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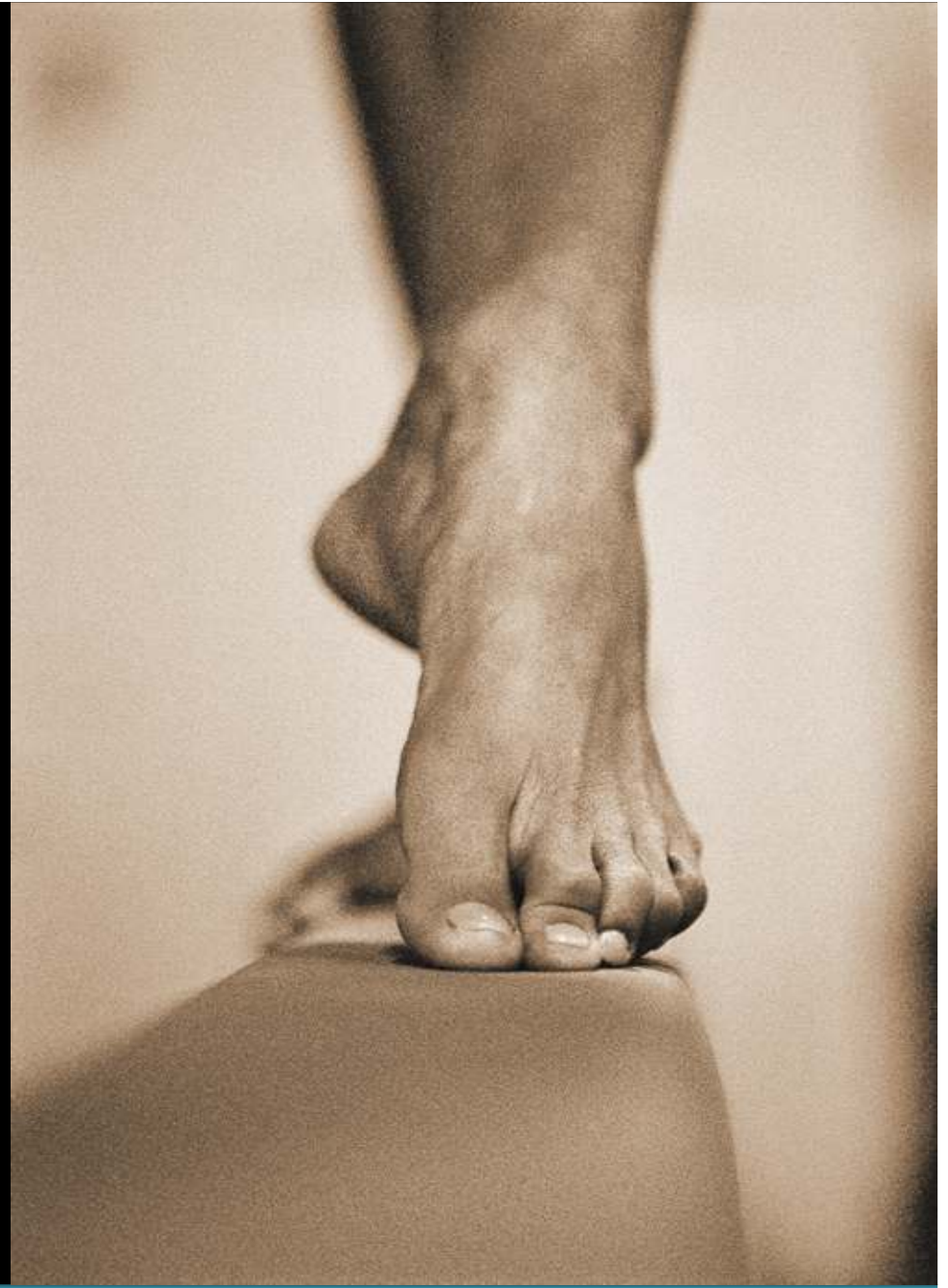
# INDIA BUDGET 2010

March 4, 2010

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**POLICY  
ANNOUNCEMENTS  
- POWER SECTOR**



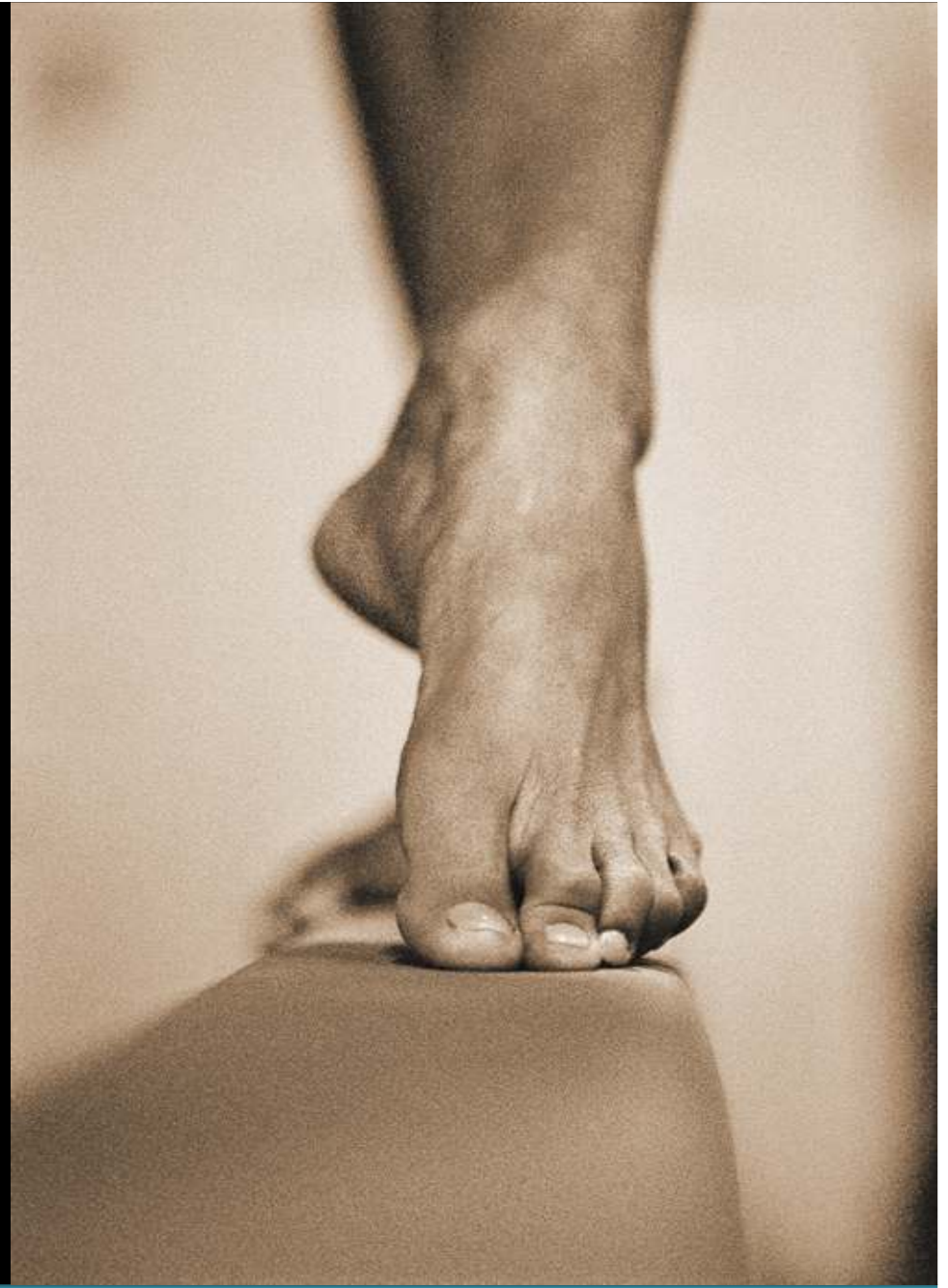
## POLICY ANNOUNCEMENTS

- Plan allocation for power sector increased from INR 22.3 billion in 2009-10 to INR 51.3 billion in 2010-11
- Increase in outlay for the Ministry of New and Renewable Energy by 61 percent from INR 6.2 billion in 2009-10 to INR 10 billion in 2010-11
- Introduction of competitive bidding process for allocating coal blocks for captive mining
- Coal Regulatory Authority to be set up for facilitating issues including economic pricing of coal and benchmarking of standards of performance
- Proposal to set up solar, small hydro and micro power projects at a cost of about INR 5 billion in Ladakh region of Jammu and Kashmir

