CA-FINAL

DIRECT TAX & INTERNATIONAL TAXATION

SMART NOTES

BY CA YASH KHANDELWAL

Applicable for May 23 Exams

As per Finance Act 22

2nd Edition: December 22

For CA Final

Direct Tax Laws &

International Taxation

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We express our sincere thanks to all our readers, authors and business associates for helping us in our mission of producing quality books for quality education. We wish all our young readers a brilliant success in various examinations and a bright future.

- Publisher

Preface for 2nd Edition

Ruko Ruko Ruko. Padho Pehle YE

After the Unimaginable Success of 1st Edition, It gives me immense pleasure to present 2nd Smart Notes of C.A. Final Direct Tax & International Tax. This edition has updated syllabus which is applicable from May 23 Exam and onwards.

This book has everything which student may require to understand & remember. The book has been developed keeping in the mind the technicality of the subject to bring it at a students grasping level. Efforts have been made to keep the book in simplest form to understand without compromising on the integral topics. Please note this book must be used as a summary book. Students should refer to the Module/Study Material provided by the Institute.

Students need to understand the concepts and logical reasoning of the Chapter. Only mugging-up shall not suffice to score in this subject. Also, students should practice as many illustrations as possible.

For all revisions, updates and notes, students are requested to join the Telegram Channel:
Main Channel (CA Yash Khandelwal – Direct Tax)

I have worked tirelessly day & Night for past 2 years to make this book happen. It was my dream to write a Book & its Coming true again. This Book has all my blood and sweat in it. Just want to tell you that anything & Everything is possible, just take a first step.

Every effort has been made to avoid any errors and omissions in this book. Despite all the effort we believe some errors might have crept in. The students are welcome to point out any errors/suggestions.

Best wishes,
Yash Khandelwal
(sabkarlenge@gmail.com)

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I would like to thank my Parents (Gopal & Radhika), Krrish (My Brother), Rupal (My Sister) & MAA(My Grandmother) for all their support towards my studies, career and various aspects of my life. This Book is dedicated to them.

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Above all, a big Thank You to all my students for showering so much love in such a short span of time. We will make it big together.

A wise man once said " SAB KAR LUNGA MAIN"

INDEX

Direct Tax

Sr No.	Chapter	Page No.
1.	Tax Rates & 115BAA BAB BAC	1.1-1.9
2.	Profit & Gains of Business & Profession	2.1-2.35
3.	Capital Gains	3.1-3.23
4.	Income from other sources	4.1-4.9
5.	Taxation of Various Entities	5.1-5.17
6.	Minimum Alternate Tax	6.1-6.7
7.	Alternate Minimum Tax	7.1-7.2
8.	Taxation of Trust	8.1-8.11
9.	Exit Tax	9.1-9.3
10.	Chapter VI-A Deduction	10.1-10.31
11.	Deduction u/s 10AA	11.1-11.2
12.	TDS & TCS	12.1-12.25
13.	Return Filing & Assessment Procedure	13.1-13.28
14.	Search & Seizure	14.1-14.8
15.	Appeals & Revision	15.1-15.10
16.	Advance Tax & Interest u/s 234ABC	16.1-16.3
17.	Penalties	17.1-17.5
18.	Deemed Dividend	18.1-18.4
19.	Tax Planning, Tax Avoidance & Tax Evasion	19.1-19.2
20.	Miscellaneous Provisions	20.1-20.2
21.	Dispute Resolution	21.1-21.10
22.	Virtual Digital Assets	22.1-22.11

International Taxation

1.	Transfer Pricing	1.1-1.24
2.	Non-Resident Taxation	2.1-2.26
3.	Double Taxation Avoidance Agreement	3.1-3.4
4.	Equalisation Levy	4.1-4.5
5.	Advance Ruling	5.1-5.3
6.	Tax Treaties, MTC & BEPS	6.1

Chapter 1: TAX RATES

#SabKarLenge

SLAB RATES:

(1) Individual/ HUF/AOP/BOI/AJP (Resident/Non-Resident)

Total Income upto 2,50,000	Nil
Total Income > 2,50,000 upto 5,00,000	5%
Total Income > 5,00,000 upto 10,00,000	20%
Total Income > 10,00,000	30%

(2) Senior Citizen (Resident Individual of Age 60 or more)

Total Income upto 3,00,000	Nil
Total Income > 3,00,000 upto 5,00,000	5%
Total Income > 5,00,000 upto 10,00,000	20%
Total Income > 10,00,000	30%

(3) Super Senior Citizen (Resident Individual of Age 80 or more)

Total Income upto 5,00,000	Nil
Total Income > 5,00,000 upto 10,00,000	20%
Total Income > 10,00,000	30%

Note: A Resident Individual whose 60th/80th birthday falls on 1st April, 2023, would be treated as 60/80 years in the P.Y.2022-23, and would be eligible for higher basic exemption limit of 3 lakh/5 lakh in computing his tax liability for A.Y.2023-24.

(4) FIRM / LLP / LOCAL AUTHORITY

ON THE WHOLE OF TOTAL INCOME - 30%

(5) CO-OPERATIVE SOCIETY

Total Income upto 10,000	10%
Total Income > 10,000 upto 20,000	20%
Total Income > 20,000	30%

(6) COMPANY - DOMESTIC

(i) If TOTAL T/O or Gross Reciepts in P.Y. 2020-21 is upto Rs. 400 cr — 25%

(ii) In any other case — 30%

(7) COMPANY - FOREIGN — 40%

SURCHARGE:

1) Individual/HUF/AOP/BOI/AJP

→ WHEN TOTAL INCOME (TI) DOES NOT INCLUDE INCOME u/s 111A, 112A & DIVIDEND & 112

Total Income> 50 lakh upto 1 crore	10%
Total Income> 1 cr upto 2 cr	15%
Total Income> 2 cr upto 5 cr	25%
Total Income> 5 cr	37%

→ WHEN TOTAL INCOME (TI) INCLUDES INCOME u/s 111A, 112A & DIVIDEND & 112

Total Income> 50 lakh upto 1 crore	10%
Total Income> 1 cr upto 2 cr	15%

If Total Income> 2 cr

- On Tax computed on Income u/s 111A, 112A,112 & Dividend — 15%
- On Other Income if

(Total Income- 111A,112A,112 & Dividend)> 2cr upto 5cr — 25%

If Total Income> 5 cr

- On Tax computed on Income u/s 111A, 112A,112 & Dividend — 15%
- On Other Income if

(Total Income- 111A,112A,112 & Dividend)> 5cr — 37%

2) FIRM/LLP/LOCAL AUTHORITY

→ When the TOTAL INCOME exceeds Rs. 1cr. — 12%.

3) CO-OPERATIVE SOCIETY:

If Total Income>1 cr upto 10 cr	7%
If Total Income>10 cr	12%

4) COMPANY

TOTAL INCOME	Foreign Co.	Domestic Co.
If Total Income>1 cr upto 10 cr	2%	7%
If Total Income>10 cr	5%	12%

If Exercised option u/s 115BAA & 115 BAB → 10%

5) AOPs having only Companies as Members:

Total Income> 50 lakh upto 1 crore	10%
Total Income> 1 cr	15%

SPECIAL RATES OF TAX

1) Sec 112

LTCG (Other than section 112A) — 20%

2) Sec 112A

LTCG >Rs. 1 lakh — 10%

↳ on transfer of

- Eq. shares in a company
- Units of an Eq. oriented fund
- Units of business trust

3) Sec 111A — 15%

STCG

↳ on transfer of

- Eq. shares in a company
- Units of an Eq. oriented fund
- Units of business trust

4) Sec 115 BB — 30%

Tax on Winnings, lotteries, Card game, Horse Race

5) Sec 115 BBE

UNEXPLAINED money, investment, exp etc.(sec 68 - 69D)

- No basic Exemption, No expenditure allowed.
- No set off of loss allowed against such income

Tax	60%
+ Surcharge	25%
+ cess	4%
Effective Rate	78%

6) Sec 115 BBF — 10%

Royalty Income from Patent developed & registered in India

- Developed in India- 75% Exp incurred in India
- No expense allowed.

7) Sec 115 BBG — 10%

Income from transfer of Carbon Credits

- No Exp Allowed

8) Rebate u/s 87A — Rs. 12,500 or Tax w.e. is lower

When Total Income does not exceed Rs. 5,00,000

9)Health & Education cess — 4%

Notes:

→ Deduction u/s VI-A not available against above special Income

→ Basic Exemption not available against above Income except 112,112A,111A in case of resident Individual & HUF.

Sec 115 BAA,BAB,BAC,BAD

Sec 115BAC: New Tax Regime

APPLICABLE TO- Individual /HOF (R, NR-Both)

NORMAL SLAB RATES		SLAB RATES u/s 115 BAC	
0 - 2,50,000	- Nil	0 - 2,50,000	Nil
2,50,000 - 5,00,000	- 5%	2,50,000 - 5,00,000	5%
5,00,000 - 10,00,000	- 20%	5,00,000 - 7,50,000	10%
Above 10,00,000	- 30%	7,50,000 - 10,00,000	15%
		10,00,000 - 12,50,000	20%
		12,50,000 - 15,00,000	25%
		Above 15,00,000	30%

Note: For Individual above 60/80 yrs of age, same slab rate shall be applicable.

↳ Benifit of 3L/5L Not available.

Smart Notes
CA Yash Khandelwal

CONDITIONS:-

BENIFITS / EXEMPTIONS / DEDUCTIONS NOT AVAILABLE U/S 115 BAC

SALARY HEAD

Sec 10(5) → LTC

Sec 10(13A) → HRA

Sec 10(17) → Allowances to MP/MLA

Sec 10(32) → Parents
↓
Minor Income 1500 p.a

Se 16 → → Prof Tax
→ Std. ded^{n}
→ Entertainment Allowance

Sec 10(14) → Allowances

Exceptions:-

Transport Allowance

Conveyance Allowance

Travel on Tour Allowance

Daily Allowance.

HOUSE PROPERTY

Sec 24 → (Interest → SOP)
(30,000 / ~~2,00,000~~)

LOP/DLOP Interest allowed

HP losses (LOP/DLOP)
↳ set off against other head not allowed.

PGBP

→ Additional Depreciation - Sec 32(1)(iia)

→ Sec 32AD - Investment allowance

→ Sec 33AB, 33ABA - Tea Coffee Rubber

→ Scientific Research :- Donation to

35(1)(ii) → Institute, Research Assoc., College, University } Scientific Research.

35(1)(iia) → Social / Statistical

35(iii) → Indian Co. eng. in R&D

35(2AA) → IIT / National laboratory.

→ Sec 10AA → SEZ

→ Sec 35AD → Specified Busines.

→ Sec 35CCC → Agri Extension Project

OTHERS

→ Sec 57 → Family Pension

→ Any deduction u/c VI-A
↳ Except (i) 80JJAA
(ii) 80CCD(2)

Some Notes for Sec 115BAC

→ Every year, before filing Return, you will have an option, between Normal Slab rates and Section 115 BAC.

→ If you have opted 115BAC for 1 year, then next year → You can opt Normal Slab rates.

↓

Exception → If you have PGBP Income, and you have opted 115 BAC, then in subsequent years also → You have to Opt 115BAC.

↳ If in any year, if you have opted out of 115BAC, then you can not opt 115BAC for lifetime.

→ How will Employer deduct TDS of Employees?

↳ Employee will give declaration to Employer in the begining of the year.

↓

Declaration given- 115 BAC . Return filed- Normal Slab Rates

↳ Is It Possible?

YES

SEC 115BAA & BAB

Particulars	SEC 115BAA	SEC 115BAB
1) Applicable to	Domestic Companies	New Domestic Manufacturing Companies
2) Set up date	Any time	On or after 01/10/2019 before 31/03.2024
3) Tax Rate	22%	15%
4) Surcharge	10%(mandatory)	10%(mandatory)
5) Effective Tax Rate	25.168%	17.16%
6) Exempt from MAT?	YES	YES
7) Tax Rates for Special Rates Income (111A,112, 112A)	Special Rate + 10% Surcharge + 4% cess	Special Rate + 10% Surcharge + 4% cess
8) Tax Rates for House property & IFOS Income	25.168% (22% + 10% + 4%)	25.168% (22% + 10% + 4%)
9) when option Under this section can be exercised?	On or before due date of 139(1) for relevant P.Y.	On or before due date of 139(1) for First P.Y.
10) Company cannot claim deduction under chapter VI-A except	80 JJAA 80 LA 80 M	80 JJAA 80M

Common Deductions under above 2 Section which Company can not claim:

- Sec 10AA → SEZ
- Additional Depreciation- Sec 32(1)(iia)
- Sec 32 AD- Investment allowance
- Sec 33AB/33ABA - Tea Coffee Rubber
- Scientific Research:- Donation to
  - 35(1)(ii) Institute, Research Asso., → scientific Research.
  - 35(1)(iia) College, University → Social/ Statistical
  - 35(iii) Indian Co. eng. in R&D
  - 35 (2AA) IIT & National laboratory.

- MAT is not applicable so MAT Credit will lapse.
- Sec 35C2AB) → Company engaged in Biotech or Mfg. Business(In-house research)
- Sec 35AD → Specified Business.
- Sec 35CCC Agriculture Extension Project
- Sec 35CCD- Skill Development project.
- No Deduction under chapter VI-A except → cheek point 10

Tax Rates u/s 115BAB

Income from Manufacturing	15%
Income from Non- manufacturing Activity	22%
STCG on Depreciable Assets	15%
STCG an Non- depreciable Assets	22%
Special Tax Income	special rates

Some Notes for Sec 115BAB

→ Co. should be set up on or after 1st Oct 2019

→ Co. should have commenced manufacturing on or before 31/03/2024

→ shall not be formed by splitting up a reconstruction of existing business.

→ Company shall use New Plant & Machinery. — 20% Old is allowed; Imported is considered New

→ Company shall not use Building which was previously used as Hotel or a convention centre.

→ Businesses which are not considered as manufacturing for 115BAB:

- Development of Computer Software
- Printing of Books
- Conversion of Marble Blocks into Slabs
- Mining
- Bottling of Gas into Cylinder
- production of Films

See 115 BAD:. Tax on Income of Co-op Societies

→ Tax @ 22% + surcharge 10% + cess 4% (Effective Rate - 25.168%)

→ Assessee can not claim certain deductions → as given above

→ Any deduction under chapter VI-A not available except Sec 80JJAA & Sec 80LA.

→ Tax on Special Rates of Income - Special Rates(111A,112,112A) + surcharge 10% + 4% Cess.

→ AMT not applicable, Hence AMT Credit will lapse.

→ Assessee can exercise this option on or before due date of ROI u/s 139(1).

Some Important Notes:

→ Any Unabsorbed loss of above sections for which deduction is not allowed will lapse on Opting 115BAA,BAC,BAD.

→From Unabsorbed Depreciation, the portion of Additional depreciation can not be set off.

└, The additional depreciation will be added to WDV of 1st April of F.Y. in which option is exercised.

→ If assessee opts any of the above section 115BA, 115 BAA, 115BAB, 115BAC, 115BAD then Maximum Depreciation allowed will be @40%

Note: Section 115BA is no more relevant for exam, thats why it is not included in the book. Please refer Pg. from ICAI study mat if you want to read it.

Concept of Marginal Relief

- Applicable to all Assessees.
- Applicable Where Surcharge is Applicable
- This Concept is applicable when Income is Slightly higher than the threshold for Surcharge.
- For Eg:

For Ind/HUF/AOP/BOI/AJP	Firm/Local Auth/Co-op Society	Company
> 50L, 1Cr, 2Cr, 5Cr	> 1Cr	> 1Cr/10Cr

Sec 28 : Charging Section:

All the following Income shall be taxable under the head PGBP:

(i) Any profits or gains of Business, Profession or vocation

(ii) Any amount received by employer (being assessee), under Keyman Insurance Policy.

(iii) Any gift or benifit or perquisite received due to Business or profession.

(iv) Some Import Incentives:.

- Profit on Sale of Import Entitlement license
- Any cash Assistance Received
- Any Duty Drawback Received.
- Profit on sale of DEPB & DFRC

*DEPB= Duty Entitlement Passbook Scheme
DFRC= Duty Free Replenishment Certificate

(v) Any Non-compete Fees received:

- For not carrying out any Business
- For not sharing any know-how, patent, copyright etc.

(Note: The person who has paid non-compete fees can treat it as intangible asset and claim depreciation @25%.)

(vi) FMV of stock in trade on the date it is converted into capital Asset.

(vii) Any compensation received or receivable:

↓

for termination or modification of any terms & conditions of contract relating to its business → Always PGBP Income whether Revenue or Capital.

(viii) Any Interest, salary, bonus commission received by Partner from partnership firm which is allowed to firm u/s 40(b)

(ix) Income derived by a trade, professional or similar association from specific services performed for its members.

Speculative Business:

Transaction in which → a contract for → Purchase or sale of any commodity including Stock & Shares. → & is settled otherwise than by actual delivery or transfer of commodity or scrips.

Transactions not deemed to be speculative:

- Hedging contract of Raw material/ shares/ Merchandise
- forward contract
- Derivatives Trading through Recognized Stock Exchange.

Speculative business for a company:

If Company's part of Business consists of → Purchase & Sale of Shares of Other companies → that PART of the Business is speculative Business.

Business not deemed to be Speculative (for Company):

- Company whose Income (GTI) mainly consists of:.
  → HP Income, Interest on Securities, capital Gain, IFOS.
- Company whose principal Business is:
  → Trading in Shares
  → Banking.
  → Granting of loans & Advances.

Note:

→ Receipt
- Revenue Receipt → Taxable in PGBP
- Capital Receipt → Not Taxable → This is generally not taxable unless it is taxable under specific provisions of Act.

Space for Notes:

Section 30: Rent, Rates, Taxes, Repairs & Insurance of Building & 31: Insurance & Repair of Plant & Machinery & Furniture

	Sec 30 Building	Sec 31 Plant & Furniture
• Rent	Allowed	Allowed
• Insurance	Allowed	Allowed
• Revenue Repairs	Allowed	Allowed
• Rates & Taxes	Allowed	x x x
• Capital Repairs	Not Allowed	Not Allowed

↳ Added to Cost of Asset ↲

Notes:

- **Rent:** Only allowed to Tenant → Not allowed to Owner on notional Basis
- **Other Expenses:** Same for owner/tenant (Allowed to Both)
- Capital Repairs by Tenant → Deemed Building → Depreciation is allowed to tenant.
- If as per the rent agreement, tenant is not under any obligation to incur Revenue repairs but he incurs such expenditure for carrying on his Business efficiently, then that expense will be allowed u/s Sec 37.
- Firm pays Rent to Partner → Allowed if Reasonable, Excessive rent will be disallowed.

Sec 32- Depreciation

Depreciation Method

SLM

Business of Generation of Power or Generation & Distribution of Power

↓

They have option of choosing between SLM & WDV (once in a lifetime option)

↓

Have to opt before due date of first return.

WDV

Applicable to everyone

CLASSIFICATION OF BLOCK OF ASSET

- Building
- Furniture
- Plant & Machinery

(Tangible Asset)

- Intangible asset

Includes: Know how, patent, copyright, license, franchise, Non-compete fees.

Does not Include: Goodwill of Business & Profession.

Conditions to Claim Depreciation:

- Claim of Depreciation is mandatory.
- Asset must be USED for the purpose of Business & Profession(active or passive.)
  - Put to Use → Allowed
  - Ready to Use → Not allowed generally.
    (Allowed in Special Circumstances
    Eg. Stand by machine, Emergency spars, fire extinguisher etc.)

- Assessee should be Owner of Such Asset → Wholly or partly.
  - Registered ownership is not mandatory, Beneficial owner can also claim depreciation.
  - If partial ownership, proportionate depreciation allowed.

- Lease and Hire Purchase
  - In case of LEASE → LESSOR Always claims Depreciation.
  - In Case of Hire Purchase → Ownership: Transferred after last payment of Installment.

Depreciation: can be claimed by Hire purchaser from beginning of Hire Purchase.

Rates of Depreciation

10%	15%	20%	25%	30%	40%
Building Furniture	Plant & Machinery, Motor Vehicle(Normal) Oil wells Windmills installed before 1- 4. 14.	SHIPS	Intangible Assets	Motor Vehicle used for Hire	Computer/Laptop Aircraft Books-any Pollution control equipments Temporary Building Windmills inst. on or after 1.4.14.

Notes:

(i) Motor Vehicles:

- Business of running them on hire → 30%
  Acquired & put to use between 23/08/19- 31.3.20 → 45%.
- Other Vehicles → 15 %
  Acquired & put to use between 23/08/19- 31.3.20 → 30%.

(ii) Buildings: Residential → 5%
General → 10%
Temporary → 40%.

(iii) Mobile/ EPABx → Not computer - 15%

(iv) UPS/ Printer/Scanner & other Accessories (Computers) - 40%

(v) Plant & machinery

Includes	Does not include
Ships, Vehicles, Books, Scientific Appliances and surgical equipments.	Tea Bushes, livestock, Building, Furniture.

(vi) If Asset is used for less than 180 days → Half Rate depreciation is allowable
→ cut off date:- 03rd october → Asset purchased on or after 4th Oct , half rate of depreciation will be allowable.

→ This proviso is applicable for First Year only.
Eg. If Asset is Acquired in P.Y. 21-22,
and Put to Use in P.Y. 22-23 → Even if asset is used for less than 180 days in P.Y. 22-23, Full Rate Depreciation will be allowed

(vii)Unabsorbed Depreciation can be set off against any head of Income except salary and can be c/f Indefinitely.

Additional Depreciation:

- Only Allowed on Plant & Machinery.
- Applicable to: Assessee engaged in the business of
  - Manufacture or production of article or things
  - Generation or Distribution or transmission of power
- Rate of Additional Depreciation: 20%.

Notes:

(i) Additional Depreciation is allowed only in the FIRST YEAR.

(ii) If used less than 180 days, Half rate applicable.
- 10% Allowed → Current Year
- Balance 10% → Allowed in Next Year

(iii) Not allowed on SLM method.

(iv) Additional Depreciation is allowed on → Printing or Printing and Publishing of Books (Considered as mfg. or production) [Note: 115BAB not allowed on this]

(v) Additional Depreciation not allowed on:.

- 2nd Hand Pl & M
- Pl & M. installed in office or residence
- Ships, Aircraft, & Transportation vehicles.
- Pl & M on which 100% Deduction is Allowed.

(v) Forklifts truck used in Factory → Not a transport vehicle → Additional Depreciation Allowed

Special cases of Depreciation

Depreciation in case of:
- Amalgamation/Demerger
- Conversion of Company into LLP
- Succession of firm/Proprietorship by company

→ Depreciation is calculated for the whole year as if nothing has happened

↳ Then, that depreciation is distributed between predecessor and successor in the ratio of no. of days assets were used.

Sec 43(1) ACTUAL COST

Actual Cost of the Asset is calculated as follows:-

Purchase price	xxx
(+) Installation, Transportation & Trial Run Expense	xxx
(+) Interest on loan upto put to use	xxx
(+) Taxes & duties (If ITC not available)	xxx
(-) Subsidy/Govt. grant received	(xxx)
(-) Amount Earned by selling trial run production	(xxx)
Actual cost of the Asset	xxx

→ If payment for purchase/Exp of Asset to a single person in a single day > Rs. 10000 by cash/Bearer Cheque/ Crossed Cheque etc.

