

Budget Impact 2009

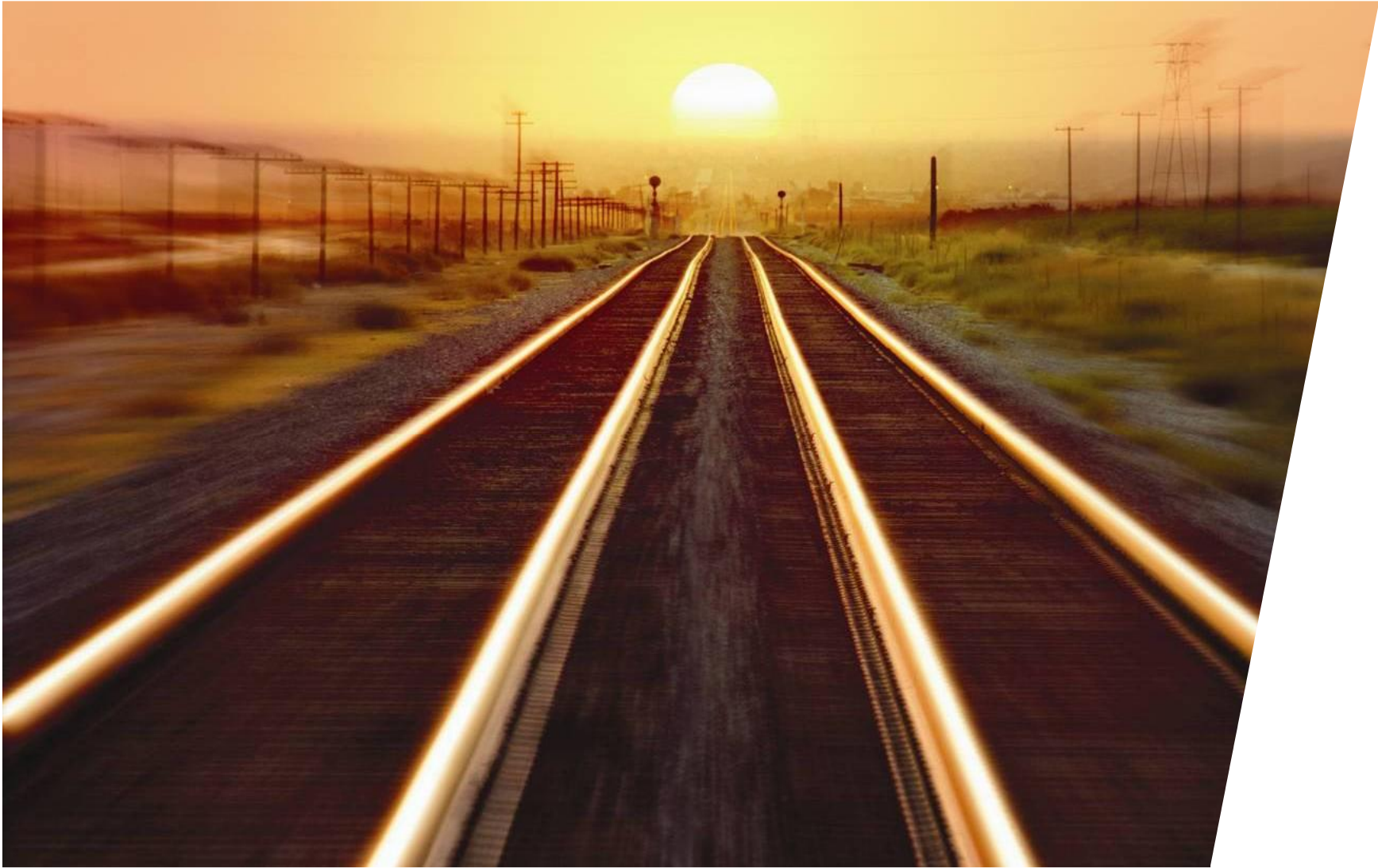
11 July 2009



Contents

- ▶ **Budget 2009**
 - ▶ **Key Direct Tax proposals**
 - ▶ **Key Indirect Tax proposals**