## POLICY ANNOUNCEMENTS

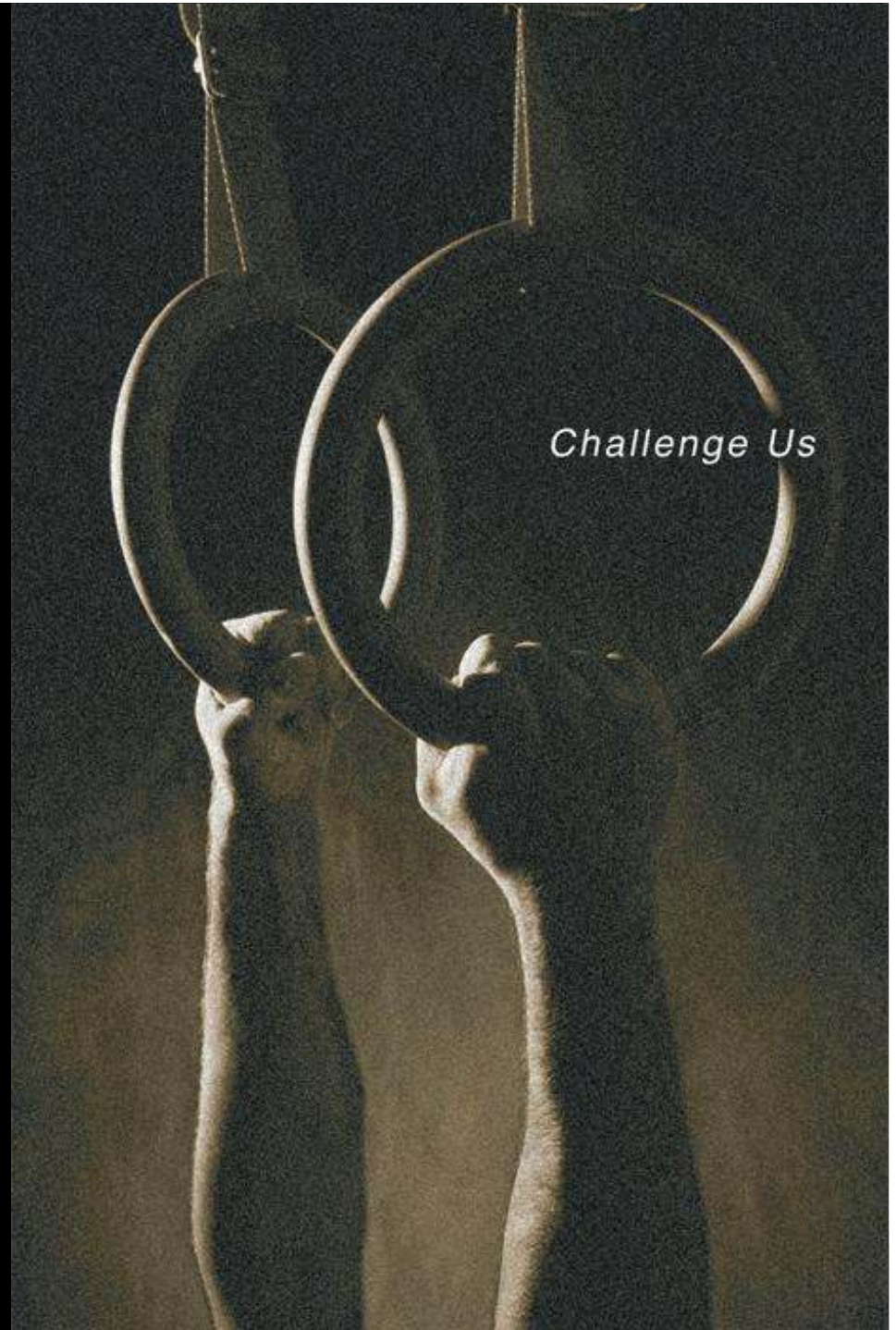
- To ameliorate the negative environmental consequences and increased pollution levels associated with industrialization and urbanization, the Budget proposes as follows:
  - Setting up of National Clean Energy Fund for funding research and innovative clean energy technologies;
  - The fund to be capitalized by levy of carbon tax on coal produced domestically as well as imported coal at the rate of INR 50 per tonne (As per Finance Minister's Budget speech)

# INDIRECT TAX PROPOSALS



# CONTENTS

- **CUSTOMS AND EXCISE**
- **SERVICE TAX**
- **GST**



## INDIRECT TAX - OVERVIEW

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- Reinforcement of desire to implement a national GST; expected date indicated as April 1, 2011
- No significant structural changes in Indirect taxes; marginal increase in excise rates to align with service tax
- Attempt to plug revenue gaps, provide sectoral incentives, rationalise rates and ease compliance
- Rationalisation of refund processes and rules for service exporters and for importer traders

## CUSTOMS AND EXCISE

- Median rate of basic customs duty unchanged
- Median rate of excise duty enhanced from 8 to 10 percent
- Clean energy cess imposed as a duty of excise on coal, lignite and peat produced in India
  - Import of coal to also attract clean energy cess (to be collected as CVD).
  - Under the relevant schedule to the Finance Bill, 2010, clean energy cess is specified at INR 100 per tonne. The Finance Minister has however indicated a rate of INR 50 per tonne in the Budget speech.
  - Provisions of Central Excise Act, 1944 are expected to be made applicable to clean energy cess

# CUSTOMS AND EXCISE

- Solar power generating projects/facility:
  - Concessional BCD of 5 percent and excise exemption (and consequently CVD) on all items of machinery including prime movers, instruments, apparatus and appliances, control gear and transmission equipment and auxiliary equipment (including those required for testing and quality control) and components required for initial set up
  
- Geo-thermal energy:
  - Ground Source Heat Pumps exempt from BCD and additional CVD

## CUSTOMS AND EXCISE

- Wind operated energy generators:
  - Existing exemption from excise duty on specified goods such as epoxy resin, adhesive resin, vinyl ester adhesives etc used for the manufacture of rotor blades is now extended to polyester based infusion resin and hand layup resin (both covered under HSN 3907 9190) and gel coat and hardener (both falling under HSN 3208 1090) used with such polyester based resins

# CUSTOMS AND EXCISE

- Exemption from excise duty on goods supplied to mega power projects
  - supply of power has been tied up through tariff based competitive bidding or a mega power project awarded to a developer on the basis of such bidding, subject to specified conditions
  - Additionally, CENVAT credit on inputs used in the manufacture of such goods is allowed

## CUSTOMS AND EXCISE

- Electricity supplied from SEZ to DTA or non processing areas of SEZ
  - Basic customs duty of 16 percent ad valorem with retroactive effect from June 26, 2009; Exemption from Special CVD.
  - Exemption to supplies or imports (other than above) continues
  
- Transfer of right to use packaged or canned software exempted from excise duty / customs duty in all cases; condition of commercial exploitation removed

# CUSTOMS AND EXCISE

- SSI units
  - Cenvat credit on capital goods allowed fully in year of receipt
  - Payment of duty and filing of returns on quarterly basis
- Pre authentication of invoices dispensed with
- Credit on jigs, fixtures, moulds and dies sent to another manufacturer permitted
- Attempt towards mitigating the disputes to expedite collection of duty:
  - Widening the scope of Settlement Commission
  - No penalty to be levied where duty along with interest is paid before issuance of show cause notice

## SERVICE TAX - GENERAL

- Service tax rate retained at 10 percent
- Significant change in conditions relating to export qualification; no requirement to demonstrate use of services outside India
- Rationalisation of refund processes and rules for exporters
  - 'Used in or in relation to' and 'Used for' (wef March 14, 2006)
  - Accumulated credit of previous quarters
- Scope of taxability of oil-field related services expanded when performed in continental shelf and exclusive economic zone
- No penalty to be levied where service tax along with interest is paid before issuance of show cause notice