↓

then such payment/Expenditure shall not form part of Actual Cost of Asset.

Special cases and their Actual Cost:

Cases	Actual Cost
• Asset used in Scientific Research • Sec 35 AD Asset	NIL
• Asset acquired by Gift/will • Asset Transferred by: Holding Co. → Subsidiary Co. Amalgamating Co. → Amalgamated Co. Demerged Co. → Resulting co.	WDV of Previous/Preceeding owner

- Stock converted into Capital Asset and used in Business → FMV on the date of Conversion

- Building used for personal purpose then Brought into Business → Original cost xxx
  (-) Notional Depreciation till date xxx
  (at current depreciation rate)

  (Note: Only Applicable for Building, Other Assets → original Cost)

- Asset brought into India by NR → Original cost xxx
  Depreciation till now xxx
  (at respective year rates)

- Re-purchase of Asset Sold → (i) WDV at the time of sale xxx
  (ii) Re-purchase price xxx
  w.e. lower

- Asset purchased & leased Back to the same person → WDV of previous owner (lessee)

Section 43A: Asset purchased in Foreign Currency

Profit/loss due to Foreign Exchange Fluctuations At the time of PAYMENT Shall be adjusted to the cost of Asset

Profit	Loss
Reduce from cost of Asset	Add to cost of Asset

Space for Notes:

Section 33AB/33ABA

	Section 33AB	Section 33ABA
• Assessee engaged in:	Growing & Mfg. of Tea, coffee, Rubber	Prospecting/extraction of Natural Gas petroleum
• Deduction Amount:	Actual Amount deposited OR 40% of PGBP w.e. is lower	Actual Amount deposited OR 20% of PGBP w.e. is lower
• Deposit:	for deduction, deposit should be made in NABARD A/c before DD of 139(1)	for deduction, deposit should be made in special account in SBI before end of P. Y.

Notes:

→ Amount deposited must be used for prescribed purposed by the board or Ministry in the year of withdrawl only.

→ If mis-utilized, then deduction allowed earlier shall be reversed and taxable as PGBP.

→ If Expense Allowed as per scheme:

Revenue Expense: not allowed in PGBP if allowed here

Capital Expense – Depreciation will be allowed

→ If Amount utilized for these Assets, then deductions not allowed :

- Home or Office appliances(not computers)
- Pl & M on which 100% deduction is allowed.

Space for Notes:

Depreciation on Goodwill of Business & Profession

Goodwill of Business & Profession → Not eligible for Depreciation from P.Y. 20-21

As on 1.4.20

→ If WDV of the block Intangible Assets has goodwill included in it

↓

we will deduct WDV of goodwill from the block.

↳ (depreciation is taken upto 31.3.20)

How to Calculate WDV of goodwill? ⟶ Purchase Price - depreciation upto 31.3.20

↓

depreciation will be calculated assuming that goodwill is the only asset in the block

WDV of the goodwill calculated above ⟶ will be taken as CoA of goodwill in the books.

→ At the time of deducting G/W from the block, If:.

WDV of goodwill > WDV of block

↳ then excess shall be STCG

→ If G/W is sold in future - then STCG/LTCG can arise.

POH & CII → will be taken from year of purchasing G/W.

→ If Intangible Asset contains only goodwill, & If:

WDV of goodwill > WDV of block

↳ No CG will arise

↳ No PGBP Income will arise

↓

Excess will lapse

SECTION 35 - Scientific Expenditure

- In-House Research
- Contribution to others

→ In-House Research:

(1) Expenditure before commencement → Allowed for Max 3 preceding Years before date of commencement

- Capital Expenditure
  - Land: xxx — Not Allowed
  - Other Expenditure: ✓✓✓ — Allowed
- Revenue Expenditure
  - Salary (Except perqs) • Material: ✓✓✓ — Allowed
  - Other Expenses: xxx — Not allowed

(2) Expenditure after commencement of business

- All Assessees
  - Sec 35(1)(i): Revenue — 100% Allowed
  - Sec 35(1)(iv): Capital — 100% Allowed (except land)
- Sec 35C2AB) Company Engaged in Manufacturing or Biotech Business
  - Revenue: 100% allowed
  - Capital: All Expenses (Except land & Building)

Building allowed in 35(1)(iv)

→ Scientific Contribution to others(100% allowed):

- IIT or National laboratory — See 35(2AA)
- Approved Indian Co. engaged in R&D — [Sec 35(1)(i)(a)]
- Approved: College, Institute, University, Research Association.
  - Scientific Research [Sec 35(1)(ii)]
  - Social & Statistical Research [Sec 35(1)(iii)]

Notes:

→ Deduction u/s 35 allowed → Depreciation will not be allowed.

→ If L&B is purchased in a composite Agreement

↳ Cost will be bifurcated on the basis of FMV.

→ When assessee gives contribution to others for Scientific Research and later on if approval of that institution is withdrawn → Assessee will not be denied exemption.

Sec 35CCC: Agriculture Extension Project	Sec 35CCD Skill Development Project
→ Applicable to all assessees → All expenditure allowed except Land & Building → Minimum Expenditure Should be 25 lakhs	→ Applicable to only Company → All expenditure allowed except land & Building → If any amount is reimbursed by employee, deduction will not be allowed.

Sec 35 DDA: Expenditure in Voluntary Retirement Scheme

→ Allowed to All Assessees.

→ Allowed in 5 equal installments.

→ If there is amalgamation/demerger in the period of 5 years.

↓

Remaining deduction will be allowed to New Formed Company → For Balance period.

[In the balance period → the Year of Amalgamation and demerger is also included.]

Section 35 ABB : Expense for obtaining telecommunication license

Deduction is allowed :

FROM → Year of Commencement of Business
OR
Year in which license fees is paid
w.e. is later

TILL → The year in which License Expires.

→ Tax Treatment if license is Sold:.

Full license sold:

Cost of License - 50 Life of License - 10 years

Suppose License is sold in 3rd year:

Cost of License → 50

- (5) : For 1st year

45

- (5) : For 2nd year

40 → Now, if License is sold, what will be the tax treatment?

Full or Part	If It is Sold at a Price of		
	35-40= (5)	46-40= 6	53-40= 13
(i) If Full License is Sold	(5) will be allowed as deduction in Sec 35ABB	6 will be Taxable as PGBP	10 will be taxable as PGBP 3 will be taxable as Capital Gain
(ii) If Part license is Sold	(5) will be allowed for remaining period of 8 yrs	6 will be Taxable as PGBP	10 will be taxable as PGBP 3 will be taxable as Capital Gain

Sec 35AD- Specified Business

Deduction u/s 35AD(100%) is allowed on all Capital Expenditure in following Businesses:

[Except Land, Goodwill, Financial Instrument]

(1) Agriculture

- Setting up & Operating a Cold chain facility
- Setting up & Operating a warehouse facility for Agriculture produce & Sugar [Edible Oil not allowed]
- Production of fertilizer in India.

(2) House/ Ghar  + Hotel  + Hospital 

- House/ Ghar → Developing and Building a Housing project under
  - Slum Redevelopment Scheme
  - Affordable Housing Scheme
- Hotel → Building & Operating a Hotel of 2 Star & above
- Hospital → Building and Operating a Hospital of minimum 100 beds

(3) Iron + Wafer + Infrastructure + Honey

- Iron → Laying and Operating a Slurry pipeline of Iron Ore.
- Wafer → Setting up & operating a Semi-Conductor wafer fabrication unit
- Infrastructure → Developing, maintaining & operating a new Infrastructure facility. (Notes)
- Honey → Bee keeping and production of Bee Honey and Wax.

Notes:

→ Business should be new, it should not be formed by splitting up or re-construction of Business.

→ Pl & M should be new

Exceptions:

- 20% Old is allowed
- Imported 2nd hand Pl & M is allowed On which depreciation has not been claimed in India.

→ Deduction is allowed on all Capital expenses except Land, Goodwill & Financial Instrument.

→ Depreciation is not allowed if deduction u/s 35 AD is taken.

→ Deduction u/s 10AA & 80IA - 80RRB also not allowed.

→ Unabsorbed loss of specified Business can be carried forward indefinitely.

→ Loss of specified Business can be only set off against specified Business Income.

↳ No matter even if the Other specified Business has taken deduction u/s 35AD or not.

→ In case of Hotel (2 Star & Above), if assessee transfers operation to another person
↳ then Assessee shall be deemed to be carrying on the Specified Business.
↳ And Deduction u/s 35AD will be allowed

→ Sec 40A(3) is applicable for all capital expenditure done u/s 35 AD
↳ i.e. All Capital expenses above 10,000 shall be through any mode of ECS or A/c payee cheque only.

→ Infra facility means:

Road including Toll, Bridge or Rail system.	Highway Project	Water supply project, Treatment project	Airport, Inland waterways etc

→ Asset bought under this section should be exclusively used for specified business for 8 years from the date of acquisition.

If used for non- specified Business before expiry of 8 years

Amount of Deduction Claimed xxx
(-) Depreciation that would be allowable if 35AD not taken xxx
↓
This will be added in PGBP xxx

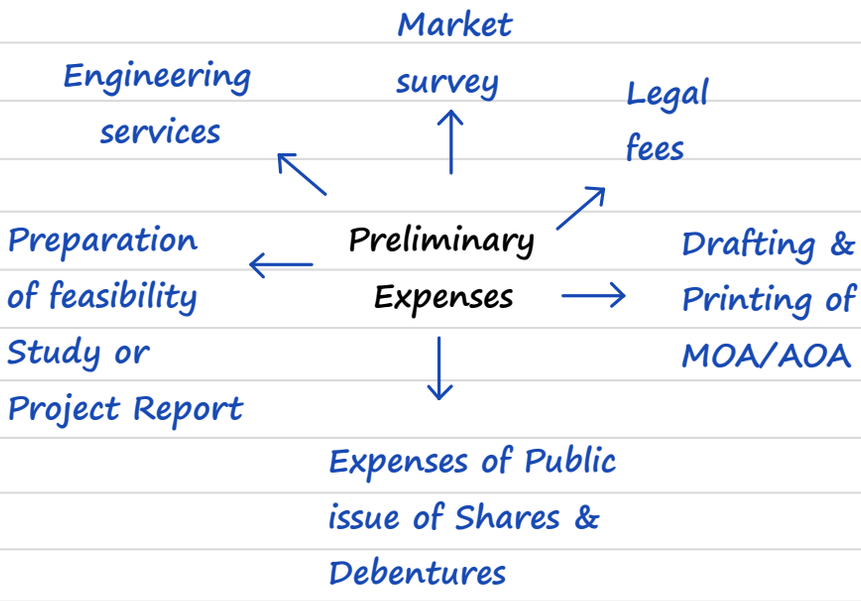
Also, this amount will be actual cost for non-specified business

If Sold before expiry of 8 Years

Whole Amount of Sale consideration will be taxable as PGBP Income
↳ Even if Sale consideration is more than deduction claimed

Sec 35 D - Preliminary Expenses

Allowed:- Only allowed to Resident.



→ Amount of Deduction:

Indian Co.

(i) Actual Expenses
(ii) 5% of :
- (a) Cost of project
- (b) Capital Employed

w.e. is higher

(i) or (ii) w.e. is lower

Other Assessee

(i) Actual Expenses
(ii) 5% of Cost of Project.

w.e. is lower

→ This deduction is allowed in 5 equal installments.

→ Cost of project: Amount invested in the Fixed Asset for new project.

→ Capital Employed= Shares + Debentures + long term borrowings for new project

(Reserves & Surplus not included)

Section 36: Other Deductions

(1) Insurance Premium

Sec 36(1)(i)
Premium for Insurance of stock in Trade

Sec 36(1)(ia)
Premium paid by Fedrel Milk co-operative society → for insurance of cattle

Sec 36(1)(ib)
Premium for Insurance of Employees

(2) **Employees Welfare Payment**

Sec 36(1)(ii)	Sec 36(1)(iva)	Sec 36(1)(iv/v)	Sec 36(1)(va)
Bonus/ Commission	Pension Scheme NPS 80CCD	SPF RPF AGF	EMPLOYEES contribution towards welfare Fund
	Sec 43B Applicable		↓ Sec ~~43B~~ Not Applicable Due date of that Act shall be applicable e.g. PF Act due date 15th of Next month ↓ Clarified by F.A. 2021

(3) Sec 36 (1)(ii)

→ Bonus or commission paid to Employees is allowed.
→ It should not be paid as profit or dividend
→ It can be more than prescribed under POBA, 1965

(4) Sec 36 (1)(iva)

Employer Contribution towards National Pension Scheme u/s 80 CCD is allowed as Deduction upto:-
(i) Actual contribution
(ii) 10% of Salary (Basic + DA (Terms)] ↓ w.e. is lower

(5) Sec 36(1)(iv)/(v)

→ Deduction allowed for EMPLOYER'S Contribution in ↓

Statutory Provident Fund (SPF)
Recognized Provident Fund (RPF)
Approved Gratuity Fund (AGF)
Any Provident Fund

Note:- Deduction under any Unrecognized or Unapproved Fund not allowed.

(6) Sec 36(1)(va)

EMPLOYEES Contribution towards welfare Fund
→ Any amount received by EMPLOYER from EMPLOYEES as contribution to provident fund, superannuation fund etc. is allowed only if it is paid to the Govt. before due date of the respective Act. → Clarified by F.A. 21

→ If paid after due date of the respective act → it will not be allowed as deduction & will be included in Income.

Eg: The due date of PF Act is 15th of Next month of the month in which PF is received. Employees PF contri. for the month of July should be paid by the Employer to the govt/govt A/c till 15th August.

Note: If deposit before 15th August → Allowed

If not deposited before 15th August → Added to Income.

(7) Sec 36 (1)(vi)

→ Animals Used in Business other than Stock in Trade:

→ Deduction under this section will be allowed in the year in which animals become permanently useless or die.

Amount of Deduction= Cost of Animal - Sale value.

(8) Sec 36(1)(vii) - BAD DEBTS

Actual Bad Debts → Allowed

Provision for Bad Debts → Not Allowed

↳ But Allowed to Banks u/s 36 (1)(viia)

→ Actual Bad debts

- Related to Business- Allowed
- Related to Loan- Not allowed.
  - Except: Lending Business
  - In Lending Business, Bad Debt Related to loan is allowed.

Notes:

→ Bad Debts must be written off in BOA in the year in which it is decided. There is no need to prove it.

→ Provision for Bad Debts is only allowed to Banks Us 36 (1)(viia).

Sec 41(4): Bad Debt Recovery:

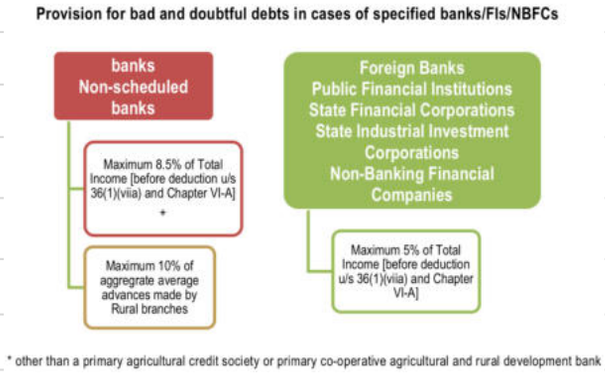
→ Any Bad debts allowed in the preceding year or this year, if it is recovered in P. Y., it will be added to PGBP Income.

→ Bad Debts will be taxable in the year of Recovery even if Business is not in existence.

Eg: Firm allowed Bad debt
↓
Firm dissolved
↓
Partner recovered Bad debt
↓
See 41(4) not applicable, as assessee who claimed Bad debt and assessee who recovered are not same.

→ Successor will be allowed to claim Bad debts deduction even if predecessor has included relevant debt in its income and successor write off it as Bad Debt.

(9) Sec 36(1) (viia):. Provision for Bad Debts of Banks



Notes:

→ Deduction is allowed for provision for Bad debts.

→ No deduction is allowed for actual Bad debts us 36 (1)(vii) for this provision amount, as it is debited in Provision Account.

↓ But if

Actual Bad Debts > Provision for Bad debts

Actual Bad debts - Provision = Difference

↓

will be allowed as deduction u/s 36(1)(vii)

→ Only one A/c will be made In Provision for Bad Debts of Rural & Non-Rural Branches.

Eg:- Provision for Bad debts vis 36(1)(viia) = 100

If Actual Bad debts is 130, 100 will be debited in the provision, 30 will be allowed u/s 36(1)(vii).

(10) Sec 36(1)(viii) – Transfer to Special Reserve

→ Allowed to financial corporation engaged in providing long term finance (> 5 years)

- Actual Amount Transferred to Special Reserve
- 20% of PGBP
- 200% of (Sh. Cap + Gen Reserve] – opening Bal of Special Reserve

w.e. is lower

(11) Expenses on promotion of Family Planning Sec 36(1)(ix)

→ Allowed to only companies : Amount of Deduction

Capital	Revenue
Allowed in 5 equal instalments	Fully Allowed

(12) Sec 36(1)(xvii) Purchase of Sugar Cane

Expenditure Incurred by → Co-operative Society → Engaged in Mfg. of sugar → For purchase of sugar cane → At a price → Equal to OR less than (Price fixed by Govt.)

(13) Sec 36(1)(xv) → STT
Sec 36(1)(xvi) → CTT
} Allowed as deduction if Assessee has held Shares, Securities & Commodities as Stock in Trade.

(14) Sec 36(1)(xviii) Marked to Market loss/Expected loss

As per ICDS	Other
Allowed (✓)	Not allowed (x)

Colour code for this Section

Blue- Allowed Red- Not Allowed

#SabKarLenge

Sec 37 - General Deduction/ Residuary Expenses

Conditions:

Revenue Expense Allowed (✓) Capital Expense Not allowed (X)

→ Must be incurred wholly or Exclusively for
- Business
- profession
- vocation

→ PERSONAL EXPENSES - NOT ALLOWED

→ Expenses must be LEGAL.

It should not be 'prohibited by law' [ILLEGAL]

→ BREACH
- Breach of Contract - Allowed
- Breach of LAW → Not allowed

→ It must be incurred in the Accounting Year

→ Only Post-Commencement Expense allowed. → PRE- Commencement not allowed.

→ The expenditure should not be of the nature specified in Sec 30-36

→ Only Business Expenses allowed (✓) Business losses not allowed. (x)

Notes:

Few Expenses specifically Allowed	Few Expenses Specifically Disallowed
(1) Expenses incurred on Buy Back of Shares, Bonus shares issue, Debenture issue → Allowed	(1) Expenses incurred on IPO, FPO, Right Shares, Increasing Authorized Sh. Cap. of Company → Not Allowed
(2) Indirect Taxes (GST) Tax Interest Penalty Allowed Allowed Not Allowed	(2) Direct Tax Tax Interest Penalty Not Allowed → Interest on loan taken for payment of Income Tax- Not Allowed
(3) Legal Expenses- Allowed	(3) Illegal Expenses → Not Allowed
(4) Breach of Contract- Allowed	(4) Breach of laws → Not Allowed
(5) Expense incurred on feasibility Study conducted for Existing Business & project was abandoned without creation of New Asset- Allowed	(5) Expense incurred a project not related to existing Business & the project was abandoned-Not Allowed

(6) Retrenchment compensation on closure of some of Business Units
↳ Revenue Exp - Allowed

(7) In case of abandoned film, the cost of film shall be treated as Revenue Expenditure- Allowed

(8) Expenses incurred on Road/Highways in Build-Operate-Transfer Agreement
↳ Allowed over life of Agreement.

(9) Gift to Employees - Allowed

(10)Customary expenses - Allowed
↳ Diwali pooja exp.

(11) Expenses incurred by CAs for attending CPE Seminars-Allowed

(12) Tax audit fees or litigation exp- Allowed

(13) Premium paid on keyman Insurance Policy

paid by co. for insurance of its keyman	Paid by firm for insurance of its partner
Allowed	Allowed

(14) Cash Embezzlement, Theft, Decoity, if incidental to Business- Allowed.

(15) Prior period exp only allowed if- liability to pay arises during P. Y.

(16) Expense on Glow sign Board
Allowed - Revenue Expense

(6) Retrenchment Compensation On Closure of Entire Business
↳ Capital Exp- Not allowed

(7) Advertisement in Brochure, Souvenir, newspaper, pamphlet published by political party - Not Allowed

(8) Donation to any political party - Not Allowed

(7)→ is allowed as deduction to companies u/s 80GGB

(8)→ is allowed to
- Companies-80GGB
- Other Assessee 80GGC

(9) CSR Expenditure- Not allowed

Donation to PM cares fund or PM relief fund.	Donation made to Clean ganga Fund or Swath Bharat Kosh.

(10) Dividend - Not allowed

(11) Provision

For loss of Subsidiary	For deferred Tax	For diminution in value of Asset	For Un-ascertained liability

Not Allowed

(12) Salary to director exceeding limit prescribed by companies Act.
↳ Excess Salary shall be disallowed.

(13) Freebies, gifts given by Pharma companies to Doctor - Not allowed

(14) Referral commission paid to doctors - Not allowed.

(17) Any payment made to Security Agency for obtaining security Personnel - Allowed.

(15) Expenditure incurred on heart surgery of a lawyer
↳ Not allowed as it is personal exp.

(16) Payment/Bribes to police and Bhai-log- Not allowed

(17) Regularization fees for violating Bye-laws - Not allowed as it is Breach of law.

(18) Compounding fees paid to Municipal Corporations - Not allowed

Explaination Added by Finance Act 22

These Expenses shall be treated as illegal and thus shall not allowed as deduction,

- For any purpose which is an offence/ prohibited by law ↓ in India or outside India; or

- To provide any benefit or perquisite, in any form to → a person, whether or not carrying on a business or profession, and acceptance of such benefit or perquisite by such person is → in violation of any law/ rule/regulation/guideline

- To compound an offence under any law ↓ in India or outside India.

Space for Notes:

Sec 40- Amounts Specifically Not Deductible

Royalty, Int, FTS etc.

Sec 40(a)(i): Payment made to NR or Foreign Co. and

- TDS not Deducted
- TDS Deducted but not paid to Govt. upto Due date of 139(1)

→ 100% Disallowed

Note: Such amount should be taxable in the hands of NR or Foreign co. under the act.

Sec 40(a)(ia): Any payment made to Resident and

- TDS not Deducted
- TDS Deducted but not paid to Govt. upto Due date of 139(1)

→ 30% Disallowed

Notes for 40(a)(i) & 40(a)(ia):

→ In the subsequent year, if TDS is deducted & paid to Govt. or paid to Govt. (if deducted earlier), then 100%/30% disallowed earlier shall be allowed in the subsequent year.