Direct Tax proposals



Rates of tax

Personal income tax

Present		Proposed	
Income slab (INR)	Rate	Income slab (INR)	Rate
<i>Upto 150,000</i>	<i>Nil</i>	<i>Upto 160,000</i>	<i>Nil</i>
<i>150,001 – 300,000</i>	<i>10%</i>	<i>160,001 – 300,000</i>	<i>10%</i>
<i>300,001 – 500,000</i>	<i>20%</i>	<i>300,001 – 500,000</i>	<i>20%</i>
<i>Above 500,000</i>	<i>30%</i>	<i>Above 500,000</i>	<i>30%</i>

- ▶ Basic exemption limit of INR 190,000 for resident women below 65 years and INR 240,000 for residents above 65 years
- ▶ Surcharge abolished. Education cess on income-tax at 3% continues

Rates of tax

- ▶ No changes proposed in tax rates for non-individual tax payers
- ▶ No changes in rates of surcharge and education cess for corporate tax payers

Taxes abolished

- ▶ FBT abolished
- ▶ Following perquisites to be taxed as salary:
 - ▶ ESOP/sweat equity
 - ▶ Contribution to approved superannuation fund exceeding INR 100,000
 - ▶ Any other prescribed fringe benefit or amenity
- ▶ Commodities transaction tax abolished

Minimum alternate tax ('MAT')

- ▶ MAT rate increased from 10% to 15%
- ▶ MAT credit carry forward increased from 7 to 10 years
- ▶ MAT profit to be enhanced by provision for diminution in value of any asset

Wealth tax

Wealth tax exemption limit raised

- ▶ The minimum amount of net wealth exempt from wealth tax has been raised to INR 3,000,000 from INR 1,500,000

Tax holiday for exports

- ▶ Deduction under section 10A and 10B which was earlier available only upto 31 March 2010 to be extended by 1 year to 31 March 2011
- ▶ The anomaly in the formula for computing deduction under section 10AA which is applicable to SEZ units has been rectified with effect from 1 April 2010. Simply put,

Profits of business of the unit X export turnover of the unit
Total turnover of the business of the *unit* (earlier assessee)

Provisions relating to computation of taxable income

Promoting investment in R&D

- ▶ Weighted deduction of 150% available to business of manufacture or production (except industries in negative list- [Eleventh Schedule](#))

Manufacture defined

- ▶ Manufacture with its grammatical variations, means a change in a non-living physical object or article or thing-
 - ▶ 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
 - ▶ bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure

Provisions relating to computation of taxable income

Relief to small businesses

- ▶ Presumptive taxation at 8% of gross receipts for businesses with turnover of less than INR 4 million
- ▶ No need to maintain books and pay advance tax

Taxing receipts in 'kind'

- ▶ An individual/HUF would now also be taxed in respect of any moveable/immoveable property received without consideration/ for inadequate consideration, in excess of INR 50,000

Provisions relating to computation of taxable income

Determination of arm's length price

- ▶ Board to announce safe harbour rules with effect from 1 April 2009
 - ▶ 'Safe harbour' defined to mean circumstances in which tax authorities will accept transfer price
- ▶ If variation between arithmetic mean and transfer price does not exceed 5% of 'transfer price', transfer price shall be deemed to be at arm's length
 - ▶ To be effective in case of proceedings pending before transfer pricing officer on 1 October 2009

LLP Taxation

- ▶ LLP taxation akin to taxation of general partnership firms
 - ▶ Definition of 'firm', 'partner' and 'partnership' extended to also include 'LLP', 'partner' and 'partnership' as defined under the LLP Act
 - ▶ No difference in tax treatment of general or limited partners
 - ▶ Effective rate of tax for LLP 30.9% vis-à-vis 33.99% in case of companies
 - ▶ DDT and MAT not applicable to LLP
- ▶ LLP typically treated as a pass-through entity in countries such as US, UK, Singapore, etc
 - ▶ Some countries like US also give an option of treating LLP as a taxable entity vis-à-vis a pass-through entity

Exemptions/deductions

Deduction under section 80CCD

- ▶ Deduction in respect of contribution to the New Pension System extended to all individuals (to cover self employed persons)
- ▶ Amount standing to the credit of the pension account applied to purchase an annuity in the same year shall not be taxed

Approval under 80G

- ▶ Approval under Section 80G to be now granted for perpetuity from the existing 5 years

Exemptions/deductions

Donations to electoral trusts

- ▶ Donations made to electoral trusts allowed as 100% deduction

Compensation received on voluntary retirement scheme

- ▶ Where assessee claims relief under Section 89 on any amount received/receivable on voluntary retirement/termination of service, exemption under Section 10(10C) would not be available and vice versa