## SERVICE TAX – NEW SERVICES

- Promoting of a brands (such as celebrity endorsements)
- Permitting commercial use or exploitation of any event; this may include sports, business, social and personal events
- Copyrights involving temporary transfer of rights, or permitting use or enjoyment of rights related to cinematographic films and sound recording
  - Individual artistes, composers etc not covered
- Services provided by builders for provision of preferential location or development of real estate complexes
  - Over and above construction services
  - Parking spaces excluded

# SERVICE TAX – NEW SERVICES

- Health Related Services:
  - Services by hospitals, nursing homes or multi speciality clinics to employees of business entities in relation to health check-up or preventive care
  - Services by hospitals, etc to a person covered by health insurance scheme for health check up or treatment, where payment made by insurance company to hospital etc
- Maintenance of medical records of the employees of a business entity
- Services of electricity exchanges for trading, processing, clearing and settlement pertaining to sale and purchase of electricity
- Promoting, marketing or organizing of games of chance, including lottery, bingo or lotto (new expanded category)

## SERVICE TAX – EXISTING SERVICES AMENDED

- All air passenger transport liable to tax (domestic or international)
  - Modalities for tax working, exemption and abatement to be prescribed
- Information technology software services coverage expanded
- Sponsorship of sport events now taxable
- Construction of new building intended for sale before, during or after construction, by builder or any person authorised by him, deemed to be a service, except where no sum is received by builder before grant of completion certificate by a competent authority
  - Explanation inserted for commercial and residential construction
  - To achieve legislative intent and to bring in parity
  - No corresponding amendment in works contract service

# SERVICE TAX – EXISTING SERVICES AMENDED

- Retroactive reinforcement (from June 1, 2007) of taxability of rentals from immovable property (to counter Delhi High Court judgment)
  - To clarify legislative intent and also bring certainty
- Vacant land, given on lease or licence for construction of building or temporary structure at later stage to be used for furtherance of business or commerce
- All services provided within ports/other ports and airports taxable under such category
  - 65A not to apply (taxable services)
  - Non taxable services
- Commercial training with or without profit motive by trust, society etc (retrospective from July 1, 2003)

# SERVICE TAX - EXEMPTIONS

- Transmission of electricity
  - MP Power Transmission Co. Ltd. – BSS
  - Kerala State Electricity Board – BAS
    - Short term open access charges, Reactive charges, Excess Energy charges, Comfort charges, Transmission charges
  - Transport of goods
  - **For** transmission
- IT software services relating to packaged or canned software, pre-packed in retail packages for single user exempted subject to conditions

## SERVICE TAX - EXEMPTIONS

- Transport of goods by rail, except for specified goods; abatement of 70 percent to be allowed
- News agencies providing 'online information and database retrieval service' and 'business auxiliary service' and covered under section 10(22B) of the Income tax Act, 1961 exempt subject to conditions
- Vocational training, except if provided by specified institutes affiliated to national council of vocational training and offering courses in designated trades

# GST

## Para 26

..... It will be my earnest endeavour to introduce GST along with the DTC in April, 2011

## Para 121:

..... a Mission Mode Project for computerisation of Commercial Taxes in States has been approved recently. With an outlay of Rs.1133 crore of which the Centre's share is Rs.800 crore, the project will lay the foundation for the launch of GST

# GST

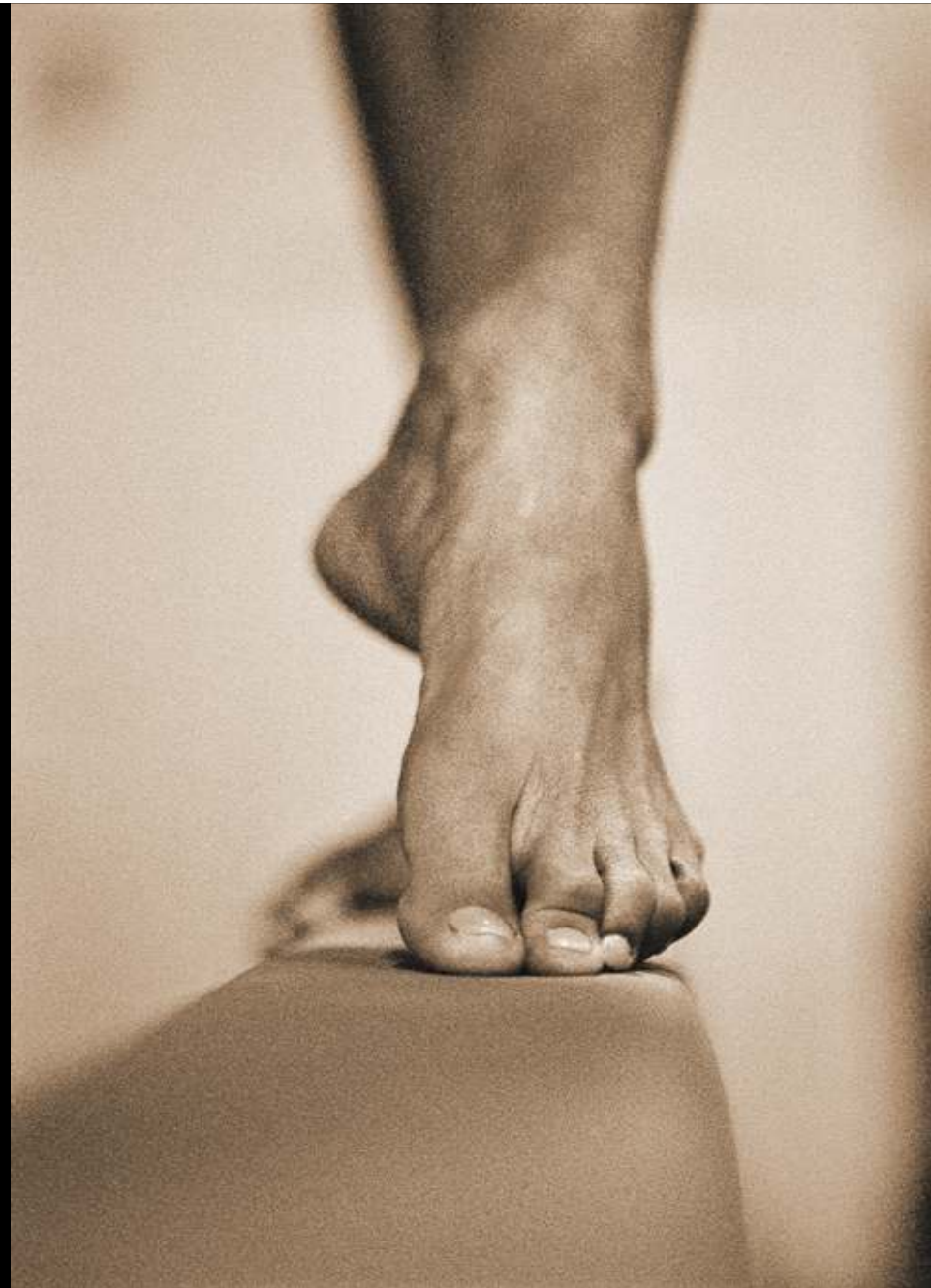
## Para 179:

..... I had the option to raise the rate of service tax to 12 per cent as it was before I introduced the third stimulus package. I am not resorting to this option to maintain the growth momentum and also to bring about a convergence in the rates of tax on goods and services. I, therefore, propose to retain the rate of tax on services at 10 per cent to pave the way forward for GST