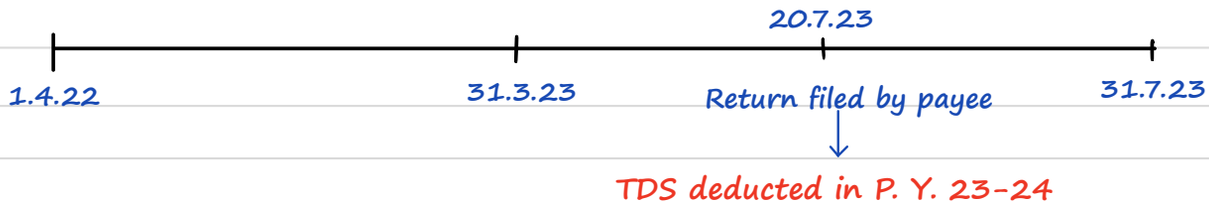
Sec 201(1) - Bachne Ka Tarika

→ If any amount paid to Resident/NR without deduction of TDS & Such PAYEE (RINR):-

- Has furnished ROI u/s 139(1)
- Takes into A/c such Income
- paid Tax on Such Income

→ And the payer furnishes a certificate in this regard from a CA to the AO. → that tax has been paid on such Income

→ The amount will be allowed in the subsequent year & will remain disallowed in current year because it is assumed that TDS has been deducted on the date of Return filed by such payee.



→ Payer has to pay interest on late deduction of TDS from :
the date on which TDS was deductible TO the date on which return has been filed by payee.
Interest applicable u/s 201(1A) @ 1% per month or part of the month.

→ Sec 40(a)(ii): Any tax paid outside India → which is eligible for Relief under DTAA ↓ is not allowed as deduction under PGBP

Note: Tax always includes Tax, Cess & Surcharge

→ Sec 40(a)(ib): → same as 40 (a)(i), but refers to Equalisation levy. - Discussed in Chapter Eq. levy - International tax.

→ Sec 40(a)(iii): TDS on Salary payable outside India,

→ And Salary payable { Outside India OR To NR in India }

TDS must be deducted.

If not deducted OR Deducted but not paid to Govt A/c upto due date of TDS payment. → 7th of Next month.

→ Such Salary will not be allowed as Deduction.

↓

This will never be allowed again on payment after due date.

Sec 40(a)(iv): Any contribution to Provident fund or any other fund made for employees

↓

And if any payment is made from the fund to employees which is taxable under the head Salaries in hands of employees

↓

If assessee does not deducts tax, the amount paid will be disallowed.

Sec 40(a)(v): Tax on Non-monetary perquisite

If employer pays Non-monetary perquisites → To Employees

↳ such non-monetary perquisites are taxable in the hands of EMPLOYEE

↳ But if EMPLOYER pays such tax on non-monetary perqs On behalf of Employee

Then such tax paid is not allowed as Deduction to EMPLOYER → As it is exempt in the hands of Employee u/s 10(10CC)

Space for Notes:

See 40A(2) :. Payment to specified Persons (Relative) in excess of Reasonable amount

If payment of expenditure is made to Relatives, in excess of Reasonable payment

→ Then AO can disallow Unreasonable or Excessive payment.

Relatives:

- Individual – Spouse, Mother, Father, Brother, Sister, lineal Ascendent, lineal Descendent.
- HUF/AP/PoI – Member & their Relatives
- Firm/LLP – Partner & their Relatives
- Company – Director & their Relatives
- Substantial Interest: a person shall be deemed to have substantial Interest in Business or profession if:

If a person has
- 20% or more shareholding in → Company
- 20% or more PSR in → Firm/AOP/BOI

Sec 40A(3):

→ If Payment or Aggregate payment made to a person > Rs. 10,000 by the Assessee in a Day.

→ It should always be done by: A/c payee Cheque,Demand Draft,Use of Electronic Clearing System,UPI/NEFT/RTGS/ Debit card/ credit card

Sec 40A(3A)

→ If expenditure is allowed in earlier year on accrual Basis → & If such expenditure is subsequently paid in cash/ crossed/Bearer cheque > Rs. 10,000 in a day

↓

Then deduction allowed earlier will be disallowed.

(Note: When Payment is made to transporter, limit of 10,000 will become 35,000.)

Exceptions to sec 40A(3)[Rule 6DD]:

→ Payment made to
- Government
- LIC
- Banks

→ Payment done by adjustment in Book entries.

→ Payment made in village/town - where there is no Bank

→ Payment of Retirement benefits to employees or their family upto Rs. 50,000

→ Not applicable to
- payment
- repayment

} of principal part of loan transactions.

However, it is applicable for interest payments exceeding Rs.10,000.

→ Payment to employee who is posted to a different place Other than his normal place (does not have a Bank A/c there) of duty for 15 days or more

→ Payment made for the purchase of
- agri or forest produce
- livestock/meat/dairy/poultry farming
- fish or fish products
- horticulture, apiculture products

↓

To the cultivator/ producer/ grower of such product

[If payment is made to Trader/Broker/Middleman - Not allowed]

→ Payment made to money changer/authorized dealer for purchasing currency.

See 40A(7) - Disallowance of provision of Gratuity

Provision for Gratuity → Disallowed Actual gratuity paid-Allowed

Gratuity provision made as per actuarial valuation → Disallowed

Section 41- Deemed PGBP Income

Sec 41(1) - Remission or Cessation of Trading liability

If assessee has taken expediture/deduction of any expenditure in earlier P.Y. ⟶

During Current year, if:

- Assessee gets refund or
- Creditor waives off/gives discount
- There is remission or cessation of such liability.

↓

Then Such Remission/Cessation/refund/discount/waiver

↓

is deemed as PGBP Income u/s 41

Eg:- we recorded purchase Rs. 12000, creditor took only 8000 - 4000 shall be PGBP Income.

→ Waiver of working capital loan will also be covered.

→ In case of succession of Business - The successor will be liable to tax when he receives any benefit during subsequent previous year.

Section

41(2)	41(3)	41(4)
Balancing charge	Sale of Scientific research Asset	Recovery of Bad debts

Sec 41(5)- If there is any recovery in case of defunct Business which is chargeable to tax, then B/f losses will be allowed to set off even after expiry of 8 years.

Section 43B- Certain Expenses allowed on Actual payment Basis

Deduction in case of following payments is allowed only if paid before due date of ROI:-

- Any tax, duty, cess, Interest on tax
- Employer's contribution towards
  RPF SPF ASF AGF NPS u/s 80CCD,Any other fund
- Bonus or Commission to Employees
- Leave Salary Encashment to Employees
- Interest on loan to any Bank/NBFC/ Financial Institution
- Amount payable to railways for use of Railways assets

Notes:

→ Interest includes pre-payment premium.

→ lump sum payment of interest if paid in a year is also allowed as deduction

→ Furnishing of Bank guarantee- Not actual payment

→ If Interest payable on loan is converted into → Debenture or any other Instrument → Due to which, Liability is delayed or deferred to future date ↓ Then, It will not be treated as Actual Payment

Section 43CA - Sale Consideration of Land & Building held as Stock in Trade

Sale Consideration → Sale price
OR
Stamp Duty value
↑ w.e. is higher

→ If Stamp duty value < 110% of Sale Price.
↳ then SC= Sale price.

Sale price 1,00,000
SDV 1,09,000
} Then SC - 1,00,000 (as it is up to 110%)

Imp Note: Between period 12.11.20- 30.6.21

Sale a Residential Unit & by Builder — sale is upto Rs. 2 cr → Then 120% will be taken instead of 110%.

Eg. Sale of Residential Unit by seller

Sale price 1,00,000 → SC= 1,00,000 (as it is upto 120%)
SDV 1,18,000

→ If date of registration and date of agreement are not same,

THEN

↓

SDV on Date of agreement will be considered → only If any amount is received on or before the date of agreement by A/c payee cheque/DD/Any mode of ECS/UPI/BHIM/Debit card/Credit Card/ NEFT/RTGS

In Other Case - SDV on the date of registration will be considered

Section 43CB - Income from Construction and Service Contracts

Construction Contract → Income is recognized on percentage of Completion method

Service contract:

Depends upon → Duration of contract

- less than 90 days → Project completion method → Income is recognized on completion of project
- More than 90 days → Percentage of Completion method → Income recognized on % of Completion

→If in Service contract, there are indeterminate number of Acts →Straight line Method.

→ Retention amount is also included in Income.

Section 44A- Special provisions for Trade, Professional or Similar Association

If expenditure of Such Association > Subscription Income from Members

↓

Then deficiency is

- first set-off against PGBP Income
- If no PGBP Income, then Set-off can be made against other Income

→ Max deficiency that can be set off → 50% of Total Income of Association & Deficiency can't be carried forward.

Sec 44AB- Tax Audit of Books of A/cs

→ Tax Audit is compulsory in following cases:

In Case of Business

If T/O> Rs. 1 crore in P. Y.

But limit of sec 44AB is Rs. 10 crore if:

↳ if aggregate payments/receipts during the P. Y. received in cash/Bearer cheque, crossed cheque does not exceed

5% of Total { Receipts & Payments

In Case of Profession

If Gross Receipts> Rs. 50 lakhs in P. Y.

Total Receipts/payments includes all the payments & receipts by the Assessee during the P. Y. It can be more than Turnover

Due date of furnishing Tax Audit Report → 1 month prior to due date of return filing

Due date of ROI - 31st oct — Due date of Tax Audit report - 30th Sept

In case of Transfer pricing:

Due date of ROI - 30th Nov — Due date of Tax Audit report - 31st Oct

→ if Assessee is covered by 44AD/44ADA & assessee claims

Income < 6%/8% of Turnover — Income < 50% of Gross Receipts

and his Total Income> Basic Exemption limit.

then he has to get his accounts audited.

PRESUMPTIVE TAXATION - 44AD/44ADA /44AE

Sec 44AD

Eligible Assessee- Resident Individual/HUF or partnership Firm (not LLP)

↓

Having T/O upto Rs. 2 crores

See 44AD not applicable to:

- A person carrying on profession
- A person having commission or Brokerage Business
- A person having Agency Business
- A person having section 44AE Business
- Assessee claiming dedn u/s 10AA or chap. VI-A 'C'

Presumptive Income : 6% of Total T/O received through A/c payee cheque/Bhim UPI/any other mode of ECS
↳ received before Due date of 139(1)

8% of Total T/O received through cash/bearer cheque/crossed cheque.

→ If any amount is received after due date of 139(1), then 8% of total T/O will be taken even if it is received through A/c payee cheque, any other mode of ECS etc.

→ No deduction of Expenses From Section 30-38 will be allowable

→ Assessee does not need to maintain books of Accounts as per section 44AA

→ Advance Tax payment → shall be done in 1 instalment before 15th March of P.Y.

→ Due date of ROI → 31st July.

→ If Assessee opts for section 44AD for any Previous Year → then he has to opt 44AD for next 5 consecutive P.Ys.

↓

If in any of those 5 P.Ys, he opts out of 44AD. ← Then he will not be eligible for sec 44AD for 5 years subsequent to year in which he does not declare income as per sec 44AD

Sec 44ADA

Eligible Assessee- Resident Individual/HUF or partnership Firm(not LLP)

↳ Engaged in Notified profession(44AA)

Legal, Medical, Engineering, Film Artist, CS, Architect,

Accountancy, Technical Consultancy,IT professionals.

Profession whose gross Receipt is upto Rs. 50 lacs in P. Y.

Presumptive Income: 50% of Gross Receipts

→ No deduction of Expenses From Section 30-38 will be allowable

→ Assessee does not need to maintain books of Accounts as per section 44AA

→ Advance Tax payment → shall be done in 1 instalment before 15th March of P.Y.

→ Due date of ROI → 31st July.

Section 44AE

Eligible Assessee: Any assessee Engaged in Transportation Business

↓

Plying, Hiring,

Leasing goods carriage

↓

who owns not more than 10 goods carriages at any time during the PY.

Ownership will be counted from when vehicle was purchased, not when it was put to use

Presumptive Income :

Heavy goods vehicle: Rs. 1000 per ton x No. of months vehicle is owned x no. of vehicles

Other Vehicle: Rs. 7500 x No. of months Vehicle is owned x No. of vehicles

(Heavy Goods Vehicle: Vehicle having Gross Weight > 12000 Kgs)

→ No deduction of Expenses From Section 30-38 will be allowable

→ Assessee does not need to maintain books of Accounts as per section 44AA

→ Due date of ROI → 31st July.

→ Advance Tax Payment - 4 Instalments

→ In case of firm: Salary & Interest } paid to partners is deductible subject to sec 40(b)

very Important

↓

different than 44AD/44ADA

Section 44AA

→ Following person shall maintain prescribed Book of Accounts

Maintainance of Books of Accounts

In Case of Notified Profession

If GR> Rs. 1,50,000 in All 3 preceeding PYs.

OR

likely to exceed in Current P. Y. [New Business]

↓

Maintain Prescribed Books

Other

Maintain such Books which would enable AO to Compute Total Income

In case of Business

Individual/HUF

T/O > Rs. 25 Lacs

OR

PGBP Income> Rs. 2.5 lacs

Other Person

T/O > Rs. 10 Lacs

OR

PGBP Income> Rs. 1.2 lacs

In any 1 of 3 Preceding P.Ys.

Prescribed Books → Cash Book, Journal, Ledger, Carbon Copies of Bills> Rs. 25, Daily Cash & Stock Register (Medical)

Notified profession → Legal, Medical, Engineering, Film Artist, CS, Architect, Accountancy, Technical consultancy, IT professionals.

Charging Section [Section 45]

→ If there is a Transfer of Capital Asset during the Previous Year,

↓

then Gains/Profit on such transfer is taxable under the head capital Gains.

Short term / Long term

↓

in the Previous year in which Transfer took place.

What is a Transfer?

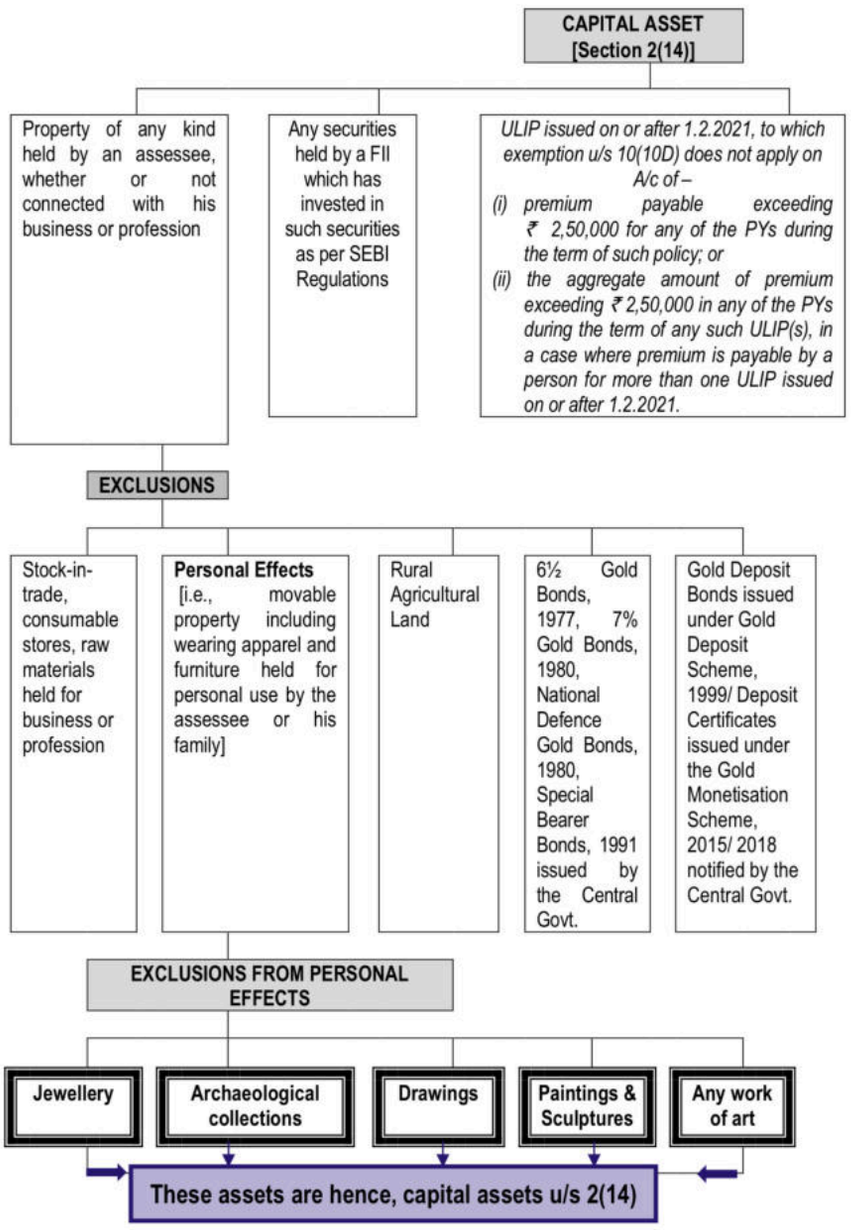
section 2(47)

What is a Capital Asset?

Section 2 (14)

Is capital Gains Taxable in any Year other than the year of transfer?

4 Cases



Definition of Transfer - Sec 2(47)

TRANSFER INCLUDES:

- Sale, Exchange Relinquishment of Asset
- Extinguishment of any right
- Compulsory Acquisition of property
- Redemption/ Maturity of Zero Coupon Bond
- Giving possession of an immovable property for consideration in part performance of contract.
- Conversion of Capital Asset into stock in Trade
- Transfer which has effect of Transferring/enabling the enjoyment of immovable property. → Eg:. Becoming member of Housing co-operative society/ company and getting possession of House on paying consideration.

Year of chargeability of Capital Gains

Generally, Capital Gains is chargeable in the year in Which Transfer Takes place,

↓

But in these 4 cases, Year of Changeability is different from Year of Transfer

Exceptions to sec 45(1)

	Conversion of capital Asset into stock in Trade	Compulsory Acquisition of asset	Insurance claims for Damage or Destruction of capital Asset	Joint Development Agreement
Taxability:	Year in which stock is sold	Year in which compensation is received	Year in which Insurance claim is received	Year in which CC is issued by competent Authority

Exceptions to Sec 45(1)

→ Conversion of capital Asset into stock in Trade [see 45(2)]

Capital Asset → into → Stock in Trade

Year of Calculating Capital Gain & applying Indexation = Year of conversion

Year of Taxability = Year in which Stock in Trade is sold.

Capital Gain		PGBP Income	
FVOC	= FMV on conversion date	Sale Value	= Sale Price
-CoA/ICOA	= cost of Acquisition	- Cost	= FMV
Capital Gain=	xxx	PGBP Income	

↓

By applying Indexation of year of conversion

Conclusion: In the year when stock in Trade is Sold, 2 Incomes will be taxable:.

PGBP Capital Gain

→ Compulsory Acquisition of Capital Asset [See 45(5)]

Year of Calculating Capital Gains and applying Indexation = Year of compulsory Acquisition

Year of Taxability = Year in which Compensation is received

	Initial Compensation Compensation Amount	Enhanced Compensation Compensation Amount
FVOC		
(-) COA/ICOA	xxx	-
(-) COI/ICOI	xxx	-
(-) Litigation Expenses	-	XXX
STCG/ LTCG	xxx	xxx

	Initial Compensation	Enhanced Compensation
If Compensation is received in Instalments	Full Amount is taxable when first Installment was received.	Taxable in the respective years when different Installments are received.
Enhanced Compensation received due to interim order of Court	–	Taxable in the year when Final Order is Passed

→ Interest received on delay of compensation – Taxable under IFOS & 50% deduction is allowed u/s 57

→ If Initial Compensation
- LTCG → Enhanced – LTCG
- STCG → Enhanced – STCG

→ For Ind/HUF, Compulsory Acq. of urban Agriculture land → Fully Exempt u/s 10(37)

↓

If such land is used by him/ his parents/HUF for Agri. purpose in preceeding 2 years before Transfer.

Insurance Claims for Damage or Destruction of Capital Assets [Sec 45(1A)]

Year of Calculating Capital Gains and applying Indexation → Year of Destruction

Year of Taxability → Year in which Claim is received.

When Cap. Asset is Damaged due to : Fire, Flood, Earthquake, Tsunami, Riot, Civil Disturbance.

Capital Gains in case of Joint Development Agreement:

Assessee : Individual/HUF

Year of Calculating Capital Gains and applying Indexation → Year in which possession is Transferred in JDA

Year of Taxability → Year in which completion Certificate is issued by competent Authority.

FVOC= Stamp Duty value of share in Project on the date of issue + any amt received.

Types of Capital Assets

Short Term Capital Asset | Long Term Capital Asset

Period of holding: A summary

STCA, if held for ≤ 12 month LTCA, if held for > 12 months	• Security (other than unit) listed in a recognized stock exchange • Unit of equity oriented fund/ unit of UTI • Zero Coupon bond
STCA, if held for ≤ 24 month LTCA, if held for > 24 months	• Unlisted shares • Land or building or both
STCA, if held for ≤ 36 month LTCA, if held for > 36 months	• Unit of debt oriented fund • Unlisted securities other than shares • Other capital assets

Section 48: Computation of Capital Gain

SHORT TERM CAPITAL GAIN		LONG TERM CAPITAL GAIN	
Full Value of Consideration	xxx	Full Value of Consideration	xxx
(-) Transfer Expenses	(xxx)	(-) Transfer Expenses	xxx
Net Sale Consideration	xxx	Net Sale Consideration	xxx
(-) Cost of Acquisition	(xxx)	(-) Indexed Cost of Acquisition	(xxx)
(-) Cost of Improvement	(xxx)	(-) Indexed Cost of Improvment	(xxx)
Short Term Capital Gain/(loss)	xxx	Long Term Capital Gain/(loss)	xxx
(STT not allowed in Transfer Expenses)		(STT not allowed in Transfer Expenses)	

2nd Proviso to Section 48 :

INDEXATION

CII For F.Y. 01-02 - 100

For F.Y. 22-23 - 331

If Asset is purchased before 1.4.2001. CII will be 100.

Indexation is not available in following Cases

- Slump Sale
- Section 112A
- Depreciable Asset — Always short Term
- Bonds or Debentures — Except Capital Index Bonds & Sovereign Bonds

1st Proviso to Section 48 : Capital Gain in Case of Non-Resident

Method of Conversion(Rule 115A):

FVOC	Avg of TTBR & TTSR	date of Trf.
Trf Exp	Avg of TTBR & TTSR	date of Trf.
COA	Avg of TTBR & TTSR	date of acq.
Capital Gain	TTBR for Re-conversion	date of Trf.

Assessee: NR/Foreign Co.

Asset : Share Debenture of Indian Co. Acq in Foreign Currency

3rd Proviso to Sec 48: 1st & 2nd Proviso not available on Sec 112

4th 5th & 6th Proviso : To be written in class & YT

Tax Rates on Capital Gains:

→ Equity shares
→ Units of Equity Oriented Fund
→ Units of Business Trust

Short Term Cap. Gain	Long term Cap. Gain
Taxable u/s sec 111A	Taxable uls 112A
↓	↓
Taxable @ 15%	Taxable @10% in excess of 1,00,000

Other STCG → Normal Tax Rates

Other LTCG (Other than 112A)
↳ Taxable u/s 112 - Taxable@20%

Full value of Consideration:

→ Amount Received or Accruing as a result of Transfer of Capital Asset

Section 112A LTCG on Long Term Capital Assets

LTCG on → Equity shares
→ Units of Equity oriented fund
→ Units of Business Trust

1st & 2nd proviso not available(3rd proviso)

STT -	Equity shares	Others
	STT shall be paid at the time of purchase & sale both.	STT shall be paid at the time of Transfer

Taxable at → 10% in excess of Rs.1,00,000
↳ No Indexation

Cost of Acquisition → If purchased before 31.1.18

(i) Purchase price
(ii) (a) Sale Consideration
↳ (b) FMV as on 31.1.18

(i) or (ii) w. e. is higher

(a) or (b) w. e. lower

How to find FMV as on 31.1.18?