Introduction of Alternate Dispute Resolution ('ADR')

- ▶ ADR mechanism proposed to facilitate speedy resolution of disputes. Salient features detailed as under:
 - ▶ Only foreign companies/persons having transfer pricing variations eligible for ADR
 - ▶ Collaborative process between Assessing Officer, Assessee and the Dispute Resolution Panel ('DRP')
 - ▶ DRP would comprise of 3 Commissioners of Income-tax constituted by the Board
 - ▶ Entire process would not exceed 10 months from the date the draft order is provided to the assessee by the Assessing officer
 - ▶ Every direction by the DRP is binding on the Assessing officer
 - ▶ These amendments will take effect from 1 October 2009

Rationalisation of tax administration and compliance provisions

Reassessment proceedings

- ▶ In the course of reassessment proceedings, Assessing Officer to have the power to assess income in respect of any issue which may not have been recorded as the reasons for re-opening the assessment
 - ▶ The above amendment to apply retrospectively from 1 April 1989

Rationalisation of tax administration and compliance provisions

Introduction of document identification number (DIN)

- ▶ Income-tax authorities to allot and quote a computer generated DIN in respect of every notice, order, letter or correspondence issued
- ▶ Non quoting of DIN shall invalidate the notice, order, letter or correspondence issued
- ▶ Document, letter or correspondence received by an income-tax authority or on his behalf to include the DIN failing which the document shall be deemed to have not been received

Rationalisation of tax administration and compliance provisions

Time limits for completion of tax withholding assessments

- ▶ Limitation period for passing an order holding an assessee to be an 'assessee in default' specified:
 - ▶ In the case of resident assessees, 2 years from the end of the financial year in which statement of tax deduction at source is filed by the deductor
 - ▶ 4 years in other cases
 - ▶ Proceedings for financial year 1 April 2007 and earlier years to be completed by 31 March 2011
- ▶ No time limit prescribed where:
 - ▶ Deductor has deducted but not deposited the tax
 - ▶ Employer has failed to pay taxes on perquisites
 - ▶ Deductee is a non-resident

Rationalisation of tax administration and compliance provisions

Provisional attachment of assets

- ▶ Attachment orders are typically valid for six months; validity period extendable by 2 years
- ▶ Provisions amended to provide that the period during which any proceedings are stayed by any Court shall be excluded in calculating the specified period (the amendment is retrospective from 1 April 1988)

Rationalisation of penalty provisions

Penalty provisions

- ▶ Scope of penalty provisions in search cases to extend to situation where the tax return is filed but income is not disclosed in the return
 - ▶ The above amendment to apply in cases of search initiated after 1 June 2007

Tax deduction at source

Permanent Account Number (PAN) made mandatory

- ▶ PAN has to be mandatorily quoted by person (including non-residents) receiving payments on which tax is deductible
- ▶ Failure to quote PAN shall result in tax deduction at the higher of the following rates:
 - ▶ Rate specified under the relevant provision of the Act
 - ▶ Rates in force
 - ▶ 20%
- ▶ Declarations for 'nil' tax deduction at source valid only if PAN quoted in the declaration
- ▶ Certificate for 'nil' or reduced tax deduction at source shall not be granted unless PAN quoted in application made for such purpose.

Tax deduction at source

Changes proposed in rates applicable to payments in pursuance of a contract

- ▶ Distinction between contractor and sub-contractor removed
- ▶ New rates applicable:
 - ▶ 1% where payment is to an individual or a HUF
 - ▶ 2% in other cases
- ▶ No tax withholding provisions apply on payments to a contractor during the course of business of plying, hiring, or leasing goods carriages provided a Permanent Account Number is furnished by such contractor

Tax deduction at source

- ▶ Tax withholding provisions not to apply to manufacturing or supplying a product according to customer specifications where the material is purchased from a person other than the customer
- ▶ For payments for manufacturing or supplying a product where the material is supplied by the customer, tax withholding shall be on the invoice value excluding value of material where such value is separately mentioned