# GST - THIRTEENTH FINANCE COMMISSION

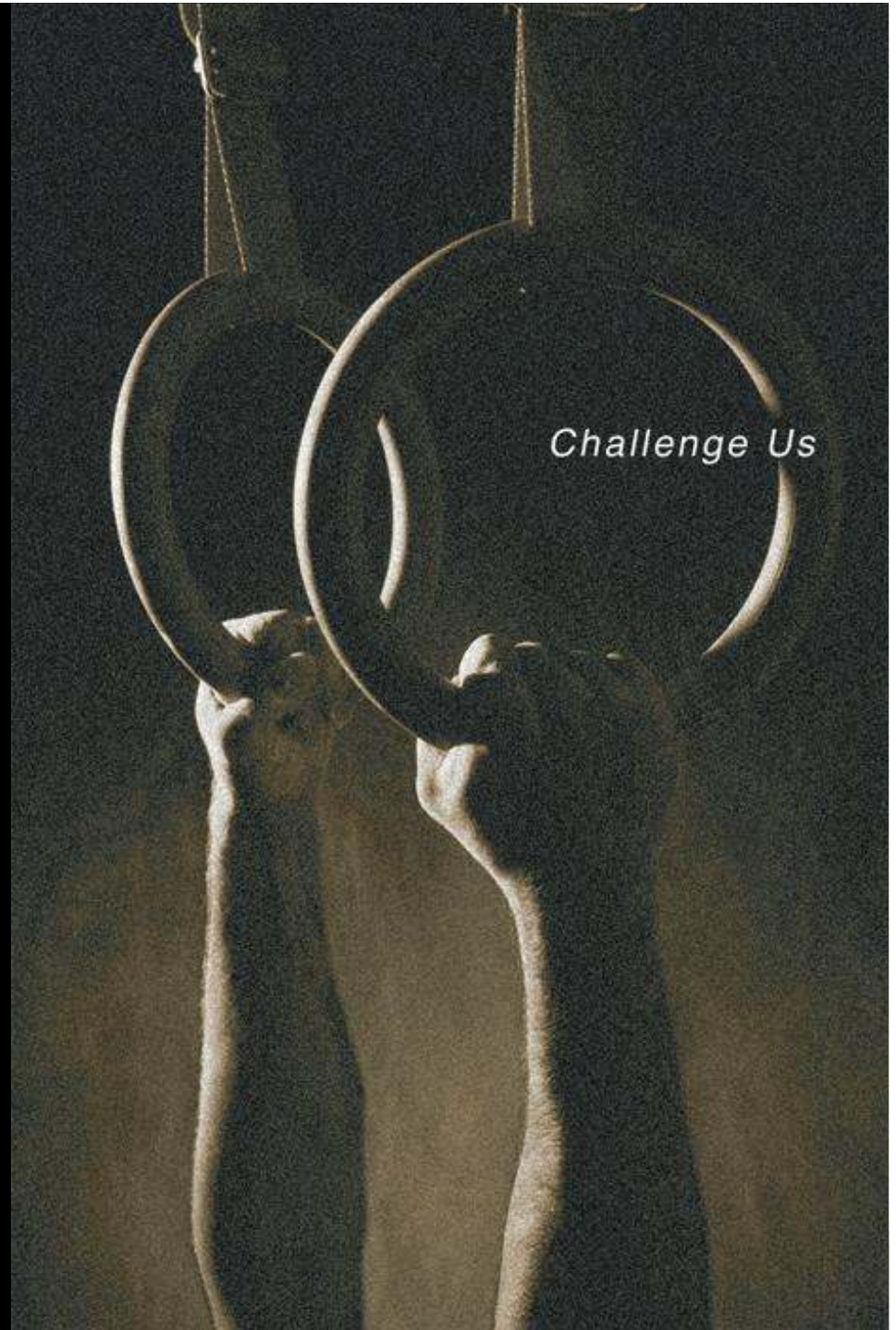
- Power sector must form an integral part of the comprehensive GST
  - High cost of power generation and distribution
- Electricity duty levied by the States should be subsumed in the SGST
- Article 278 and Article 288 of the Constitution should be amended to enable levy of GST on supply of electricity to Government at all levels like any other normal goods

# DIRECT TAX PROPOSALS



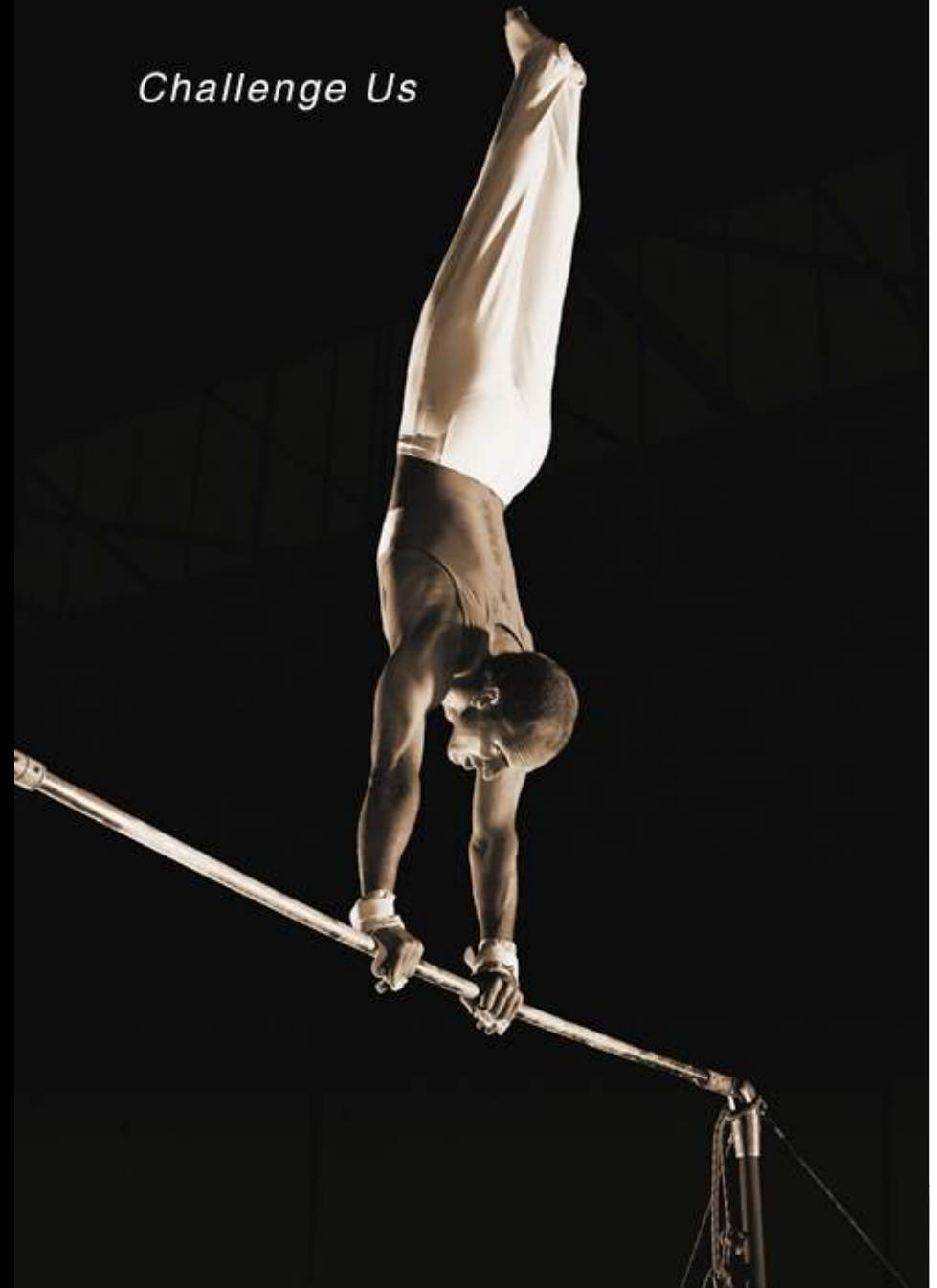
# CONTENTS

- **PERSONAL TAX**
- **INTERNATIONAL TAX**
- **CORPORATE TAX**
- **LIMITED LIABILITY PARTNERSHIP**
- **WITHHOLDING TAX**
- **OTHERS**



# PERSONAL TAX

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# PERSONAL TAX

## ➤ Tax rates for individuals

FROM		TO	
INCOME RANGE	RATE (%)	INCOME RANGE	RATE (%)
Up to 160,000	Nil	Up to 160,000	Nil
160,001 – 300,000	10	160,001 – 500,000	10
300,001 – 500,000	20	500,001 – 800,000	20
500,001 and above	30	800,001 and above**	30

**\* Net peak savings in hands of individual taxpayer- INR 51,500**

**\* Basic exemption limit in case of woman taxpayers and senior citizens continue to remain at INR 190,000 and INR 240,000**