Shares	Units	
	Listed on 31.1.18	Unlisted on 31.1.18
Highest Trading Price on RSE on 31.1.18	Highest Trading Price on RSE on 31.1.18	Net Asset Value on 31.1.18

Sec 50C- Deemed full Value of consideration in case of Land & Building

When Land or Building or Both is transferred then:

FVOC → Sale price
OR
Stamp Duty value

↑ w.e. is higher

shall be deemed to be Full Value of Consideration

→ If Stamp duty value ≤ 110% of Sale Price.

↳ then FVOC= Sale price.

Eg:
Sale price 1,00,000
SDV 1,15,000
} Deemed FVOC 1,15,000 (w.e. higher)

Sale price 1,00,000
SDV 1,09,000
} Deemed FVOC - 1,00,000 (as it is up to 110%)

→ If date of registration and date of agreement are not same,

THEN

↓

SDV on Date of agreement will be considered → only If any whole/part amount is received on or before the date of agreement by A/c payee cheque/DD/Any mode of ECS/UPI/BHIM/Debit card/Credit Card/ NEFT/RTGS

If Assessee does not agree with the SDV, then Assessee can give application to A.O. for reference to Valuation Officer.

↓

A. O. can refer the case to the valuation for

If Value by V.O. < SDV

↓

then Valuation officer value
OR
Sale price

↑ w.e. higher

If value by VO > SDV

↓

Then SDV will be Taken

Silly doubt note: After value by V.O. is considered, 110% will not be checked for value by valuation officer.

2 more Special Cases of FVOC

Sec 50CA

Sale Consideration of unlisted Shares

↓

FMV
OR
sale Price

↑ w.e. is higher

Sec 50D

Sale Consideration When Sale price is not ascertainable

↓

FMV on the date of transfer.

Cost of Acquisition (Sec 55)

Purchase price + all exp. incurred on purchase

↳ STT will not be added.

→ Any amount paid for obtaining clear title of property shall be included in cost of Acquisition.

For Intangible Assets:

[Goodwill of Business, Profession, Brand Name, Trademark, Copyright]

- Self Generated → COA=Nil
- If purchased → Purchase price

↓

For goodwill of Business or profession, on which depreciation has been taken (upto P.Y. 19-20) → COA = Purchase price-Deprecation till date

→ COA of Asset obtained by way of Transactions which are Not regarded as transfer →

COA = Cost to the Previous owner
COI= Cost of Improvement of previous + present owner is considered

↓

There are 2 views with regards to indexation in this case.

- As per provisions: CII will be taken for the year in which assessee (present owner) first held the asset.
- As per CIT vs Manjula J Shah: CII will be taken for the year in which previous owner bought the asset.

COA of Assets Acquired before 1.4.2001

Cost of Acquisition
or
F.M.V. As on 1.4.2001

↑ w.e. is higher

Imp Note: For land and Building, FMV as on 1.4.2001 can not exceed SDV as an 1.4.2001. → CoA: FMV
or
SDV

↓ w.e. is lower

BONUS SHARES

Date of Allotment

BEFORE 1.4.2001	AFTER 1.4.2001
FMV as on 1.4.2001	NIL

RIGHT SHARES

If Right Shares are purchased	If Right Shares Renounced
Purchase price of Right Share	Nil

If Right shares are sold to other person, then

In the hands of purchaser	In the hands of seller
CoA = Cost of share + Price of Rights	Proceeds from sale of Rights will be taxable as Short Term capital Gains(POH<3 yrs)

Sweat Equity shares

FMV on the date on which option is exercised.

Depreciable Asset

WDV

Indexed Cost of ACQUISITION/ IMPROVEMENT

$$COA \times \frac{CII \text{ for the year of Transfer}}{CII \text{ for the year in which assessee first held the asset}}$$

$$COI \times \frac{CII \text{ for the year of Transfer}}{CII \text{ for the year of Improvement.}}$$

→If asset is long term, COI will always be indexed.

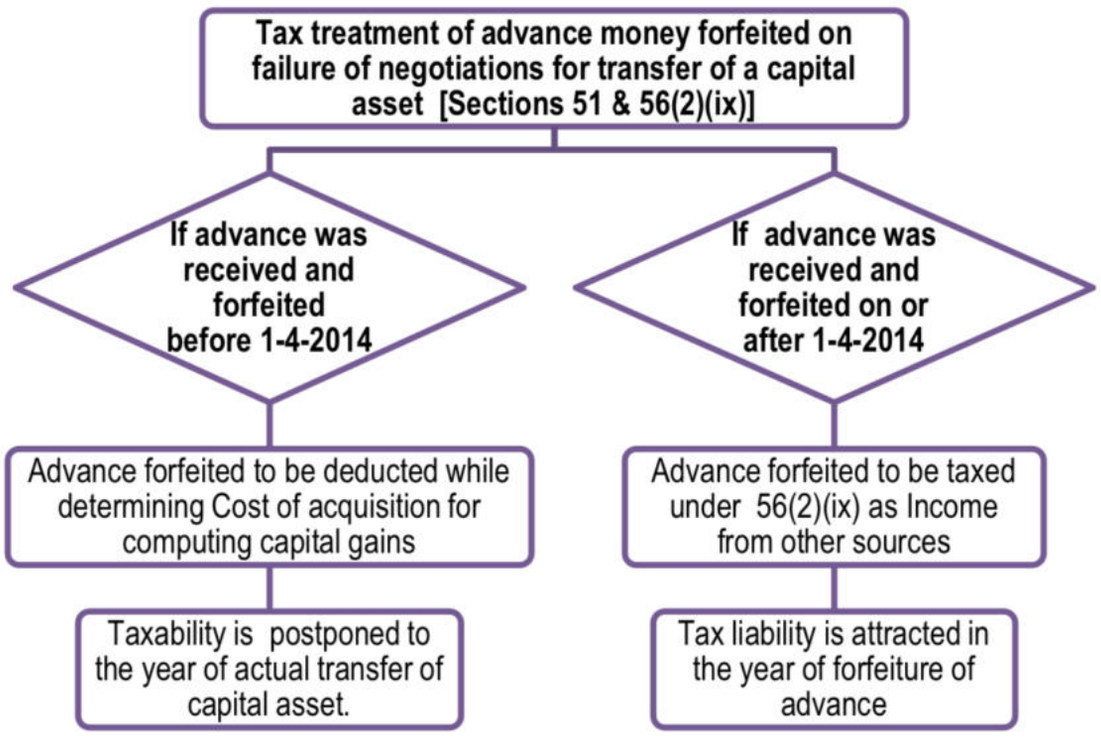
→ Cost incurred on Improvement before 1.4.2001 Shall be ignored.

→ CII will always be given in the question.
you only have to remember 2 CIIs.

CII for P.Y. 01-02 - 100

CII for P.Y. 22-23 - 331

Sec 51 - Advance Money Forfeited



Note: Advance forfeited by previous owner will not be deducted while computing COA.

SPECIAL CASES of TRANSFER

- Securities held in DEMAT formm
- SLUMP SALE
- Transfer between Firm & Partner
- Maturity of ULIP

→ **Transfer of Securities held in Demat form**

The Cost of Acquisition and Period of Holding will be determined on FIFO Basis

→ **Maturity of ULIP [Unit linked Insurance Plan] - Sec 45(1B)** → Explained later

not exempt us 10(10D)

Any Amount received by any person under ULIP issued on or after 01.02.2021

Shall be taxable as capital Gains Income if

- premium paid > Rs. 2,50000 for any year
- Aggregate premium paid by a person for more than one P.Y.s > Rs. 2,50,000

SLUMP SALE [Sec. 50B]

Slump Sale means Sale of Undertaking/Unit/division for Lump Sum Consideration.

If unit/ undertaking is held for more than 3 years

↓

Long term capital Gain will arise

↳ Otherwise short term

→ Indexation not allowed in Slump sale

Full Value of Consideration

FMV 1 or FMV 2 ↑ w.e. is higher

Cost of Acquisition

Net worth of Unit Transferred

Full value of consideration

FMV 1
or
FMV 2
↑ w.e. is higher

Jo Assts ki value nahi badhti - Book value.
Jo Assets kii value Badhti hai- FMV/SDV/OMV
Liabilities - Book value
↳ same as exit tax

FMV 1 = A + B + C + D - L

A = Book Value Of All Assets → Except Some Assets
(-) [TDS/Advance Tax Less Refund]
(-) Un-amortized deffered expenditure

- Jwellery, artistic work- B
- Shares & Securities - C
- Immovable property - D

B = Open Market Value of Jwellery, Artistic work.
C = FMV of shares & securities
D = SDV of Immovable properties
L=Book value of all the liabilities shall be taken Excluding:
→ Any provision of Income Tax
→ Paid up capital
→ any contingent liability other than arrears of dividend on cumulative pref. shares
→ any unascertained liability
→ any reserve or surplus
→ any provision for dividend which were not declared before date of transfer

FMV 2 = E + F + G + H
E = Amount received from Transfer
F = FMV of shares & securities received
G = SDV of Immovable property Received
H = Open Market Value of Other Assets received
→ for all the above assets, Valuation date is date of slump sale.

Jo paise mile for transfer + Jo Assets mile unki - FMV/SDV/OMV

Cost of Acquisition = Net worth of the Undertaking

Total Value of Assets Transferred
(-) Book Value of liabilities
Net worth of Unit

- Depreciable Assets = WDV
- Sec 35 AD Assets = Nil
- Self generated goodwill= Nil
- Other Assets = Book value

Note: For Revalued Assets, Remove the effect of Revaluation i.e. take the original value without revaluation.

TRANSFER BETWEEN FIRM & PARTNER

Partner/member —Cap Asset (as a capital contribution)→ Firm/AOP/BOI → Sec 45(3)

↓

Taxable in the hands of partner

FVOC= Amount credited in Partner/Member's Capital A/c

Firm/AOP/BOI —Cap Asset / SIT→ Partner/Member (Cap Asset or SIT)

Taxable in the hands of firm

- Sec 9B → Dissolution or Reconstitution
- Sec 45(4) → Reconstitution
  - ↳ only cap Asset.

Note: In case of Reconstitution, both sections are applicable section 9B & 45(4)

Sec 9B:- Capital Asset/Stock in trade distributed on Dissolution or Reconstitution of firm

Where a partner receives an Dissolution/Reconstitution

	Capital Asset	Stock in Trade
Taxability in the hands of firm :	Capital Gains Taxable in the year in which partner, member receives Cap Assets.	PGBP Taxable in the year in which partner, member receives Such Stock

FVOC/Value at which it is Taxable → FMV on the date of receipt by partner

Sec 45(4): Capital Gain on Transfer of capital Asset by Firm/AOP/BOI to Partner on Reconstitution

If Capital Asset —distributed on Reconstitution→ To Partners

then Capital Gains will be taxable in the hands of Firm.

Computation of capital gain → A = B+C-D

B = Value of any money received by partner/member from Firm/AOP/BOI

C= FMV of Capital Assets Received by partner/member

D= Partner/member's Capital A/c Balance at the time of Reconstitution.

↓

Capital A/c Balance will not include any value increased due to

- Revaluation of any Asset
- Self-generated goodwill or any Other Asset.

If A=negative, then CG=0

Cap Gain will always be taken as STCG case of 3 Assets

- Self Generated Goodwill
- Depreciable Asset
- Other STCA

Rule 8AB:. Capital Gain is bifurcated into LTCG & STCG in the ratio of → change in value of remaining Assets.

i.e. increase in value due to Fmv.

	BV	FMV	Increase due to FMV
eg: Land	50	100	50
Self Gen. Goodwill	0	80	80

LTCG = Cap Gain x 50/130

STCG= Cap Gain x 80/130

Dissolution

↳ Calculate Cap Gain u/s 9B

A → This Capital Gain is attributed to remaining Assets

↓

LTCG & STCG are calculated in the ratio of increase in value due to FMV

↓

While selling the remaining Assets, this already attributed LTCG & STCG is deducted from FVOC of Asset.

Reconstitution

Calculate CG u/s 9B

↓

We Calculate Book profit (less tax)

↓

Divide it between partners

↓

Calculate Partner's capital-D

↓

Then Calculate CG u/s 45(4)

A= B+C-D

↓

Capital Gain

Taxation of ULIP

	Before 1.2.21	on or after 1.2. 21
Conditions to check for Exemption:	Premium →upto 10% of sum assured	premium → upto 2,50,000 premium → upto 10% of sum assured

In Case of Single ULIP issued on or after 1.2.21:

If Premium Paid on such policy is upto 2,50,000, then the maturity is exempt u/s 10(10D).

If Premium Paid on such policy is > 2,50,000, then the maturity is taxable.

In Case if Multiple ULIPs issued on or after 1.2.21:

The ULIPs in respect of which aggregate Premium is upto 2,50,000, those ULIPs' Maturity will be exempt u/s 10(10D).

Other ULIPs maturity will be taxable.

In Case of Death of Insured, Maturity will be Exempt u/s Sec 10(10D)

Sec 45(1B):

Where any person receives any amount under ULIP which is not exempt u/s 10(10D), then any profit or gain arising from such amount shall be taxable as Capital Gain

Rule 8AD:

A-B is taxable as Capital Gain

A= Any Amount from Policy Received
B= Premium Paid till Now
} Jo Paisa mila - Jo paisa Diya

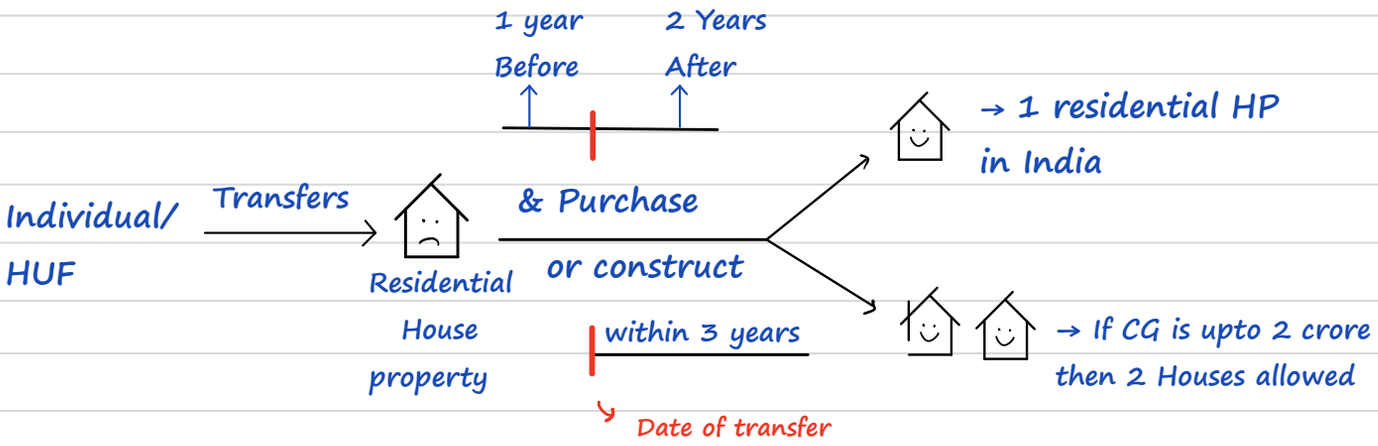
C-D

C= Balance Maturity Amount Received
D= Premium paid on this amount
} Jo Baad me Paisa Mila- Jo Extra Premium Diya

Iska Example YK sir class me or YT pe karwa denge, don't worry

EXEMPTIONS FROM CAPITAL GAINS

Sec 54:



Exemption Amount: Capital Gains OR Amount Invested — w.e. is lower

Lock in period- 3 Years

↳ If transferred within 3 years

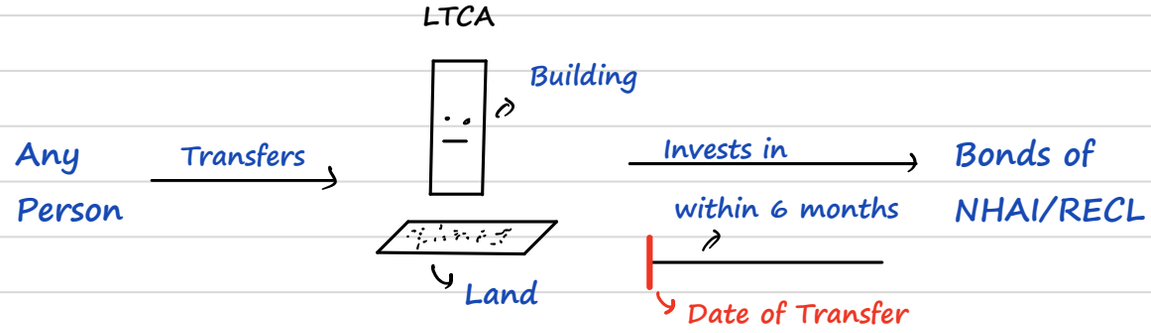
↓

Exemption will be withdrawn ⟶ COA of New Asset − Exemption Amount

Note: Investment in 2 adjacent flats are treated as 1 Residential House

Construction Cost includes cost of land and Building

Sec 54EC



Exemption Amount: Amt invested OR Capital Gains — w.e. is lower

MAX - 50 Lacs

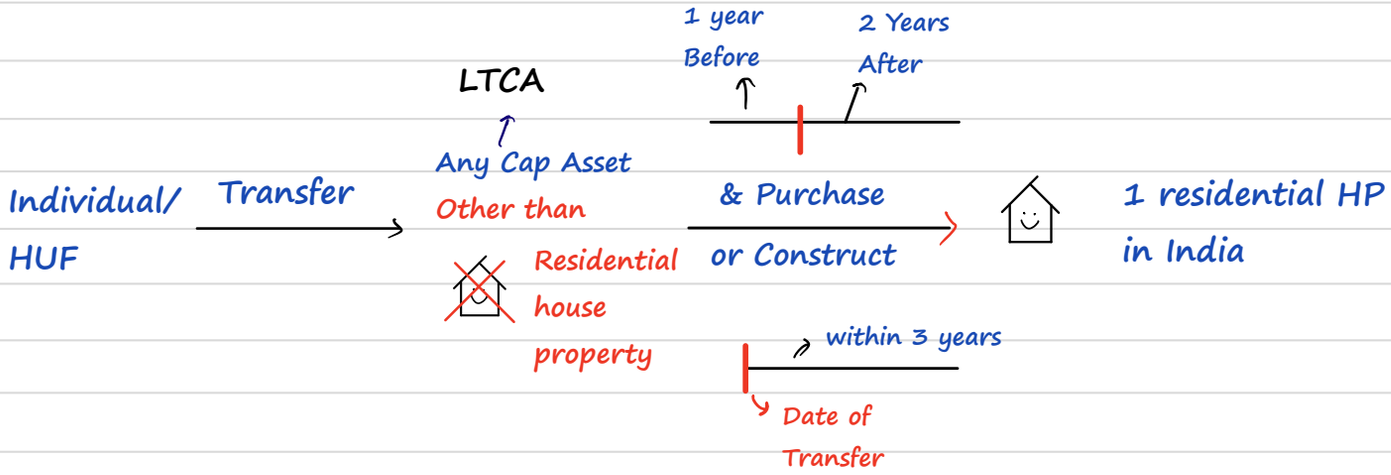
Lock in period: 5 years → If transferred within 5 years

↳ Amt Exempted earlier → will be Taxable

Note: When Cap Asset —converted into→ Stock in Trade

Time limit of 6 months for 54EC will be conidered from the date of sale of stock in Trade.

Sec 54F



Exemption Amount: LTCG × $\frac{\text{Amount Invested}}{\text{Net Sale Consideration}}$

Lock in period. – 3 Years

↳ If transferred within 3 years

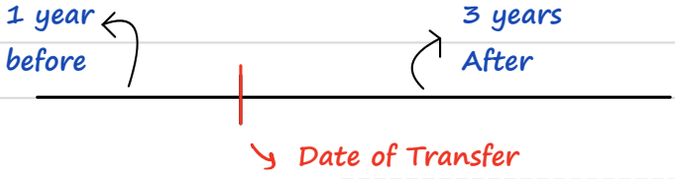
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Amt Exempted earlier → will be Taxable

Note: Assessee should not own more than 1 residential property at the time of transfer

Particulars	Sec 54G	Sec 54GA
• Eligible Assessee	Any Person	Any Person
• Activity	Shifting Industrial Unit	Shifting Industrial Unit
	Urban Area → Rural Area	Urban Area → SEZ
• Assets Transferred and purchased	L&B/ Pl&M	L&B/ Pl&M

Time limit :



Exemption Amount: Capital Gains / OR / Amount Invested → w.e. is lower

Lock in period- 3 Years

↳ If transferred within 3 years

↓

Exemption will be withdrawn → COA of New Asset − Exemption Amount

---

Sec 54GB

LTCA

Individual/ HUF → Transfers → Residential Property (House or land) → Invests in → 25% equity shares of eligible startup u/s 80-IA before due date of ROI.

That Startup company should

↓

Purchase New Plant & Machinery within 1 years from subscription of equity shares.

← Exemption Amount: $LTCG \times \frac{\text{Amt Invested in New Pl\&M}}{\text{Net Sale Consideration}}$

Lock in period- 5 years

↳ If transferred within 5 years

↓

Amt Exempted earlier → will be Taxable

New Pl&M does not include

- 2nd Hand Pl&M
- Pl&M installed in office or residence
- Computer & Computer software
- Any Vehicle
- Any Pl&M whose 100% deduction is allowed in PGBP

Sec 54B

Individual/ HUF → Transfers → Urban Agri land (used to 2 years) → purchases (within 2 years) → Agri land Rural or Urban

Capital Gain or Amt Invested — w.e. is lower

lock in period- 3 years

Sec 54D

Any person → On → Compulsory Acq. of L&B of Industrial undertaking (used for 2 years) → purchases (within 3 years) → L&B for Industrial Unit

Capital Gain or Amt Invested — w.e. is lower

Lock in period- 3 years

CGAS: Capital Gains Account Scheme

For all the above sections except 54EC → If Investment is not made before due date of ROI

Then amount shall be deposited in CGAS before due date of 139(1) for claiming exemption.

Sec 47: Transcations not regarded as Transfer

47(i) Any distribution on the total or partial partition of a HUF

47(iii) Any transfer under a gift or will or an irrevocable trust

47(iv) Any transfer by a company to its subsidiary company

47(v) Any transfer by a subsidiary company to the holding company

47(vi) Any transfer by the amalgamating company to the amalgamated company, in a scheme of amalgamation.

47(via) Any transfer by the amalgamating foreign companyto the amalgamated foreign company, in a scheme of amalgamation of two foreign companies.

47(viaa) Any transfer by a banking company to banking institution, in a scheme of amalgamation of the banking company with the banking institution, sanctioned and brought into force by the Central Government under section 45(7) of the Banking Regulation Act, 1949.

47(viab) Any transfer by the amalgamating foreign companyto the amalgamated foreign company, in a scheme of amalgamation of two foreign companies.