Tax deduction at source

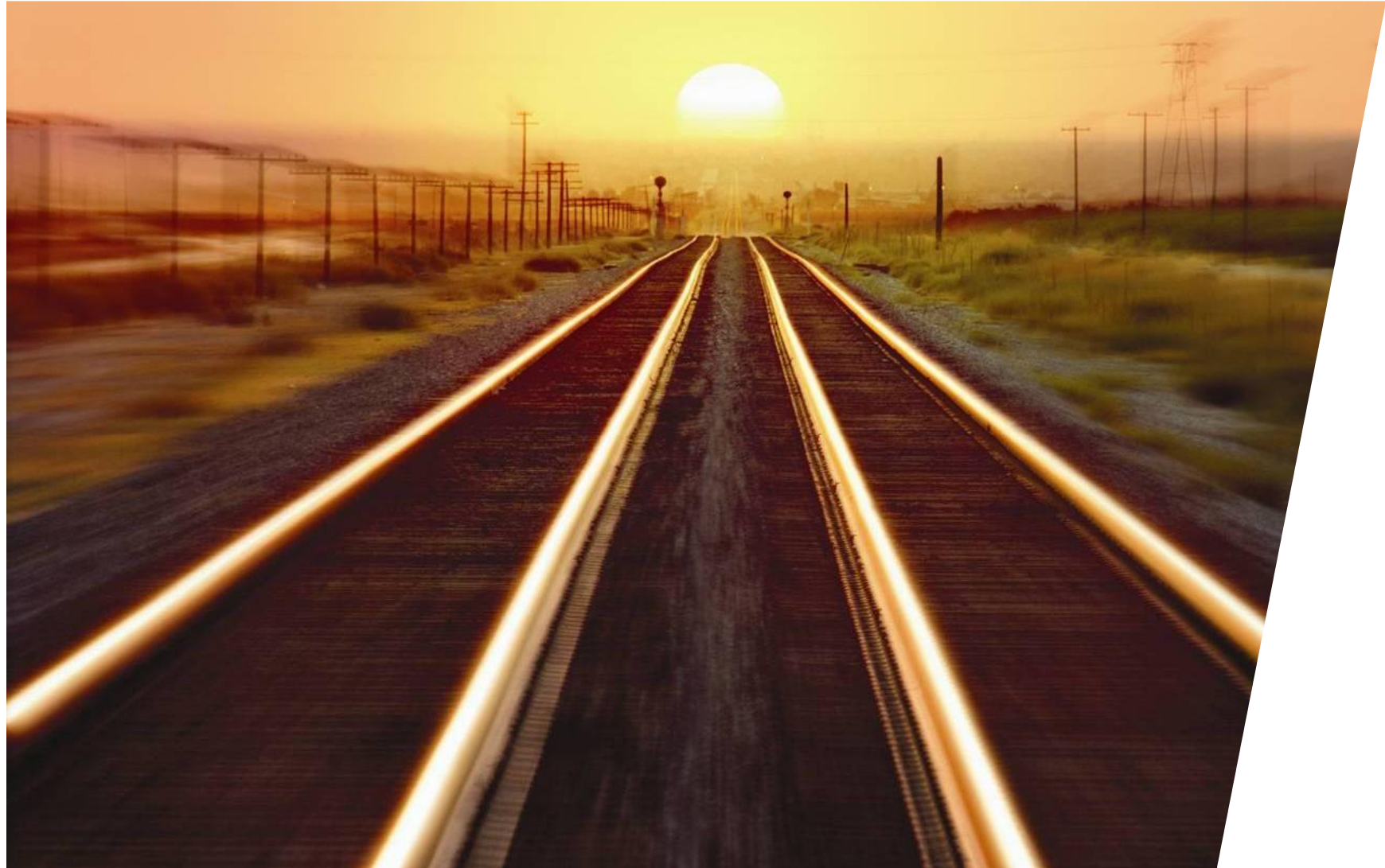
Changes proposed in rates applicable to rental payments

Nature of payment	Present rate	Proposed rate*
<i>Rent of plant, machinery or equipment</i>	10%	2%
<i>Rent of land, building or furniture</i>		
▶ <i>Individual, HUF</i>	15%	10%
▶ <i>Others</i>	20%	10%

Other miscellaneous provisions

- ▶ Central Government would now be conferred with the power to enter into agreements with non-sovereign jurisdictions for avoidance of double taxation and facilitation of information exchange

Indirect Tax proposals



Customs duty

- ▶ No change in basic (at 10%) / overall general rate structure
- ▶ Refund of duty paid on goods (which are defective or not as per Import agreement) subject to conditions – 6 months
- ▶ Authority for Advance Ruling aligned – u/s 245-O of IT Act
- ▶ High Courts have been given powers to condone delay for appeals (retrospectively)
- ▶ Retrospective validation of acts of specified officers (eg DGCEI) – Supersession of Judl. precedents like C.K. Geever/Copier Force

