



INDIAN LEGAL AND BUSINESS UPDATE
FEBRUARY 1-FEBRUARY 28, 2010

1. Highlights of Union Budget 2010-11 presented on February 26, 2010:

1. Direct Taxes

- No change in corporate tax rates
- Surcharge on domestic companies reduced from 10 to 7.5 per cent
- Minimum Alternate Tax enhanced from 15 to 18 percent
- Income from Business and Profession:
 - Tax slabs for individuals relaxed
 - Off-shore technical services relating to or when utilised in India, taxation will be in India. This will apply retrospectively.

2. Indirect Taxes

- Excise Duty rolled back to 10 per cent
- Goods and Service Tax roll out from April 1, 2011
- Overall customs duty and service tax rates unchanged
- Additional services brought within ambit of service tax in relation to:
 - Copyright on cinematograph films and sound recording
 - Health services payment by:
 - (i) any business entity for its employees
 - (ii) insurance companies under health insurance schemes
 - Employees medical records storage or maintenance
 - Electricity related contracts with approved electricity exchange
 - Providing preferential location or development of residential or commercial complex
 - Contract of brand promotion or name endorsement
 - Organizing games of chance including lottery

3. Non Tax Proposals

- Special emphasis on the development in the agriculture and infrastructure sector
- Impetus to clean energy - fund established for innovative projects

- PSU disinvestment to reach Rs 250 billion with further increase in the next fiscal
- RBI to give additional banking licenses to private sector players including eligible Non Banking Financial Companies ('NBFC')
- A nutrient based subsidy policy becomes effective April 1, 2010

2. Competition Commission of India proposes pre-merger talks to speed up deals.

The Competition Commission of India (CCI) plans to introduce pre-merger consultation for companies considering mergers and acquisition. The consultation process, if put in place, will allow companies a chance to seek competition regulator's views before they file their proposals. The provision of pre-merger consultations will allay fears of the corporates that the CCI's approval process, which can be as long as 210 days, could delay strategic investments and M&As. Introducing pre-merger consultations with companies will help reduce the time taken for approving such proposals.

Under the proposed 'pre-merger' provisions, companies mulling mergers and acquisitions would be allowed to approach the CCI to find out if their proposals comply with the Competition Act. However, the opinion will not be binding. The draft provisions would soon be placed on the CCI's website inviting comments from the public. Such consultations will clarify doubts regarding the information to be provided that firms need to provide to the CCI while filing their formal notification.

3. FIPB will be empowered to clear Rs. 1,200 – cr proposals

Foreign Investment Promotion Board (FIPB) will soon have the authority to approve proposals involving foreign equity investment of up to INR 1,200 crore (USD 250 million), facilitating faster processing of overseas investment proposals. Under the earlier rules, investments in excess of Rs. 600 crore (USD 125 million) had to be approved by the Cabinet Committee on Economic Affairs (CCEA).

The Ministry of Commerce and Industry has moved a note for the consideration of the CCEA for formal approval. The investment limit has not been revised since the last 14 years. Keeping in view the time elapsed and other factors such as inflation, the new guidelines have been put in place. The new guidelines are expected to come into effect by April.

Under the proposed framework, proposals involving only foreign equity inflow of more than Rs. 1200 crore would be sent for cabinet approval. Currently, the total project cost, including the foreign equity inflow is taken into consideration for sending the proposal to CCEA. Under the new rules, proposals involving investments of more than Rs 600 crore would get a faster approval, as the Rs.1,200 crore limit is not on total project investment but on equity component. The Government has also decided that companies which have obtained prior approval from the government for the initial foreign investment, and fall under the automatic route will not have to seek for fresh approval. The new guidelines are expected to help the government to meet its target

of achieving USD 50 billion annual FDI by 2012 and USD 100 billion by 2017.

4. Norms for attracting Private Equity investment in core sector

The Government is considering new guidelines for private equity investment in infrastructure companies in an attempt to open new sources of equity funding for the sector. The move comes in the backdrop of the poor response from private companies and banks in financing projects, especially those in sectors like highways and urban transport and infrastructure. The Government's objective is to identify infrastructure opportunities from the perspective of a PE firm and then set out to attract investment from them.

5. Department of Industrial Policy and promotion proposes entry of foreign brokers in commodity exchange

The Commerce Ministry has requested the Department of Economic Affairs to consider allowing foreign entities as broker members of national commodity exchanges. This proposal, if accepted will lead to liberalization of the foreign investment policy in commodity exchanges. In a proposal sent by the Department of Industrial Policy and Promotion (DIPP) under the Commerce Ministry suggested allowing this. It is subject to the condition that foreign entities form a company registered under the Indian laws. DIPP is of the view that these proposals should be put on the automatic approval route, on the lines of stock broking and foreign exchange broking.

This move may increase efficiency, effectiveness, liquidity and maturity of the Indian commodity derivative markets. However, the Reserve Bank of India (RBI) has disallowed several such proposals in the past. RBI is of the view that foreign investment is not advisable in the commodity business because there are no clear regulations on this.

6. Government to frame guidelines to keep a check on Advertising Industry

The Government is in the process of finalizing guidelines to deter the advertising industry from making unsubstantiated and misleading claims about their products. The guidelines are based on the recommendations of a committee set up by the Food Safety and Standards Authority of India (FSSAI).