47(vib) Any transfer, in a demerger, by the demerged company to the resulting company

47(vic) Any transfer by the demerged foreign company to the resulting foreign company, in a scheme of demerger of a foreign company.

47(vica) Any transfer by the predecessor co-operative bank to the successor co-operative bank or to the converted banking company, in a business reorganization of co- operative bank.

47(vicb) Any transfer by a shareholder of predecessor co-operative bank, in a business reorganization.

47(vicc) Any transfer by the demerged foreign company to the resulting foreign company, in a scheme of demerger of a foreign company

47(vid) Any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company.

47(vii) Any transfer by a shareholder of amalgamating company, in a scheme of amalgamation of companies

47(viia) Any transfer by a non- resident to another non- resident outside India.

47(viiaa) Any transfer, made outside India, by a non-resident to another non-resident.

47(viiab) Any transfer of specified capital assets by a non- resident on a recognised stock exchange located in any International Financial Services Centre (IFSC)

47(viiac) Any transfer, in a relocation, of a capital asset by the original fund to the resulting fund

47(viiad) Any transfer by a shareholder or unit holder or interest holder of original fund, in a relocation of fund.

47(viiae) Any transfer by India Infrastructure Finance Company Limited to an institution established for financing the infrastructure and development.

47(viiaf) Any transfer by a public sector company to another public sector company notified by the Central Government for this purpose or to the Central Government or to a State Government.

47(viib) Any transfer of a capital asset made outside India by a non- resident to another non- resident.

47(viic) Any transfer by way of redemption by an individual

47(ix) Any transfer to the Government or to a University or the National Museum, National Art Gallery, National Archives or any other public museum or institution notified by the Central Government to be of national importance or to be of renown throughout any State

47(x) Any transfer by way of conversion of bonds or deben- tures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company

47(xa) Any transfer by way of conversion of bonds into shares or debentures of any company

47(xb) Any transfer by way of conversion of preference shares of a company into equity shares of that company

47(xii) Any transfer under a scheme prepared and sanctioned under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985, by a sick industrial company which is managed by its workers' co- operative

47(xiii) - Transfer of a capital asset or intangible asset by a firm to a company on succession of the firm by a company in the business carried on by the firm

- Transfer of a capital asset by AOP/ BOI to company consequent to demutualisation or corporatisation of a recognised stock exchange in India

47(xiiia) Any transfer of a membership right by a member of recognised stock exchange in India for acquisition of shares and trading or clearing rights acquired by such member in that recognised stock exchange in accordance with a scheme for demutualisation or corporatisation approved by SEBI

47(xiiib) - Transfer of capital asset or intangible asset by private company or unlisted public company to LLP

- Transfer of shares held in the company by the shareholder as a result of conversion of the company into a LLP

47(xiv) Transfer of capital asset or intangible asset by sole proprietary concern to a company on succession of the sole proprietary concern by the company

47(xv) Any transfer in a scheme for lending of any securities under an agreement or arrangement which the assessee has entered into with the borrower of such securities and which is subject to the guidelines issued by SEBI or the RBI

47(xvi) Transfer of capital asset under Reverse Mortgage

47(xvii) Any transfer of a capital asset to a business trust

47(xviii) Any transfer by a unit holder in the consolidating scheme of a mutual fund

47(xix) Any transfer by a unit holder in the consolidating plan of a mutual fund scheme

Any income which is not taxable under head of salary, house property, business &
profession or capital gain, that income shall be taxable under IFOS.

Items that are taxable under the head "IFOS"

(i) Casual Income in the nature of winning from lotteries, crossword puzzles, races including horse races, card games and other games of any sort, gambling, betting etc. Such winnings are chargeable to tax at a flat rate of 30% under section 115BB.

(ii) Dividend received on Shares

(iii) Interest on bank deposits & loan given.

(iv) Royalty Income

(v) Directors Sitting fees (if there is ER-EE relationship and receiving remuneration in terms of salary, then taxable under head of salary)

(vi) Agriculture Income if agriculture land located outside India.

(vii) Income from Sub-letting of house property.

(viii) Salary of MP/MLA/MLC taxable under head of IFOS because there is no ER-EE relationship.

(ix) Interest on Income Tax refund.

(x) Income on Any investment made.

(xi) Amount received as family pension taxable under head IFOS.

Amount allowed as deduction u/s 57-

- 1/3rd of family pension, or
- 15,000 per annum.

↓ whichever is Less

(xii) Interest on compensation of compulsory acquisition of capital asset 50% deduction allowed u/s 57.

(xiii) Taxability of Gifts u/s 56(2)(x) **(Annexure-1)**

(xiv) Compensation or any other payment received in connection with termination of his employment u/s 56(2)(xi)

Compensation received from

Employer- Taxable under head of salary

Others- Taxable under head of IFOS

(xv) If any closely held Company issues share to any resident shareholder On premium then- [issue price of share - fmv of such shares] shall be taxable in hands of company under IFOS. **(Annexure-2)**

→ **Items that are taxable under the head "IFOS" only if not chargeable under head of "PGBP"**

(i) Any sum received by an employer-assessee from his employees as contributions to any provident fund, superannuation fund or any other fund for the welfare of the employees.

(ii) Rent income from letting out of plants, machinery, furniture

(iii) Where letting out of buildings is inseparable from the letting out of machinery, plant or furniture, the income from such letting.

(iv) Interest on securities

TAXATION OF GIFT : [Sec-56(2)(x)]

	Nature of asset	Taxable value
1	Money	The whole amount if the same exceeds Rs. 50,000.
2	Movable property	**Without consideration:** The aggregate FMV of the Property > 50,000. **Inadequate consideration:** (FMV-Consideration)= if such difference > 50,000
3	Immovable property	**Without consideration:** The SDV of the property **Inadequate consideration:** (a) (SDV-Consideration) per property > 50,000 and 10% of consideration. [**Note**- if (SDV-Consideration)is more than higher of 50,000 and 20% of consideration, 50,000 and 20% of consideration, in case the immovable property is a residential unit which is held as stock-in-trade by the seller and the transfer is during the period between 12.11.2020 and 30.6.2021 by way of first time allotment to the buyer and the consideration for transfer ≤ 2 crores.]

ANNEXURE-1

Non-applicability of section 56(2)(x) :

(a) However, any sum of money or value of property received in the following circumstances would be outside the ambit of section 56(2)(x) -

(i) from any relative; or

(ii) on the occasion of the marriage of the individual; or

(iii) under a will/by way of inheritance; or

(iv) in contemplation of death of the payer or donor, as the case may be; or

(v) from any local authority as defined in the Explanation to section 10(20); or

(vi) from any fund/foundation/university/other educational institution/ hospital/other medical institution/any trust/institution referred to in section 10(23C); or

(vii) from/by any trust/institution registered u/s 12A or 12AA **or 12AB**; or

(viii) by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in Section 10(23C)(iv)/(v)/ (vi)/(via).

(ix) by way of transaction not regarded as transfer under section 47(i)/(iv)/(v)/(vi)/(via)/(viaa)/(vib)/(vic)/(vica)/(vicb)/(vid)/(vii)/**(vii ac)/ (viiad)/(viiae)/(viiaf).**

(x) from an individual by a trust created or established solely for the benefit of relative of the individual.

(xi) From such class of persons and subject to such conditions, as may be prescribed.

- Accordingly, CBDT has, vide Notification No. 40/2020, dated 29th

June, 2020, notified that the provisions of section 56(2)(x) would not be applicable to the following transactions –

S.No.	Property	Received by	Condition
1.	Any movable property, being unquoted shares, of a company and its subsidiary and the subsidiary of such subsidiary	Shareholder	Where, (i) the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013, has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government under section 242 of the said Act; and (ii) share of company and its subsidiary and the subsidiary of such subsidiary has been received pursuant to a resolution plan approved by the Tribunal under sec-242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.
2.	Any movable property, being equity shares, of the reconstructed bank	Investor or investor bank (SBI)	where the said share has been allotted by the reconstructed bank (Yes Bank) under the Yes Bank Limited Reconstruction Scheme, 2020 at 10 per share (Face value 2 per share; Premium 8 per share).

3.	Any movable property, being equity shares, of the public sector company	a person	It should be received from the Central Government or any State Government under strategic disinvestment.

ANNEXURE-2

SHARES ISSUED ON PREMIUM [Sec-56(2)(viib)]

Basic	If any closely held company issues shares to any resident share holder on premium then, Issue price of share xxx (-) FMV of such shares xxx Shall be taxable under IFOS
Not apply to	a.By venture capital undertaking from a venture capital company or a venture capital fund b.from Non Resident c.Specified-fund (see definition) * d.Persons notified by CG - Start-up company (see definition) ** *** Specified fund means** - a fund established or incorporated in India in the form of a trust or a company or a LLP or a body corporate - which has-been granted a certificate of registration as a Category I or a Category II Alternative Investment Fund and is regulated under the SEBI (Alternative Investment Fund) Regulations, 2012 **** Meaning of Start- up** A company would be considered as Start-up if the following conditions are satisfied:

a. It would be considered as Start-up up to a period of 10 years from the date of incorporation/ registration, if it is incorporated as a Pvt Ltd Company (as defined in the Companies Act, 2013) in India.

b. Turnover of the company for any of the financial years since incorporation/registration has not exceeded 100 crore rupees.

c. The company is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation

Note - Pvt Ltd Co. shall not be considered a "Start- up", if it formed by splitting up or reconstruction of an existing business.

Condition 1. For startup

a. Aggregate amount of paid up capital and share premium of the start-up after issue or proposed issue of shares, does not exceed, 25 crore rupees.

b. However, in computing the aggregate amount of paid up share capital, in respect of shares issued to any of the following persons shall not be included:

- a non-resident
- venture capital company or a venture capital fund
- a specified company

Condition 2. For startup

- . Building or land appurtenant thereto, being a residential house. [Allowed if Start-ups business is renting or held by it as Stock in trade)
- Land or building, or both, not being a residential house. [Allowed if Start-ups business is renting or held by it as Stock in trade)
- Loans & advances. [Allowed if Start-up business is lending of money]

	- Capital contribution made to any other entity. - Shares and securities - Motor vehicle, aircraft, yacht or any other mode of transport, the actual cost of which exceeds 10 lakh rupees. [Allowed if Start-up business is plying, hiring, leasing] - Jewellery. [Allowed if it held as stock-in-trade in the ordinary course of business] - Any other asset, whether in the nature of capital asset or otherwise, of the nature specified in section 56(2)(vii)(d)(iv) to (ix) i.e., archaeological collections, drawings, paintings, sculptures, any work of art or bullion. - However, the Start-up should not invest in any of the assets mentioned above for the period of 7 years from the end of the latest FY in which shares are issued at premium.
Proviso added by FA 2019 - If fails to comply	If company fails to comply with above conditions then, any consideration received for issue of share that exceeds the FMV of such share shall be deemed to be the income of that company chargeable to income-tax for the PY in which such failure has taken place Deemed mis-reporting u/s 270A Penalty - 200% of Tax

Term	Meaning
Property	A **capital asset** of the assessee, namely,- (a) immovable property being land or building or both, (b) shares and securities, (c) jewellery, (d) archaeological collections, (e) drawings, (f) paintings, (g) sculptures, (h) any work of art or bullion. (i) virtual digital asset
Relative	**(a) In case of an individual –** (i) spouse of the individual; (ii) brother or sister of the individual; (iii) brother or sister of the spouse of the individual; (iv) brother or sister of either of the parents of the individual; (v) any lineal ascendant or descendant of the individual; (vi) any lineal ascendant or descendant of the spouse of the individual; (vii) spouse of any of the persons referred to above. **(b) In case of Hindu Undivided Family,** any member thereof.
Resident	Resident means a person having physical possession of property on the basis of a registered sale deed or latest set of Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration in respect of a property in unauthorised colonies and includes their legal heirs but does not include tenant, licensee or permissive user.
Unauthorised colony	**Means** a colony or development comprising of a contiguous area, where no permission has been obtained for approval of layout plan or building plans and has been identified for regularisation of such colony in pursuance to the notification number S.O. 683(E), dated the 24th March, 2008, of the Delhi Development Authority.
Strategic disinvestment	Sale of shareholding by the Central Government or any State Government in a public sector company which results in reduction of its shareholding to below 51% along with transfer of control to the buyer.

Amendment by FA 2022 w.e.f. AY 20-21

Section 56(2)(x) not applicable in the following cases; -

(xii) an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family, for any illness related to COVID-19 subject to conditions notified by the Central Government.

Accordingly, the Central Government has, vide Notification No. 91/2022 dated 5.8.2022, specified the following conditions -

The individual has to keep a record of the following documents, namely:-

(a) the COVID-19 positive report of the individual or his family member, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an in-patient facility by a treating physician for a person so admitted;

(b) all necessary documents of medical diagnosis or treatment of the individual or family member due to COVID-19 or illness related to COVID-19 suffered within 6 months from the date of being determined as a COVID-19 positive;

The details of the amount so received in any financial year has to be furnished in Form No. 1 to the Income-tax Department within 9 months from the end of such financial year or 31.12.2022 whichever is later.

(xiii) a member of the family of a deceased person -

(A) from the employer of the deceased person (without any limit); or

(B) from any other person or persons to the extent that such sum or aggregate of such sums ≤ 10 lakhs,

where the cause of death of such person is illness related to COVID-19 and the payment is -

(i) received within 12 months from the date of death of such person; and

(ii) subject to such other conditions notified by the Central Government.

Accordingly, the Central Government has, vide Notification No. 92/2022 dated 5.8.2022, specified the following conditions -

1. (i) the death of the individual should be within 6 months from the date of testing positive or from the date of being clinically determined as a COVID-19 case, for which any sum of money has been received by the member of the family;

(ii) the family member of the individual has to keep a record of the following documents,

(a) the COVID-19 positive report of the individual, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an inpatient facility by a treating physician;
(b) a medical report or death certificate issued by a medical practitioner or a Government civil registration office, in which it is stated that death of the person is related to corona virus disease (COVID-19).
2. The details of such amount received in any financial year has to be furnished in Form A to the Assessing Officer within 9 months from the end of such financial year or 31.12.2022 whichever is later.
Meaning of "Family" -
Family, in relation to an individual,
(i) the spouse and children of the individual; and
(ii) the parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual.

Taxation in the case of Buy Back:

IN CASE OF FOREIGN COMPANY

- **In hands of company** → No Tax Treatment
- **In hands of Shareholders** → Sec 46A:. Capital Gain is applicable in hands of shareholders

FVOC(Buy Back Price)	xxx
(-) COA/ICOA	xxx
STCG/LTCG	xxx

POH= Date of Acquisition to Date of Buy Back

IN CASE OF DOMESTIC CO. (LISTED or UNLISTED)

- **In hands of company** → Domestic co. shall pay tax @ 23.296% (20% + 12% + 4 %) on distributed Income (Sec 115QA)
- **In hands of Shareholders** → Exempt u/s 10(34A)

Distributed Income=
Buyback Price-Issue Price(incl. premium)

Notes:

- Redemption of preference shares → also amounts to Buy Back of Shares
- Tax on Buyback shall be paid to Govt → within 14 days of Buy Back
- Sec 115 QB/QC:- Interest @1% pm or part From 15th day Till Actual payment of Tax

Issue price can be different in certain cases

Following issue prices can be taken as follows:-

CASES	ISSUE PRICE
→ Normal case	Issue price including Premium
→ If before Buy Back, any amount returned by company	Amount received by Co. - Returned Amount
→ Esop shares or Sweat Equity shares	a) FMV of shares xxx b) Amt recd incl. premium xxx w.e. lower

→ Shares issued by Amalgamated Company in Amalgamation.

Amount received by Amalgamating co.

→ Shares issued by Resulting Company in Demerger

Amt. recd. by Demerged Co. × $\frac{\text{Net Book Value of Assets Transferred in Demerger}}{\text{Net worth of Demerged Co.}}$

Taxation in Case of Liquidation

In hands of Company

As per sec 46(1)

↓

Distribution of Assets by Company

↓

Not treated as transfer, Capital Gains Not Taxable

In hands of Shareholder

Distribution of Profits by Company

↓

Deemed Dividend us 2(22)(c)

Distribution of Assets by Company

↓

Capital Gain applicable in hands of Shareholder

↓

Computation of Capital Gains:-

Money received	xxx
+ FMV of asset on that date	xxx
(-) Amount taxable as deemed dividend	xxx
Full Value of Consideration	xxx
(-) COA/ICOA Of Shares	xxx
STCG/LTCG	XXX

Period of Holding = Date of Acquisition TO date of liquidation of Shares of Company

COA of Assets = FMV of Assets on date of Liquidation

Taxation in Case of Amalgamation

Amalgamation:

Merger of one or more companies in a way that:

- All Assets & liabilities of Amalgamating co. **Becomes** Assets & liabilities of Amalgamated Co.
- Shareholders holding minimum 75% value of Shares of Amalgamating co. **Becomes** Shareholders of Amalgamated Co.

Taxation

- **In the hands of Shareholders**
  - No capital Gain in hands of Shareholders
    - COA = Cost of shares in Amalgamating Co.
    - POH= POH of Shares in Amalgamating Co. + Amalgamated Co.
- **In the hands of Company**
  - **Amalgamating Co.**
    - No capital Gain on Transfer
  - **Amalgamated Co.**
    - CoA= Cost to previous owner
    - POH= POH of Previous + Current Owner

Taxation in Case of Demerger

Demerger:

Transfer of One or more Undertaking/Unit by Demerged Co. -> to Resulting co.

Conditions

- All Assets & Liabilities of Demerged unit becomes Assets & liabilities of Resulting Co.
- All Assets & liabilities should be transferred at Book Value (Note:Book value condition not applicable if value is changed due to Ind AS)
- Resulting Co. issues its shares to shareholders of Demerged Co. -> on proportionate Basis

- The Shareholders holding minimum 75% Value of shares in the demerged Co. becomes Shareholders of Resulting Co.
- Transfer of undertaking/unit is on going concern Basis.

Taxability

In the hands of Shareholders

COA of Shares in Resulting Co. =

$$\text{COA of Shares held in Demerged Co} \times \frac{\text{Net Book Value of Assets transferred in Demerger}}{\text{Net worth of demerged Co. before demerger}}$$

In the hands of Company

- **Resulting co.**: COA= COA to Previous Owner
- **Demerged Co**: No capital Gains

→ PGBP losses & Unabsorbed depreciation OF Transferred Undertaking can be set off by Resulting Co.

Taxation of Political Parties

3 Incomes of Political Parties are EXEMPT under Section 13A

- Income from House property
- Income from Capital Gain
- Income from Other sources including donation

Income from Salary -> NOT POSSIBLE

Income from PGBP -> Fully Taxable

There are Certain conditions for EXEMPTION:

1) Political Party must maintain its Books of accounts & get it Audited.

2)For Every donation received above Rs. 20000, party must maintain record of Name & Address of the donor.

3)Every donation received > Rs. 2000 must be taken by A/c payee cheque, A/c payee DD, any mode of ECS etc.

4)For claiming exemption, Political parties need to file return before Due date of 139(1).

→ Deduction will be available to the donor against above donation

u/s 80GGB-> Company

80GGC-> Others

(Note: Not available for donation made in Cash)

Sec 13B Taxation of Electoral Trust

Any Voluntary Contribution received by Electoral trust shall be exempt if 2 condition are satisfied:

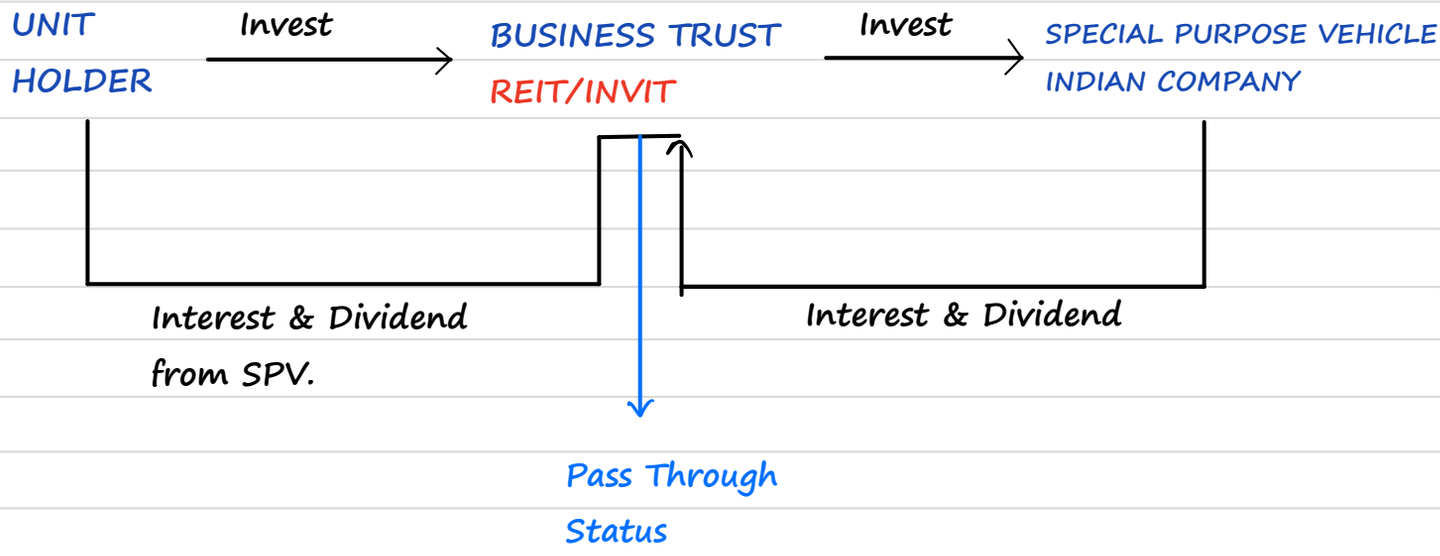
i) 95% or more aggregate donation given to political party.

ii) functions in accordance with CG Rules

Notes:

- 80GGB/GGC same as political party.
- Only Donation Income exempt, other Income taxable.
- It should not recieve money from Govt. Co., Other Electoral Trust & Foreign source.
- It should not receive donation in Cash

Taxation of BUSINESS TRUST





Taxability:

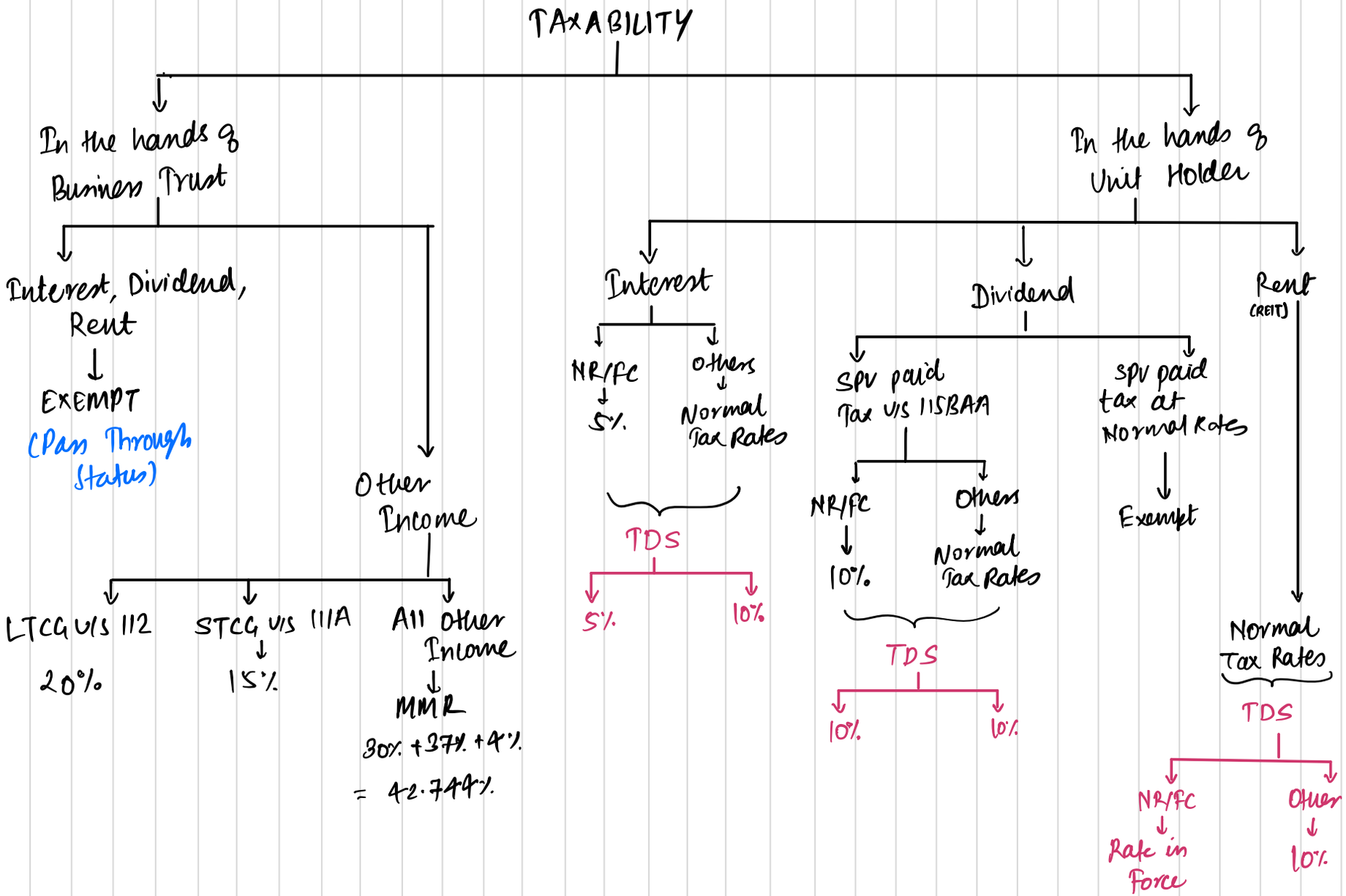
Only 3 Income are taxable in the hands of Unit Holders:

Interest, Dividend from SPV & Rent (from REIT) .