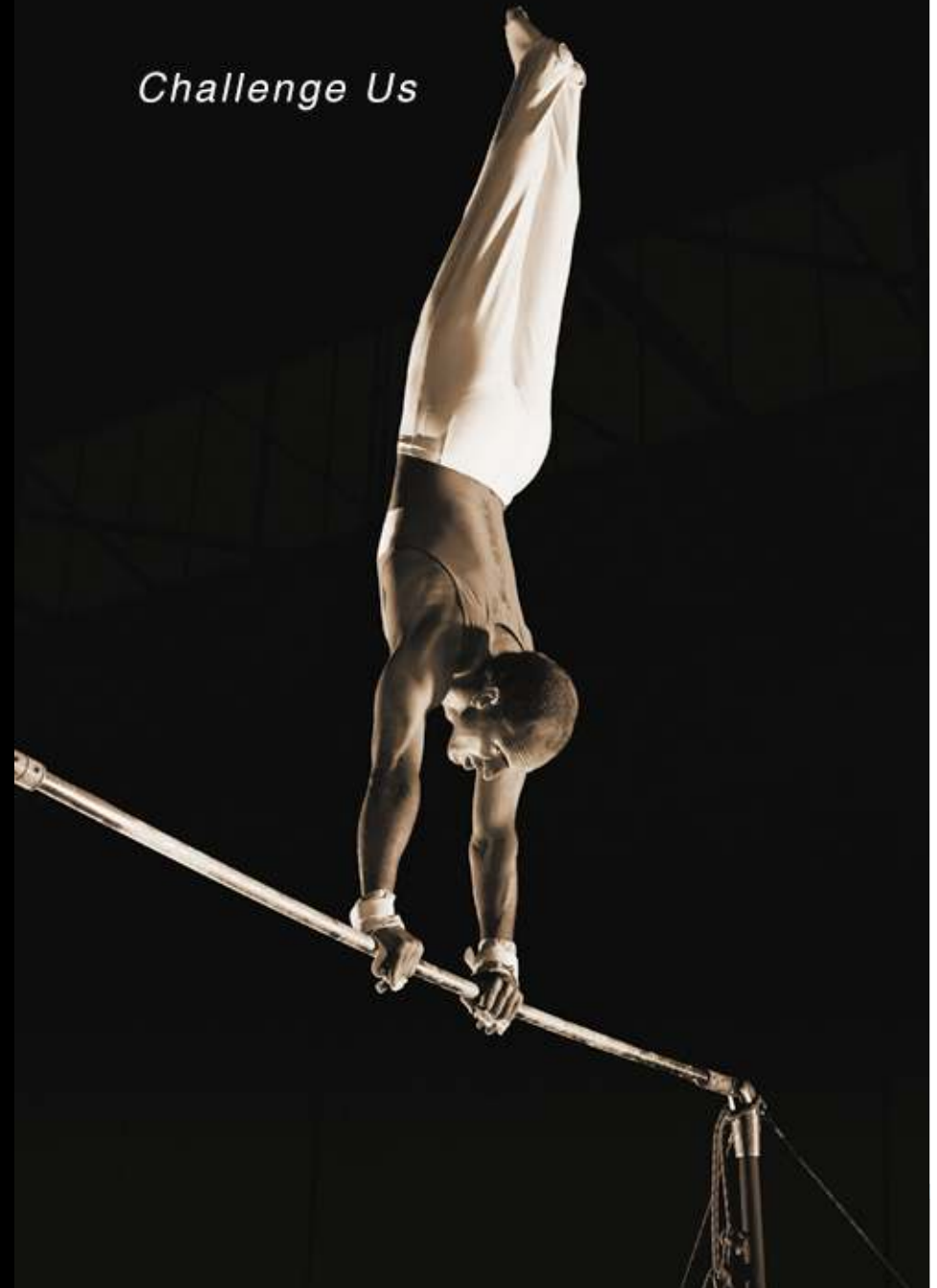
**\* No change in education and Higher education cess rates**

## PERSONAL TAX - DEDUCTION

- Deduction of INR 20,000 – subscription to long term infrastructure bonds
  - Over and above the existing limit of INR 100,000
- Contribution to 'Central Govt. Health Scheme' eligible for deduction
  - similar to health insurance
  - available to serving and retired Government servants
- Donation to research associations undertaking social science or statistical research is eligible for deduction

# INTERNATIONAL TAX

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## SOURCE RULE – WIDENED

- Explanation inserted in section 9
- Income of NRs – Interest, Royalty and FTS would be deemed to accrue or arise in India, whether or not –
  - NR has residence / place of business / business connection in India
  - NR has rendered services in India
- With retrospective effect from June 1, 1976
  - Levy of interest and penalty for past years
- Decision nullified
  - Ishikawajima Harima (Supreme Court)
  - Jindal Thermal Power (Kar. High Court)
  - Clifford Chance (Bom. High Court)

# PROVISION OF SEC 44BB vis a vis 44DA

Section 44BB

Section 44DA

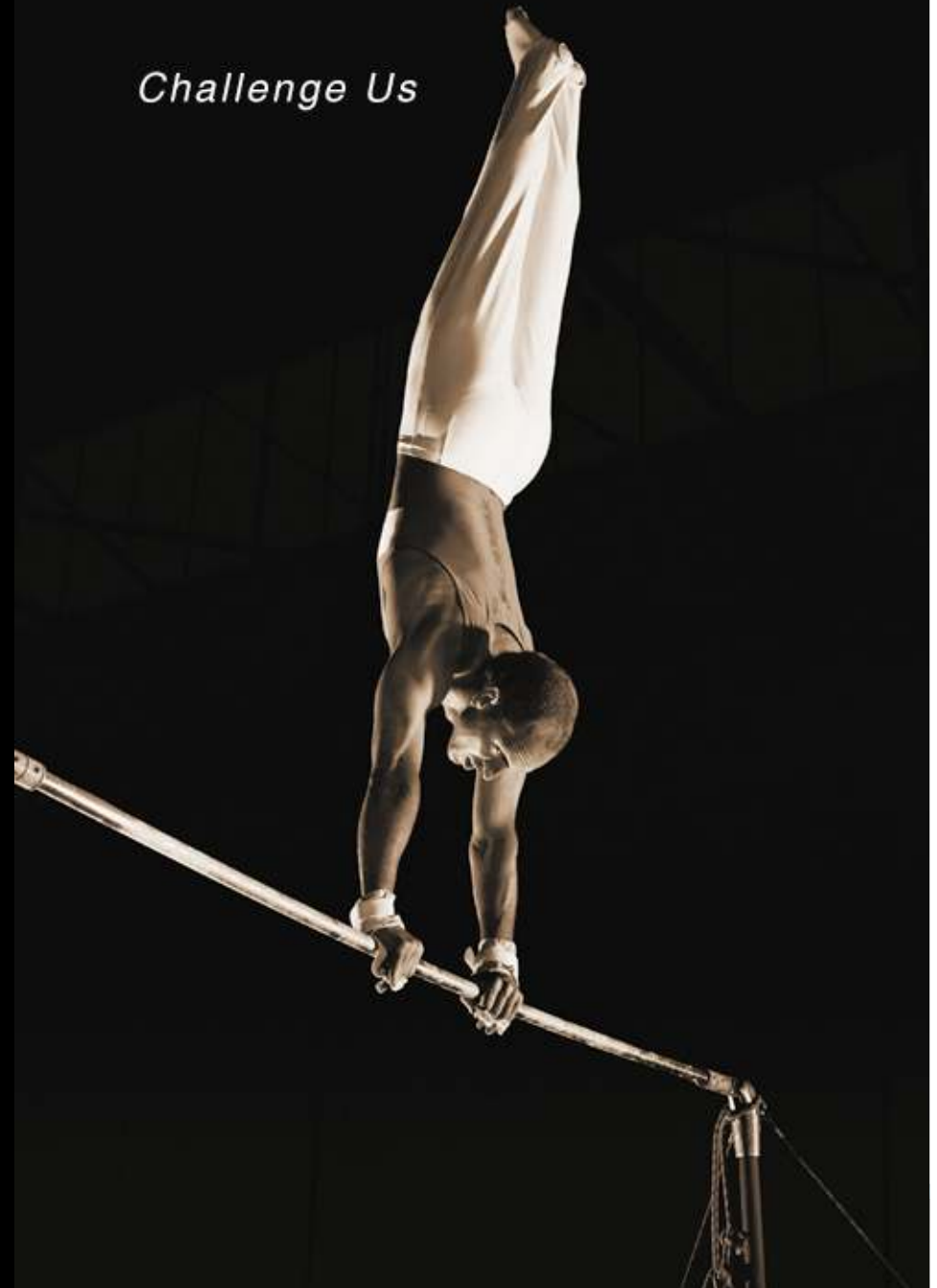
Section 115A

**Income of NR in nature of Royalty or FTS other than those relating to the PE of NR in India –  
Services on the facilities relating to exploration activities (which are not in nature of technical services)  
– deemed income equal to 10 % of the aggregate amount  
Covers income of NR by way of royalty or FTS  
where the NR carried on business through a PE in India**