Customs duty

- ▶ Export promotion exemption extended to additional 5 types of inputs/RM imported for manufacture of sports goods
- ▶ CVD exemption on packaged or canned software (on value of transfer of right to use)
- ▶ If tariff value fixed under Excise by Central Government, the same to be assumed for import valuation
- ▶ Rebate of duty paid on local inputs used for export under DFIA (retrospective effect)
- ▶ BCD on LCD panels reduced from 10% to 5%
- ▶ BCD on set-top boxes increased from Nil to 5%

Central excise

- ▶ No change in basic (at 8%) / overall general rate structure
- ▶ Authority for Advance Ruling aligned – u/s 28F of Customs Act / 245O of IT Act
- ▶ High Courts have been given powers to condone delay for appeals (retrospectively)
- ▶ Exemption of duty on packaged or canned software – on value representing transfer of right to use – service tax payable on this value

Central excise – rate variations

- ▶ Car with engine capacity 2000 cc and above – duty reduced from INR 20,000 to INR 15,000
- ▶ Petrol driven trucks, chassis – duty reduced – 20% to 8%
- ▶ Duty increased from 4% to 8% on various items except specified items such as drugs/pharma, medical, etc
- ▶ Rates for branded petrol/ diesel aligned with unbranded
- ▶ Goods (chapter 68) manufactured for construction at site fully exempt

CENVAT credit

- ▶ Definition of 'inputs' clarified to exclude the following items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods, such as
 - ▶ Cement
 - ▶ Angles
 - ▶ Channels
 - ▶ Centrally twisted deformed bar
 - ▶ Thermo-mechanically treated bar; and
 - ▶ Other items

CENVAT credit

- ▶ Amendment to option under Rule 6(3), where assessee not maintaining separate records for taxable and exempted goods/services:
 - ▶ Amount payable reduced from 10% to 5% on exempted goods
 - ▶ Amount payable reduced from 8% to 6% on exempted services
- ▶ CENVAT credit to be paid by service providers if inputs and capital goods are fully written off before use

Service tax

- ▶ Effective rate of 10.3% maintained
- ▶ Extended to installations, structures and vessels in the entire Continental Shelf and Exclusive Economic Zones of India
- ▶ Definition of 'India' similarly amended for determining 'import' of services

Service tax

Service tax introduced on (effective date to be notified)

- ▶ Advice, consultancy and technical assistance in the branch of law
- ▶ Specific exclusions:
 - ▶ Where service provider or service recipient is an individual
 - ▶ Representation before any court, tribunal or authority
- ▶ Service provided in relation to transport of Coastal goods and goods through inland water including national waterway
- ▶ Cosmetic and plastic surgery service

Service tax

Scope of existing taxable services amended (effective from date to be notified)

- ▶ Stock Broking services – Sub-brokers excluded (clarified not taxable under Business Auxiliary services also)
- ▶ Business Auxiliary services – Only processes amounting to manufacture of ‘excisable’ goods excluded
- ▶ Transportation of goods in container by rail services - Transport of goods in container or otherwise including by Government railway now taxable

Scope of existing taxable services clarified

- ▶ Information Technology Software services – the term ‘providing’ replaced for ‘acquiring’ (retrospective change w.e.f. 16 May 2008)

Service tax

Exemption provided (effective from 7 July 2009)

- ▶ Point-to-point transportation of passengers by tour operators having contract carriage permit (tourism, conducted tours, charter/hire service continue to be taxable)
- ▶ Inter-bank purchase and sale of foreign currency between scheduled banks
- ▶ Membership fee and other charges charged by Export Promotion Council and Federation of Indian Export Organization under Clubs or Association services, till 31 March 2010
- ▶ Retrospective extension of exemption from 1 January 2005 on specific input services availed by GTA

Service tax

Valuation of works contracts under composition scheme (effective 7 July 2009)

- ▶ Specific inclusions
 - ▶ Value of all goods used in or in relation to execution of works contract (including free supplies)
 - ▶ Value of all services required to be provided for execution of works contracts
- ▶ Specific exclusions
 - ▶ Cost of machinery and tools (except when acquired on hire)
- ▶ Option available only where 'declared value' of works contract is not less than gross amount charged for such works contract