All Other Income will be Exempt.

All Other Income are Taxable in the hands of Business Trust.

Smart Investor
CA Yash Khandelwal



Notes: → Taxability on Transfer of Business Units

Listed Units		Unlisted Units	
LTCG [POH> 36 months]	STCG	LTCG u/s 112	STCG
↓	↓	↓	↓
Taxable @ 10% u/s 112A in excess of Rs. 1,00,000.	Taxable @ 15% u/s 111A	Taxable @ 20%	Normal Tax Rates

→ Any other Income other than Interest, Dividend and Rent(REIT) received by unit Holders shall be EXEMPT in the hands of Unit Holders u/s 10(23FD).

→ Any person ⟶ Shares of SPV ⟶ Business Trust

Business Trust ⟶ Units of Business trust ⟶ Any person

Not a Transfer u/s 47(xvii). Capital Gain will not apply.

COA of Units = COA of shares in SPV

Period of Holding = Period of Shares in SPV + Period of Units of Business Trust

Taxation of Investment Fund

In the Hands of UNIT HOLDERS ⟶ All Income Taxable except PGBP

In the Hands of INVESMENT FUND ⟶ Only PGBP Taxable.
All Other Income Exempt.

Only PGBP Income is taxable in the hands of Investment fund, all other Income is taxable in the hands of Unit Holders

↳ PGBP loss- Inv. Fund will carry forward
Other losses - Unit holders will carry forward only if Unit is held by them for 12 months or more

→ Before carrying forward the losses, it will be first set off against other heads in the Investment fund.

→ Investment fund is required to file its return compulsorily u/s 139 (4F).

Tax Rates for Investment fund:

If Investment Fund is: Company- 25%/30% (Based on Turnover)
Firm → 30%
Others- MMR

Unit Holders -> Normal Tax Rates

→ Investment fund has to deduct TDS u/s 194LBB while paying to Unit Holder:

Resident- 10%

NR/FC- Rate in force

Taxation of Securitisation Trust

In the hands of Securitization Trust → All Income EXEMPT

In the hands of Unit Holders → All Income TAXABLE

Securitization Trust has to deduct TDs u/s 194LBC while paying to Unit Holders:

Resident: Ind/HUF - 25%

Others - 30%

NR/FC → Rates in force

Common Points for Investment Fund & Securitisation Trust:

- If Income earned by Fund/Trust during P.Y. → Has not been paid/credited to the Unit holders → It shall be deemed to be credited to the Unit Holders on the last day of P.Y.

Common Points for Business Trust,Investment Fund & Securitisation Trust:

- Income distributed by Fund/Trust will be in → Same Nature, Same Proportion → In the hands of Unit holders

e. g. 100 lakhs

CG 70 lacs

IFOS 30 lakhs

→ 10 lakh to unit Holder

CG 7 lakhs

IFOS 3 lakhs

- They shall provide Break-up to the unit Holders & IT Authority regarding Nature & proportion:
  Unit Holders -> upto 30th June of A.Y.
  Income Tax Authority->Upto 30th Nov of A.Y.

TONNAGE TAXATION:

Sec 115UG: COMPUTATION OF TONNAGE INCOME

Income = Daily Tonnage Income x No. of days ship is operated in a P. Y.

↓

We have to calculate this now.

QUALIFYING SHIP HAVING NET TONNAGE	DAILY TONNAGE INCOME
Tonnage upto 1000	Rs. 70 for each 100 tons
> 1000 upto 10,000	Rs. 700 + Rs. 53 for each 100 tons
> 10,000 upto 25000	Rs. 5470 + Rs. 42 for each 100 tons
> 25000	Rs. 11,770 + Rs. 29 for each 100 tons

Notes:

- Tonnage shall be rounded off to nearest multiple of 100
- Tax Rate will be @ 30% + surcharge + cess (if applicable)
- MAT not applicable
- No Deductions/set off of losses allowed against Tonnage Income.

Tonnage Tax Reserve A/c

→ Minimum 20% of Book Profit shall be transferred to Tonnage Tax Reserve A/c in every P.Y.

→ Reserve Amount should be utilised for
- Purchase of ship within 8 years
- Business of operating ships

Shortfall in Reserve

$$\text{Taxable Amount} = \text{Relevant Shipping Income} \times \frac{\text{Shortfall}}{\text{Minimum Reserve to be created}}$$

Mis-utilization/ Non-Utilization of Reserve

$$\text{Taxable Amount} = \text{Relevant Shipping Income} \times \frac{\text{Amount Mis-utilized/Un-utilized}}{\text{Total Reserve created during Year}}$$

Note:- Relevant Shipping Income =

Profit from Core-Shipping Activity + Profit from Incidental Activity

TAXATION OF AOP/BOI

(1) When Shares of Members are Known: -

All members having NTI upto Basic Exemption → Tax at slab Rate

One or more members have NTI> basic exemption → Tax on Entire Income @ MMR i.e. 42.744%(30+37+4)

→ If Income of any member is taxable at Rate higher than MMR, then:

- His Share of Income will be taxable at Higher Rate
- Balance Income of AOP/BOI will be taxable at MMR

(2) When Shares of Members are UNKNOWN:-

Tax Entire Income @MMR i.e. 42.744%

If Income of One Member is taxable at rate higher than MMR, then whole Income of AOP/BOI will be taxable at such higher rate.

Note: While calculating NTI (Net Total Income) of member share from AOP/BOI will not be included.

If AOP/BOI has paid tax at MMR, then share from AOP/BOI will be Exempt in the hands of members

Sec 40 (ba)

Interest, Salary, Bonus/Commission paid by AOP/BOI → shall be disallowed While Computing PGBP Income OF AOP/BOI.

IF AOP/ BOI ⟺ (Interest / paid Interest too) Members

→ Only Net Interest paid by AOP/BOI shall be disallowed

→ Loss OF AOP/BOI shall be carried/forward by AOP/BOI only.

Sec 67A- Computation Of Member's share in AOP/BOI

→ Compute Net Total Income of AOP/BOI

↳ After disallowing Salary & Interest paid to members.

→ Now we will calculate Member's share in profit of AOP/BOI:.

Net Total Income of AOP/BOI	xxx
(-) Interest & Salary paid to members	xxx
	xxx → This amount will be distributed to members in PSR

→ Therefore members will recieve 2 kinds of Amount from AOP/BOI:
Interest Salary + Share in profit = Share of member received from AOP/BOI.

→ Share from AOP/BOI will be included in Member's Total Income, but members will get Rebate u/s 86.

Share from AOP/BOI	xxx	
(+) Other Income of Member	xxx	
Total Income	xxx	→ Tax will be calculated on this income first, then Rebate will be allowed.
Tax+surcharge+cess on Total Income -	xxx	
(-) Rebate u/s 86 =		
Tax Amount x $\frac{\text{Share from AOP/BOI}}{\text{Total Income}}$	xxx	
Net Tax payable by members	xxx	

→ Rebate u/s 86 only available when Tax has been paid by AOP/BOI

→ If any member is member in Individual Capacity and he receives Interest in Representative capacity, then that Interest will not be considered for sec 40(ba).

→ If any member is member in Representative Capacity and he receives Interest in Individual capacity, then that Interest will not be considered for sec 40(ba).

Conclusion: Interest will only be considered for sec 40(ba) when a member receives it in the same capacity in which he is a member.

Taxation of Firm/LLP

Sec 40(b): While Calculating the Business Income of Firm/LLP, following amounts shall not be deducted:

i) Remuneration to a non-working partner
ii) Remuneration to a working partner not authorized by deed.
iii) Remuneration to a working partner or interest to a partner authorized by deed but relates to an earlier period.
iv) Interest to any partner in excess of 12% p.a.
v) Remuneration to a working partner in excess of prescribed limits

Prescribed Limits for Book Profit:

Book Profits	Quantum of deduction
On the first Rs. 3 lakh of book profit or in case of loss	1,50,000 or 90% of book profit, whichever is higher
on the balance of book profit	60% of book profit

Notes:

1) Book Profit: PGBP Income before allowing Remuneration

Calculation:

Net Profit under PGBP	xxx
(+) Remuneration(if debited to P&L A/c)	xxx
(+) Disallowances under PGBP	xxx
(-) Current Year + b/f Depreciation	xxx
Book Profit	xxx

2) Interest over and above 12% shall be added back to calculate Book Profit.(RTP Nov 22 Q.)

Tax Rate for Firm/LLP: 30% Surcharge: 12% if NTI> 1 Cr.

STCG u/s 111A & LTCG u/s 112A shall be applicable to firm also.

Sec 44AD/ADA/AE for Firm LLP

Sec 44AD/ADA	Sec 44AE
→ LLP not eligible for 44AD/ADA	→ No such restriction for 44AE
→ Int & Remuneration to partners not allowed while calculating Income.	→ Int & Remuneration to partners will be allowed while calculating Income.

Explanation to Sec 40(b):

→ If any partner is partner in Individual Capacity and he receives Interest in Representative capacity, then that Interest will not be considered for sec 40(b).

→ If any partner is partner in Representative Capacity and he receives Interest in Individual capacity, then that Interest will not be considered for sec 40(b).

Conclusion: Interest will only be considered for sec 40(b) when a partner receives it in the same capacity in which he is a partner.

Note: This Explanation is only applicable on Interest and not on Remuneration.

Sec 78: Set off & Carry Forward of Losses

Losses & Unabsorbed Depreciation of Firm → can be c/f by Firm Only.

On Retirement/Death of Partner → Share of B/f Loss of Deceased/Retired Partner can not be Carried Forward.

↓

2 Exceptions:

- If After Death of Partner, His Legal Heir becomes partner of firm, then his share will be c/f by firm
- Unabsorbed Depreciation of Deceased/Retired partner can be carried forward

Sec 188A: Joint & Several Liability of Partners

Every person who is a partner of the firm at any time during P.Y. shall be jointly & Severally Liable along with firm for tax, penalty etc.

Even Liability of partners of LLP is not limited for Income Tax Act purposes.

Change in Constitution & Succession

Sec 187: Change in Constitution	Sec 188: Succession of firm
→ Where all the partners continue with a change in respective PSR	→ Where a firm is succeeded by another firm.
→ when atleast one person continues as partner after the retirement/death of one or more person.	→ 2 Returns are filed for year of succession: one by predecessor one by successor

Chapter 6: Minimum Alternate Tax

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→MAT provisions are applicable to All COMPANIES
- Domestic Co.
- Foreign Co.
- Govt/Non-Govt. Co.

Sec 115JB:

Companies have to pay tax at:

(i) Tax computed as per Normal provisions of Income tax

OR

(ii) 15% of Book Profit (MAT)

WHICHEVER IS HIGHER

Note: If Company is located in IFSC, MAT Rate is 9% instead OF 15%.

↳ Income of Co. must be in Convertible Foreign Exchange

→ MAT is Not Applicable to Companies Opting Sec 115BAA & 115BAB

→ Surcharge & Cess is applicable on MAT(Same as Normal Companies) :

TOTAL INCOME	Foreign Co.	Domestic Co.
1 cr < Total Income ≤ 10 cr	2%	7%
Total Income > 10 cr	5%	12%
+ Cess@ 4%		

Computation of BOOK PROFIT as per Sec 115 JB

Profit as per Profit & loss A/c as per Companies Act, 2013 — xxx

Add:	Less:
1) Any amount Transferred to Any Reserve A/c	1) Any Amount withdrawn from any Reserve A/c ↳ (Only reduced if it was added in the Book profit in the Year of making reserve.)
2) Expenses incurred for earning Such Exempt Income (See 10/11/12)	2)Income Exempt u/s Sec 10,Sec 11, & Sec 12
3) Depreciation Debited to P&L A/c ↳ as per companies act	3) Depreciation excluding depreciation on Revalued Assets ↳ as per companies act
4) Deferred Tax debited to P & L	4) Deferred Tax credited to P & L

4a) Income Tax — Paid / Provision
↳ includes interest, surcharge, Cess but Not penalty → Means Penalty will not be added back.

5) Expenditure incurred relating to share in Income of AOP/BOI

6) Expenses incurred by foreign Co. for earning such income:
→ Capital Gain on securities
→ Interest
→ Dividend*
→ Royalty or FTS
} Sec 115A

7) Expenditure incurred on Earning Royalty Income

8) Balance in Revaluation Reserve on Retirement or Disposal of Assets
↳ if not credited to P&L

9) Business Trust Units
Notional Loss / Actual GAIN on transfer

→ Notional Loss on:
• Shares of SPV ⇌ Units of Business Trust
• Change in Carrying value

→ Loss on Transfer of such units
→ Amount of Actual GAIN on Transfer of units of Business Trust
[Selling price of units- Cost/Carrying value of shares of SPV]

Already taxed in the hands of AOP/BOI
5) Share of Company in the Income of AOP/BOI

6) Income Of Foreign Co. from:
→ Capital Gain on securities
→ Interest
→ Dividend*
→ Royalty or FTS
} If Tax rates on these income is less than 15% CMAT Rate)

7) Royalty Income on Patent Taxable u/s 115BBF @10%

8) Transfer from Revaluation Reserve (to the extent of depreciation on Revalued assets)

9) Business Trust Units
Notional gain / Actual LOSS on transfer

→ Notional Gain on:
• Shares of SPV ⇌ (Exchange) Units of Business Trust
• Change in Carrying value

→ Gain on Transfer of such units
→ Amount of Actual LOSS on Transfer of units of Business Trust
[Selling price of units- Cost/Carrying value of shares of SPV]

10) Dividend — PAID / PROPOSED

11) Provision for Contingent/ Unascertained liability

12) Provision for Dimunition in the value of Assets.
[eg. Provision for Bad Debts]

13) Provision for losses of Subsidiary company.

10) Profit of Sick Industrial Company

11) B/F losses/Unabsorbed Depreciation

i) B/F Losses OR ii) Unabsorbed Depreciation Whichever is lower	i) B/F Losses AND ii) Unabsorbed Depreciation
↓	↓
Normal Companies	In case of 2 Companies

Company against whom corporate Insolveny Resolution Process has been admitted Under IBC 2016	Company & its subsidiaries whose BOD has been suspended & New BOD is appointed by CG

→ B/f losses & Unabsorbed depreciation

As per companies Act	Not Income Tax Act
✓	xx

Space for Notes:

Computation of Book Profit of Ind-AS compliant Companies

In case of companies which are required to Comply with Ind-As, then following additional adjustments is required to be done after above adjustments

ADD:-	LESS:-
1) Items CREDITED to Other Comprehensive Income (OCI) which will never be classified to P&L Except ↓ Revaluation Surplus from Asset as per IndAs 16 & 38 Gain or Loss From Investment in Equity Instruments designated at Fair value through OCI as per Ind As 109	1) Items DEBITED to Other Comprehensive Income (OCI) which will never be classified to P&L Except ↓ Revaluation Surplus from Asset as per IndAs 16 & 38 Gain or Loss From Investment in Equity Instruments designated at Fair value through OCI as per Ind As 109
2) GAIN from: • Change in fair value of Equity instruments through OCI & • Revaluation surplus from Assets on Retirement, Disposal, Realization or Transfer.	2) LOSS from: • Change in fair value of Equity instruments through OCI & • Revaluation surplus from Assets on Retirement, Disposal, Realization or Transfer
3) Amount DEBITED to Profit & loss on Distribution of Non-Cash assets to Shareholder in a demerger as per Appendix A of Ind As-10.	3) Amount CREDITED to Profit & loss on Distribution of Non-Cash assets to Shareholder in a demerger as per Appendix A of Ind As-10.
4) 1/5th of Transition Amount(Credit)*	4) 1/5th of Transition Amount(Debit)*

Space for Notes:

→ Transition Amount: Aggregate Amount adjusted in Other Equity but Excludes:-

- Capital Reserve & Securities Premium
- Amount adjusted in OCI but subsequently reclassified to P&L
- Revaluation Surplus from Assets on convergence date
- Gain or loss in fair value of Equity instrument through OCI
- Adjustments relating to
  - Investments in Subsidiary/JV/Associate through OCI
  - Cummulative Translation difference of foreign Operation
  - PPE & Intangible Assets

→ All the above amounts are to be taken at convergence date.

↳ 1st day of 1st Ind-As Reporting Year

→ For All Companies - Net profit shall be computed as per Companies Act 2013

→ For
- Electricity co.
- Banking Co.
- General Insurance Co.

} Profit shall be calculated as per respective Act.

↳ For Life Insurance Co, MAT not applicable

→ If
- Provision for Gratuity
- Leave Salary
- Provision for warranty

} → If Made as per actuarial valuation, then Not to be added Back.

[Note: In PGBP, only gratuity paid is allowed]

→ Advance Tax Int u/s 234ABC } These provisions will be applicable to MAT following companies

→ MAT not applicable to companies opting 115BAA or 115BAB

MAT for foreign companies:

→ Point No. 7) from Deductions (Less) Side.

→ MAT not applicable to foreign Cos. which have opted
- 44B
- 44BB ⟶ presumptive
- 44BBA
- 44BBB

→ MAT not applicable to

Foreign Co. is of Country with which India has DTAA	Foreign Co. is of country with India does not have DTAA
Foreign country ⟷ (DTAA) India	Foreign country ⟷ (No DTAA) India
& Foreign Co. does not have PE in India.	& Foreign Co. is not required to take any registration under any law in India.

Sec 115JJAA: MAT Credit

MAT credit arises when: MAT payable > Tax as per normal provision

↓

MAT Credit = MAT payable − Tax as per normal provisions

→ It can be carried forward for 15 years.

→ MAT credit can be utilized in the year in which Tax as per Normal provisions > MAT payable } Allowed to the extent Normal Tax exceeds MAT

→ If Unlisted Co. Converts to LLP, MAT credit shall not be allowed to LLP.

eg.

	P.Y. 21-22	P.Y. 22-23	
	MAT = 100,000	MAT = 1,10,000	
	Normal Tax = 80,000	Normal Tax = 1,20,000	
	MAT credit = 20,000	Tax payable = 1,10,000	⟶ MAT credit of 10,000 will be utilised.

Space for Notes:

→ Amendment F. A. 2021

If there is increase in Book Profit of current P.Y.

Due to

APA or Sec Adj.

Change in Income of Past year included in Book profit

on Account of

Advance pricing Agreement or Secondary Adjustment

Then Assessee can apply to AO to recompute Book profit and tax payable by assessee for past year or years.

Rule 10RB:

$$(A-B) - (D-C)$$

A= tax payable by the assessee company under section 115JB(1) on the book profit of the previous year including the past income.

B =tax payable by the assessee company under section 115JB(1) on the book profit of the previous year after reducing the book profit with the past income.

C =Aggregate of tax payable by the assessee company under section 115JB(1) on the book profit of those past year or years to which the past income belongs.

D=Aggregate of tax payable by the assessee company under section 115JB(1) on the book profit of past year or years, referred to in item C, after increasing the book profit with the relevant past income of such year or years.

It may be noted that if the value of (A-B)-(D-C) in the formula is negative, its value would be deemed to be zero.

Meaning of past income [Rule 10RB(2)]

Past income means the amount of income of past year or years included in the book profit of the previous year on account of an APA entered into by the assessee under section 92CC or on account of secondary adjustment required to be made under section 92CE.

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ALTERNATE MINIMUM TAX

Sec 115JC:-

→ AMT is applicable to all Assessees except Companies

→ AMT shall not be applicable if ATI is upto 20 lakhs

↳ Individual/HUF/AOP/BOI/AJP

Income Tax payable:

→ Income Tax payable as per Normal provisions or
→ 18.5% of Adjusted Total Income

} whichever is Higher

Calculation of Adjusted Total Income

Total Income as per Normal provisions	xxx
(+) Dedn u/s 10AA	xxx
(+) Dedn u/s VI-A 'C'	xxx
(+) Dedn u/s 35AD	xxx
(-) Depreciation allowable on 35AD Assets if deduction u/s 35AD was not allowed	xxx
Adjusted Total Income (ATI)	xxx

→ The provisions of AMT apply only if assessee is claiming deduction u/s 10AA, chapter VIA-'C' or 35 AD.

→ If unit is located in IFSC, AMT is applicable at 9% → Instead of 18.5 %

→ All provisions of Income Tax Act like Advance Tax, Int u/s 234A/B/C shall apply to the assessee.

→ AMT is not applicable to Assessees opting 115BAC & 115 BAD, AMT credit unutilized on the day of opting above sections will LAPSE.