- *Specifically provides that 44BB cannot be apply if 44DA can be applied*
- *Overturms earlier position that 44BB being more specific would prevail*
- *Amendment effective from AY 2011-12*

# CORPORATE TAX

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## CORPORATE TAX RATES

- No change in corporate tax rates
- Surcharge reduced from 10 percent to 7.5 percent
- MAT rate increased from 15 percent to 18 percent effective from April 1, 2011

Particulars	From	To	Change
Corporate tax	33.99	33.2175	0.77
MAT	16.995	19.9305	(2.9355)

# TAX HOLIDAY

- Proviso to section 10AA(7) inserted –
  - Amendment made in sub-section (7)
  - Relief granted retrospectively with effect from April 1, 2006

***Substituted “the undertaking” for “the assessee”***

- No extension of tax holiday for 10A / 10B Units

## SCIENTIFIC RESEARCH EXPENDITURE

- Weighted deduction of 175 percent (instead of 125 percent) on amount paid to 'research association' or approved university, college or institution for research in social science or statistical research
  - Clause amended to include any payment made to approved research association
- Weighted deduction of 175 percent (instead of 125 percent) on payment made to national laboratory
- Weighted deduction of 200 percent (instead of 150 percent) on expenditure incurred on in-house R&D facility

# SME TAXATION

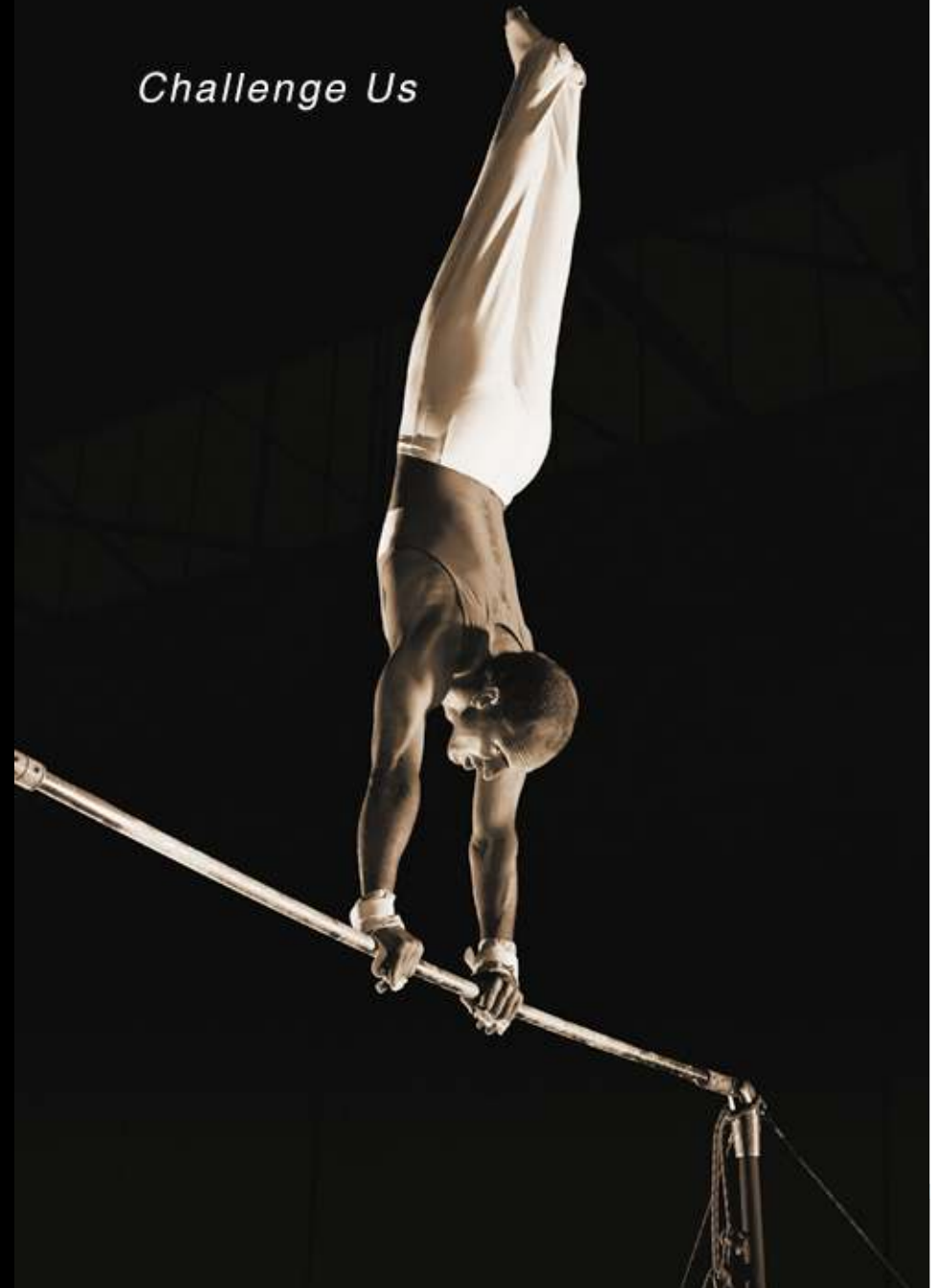
## ➤ Tax audit

- Threshold limit of turnover increased to INR 60 lakhs in case of business and INR 15 lakhs in case of professions
- Failure to get accounts audited would attract penalty of INR 1.5 lakhs (instead of INR 1 lakhs)

## ➤ Gross receipts limit for applying presumptive rate (8 percent) increased from INR 40 lakhs to INR 60 lakhs

# LLP TAXATION

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# LIMITED LIABILITY PARTNERSHIP (LLP)...

- Conversion of Company into LLP, exempt from Capital Gain tax
- Conditions to avail capital gains exemption
  - All assets and liabilities **Firms not eligible for exemption!**
  - All shareholders of the company to become partners in LLP with the same proportion of capital and profit sharing rights
  - No other consideration to be received by shareholders of the company
  - Total sales / turnover / gross receipts in business of company in the **3 preceding previous** **No clarity on preference share!**
  - For **5 years** from conversion, shareholders of the company who become **partners** in LLP **continue to hold at least 50 percent of profit sharing rights**
  - For **3 years** from conversion, **no amount to be paid to any partner** out of the **accumulated profits of the company** as it stood before conversion