Service tax

Simplification of refund scheme for goods exporters

- ▶ Exemption to specified services
 - ▶ Goods Transport Agency services
 - ▶ Commission paid to foreign agents (service tax limited to 1% of FOB value of exports subject to conditions)
- ▶ Terminal handling charges added to list of input services eligible for refund
- ▶ Time limit for filing refund extended from 6 months to 1 year from date of export of goods

Service tax

Procedure for filing claims simplified

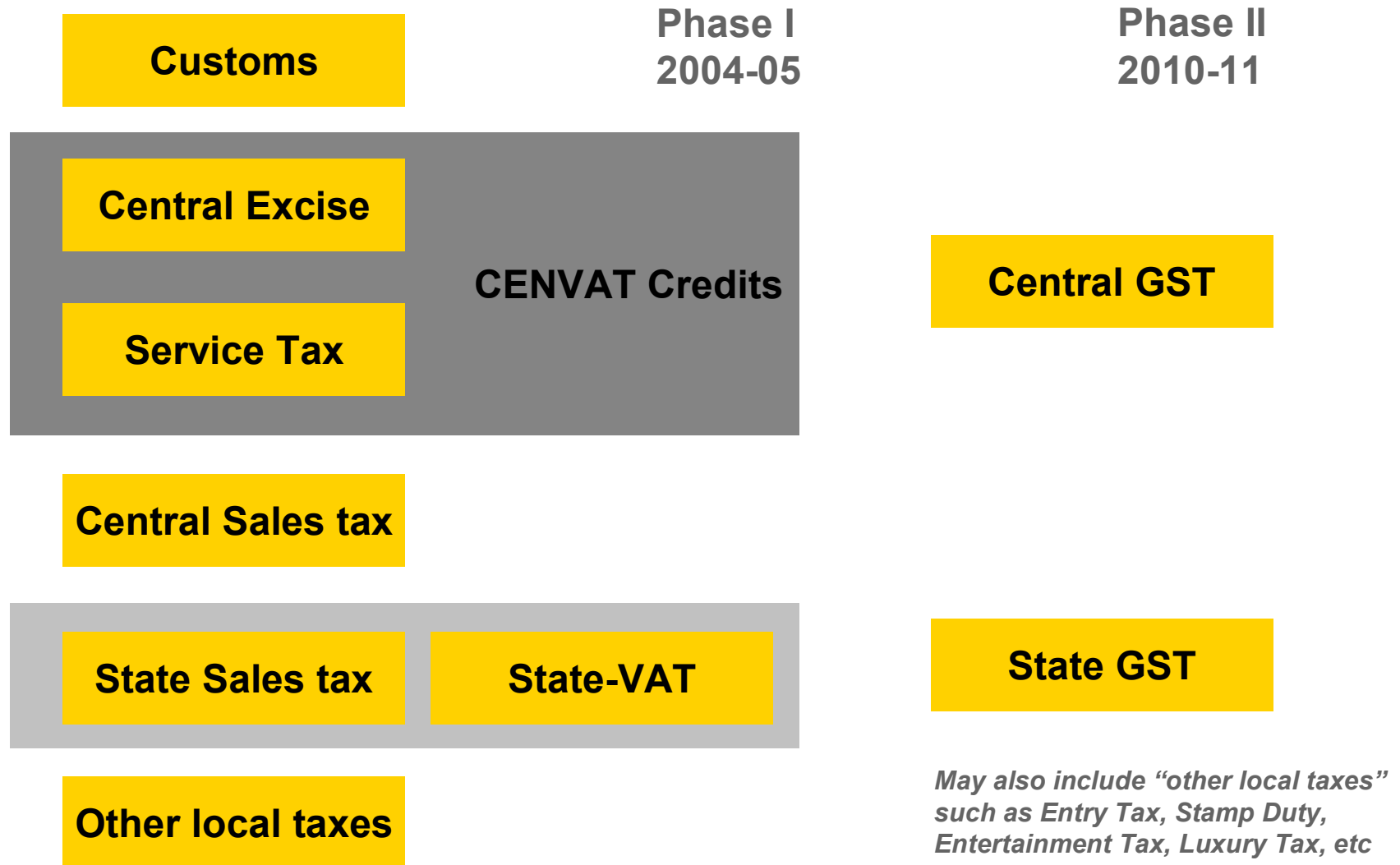
- ▶ Refund can be claimed anytime after export (earlier to be filed on a quarterly basis)
- ▶ Refund to be granted within 1 month without pre-audit based on
 - ▶ Self certification where refund up to 0.25% of total FOB value of exports
 - ▶ Certification by Chartered Accountant (under Companies Act, 1956 or Income-Tax Act, 1961), for other cases

Service tax

Procedural amendments

- ▶ Power of Commissioner of Central Excise to revise orders of sub-ordinates removed – though appeal can be filed
- ▶ Central Government granted power to frame rules on the following
 - ▶ Place of provision of taxable services; and
 - ▶ Relevant date for determining the rate of service tax

GST – the Roadmap so far...