→ AMT is not applicable to Specified fund u/s 10(4D)

AMT Credit

When AMT payable > Tax as per normal provision

↓

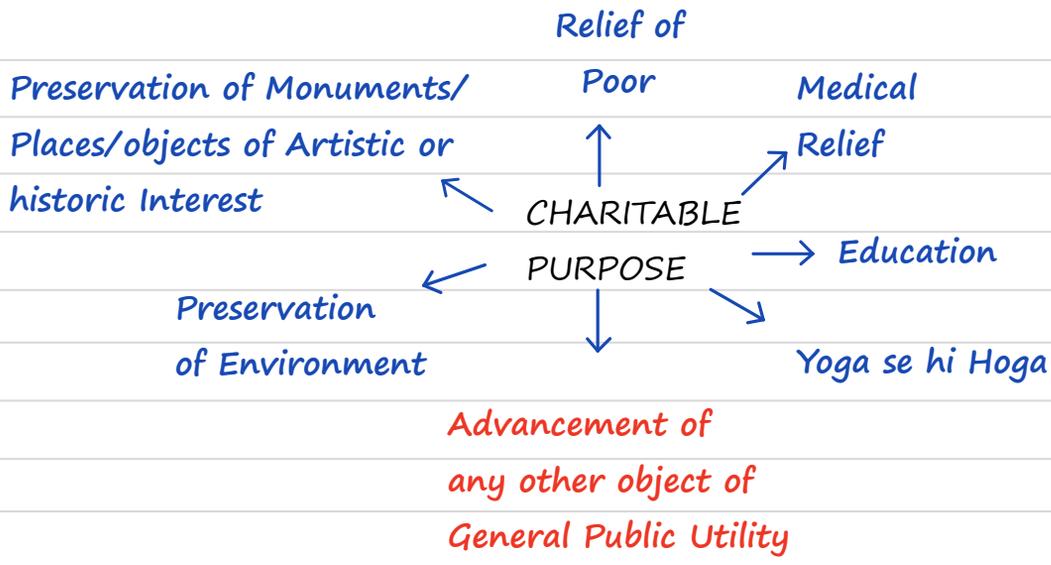
AMT credit arises when → AMT Credit = AMT payable - Tax as per Normal provisions

It can be carried forward for 15 years.

AMT credit can be utilized in the year in which Tax as per Normal provisions > AMT payable } Allowed to the extent Normal Tax exceeds AMT

Eg.	P.Y.-19-20	P.Y. 20-21	
	AMT = 1,00,000	AMT = 1,10,000	} AMT credit of 10,000 will be utilised.
	Normal Tax = 80,000	Normal Tax = 1,20,000	
	AMT credit- 20,000	Tax payable = 1,10,000	

→ In Case of Co-operative Society, AMT Applicable @ 15% instead of 18.5%



→ **Advancement of any other Object of GPU:**

If it involves any activity related to TRADE, COMMERCE or BUSINESS

is a Charitable purpose only if Aggregate Receipts from Business Activity → Not more than 20% of Total Reeiepts.

→ If it exceeds 20%, Exemption will be denied for that particular year, Registration will not be cancelled.

SECTION 11(1) : INCOME OF TRUST

Following income of Trust are Exempt:-

i) Corpus donation (exempt only if invested in 11(5) modes)

ii) 15% of Gross Income

iii) Income applied for charitable or Religious purposes in India - From remaining 85%

Notes:

→ Applied Means:

- Capital + Revenue Exp.
- Donation to other trust regd. u/s 12AA/12AB
- Repayment of loan taken for acquisition capital Assets.

corpus donation will not be considered as applied.

→ Cost of Asset - Taken in applied.

↳ Then depreciation will not be taken in applied.

→ 40(a)(ia), 40A(3) , 40A(3A) is applicable in case of Trust

- TDS not deducted (30%)
- cash payment >10k
- cash payment >10K of last Year

If expense is disallowed in these 3 Sections, it will not be taken in applied.

→ If 85% not applied, it can still be taken in applied:

How?

If its Outstanding

- Trust will give declaration to A.O. that the amount is still outstanding.
- Till when: Should submit it before Due date of ROI
- Assessee will apply it when received:

when?

In the year of Receipt or Next Year after receipt (Bonus)

- If Not applied : It will become Income of this year

Any Other Reason

- Assessee will give declaration to AO. that we will apply in Next P.Y.
- Till when: Should submit it before Due date of ROI.
- If not applied: It will become Income of next P.Y.

Explanation-3A (Added by FA 22 w.e.f. AY 21-22)

If trust is having any temple, mosque/gurdwara/church or any place notified u/s 80G(2)(b) → & it has received any donation for repair or renovation of such places

↓

then such donation may be treated by trust as Corpus if following conditions are satisfied; -

↓

- Such amount should be applied only for repair or renovation
- Such amount should not be donated to any other person or trust,
- Such corpus must be separately identifiable, &
- Such amount must be Invested/deposited in Safe modes u/s 11(5).

Note:

If any condition mentioned in Exp. 3A above is violated

↓

then such sum shall be deemed as income of the PY in which violation takes place.

Explanation added section 11 by FA-22 w.e.f. AY 22-23

→ Any sum payable by any trust or institution shall be considered as application of income → in the P.Y. in which → trust has actually paid the sum.

Method of accounting Irrelevant

However, where during any Preceeding P.Y., Trust/Inst. has already claimed any amount as application,

↳ such sum shall not be allowed as application again in any subsequent P.Y based on actual payment due to this explaination.

Sec 11(2) : Exemption if Income Accumulated for specific Purpose

Conditions:

i) Assessee will tell period & purpose to A.O.

ii) Max period - 5 years

iii) This Amount must be invested in Sec 11(5) Safe Investment modes

iv) This amount can not be donated to Other Trust.

Note: After 5 Years period, One bonus year(6th Year) will be given.
If accumulated Amount is not applied in the 6th year, it will become Income of 6th year.

→ If this amount is applied for any purpose other than the purpose for which it was accumulated - the amount will become the income of the year in which it is applied. [Sec 11(3)]

Sec 13(9) : Exemption u/s 11(2) will not be given if:

→ Statement to A.O. is not given upto Due Date of ROI

→ ROI not filed upto due date of ROI.

Sec 11(4)/(4A): Business Income of Trust:

→ If Business is Incidental to the main object of the Trust & separate BOA is maintained, Exemption of Sec 11(1) & 11(2) will be allowed.

→ If A.O. finds any concealed Income, no exemption will be allowed on such concealed Income, whole Concealed Income will be taxable.

Sec 11(7):

If Trust takes exemption u/s 11/12, Exemption under Section 10 will not be allowed.

2 Exceptions: i) Section 10(1)
ii) Section 10(23C)

Provided that registration of Trust will become inoperative from the date on which trust or institution is approved u/s 10 (23C)(iv),10 (23C)(v),10(23C)(vi),10(23C)(via) or notified us 10(46) or the date on which this proviso has come into force, whichever is later (Added by FA 2020 W.e.f. 01.06.20)

Sec 12A: Conditions for applicability of Sec 11&12

→ Trust shall be registered u/s 12AA/12AB

→ Exemption will be available from the P.Y. in which application is given.

→ If Total Income (Before Claiming Exemption) > Basic Exemption limit then trust has to submit audit report with ROI.

Notes:

→ Exemption is available from P.Y. in which application was made but, If on the date of registration, no case is pending for earlier A. Ys:

↓

In which activities of Trust are same
on the basis of which registration is granted

↳ then Exemption u/s 11 & 12 will be available for such earlier A.Y.s also.

→ 147 - Re-assesment proceedings can not be done on the basis that Trust was not registered in any preceding A.Y.

The above benifit of earlier A.Y is not available if:

→ Trust had applied for registration & CIT had rejected it.

→ Trust had Registration but it got cancelled.

See 13(1):- Exemption us 11/12 not available in following cases:

The Exemption of Trust shall not be available in the following cases:

(a) Income from Property of trust for Private Religious Purpose

(b) Income from trust established for the benefit of particular religious caste or community.

(c) Income of trust ensuring for the benifit of any person referred in Sec 13(3) (Related persons)

(d) Funds invested in any modes other than 11(5) modes.

Person referred in sec 13(3):

- Author/founder of Trust .
- Member of HUF if founder/donor is HUF .
- Trustee or manager of Trust
- People who made donation> 50k
- Relative of any one above

→ If education/Medical facility is given to above referred person, then Value/FMV of such service shall be treated as Income of the Trust.

Sec 11(1A): Capital Gain is deemed to be applied for charitable purpose → If new Asset is purchased on transfer of Old asset

→ If whole Net consideration is utilized- Fully exempt

→If Net Consideration is partly utilized → [Cost of New Asset - Cost of Old Asset] shall be exempt

ANONYMOUS DONATION

Sec 115 BBC: Taxable @ 30%

Whole Anonymous donation is not taxable @ 30%,
some amount is deducted from it →

Higher of:-
(i) 5% of TOTAL DONATION → All donation.- corpus, anonymous, govt. grant
(ii) Rs. 1,00,000

→ Anonymous donation received by wholly Religious trust - Not Taxable
→ The amount which is deducted from anonymous donation → This is added with normal donation - and it is taxed at normal rates.

Section 115BBI: Tax on Specified Incomes

Tax Rate: 30%

Deductions Allowed: No Deduction allowed of any expense/loss.

Following specified Incomes are taxable @ 30%: -

(I) Income accumulated or set apart in excess of 15% where such accumulation is not allowed under any specific provision of IT Act.

(ii) Deemed Income on Violation of use of Accumulated Income u/s 11(3)

eg: used for some other purpose — donated to other trust

(iii) Deemed Income on account of deemed application provisions u/s 11(1B).

↳ Eg: Not able to apply Income in this year, gave declaration to AO that we will apply in next year or year of receipt but could not apply.

(iv) Any Income applied for the benefit of Specified prohibited person(Relative) u/s 13(1).

(v) Income which is not deposited/invested in modes specified in 11(5).

(vi) Income from property held by trust to promote International Welfare.

If Income is Applied for Charitable purposes in India → Not a Specified Income

If Income is Applied for Charitable purposes Outside India → Specified Income

Section 13(10): Calculation of Income in case of certain violations

In Case of Following Violations:

- Where Commercial receipts > 20% of Total receipts in case of Advancement of any object of GPU; or
- Prescribed BOA not maintained by Trust; or
- Return not filed or BOA not audited before due date of ROI.

↓

The Income Shall be Computed in following manner:

Conditions for Allowance of Expenditure	Disallowances
• Revenue Exp Allowed • Such Exp is not incurred Out of the Closing Corpus Balance of Preceeding PY; • Such expenditure is not from any loan or borrowing; • Where Cost is Already Applied, Depreciation will not be allowed; • Such expenditure is not in the form of any contribution or donation to any person.	• Capital Expense Not Allowed • Disallowance of 40(a)(ia) & 40A(3)/(3A) would be attracted. • No Deduction/Allowance/set-off of loss shall be allowed under any provision of act.

Sec 12AB: New Procedure of Registration (w.e.f. 1.4.21)

→ CIT/PCIT on receipt of application can give registration in different situations:

Without Enquiries

- New applicants Provisional Registration
- Existing Trust (12A/12AA) - Registration in 12AB

↓

(1) & (2)

With Enquiries

CIT may call for record & docs to satisfy himself about:.

- Genuineness of activity of trust
- Compliance of any other law by trust:-
  - Provisional to final
  - Re-registration after 5 years.
  - Trusts adopting Modification
  - Trust inoperative u/s 11(7)

↓

(3), (4),(5),(6)

→ All applications u/s 12 AA, pending on 01.04.21 → Shall be deemed to be applied u/s 12AB as new application.

→ After satisfying himself, He can either within prescribed time limit. < Accept / Reject. or

Cancellation of Registration:

→ Registration or provisional registration granted u/s 12 AB can be cancelled in following conditions: -

The CIT/PCIT noticed occurrence of 1 or more specified violations during any PY;	The CIT/PCIT has received a reference from the AO under 2nd proviso of section 143(3) for any PY to withdraw approval of trust; or	Case has been selected as per risk management strategy of CBDT, for any PY:

Procedure of Cancellation:

(i) To Satisfy himself, CIT/PCIT shall Call for such documents or information, or make such inquiry as he thinks necessary.

- If he is satisfied that 1 or more specified violation took place
  - After Giving OOBH, he shall cancel the registration for that P.Y & All Subsequent PYs
- If he is satisfied that specified violation has not taken place
  - He Shall refuse to cancel the Registration

By Passing an Order in Writing

↓

within 6 months from end of quarter in which the first notice is issued by CIT/PCIT

↓

CIT/PCIT shall Forward a copy of the order to < A.O / & / Trust

Meaning of Specified Violation:

(a) Any Income from property under trust → has been applied, other than for the . objects of the trust or institution; or

(b) the trust or institution has income from PGBP which is not incidental to the main object or separate BOA are not maintained by such trust or institution; or

(c) the trust or institution has applied its income for private religious purposes; or

(d) the trust or institution has applied its income for the benefit of any particular n religious community or caste; or

(e) any activity being carried out by the trust or institution—

(i) is not genuine; or

(ii) is not being carried out in accordance the conditions; or

(f) the trust or institution has not complied with the requirement of any other law.

Time limits u/s 12AB:

[Time limits- 1,2,3,4 is same for Institute regd u/s 10(23C)]

WITHOUT ENQUIRIES:

CASE	Time limit of application	Time limit for grant of Registration by CIT	Period of Registration	Validity from:.
(1) Existing Trusts regd. u/s 12A/ 12AA ↳ same for 10(23C)	3 months from the date of this amendent. i. e. till 30.06.21	3m. from the end of month in which appl. was recd.	5 Years	A.Y. from which approval was earlier granted.
(2) New Trust. First time Applicant (Provisional Regn) ↳ same for 10(23C)	1 month prior to the P. Y. for which regn is applied	1m. from the end of month of receipt of application	3 Years	A.Y. from which application is made.

WITH ENQUIRIES:

CASE	Time limit of application	Time limit for grant of Registration by CIT	Period of Registration	Validity from:.
(3) Provisional Regn to Final Regn. ↳ same for 10(23C)	6m from commencement of activity or 6m prior to expiry of provisional regn w. e. earlier	6 m from the end of month in which application was received	5 years ↓ starting from AY. for which it was granted provisional regn.	A.Y. from which provisional regn was granted

(4) Renewal of Trusts regd. u/s 12AB after 5 years ↳ same for 10(23C)	6 months prior to expiry of regn.	6m from the end of mouth in which appl. was recd.	5 years	A.Y. from which appln was made.
(5) Trust has adopted modifications (which violates conditions of Regn)	30 days from date of modification	6m from the end of month in which appln was recd	5 years	A.Y. from which appln was made.
(6) Trust becomes inoperative under Sec 11(7)	6 months prior to the commencement of A.Y. for which regn is sought to be made operative	6m from the end of month in which application was received	5 years	AY. from which appln was made

Sec 10(23C) → Time limits are indicated in above table

Income of Certain Universities, Hospitals, Educational Institutions

(iiiab/iiiac)

Universities, Hospital and Other Edu. Inst. wholly or substantially financed by Govt. (Govt Grant > 50%)

↓

which exists solely for (Medical or edu. purposes & Not for profit)

↓

Income fully Exempt from Tax

(iiiad/iiiae)

Universities, Hospitals & Other Edu Inst.

↓

which exists solely for (Medical or edu. purposes & Not for profit)

↓

& their aggregate annual receipts are upto Rs. 5 crore

↓

Income Fully Exempt from Tax

(iv)/(v)/(vi)/(via)

Any fund, Trust, Inst. registered for Religious or Charitable purposes approved by CIT

which exists solely for (Medical or edu. purposes & Not for profit)

↓

Income exempt subject to certain conditions, same as Sec 11/12

Some Additional Points:

1) Amount applied out of Corpus Fund → It shall not be treated as application.

↓

It shall be considered as applied in the year in which the amount is invested or deposited back.

P.Y. 21-22

Eg: Corpus Fund= 20 lakh. Amt applied out of corpus → 5 lakhs not considered as applied in PY. 21-22.

Corpus Balance: 15 lakhs.

P.Y. 22-23

Corpus fund -15 lakhs
+ Amt deposited 5 lakh back in corpus= 20 Lakhs

⟶

Now this amount of Rs.5 lakh will be considered as applied in PY-22-23.

2) Application out of loans and borrowings → not considered as applied

↓

It will be treated as applied in the year of Repayment of loan.

3) When expenditure is more than Income of the trust it can not be carried forward and taken as applied in next P. Y., it just lapses.

115TD: Tax on Accreted Income

The 'Accreted Income' of trust registered u/s 12AA/12AB/10(23C) shall be taxable at MMR- 34.944% (30%+12%+4%) in 3 Cases:.

- Conversion of Trust, Institution in a non- eligible form
  - Registration granted has been cancelled
  - Objects of the trust has been modified and
    - It has not applied for fresh registration or
    - It has applied for fresh registration but application rejected.
- Merger with other trust having different object
- Non-distribution of assets within 12 months from the end of dissolution to other trust/ Inst. regd. u/s 12AA/12AB/ 10(23C) on Dissolution.

→ Accreted Income means:

Aggregate FMV of Total Assets	xxx
(-) Total liability of Trust	(xxx)
Accreted Income	xxx

→ Following assets shall not be considered in accreted Income:

- Assets bought out of agriculture Income
- Assets purchased by trust before registration became effective u/s 12AA/12AB
  - Basically, Trust has not claimed exemption on this Income.
- Assets transferred to other Inst. within 12 months of dissolution.

Calculation of FMV of Assets

ASSETS	LIABILITIES
FMV of all assets should be taken excluding: - any amount of TDS, TCS, Advance Tax (reduced by refund if taken) - any unamortised amount of deferred revenue expenditure	Book value of all the liabilities shall be taken excluding: - Any provision of income Tax - any Corpus fund or Capital fund - any contingent liability - any unascertained liability - any reserve or surplus.

FMV of Assets

1) Quoted Shares & Securities (listed):

Average of lowest & Highest price on valuation date

↳ If Shares are not Traded on Valuation date, One day preceeding to Valuation date will be taken for highest & lowest price.

2) Unquoted Equity Shares:

$$\frac{A+B-L}{PE} \times PV$$ → Discussed later

3) Unquoted shares & securities (other than Shares):

FMV/ NRV of Securities

4) Immovable property

SDV on Valuation date

or FMV/NRV on that date

w.e. is higher.

5) A Business Undertaking: (A+B-L)

6) Any Other Assets: FMV/NRV on valuation date

Notes:

- Exit Tax should be paid within 14 days from prescribed date.
- Interest @ 1% pm or part from 15th day till payment of tax.

(2) Unquoted Equity shares: $\frac{(A+B-L) \times PV}{PE}$

where,

A = Book value of all the assets in the balance sheet (other than bullion, jewellery, precious stone, artistic work, shares, securities, and immovable property) as reduced by-

(i) any amount of income-tax paid as TDS, TCS or as advance tax payment as . reduced by the amount of refund; and

(ii) any amount of unamortised deferred expenditure

B = Fair market value of bullion, jewellery, precious stone, artistic work, shares, securities and immovable property

L= Book value of liabilities shown in the balance sheet, but not including :

(i) Contingent liabilities other than arrears of dividends payable in respect of the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares;

(iii) reserves and surplus, other than those set apart towards depreciation;

(iv) Any amount of provision for taxation, reduced by refund under the Act

(v) any amount of provision for unascertained liabilities;

(vi) any amount of cumulative preference shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet;

PV = the paid up value of such equity share.

Deduction under Chapter VI-A

Part A & Part B- Expenditure based deduction

Part C – Deduction in respect of certain income

Common Points:

1. As per Sec 80AC –

   Deduction u/s **80-IA to 80RRB** (Part C Deduction) is **not allowed** unless assesses furnishes Return of Income within due date u/s 139(1).

2. Deduction under chapter VI-A is **Not Allowed** against
   - LTCG u/s 112 and 112A,
   - STCG u/s 111A &
   - Special tax rate income.

Part-A & B Deduction: Expenditure based deduction

1) 80C- Specified Investment

Assessee	Individual & HUF
Max Deduction	1,50,000
Eligible Amount for deduction	• **Life Insurance Premium for Individual**- Self, Spouse, Children • **Life Insurance Premium for HUF**- Any member of HUF
	• **Contribution in Unit-linked Insurance Plan (ULIP) 1971 & plan of LIC Mutual Fund** - individual - Self, Spouse, Children - HUF - Any member of HUF
	• **Premium paid in respect of a contract for deferred annuity** • **Any sum deducted from the salary payable of a Government employee for securing a deferred annuity**
	• **Contribution to SPF/PPF/RPF**
Other Points to be	• Any sum received under a life insurance policy,

noted	including the sum allocated by way of bonus on such policy are exempt u/s 10(10D) if Policies issued before 01/04/12- (a) Premium paid or ↓ W.E.L (b) 20% of sum assured Policies issued after 01/04/12 but before 01/04/2013- (a) Premiumpaid or ↓ W.E.L (b) 10% of sum assured Policies issued after 01/04/13- (a) Premium paid or ↓ W.E.L (b) 10% of sum assured (c) 15% of sum assured in case where the insurance is on the life of a person with disability or severe disability as referred to in section 80U or a person suffering from disease or ailment as specified under section 80DDB. **Notes regarding Exemption u/s 10(10D)** • Exemption u/s 10(10D) wouldn't be available Premium payable in one or more ULIP(issued on or after 01/02/2021) exceeds 2,50,000. (this 2,50,000 limit wouldn't applicable in case of sum received on death of person) • Any sum received under section 80DD(3) shall not be exempt under section 10(10D) • Any sum received under a Keyman insurance policy shall also not be exempt. • Contribution to SPF/PPF/RPF (maximum limit for deposit in PPF is 1,50,000 in a year)

	Other deduction u/s 80C • Contribution to approved superannuation Fund • Any sum paid or deposited in Sukanya Samridhi Account (for any girl child) • Subscription to National Savings Certificates VIII • Contribution to approved annuity plan of LIC • Subscription towards notified units of mutual fund or UTI • Subscription to any units of any mutual fund referred to in section 10(23D) and approved by the Board on an application made by such mutual fund in the prescribed form. • Investment in five year Term Deposit in scheduled bank (The maximum limit for investment in term deposit is 1,50,000) • Contribution to National Housing Bank (Tax Saving) Term Deposit Scheme, 2008 • Contribution to notified pension fund set up by mutual fund or UTI • Subscription to notified deposit scheme (for example, public deposit scheme of HUDCO) • Subscription to notified bonds issued by NABARD • Deposit in Senior Citizens Savings Scheme Rules, 2004 • Investment in five year Post Office time deposit • Contribution to additional account under NPS • Payment of tuition fees to any university, college, school or other educational institutions within India for full-time education for maximum 2 children (for full-time education of any two children) • Subscription to certain equity shares or debentures • Repayment of housing loan including stamp duty, registration fee and other expenses towards the cost of purchase or construction of a new residential house

	property. (But do not include cost of any addition or alteration or renovation or repair of the house property after the issue of completion certificate) Repayment of amount borrowed by the assessee from: → The Central Government or any State Government; → Any bank including a co-operative bank; → The Life Insurance Corporation; → The National Housing Bank; → Any public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes which is eligible for deduction under section 36(1)(viii); → Any company in which the public are substantially interested or any cooperative society engaged in the business of financing the construction of houses; → The assessee's employer

2) 80CCC- Deduction in respect of pension fund

Assessee	Individual & HUF
Max Deduction	1,50,000

3) 80CCD- Contribution to pension scheme notified by the Central Government

80CCD(1)-

80CCD(2)- Employer's contribution to NPS

80CCD(1)- Contribution to Pension Scheme / Contribution to Pension Scheme / ATAL Pension Yojna / NPS

80CCD(1B)- Additional deduction other than Sec 80CCD(1)

80CCD(1)

Assessee	Individual
Max Deduction	Deduction for Salaried Employee (a) EE own Contribut **W.E.L** (b)10% of salary
	Deduction for any other Individual (a) EE own Contribu **W.E.L** (b)20% of GTI
	(Salary = Basic salary+ DA (In terms)

80CCD(1B)

Assessee	Individual
Max Deduction	Additional Deduction upto 50,000- allowed other than contributions covered u/s 80CCD

80CCD(2)

Assessee	Individual (Salaried)
Max Deduction	Deduction for Salaried Employee (a) ER's Contribution W.E.L (b)**10%** of salary
	Deduction for Government Salaried Employee (a) ER's Contribution W.E.L (b)**14%** of salary

4) **80CCE- Limit on deductions under sections 80C, 80CCC & 80CCD(1)**

→ This section restricts the aggregate amount of deduction under section 80C, 80CCC and 80CCD(1) to 1,50,000

→ 80CCE limit does not apply to 80CCD(2)

5) **80D- Deduction in respect of medical insurance premium**

Assessee	Individual & HUF
Max Deduction	Individual (self, spouse, dependent children & parents) (S+S+C & P) HUF (Any member of HUF)

Particular	S+S+C Age <60	S+S+C age >60	Parent age <60	Parent age >60
Medical Insurance Premium	25,000	50,000	25,000	50,000
CG. Health Scheme (CGHS)	25,000	25,000	-	-
Preventive Health check-up [Cash allowed]	5,000	5,000	5,000	5,000
Maximum Allowed	25,000	50,000	25,000	50,000
Medical Expenditure of senior	-	50,000	-	50,000

citizen*				
Final Deduction	**25,000**	**50,000**	**25,000**	**50,000****

* Medical Expenditure is allowed if no amt has been paid towards health insurance.