**Violation of conditions would attract tax under head PGBP @ 30 percent**

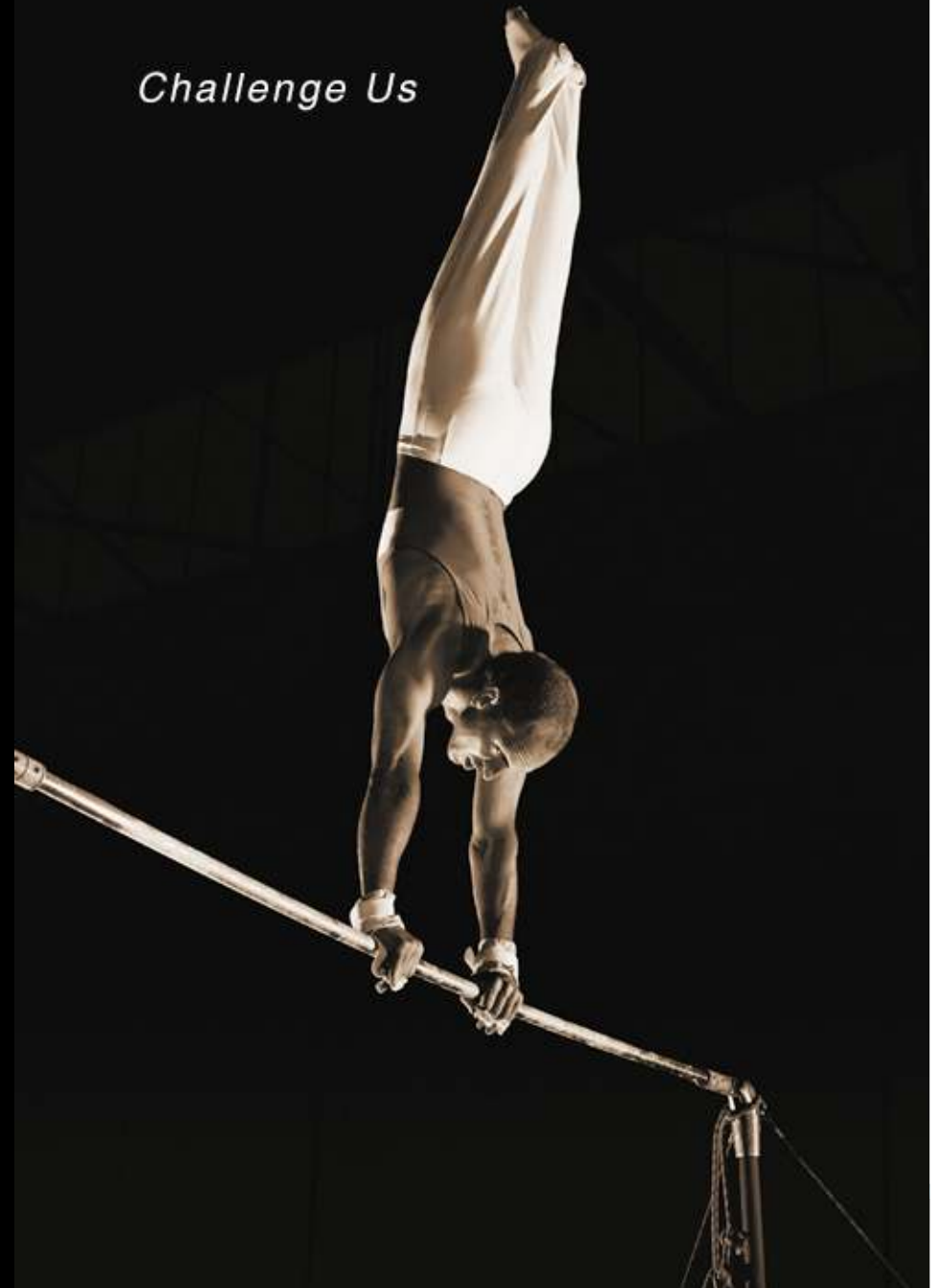
# LIMITED LIABILITY PARTNERSHIP (LLP)

- The cost of acquisition of the capital asset sold by LLP after conversion to be taken at cost to the company
- Carry forward of business losses and unabsorbed depreciation
  - LLP eligible to carry forward accumulated business losses of company for a fresh period of eight assessment years and unabsorbed depreciation of the company for an unlimited period
  - Conditions specified for capital gains exemption to be complied with
- Company converted into LLP will not be eligible for carried forward MAT Credit
- Depreciation
  - Written down value of the block of assets for claiming depreciation to be taken at the values on the date of conversion – subject to compliance of condition
  - Depreciation available to LLP cannot exceed depreciation available to company
  - Capital asset claimed as deduction u/s 35AD would not be eligible for depreciation claim in hands of LLP
- If the conditions specified for capital gains exemption on conversion are complied with, LLP is entitled to carry forward claim unamortized expenditure on VRS – section 35DDA

## **SECTION 56:**

# **RECEIPT OF PROPERTY FOR INADEQUATE CONSIDERATION**

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# TRANSFER OF IMMOVEABLE FOR NIL CONSIDERATION

## ➤ Pre Amendment

Transfer of immovable property without consideration / inadequate consideration to individual / HUF is taxable as 'other income' in the hands of the recipient

- If Stamp duty value exceeds INR 50,000

## ➤ Amendment: Only Transfers for Nil consideration covered

- Transfers for inadequate consideration excluded
- Amendment with retrospective effect from October 1, 2009

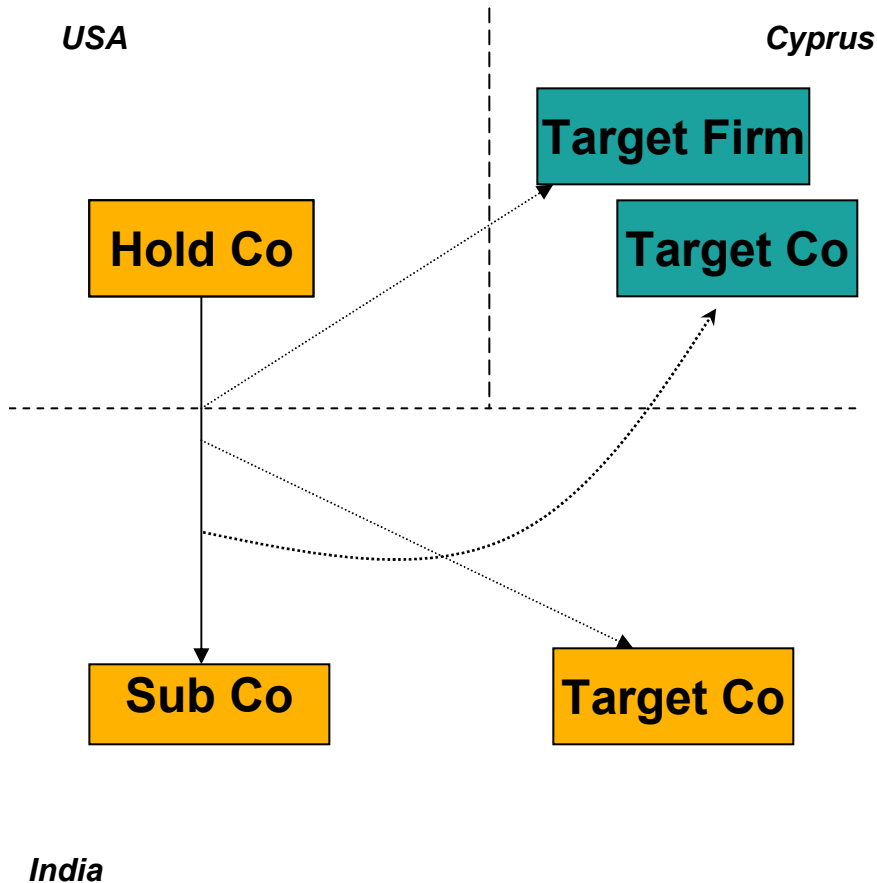
## ➤ Definition of property changed

- Property defined to mean specified capital assets of taxpayer
- Bullion added to the list of specified capital assets
- Stock-in-trade not to be included; personal assets not included

## TRANSFER OF SHARE AT LESS THAN FMV

- Transfer of shares by any person to a Firm or a Private Co, taxable in hands of recipient
  - Shares of company in which public are not substantially interested
  - For nil or inadequate consideration
  - Excess of FMV over the consideration (if it exceed INR 50,000) would be taxed
  - Not applicable to transfer of shares in a scheme of amalgamation, demerger or business re-organization in co-operative banks
- Reference to Valuation Officer for determining FMV
- Applicable with effect from July 1, 2010
- The cost of acquisition for computing any capital gains in the hands of the Firm or Private Co would be equal to FMV determined above