GST

- ▶ Central Government reiterating that GST likely to come from 1 April 2010
- ▶ GST likely to replace present CENVAT and State-VAT structure into a comprehensive Goods & Services Tax
- ▶ Empowered committee of State Finance ministers has now set up 3 sub-committees to work out the modalities of GST:
 - ▶ For computing the “revenue neutral rates” for GST
 - ▶ For finalising the list of exempt commodities/ transactions
 - ▶ To review the phase-out of central sales tax (CST)
- ▶ Empowered Committee has recommended a “Dual-GST” regime – viz a Central-GST and a State-GST
- ▶ Study by 13th Finance Commission revealed that 16 percent rate for GST could be tax-neutral
- ▶ Centre and states yet to finalise rate structure
(news reports indicate it could be upto 20% - ie 12% Central-GST & 8% State-GST)

GST: Alternative models considered

Concurrent Dual-GST

Model preferred by Centre & Empowered Committee

- ▶ For goods, GST levied concurrently by Centre as well as States
- ▶ For services, following options considered:
 - (a) GST levied only by Centre, other than specified “local” services
 - (b) GST levied concurrently by Centre & States; and inter-state services to be levied by Centre and allocated to States

National-GST

Model least favoured by the States

- ▶ Centre & State combine their levies in the form of a single National GST, with appropriate revenue sharing amongst them
- ▶ Tax could be controlled and administered by Centre, or by States or by a third agency reporting to both Centre & States
- ▶ Concerns raised on revenue sharing arrangements and centralization of taxation powers with the Centre

State-GSTs

Model least favoured by Centre

- ▶ GST would be levied by States only
- ▶ Centre would withdraw from the field of general consumption taxation
- ▶ Concerns raised on inequalities in distributing tax revenues among developed and under-developed states & reduction of revenues at Centre

GST: Alternative models considered

Non-concurrent Dual-GST

Variant of State-GST model

- ▶ Centre withdraws entirely from levying consumption taxes on goods
- ▶ States levy GST on goods within their jurisdictions
- ▶ Centre levies GST on services – passes on revenues collected to States either partially or wholly
- ▶ States agree to allow input credits of Central-GST on services and Centre agrees to allow input credit of State-GST paid on goods

-
- ▶ Above discussion suggests GST-design likely to be a challenge, regardless of the Alternative Model chosen
 - ▶ All Models discussed above require significant Centre-State coordination & harmonization
 - ▶ To ensure harmonization of tax base, rules and procedures, it would be desirable to have a common GST legislation enacted by Parliament, following the CST model

Empowered Committee may conclude on the CST Model for enacting State-GST

GST: Key challenges

Agreement of all states and legislations

Government administrative machinery and IT systems

Business system and accounting

Status of tax incentives/exemptions

Treatment of:

- ▶ Transition – Stock, Input credits
- ▶ Tax base and rates
- ▶ Services – International and inter-State services
- ▶ Real property
- ▶ Dealing with Governments and Public Bodies

GST: Key questions

International Trade in goods

- ▶ Zero-rating of exports
- ▶ State GST on Imports
 - ▶ Determination of final destination of goods at the port of entry
 - ▶ Commercial importations - the lack of tax at the point of entry offset by the lack of input tax credit
 - ▶ Imports by final consumers - taxability on the basis of the state of residence of the consumer

Role of Entry Tax

- ▶ State entry tax could be redesigned as a general 'reverse charge' on inter-state and international imports of property (ie goods or intangibles) and services

Inter-state and international services

- ▶ Reverse charge on import of services for neutral application to domestic and imported supplies

GST: Key questions

Sector-wise impact

- ▶ Manufacturing
 - ▶ Transition rules for unutilised CENVAT credits

Transportation

- ▶ Place of taxation of inter-state transportation services
- ▶ Status of various cargo handling and port services

GST

Changing the way you do business...



 **ERNST & YOUNG**

Thank You