# IMPLICATIONS OF AMENDMENT TO SECTION 56



## Issues

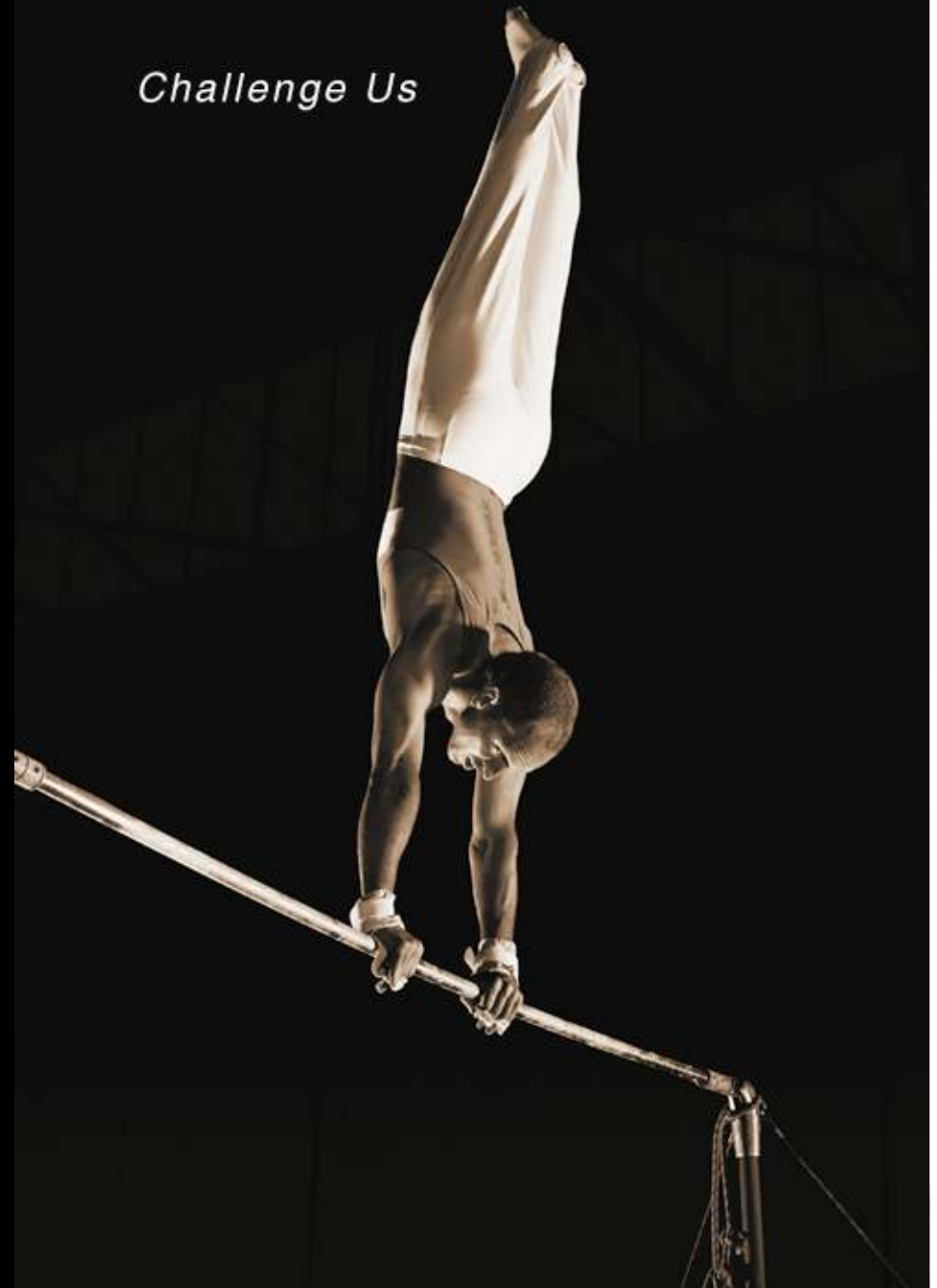
*Step 1: Hold Co has a valuable 100 percent Sub Co in India*

*Step 2: Hold Co transfers shares of Sub Co to Target Co under Corporate Arrangement, which is less than FMV*

*Whether amendment to section 56 will be restricted change if the position be changed if the holding co is a listed company? What is the implication if the transfer is to a foreign firm as a capital contribution?*

# TDS PROVISIONS

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# TDS – CHANGE IN THRESHOLDS

Minimum amount beyond which tax is to be deducted (w.e.f July 01, 2010)

Section	Nature of payment	Amended limit	Existing limit
194B	Winnings from lottery/ crossword Puzzle	10,000	5,000
194BB	Winnings from horse race	5,000	2,500
194C	Payment to contractors	75000 (30000-single payment)	50000 (20000-single payment)
194D	Insurance commission	20,000	5,000
194H	Commission or brokerage	5,000	2,500
194I	Rent	180,000	120,000
194J	Fees for professional or technical services	30,000	20,000

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# TDS - AMENDMENTS

- Section 40(a)(ia) – Tax withheld and paid on or before the due date of filing return of income
  - Amendment to take retrospective effect from AY 2010-11
- Interest for belated payment of TDS after deduction increased to 18 percent from 12 percent per annum. However the interest for the period from date of deductibility to actual date of deduction is still 12 percent per annum.- – 201(1A) amended
  - Amendment to section 201(1A) of the Act with effect from July 1, 2010
  - Interest for period from date of deductibility to actual date of deduction is still 12 percent per annum
- Scheme of paper-less TDS regime withdrawn
  - Section 203(3) and Proviso to section 206(C)(5) omitted
  - With retrospective effect from April 1, 2010

# OTHER CHANGES

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# SETTLEMENT COMMISSION

- Application for settlement of cases – Relaxation
  - Additional amount of income-tax payable on the income disclosed in the application exceeds INR 50 Lakhs, if assessment or reassessment proceedings are initiated as a result of search.
  - Additional amount of income-tax payable on the income disclosed in the application exceeds INR 10 Lakhs.
- Time limit for passing the order is extended to 18 months from the date on which the application is made.
- With effect from June 1, 2010.

## POWERS OF HIGH COURT

- High Court has now been granted with power to condone delay in filing the appeal after 120 days
  - Section 260(2A) inserted
  - With retrospective effect from October 1, 1998
- High Court has now granted powers to condone delay in filing the Statement of Cases after six months by insertion of section 256(2A)
  - With retrospective effect from June 1, 1981
  - Section 256 was omitted by Finance Act, 1981
  - Amendment made for the benefit of pending cases

# CHARITABLE INSTITUTIONS

- Institutions spared from rigor of proviso to section 2(15) – carrying on activity in the nature of trade, commerce or business.. not a charitable purpose
  - If aggregate value of receipts per year from the activities is INR 10 Lakhs or less
  - Retrospective from AY 2009-10
  
- Powers of Commissioner to cancel the registration of trusts expanded
  - Registration obtained under section 12A can be cancelled by Commissioner
  - With effect from June 1, 2010

# PROCEDURAL AMENDMENTS

## ➤ Reference to Valuation Officer

- Valuation of property or shares transferred at less than FMV as referred to in section 56(2)
- Amendment to section 142A(1)
- With prospective effect from July 1, 2010

## ➤ CBDT's power to issue directions on centralised processing of returns

- Extended to March 31, 2011
- Sections 115WE(1B) and 143(1B) - amended
- With retrospective effect from July 1, 2010

## ➤ Document Identification Number proposed by Finance Act, 2009 deferred to July 1, 2011

## INSURANCE BUSINESS: COMPUTATION

- For taxpayers engaged in Insurance business
  - Deduction on provision for diminution in the value of investments needs to be added back to profits
  - Any gains or losses on realization of investments – to be added or reduced accordingly if such gains/losses are not credited/debited to the Profit and Loss Account
  - Amendments will come in force with effect from April 1, 2011

## WEALTH TAX

- High Court has now been granted powers to condone delay in filing the appeal after 120 days
  - With retrospective effect from October 1, 1998.
  
- High Court has now been granted powers to condone delay in filing the Statement of Cases after six months –
  - Section 27(3B) inserted with retrospective effect from June 1, 1981
  - Note: Section 27 was omitted with effect from June 1, 1981 by Finance Act, 1981

## DISCLAIMER

- This presentation summarizes the proposals of the **India Budget 2010**
- The proposals are subject to amendment as the **Finance Bill** is passed by the legislature and receives Presidential assent
- This presentation is not an offer, invitation or solicitation of any kind.
- All reasonable care has been taken in preparation of this presentation. This presentation is meant for general guidance and no responsibility for loss arising to any person acting or refraining from acting as a result of any material contained in this presentation will be accepted by **BMR Advisors**
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