** If parent has age more than 60, but if he is NR, then max deduction allowed only 25,000.

6) **80DD- Deduction in respect of Medical treatment & Maintenance of Handicapped dependent relative [For others]**

Assessee	Individual- Spouse, Children, Brother, Sister, Mother HUF- Any Member
Max Deduction	Eligible Amount - Incurred for medical treatment, training, rehabilitation of dependent person being with disability - Amount paid/deposited under a scheme for the maintenance of dependent person being with disability.
	Flat Deduction – Normal Disability- **75,000** Severe Disability (Person with 80% or more disability)- **1,25,000**

7) **80DDB- Deduction in respect of medical treatment etc.**

Assessee	Individual- Spouse, Children, Brother, Sister, Mother HUF- Any Member
Max Deduction	Eligible Amount - Incurred for medical treatment, training, rehabilitation of dependent person being with

	disability - Amount paid/deposited under a scheme for the maintenance of dependent person being with disability.
	Deduction – (a) Actual Exp (b) 40,000 ↓ W.E.L In case of senior citizen (a) Actual Exp (b) 1,00,000 ↓ W.E.L Any Amount received under insurance from insurer, or reimburse by ER for medical treatment shall be reduced from deduction.
Condition	**No deduction shall be allowed** unless the assessee obtains the **prescription** for such medical treatment from a **neurologist, an oncologist, a urologist, a hematologist, an immunologist or such other specialist, as may be prescribed.**

8) 80E- Deduction in respect of interest loan taken for higher education

Assessee	Individual
Deduction Amount	Amount of Interest Paid towards Higher Education loan
Condition	• The loan must have been taken for the purpose of pursuing his higher education or for the purpose of higher education of his or her relative. • The loan must have been taken from any financial institution or approved charitable

	institution.
Period of deduction	Earlier of (a) First 7 assessment years or (b) Until the interest pain fully

9) **8OEE- Deduction for interest on loan borrowed for acquisition of house property by an individual**

Assessee	Individual
Maximum Deduction	50,000 (first deduction of 2,00,000 u/s 24B is allowed in IFHP, and then additional of it is allowed as deduction here u/s 8OEE after fulfilling the below condition)
Condition	• Loan should be borrowed for acquiring residential property. • Value of house ≤ 50 lakhs • Loan sanctioned ≤ 35 lakhs • Loan should be sanctioned during the PY 2016-17 • The assessee should not own any residential house on the date of loan sanctioned.

10) **8OEEA- Deduction for interest on loan borrowed for acquisition of house property**

Assessee	Individual
Maximum Deduction	1,50,000 (first deduction of 2,00,000 u/s 24B is allowed in IFHP, and then additional of it is allowed as deduction here u/s 8OEE after fulfilling the below condition)

Condition	• Loan should be borrowed for acquiring residential property. • Stamp duty Value of house ≤ 45 lakhs • Loan should be sanctioned by a FI during period from **01/04/19 to 31/03/2022** • The individual should not own any residential house on the date of loan sanctioned. • The individual should not be eligible to claim deduction u/s 80EE

11) 80EEB- Deduction in respect of Interest on Electric Vehicle Loan

Assessee	Individual
Maximum Deduction	1,50,000 (first deduction of 2,00,000 u/s 24B is allowed in IFHP, and then additional of it is allowed as deduction here u/s 80EE after fulfilling the below condition)
Condition	• Loan should be borrowed for purchase of electric vehicle. • Loan should be sanctioned by a FI during period from **01/04/19 to 31/03/2023** • Loan should be sanctioned by a FI (Bank or Specified NBFCs) • The individual should not be eligible to claim deduction u/s 80EE

12) 80G- Deduction in respect of donations to certain funds, charitable institutions etc.

Assessee	All Assessee
Eligible Donation	10% of Adjusted GTI

Maximum Deduction

Notes

- **No deduction shall be allowed** in respect of donation of any **sum exceeding Rs. 2,000** unless such sum is **paid by any mode other than cash.**
- Donation In kind shall not be Qualify as deduction

Steps for Computation of Qualifying limit

Step 1:	Compute adjusted total income i.e., the GTI as reduced by the following: (i) Deductions under Chapter VI-A, except under section 80G (ii) Short-term capital gain taxable under section 111A (iii) Long-term capital gains taxable under sections 112 & 112A (iv) Any income on which income-tax is not payable (v) Income referred to in section 115A(1)(a), 115AB, 115AC,115AD and 115D
Step 2:	Calculate 10% of adjusted total income
Step 3:	Calculate the actual donation, which is subject to qualifying limit (Total of Category III and IV donations, shown in the table above)
Step 4:	Lower of Step 2 or Step 3 is the maximum permissible deduction.
Step 5:	The said deduction is adjusted first against donations qualifying

	for 100% deduction (i.e., Category III donations). Thereafter, 50% of balance qualifies for deduction under section 80G.

13) 80GG- Deduction in respect of Rent paid of house property (if HRA not received).

Assessee	Individual & HUF
Maximum Deduction	a) Rs. 5000 p/month b) 25% of Adjusted GTI c) [Rent paid – 10% of adjusted GTI]
Condition for availing deduction	• Assessee should not receive any HRA which is exempt u/s 10(13A). • Assessee, Spouse, Minor child or any member of HUF should not own any accommodation at the place of his duty

14) 80GGA- Deduction in respect of Donation for scientific research or rural development.

Assessee	Any assessee not having PGBP Income
Maximum Deduction	100% deduction
Condition for availing deduction	No deduction shall be allowed in respect of donation of any sum exceeding **Rs. 2,000** unless such sum is paid by any mode other than **cash**.

15) 80GGB- Deduction in respect of Donation to Political Party or Electoral trust by Compnies

Assessee	Indian Co.
Maximum Deduction	100% deduction

Condition for availing deduction	No deduction shall be allowed in respect of donation of any sum is paid by **cash**.

16) **80GGC- Deduction in respect of Donation to Political Party or Electoral trust by any person**

Assessee	All assessee (except LA & AJP)
Maximum Deduction	100% deduction
Condition for availing deduction	No deduction shall be allowed in respect of donation of any sum is paid by **cash**.

Part-C Deduction: Deduction in respect of certain income

1) **80-IA Profits from enterprises engaged in infrastructure development, etc.**

Applicability	Section 80-IA(1) provides a **10 year tax holiday** to an assessee, whose GTI includes any profits and gains derived by an undertaking or enterprise from an **eligible business**

<table>
<tr><td>Maximum Deduction</td><td>
<table>
<tr><th>Eligible Business</th><th>Deduction</th><th>period</th></tr>
<tr><td>Infrastructure Facility</td><td>100% of profit</td><td>10 / 20 year</td></tr>
<tr><td>Industrial Park, SEZ, Power Generating</td><td>100% of profit</td><td>10 / 15 year</td></tr>
</table>
</td></tr>
<tr><td>Condition for availing deduction</td><td>(1) <u>Infrastructure Facility</u>
Carrying business of – developing
– developing operating & maintaining
– operating & maintaining
commence on or after 01/04/1995 but not later than 01/04/2017.
→ Of road, including toll road, bridge or rail system
→ A port, airport, inland water way or navigation channel in the sea
→ Highway project
→ Water Supply project, irrigation, sanitation and sewerage system or solid waste management system.
(2) <u>Industrial park</u>
Undertaking – Develops
– Develops and operates
– Maintain & operates
Which is Notified by CG for period of 01/04/1997 & ending on 31/03/2011
(3) <u>Power Undertaking</u>
Undertaking – which set up in any part of</td></tr>
</table>

	india for – generation or generation & distribution of power (set up between 01/04/1993 to 31/03/2017) – Transmission or distribution Lines (start transmission during 01/04/1999 to 31/03/2017) – Renovation and modernization of existing Network (Undertake between 01/04/2004 to 31/03/2017) (4) **Undertaking owned by an Indian Co. set up for reconstruction or revival of power generating Plant.** – Company formed on or before 30/11/2005 and – begins to genetate transmission or distribute power before 31/03/2011 and – notified before 31/12/2005 by CG

2) 80-IAB Profits from enterprises engaged in development of SEZ.

Applicability	An assessee being developer whose GTI Includes any profit and gain from business of developing a SEZ on or after 01/04/2005. **Note** : No deduction would be available, where development of SEZ on or after 01/04/2017
Maximum Deduction	

Eligible Business	Deduction	period

	SEZ Developer	100% of profit	10 / 15 year

3) 80-IAC Tax incentive for new Startup

Eligible Start-up means- Company or LLP Engaged in eligible Business

Incorporated during — Total turnover ≤ 100 cr

Holds a certificate

The period between in P.Y relevant to A.Y.of eligible business

01/04/2016 to 31/03/22 for which deduction is Claimed.

from the notified IMBC

Applicability	Business of Innovation/ Development/ Improvement of products/ processes
Maximum Deduction	**Deduction**- 100% of profit **Period**- 3/10 years
Condition	Meaning of eligible Business – Startup engaged in Innovation, development or improvement of product, process or services – Scalable business model with high potential of employment generation or wealth creation. **Condition** • It is not formed by splitting up, or the reconstruction, of a business already in existence. BUT, if splitting up, reconstruction, re-establishment or revival of business is due to any natural calamity or any other unforeseen circumstances, and business revived within 3 years, then allowed.

	• It is not formed by the transfer to a new business of machinery or plant previously used for any purpose. (**20% of total value** of old plant and machinery is allowed in new start up business) Exception - In following circumstances, machinery/plants shall be consider as new. (i) Such plant & machinery was not used in India, at any time previous to the date of installation by assessee (ii) Such machinery/plants is imported into India.

4) **80-IB Industrial Undertaking in Jammu & Kashmir**

Applicability	All Assessee whose GTI Includes any profit and gain derived from any following business activities. – Industrial Undertaking including a SSI in J&K – Undertaking which begins commercial production of mineral oil or natural gas – Undertaking deriving profit from business of processing, preservation and packaging of fruits, vegetables, meat or meat products, poultry, marine or dairy products or business of handling, storage and transportation of food grains.
Maximum Deduction	

Particulars	Quantum of Deduction
Industrial Undertaking including a SSI in J&K	-for the first 5 initial years → 100% of profit -thereafter years → 25% of such profit

		Notes: Total period for deduction should not exceed **12 consecutive AY** in case of co-op society begins mfg or production of article or operation of cold storage plant between **01/04/1993 to 31/03/2012**
	Undertaking which begins commercial production of **mineral oil or natural gas**	-for 7 consecutive AY → 100% of profit Notes No deduction would be available u/s 80-IB, where production of mineral oilcommence on or after 01/04/2017
	Undertaking deriving profit from business of **processing, preservation and packaging of fruits, vegetables, meat or meat products, poultry, marine or dairy products or business of handling, storage and transportation**	-for the first 5 initial years → 100% of profit -thereafter years (Others)→ 25% of such profit -thereafter years (Company)→ 25% of such profit Notes - It should begin to operate such business on or after 01/04/2001 - Commencement date shall be consider 01/04/2009 in case of business of processing, preservation and packaging of fruits, vegetables, meat or meat products, poultry, marine or dairy products

	of food grains.	
Subsidies eligible for deduction	Transport, Power, Interest, Insurance subsidy received by an industrial undertaking are eligible for deduction u/s 80-IB & 80-IC	

5) 80-IBA Deduction in respect of profit & gain from housing project/ rental housing project.

Applicability	All Assessee
Maximum Deduction	100% of profit & gain deriving from such business of developing and building of Housing projects
Condition	• Project is approved by competent authority between 01/06/2016 to 31/03/2022 • Project shall be complete within 5 years from date of approval. (When approval is taken more than once, first approval shall be deemed to be consider as Approved date. And project deemed to be have been completed when completion certificate is obtained from authority.) • Upto **3% carpet area** allowed for shops & Commercial establishment. • Not more than one residential unit in the housing project is allotted to any person not being an individual • It should not be a mere work contract. • Maintain separate Books of accounts in respect of housing project. • Where residential unit in the housing project is allotted to an individual, no other residential • units shall be allotted to that individual / his spouse / minor children

Notes

Before 01/09/2019 ---Metro City--- Delhi, Mumbai, Kolkata, Chennai

After 01/09/2019 ---Metro City--- Delhi (includes Noida, Gaziabad, Gurugram, Faridabad), Mumbai(Whole), Kolkata, Chennai, Hyderabad, Bengaluru

Additional Condition to be fulfilled when project approved before 01/09/2019

- Project Plot limit

Particular	4 Metro City	Other places
Minimum size of Plot of Land	1000 sq Meter	2000 sq Meter
Residential Unit Carpet Area	Max 30 sq Meter	Max 60 sq Meter
Minimum % of permissible floor area	Not less than 90%	Not less than 80%
Shop, commercial establishment	Max- Higher of 3% of aggregate carpet area 5000 sq foot	

Additional Condition to be fulfilled when project approved After 01/09/2019

- The **stamp duty value of residential unit** in the housing project ≤ **45 lakh rupees.**
- Project Plot limit

Particular	4 Metro City	Other

		places
Minimum size of Plot of Land	1000 sq Meter	2000 sq Meter
Residential Unit Carpet Area	Max 60 sq Meter	Max 90 sq Meter
Minimum % of permissible floor area	Not less than 90%	Not less than 80%
Shop, commercial establishment	Max- Higher of 3% of aggregate carpet area 5000 sq foot	

6) **80-IE Tax Holiday in respect of profit & gain from eligible business of certain undertaking in North Eastern State**

Applicability	All Undertake substantial expansion to Manufacture / process any eligible article /Carry eligible business In North Eastern State like the Arunachal Pradesh, Assam, Manipur, Nagpur, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura)
	eligible article : the article or thing other than – → Tobacco and manufactures of tobacco substitutes → Pan Masala → Plastic carry bags of <20 microns → Goods produce by petroleum oil or gas refineries eligible business : Business of – → hotel (not below two star category);

	→ adventure and leisure sports including ropeways; → providing medical and health services in the nature of nursing home with a minimum capacity of 25 beds; → running an old-age home; → operating vocational training institute for hotel management, catering and food craft, entrepreneurship development, nursing and para- medical, civil aviation related training, fashion designing and industrial training; → running information technology related training centre; → manufacturing of information technology hardware; and → Bio-technology.
Max Deduction	100% of profit and gain derived from such business for 10 consecutive assessment years
Condition	• Such Business Commence on or before 31/03/2017 • Increase in investment in Plant & Machinery by at least 25% of book value for Substantial Expansion

7) **80JJA Deduction in respect of profits and gains from business of collecting and processing of bio-degradable waste**

Applicability	All Assessee who is carrying eligible business eligible business : Business of – → for generating power, or → producing bio-fertilizers, bio-pesticides or other biological agents, → for producing bio-gas, or

	→ Making pellets or briquettes for fuel or organic manure.
Maximum Deduction	100% of profit and gains from this business

8) 80JJAA Deduction in respect of employment of new employees

Applicability	- Applicable to whom Sec 44AB applies whose T/O more than 1 cr - All Assessee carrying eligible business (Any business but not profession)
Maximum Deduction	30% of additional employee cost Period : 3/10 years

Calculation of Additional Employee Cost

Existing Business

The additional employee cost shall be Nil, if—

- No increase in number of employee than last Year
- emoluments are paid by cash

New Business

The Emoluments paid or payable to employees employed during the P.Y. shall be deemed to additional employee cost.

Condition	Additional employee **does not** includes; → Employee whose **total emoluments are > Rs. 25,000 per month**; or → Employee **does not participate in RPF**; or → **Employee employed for a period of <240 days during the previous year** (In case of apparel manufacturing business footwear or leather products – 150 days) → **Emoluments are paid in Cash** [otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account] → Employee for whom the entire contribution is paid by the Govt. under the Employees' Pension → Scheme notified in accordance with the provisions of the EPF Act, 1952

9) 80LA Deduction in respect of certain income of Offshore Banking Units and International Financial Services Centre (IFSC)

Eligible Assesse	– Schedule Bank having Offshore banking Unit in SEZ – Any bank incorporated outside india having Offshore Banking unit in SEZ – IFSC
Maximum Deduction	

Eligible Business	Deduction	period
Banking unit in SEZ	100% of profits	Initial 5 years
	50% of profits	Next 5 years

	IFSC	100% of Profit	10/15 years	
Condition	• Report of Chartered Accountant in prescribed form certifying that deduction has been correctly claimed. • A copy of Permission or registration obtained from IFSC should be along with the return of income.			

10) 80M Deduction in respect of Inter Corporate Dividends

If Company receiving Dividend Distributed one month prior to the Due date of Furnishing return u/s 139(1)

Eligible Assessee	Domestic Company only (If Income of Domestic company any by way of dividend received from any other domestic company or foreign company or business trust)
Maximum Deduction	Deduction shall not exceeds As per Sec 80A(2), It shall not exceed the amount included in Gross Total Income.
Condition	• Deduction shall be allowed only if the dividends are **distributed** and not just declared on or before the due-date.
Note	• Sec 80M shall also allowed for Dividend u/s 115BBD, Deemed Dividend u/s 2(22)(a)/(b)/(c)/(d)/(e). • Deduction u/s 80M will be available even if the Company has opted for section 115BAA / 115BAB.

11) 80P Deduction in respect of Income of Co-Operative Socities

Eligible Assessee	Co-Operative Societies
Maximum Deduction	100% of profits
Condition	100% of profit to thr co-operative societies engaged in engaged in - carrying on the business of banking or providing credit facilities to its members; or - a cottage industry; or - the marketing of the agricultural produce grown by its members; or - the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture or for the purpose of supplying them to its members; or - the processing without the aid of power, of the agricultural produce of its members; or - the collective disposal of the labour to its member Deduction to the Activity of Co-operative society other than above - Rs. 50,000 to the co-operative society engaged in business other than above mentioned. - This limit is limited to 1,00,000 in case of consumer co-operative society.

	Deduction in respect of Interest or dividend income – Deduction in full Under this section Deduction in respect of letting-out income for certain purpose – The income derived by a co-operative society from the letting out of godowns or warehouses for storage, processing or facilitating the marketing of commodities is fully allowable as deduction

12) **Section 80PA Deduction in respect of certain income of Producer Companies**

Eligible Assessee	Producer Co. having t/o less than 100 cr in AY 2019-2020 to 2024-2025
Maximum Deduction	100% of the profits and gains attributable to following eligible businesses – The marketing of agricultural produce grown by the members; or – The purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to the members; or – The processing of the agricultural produce of the members

13) **Section 80QQB Deduction in respect of royalty income, etc., of authors of certain books other than text books**

Eligible Assessee	Resident Individual
Maximum Deduction	Actual royalty Income derived Or W.E.L Rs. 3,00,000
Notes	This deduction shall not, however, be available in respect of royalty income from brochures, commentaries, diaries, guides, journals, magazines, newspapers, pamphlets, textbook for schools, tracts and other publications of similar nature.
Condition	• For claiming the deduction, the assessee shall have to furnish a certificate in the prescribed manner in the prescribed format • Where the assessee earns any income from any source outside India, he should bring such income into India in convertible foreign exchange within a period of **six months**

14) Section 80RRB Deduction in respect of royalty on patents

Eligible Assessee	Resident Individual who is registered as the true and first inventor in respect of an invention under the Patents Act, 1970, including the co-owner of the patent and earning income by way of royalty of a patent registered on or after 1.4.2003.
Maximum Deduction	Actual royalty Income derived Or W.E.L Rs. 3,00,000
Condition	• For claiming the deduction, the assessee shall have to furnish a certificate in the prescribed manner in the

	prescribed format • Where the assessee earns any income from any source outside India, he should bring such income into India in convertible foreign exchange within a period of **six months**

Deduction In respect of Other Income

1) Section 80TTA Deduction in respect of interest on deposits in savings accounts

Eligible Assessee	Invidual + HUF
Maximum Deduction	Max 10,000 on interest on Saving Bank Account

2) Section 80TTB Deduction in respect of interest on deposits in savings accounts to Senior Citizdens

Eligible Assessee	Resident Senior
Maximum Deduction	Max 50,000 on interest on Saving Bank Account & Interest on Fixed deposit with • a banking company to which Banking Regulation Act, 1949 applies • a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank) • a Post Office

Non-availability of deduction	– to partner/member, where deposit held by firm/AOP/BOI: – Where interest income is derived from any deposit held by, or on behalf of, a firm, an AOP or a BOI, the partner of the firm or member of AOP/BOI would not be allowed deduction in respect of such income while computing their total income.

Other Deduction

1) Section 80U Deduction in the case of a person with disability

Section 80U harmonizes the criteria for defining disability as existing under the Income-tax Rules with the criteria prescribed under the Persons with Disability

Eligible Assessee	- Resident individual, certified by the medical authority to be a person with disability. - Benefit of this deduction also extended to persons suffering from autism, cerebral palsy and multiple disabilities.
Maximum Deduction	Flat Deduction Normal Disability- 75000 Severe Disability- 125000
Condition	- Shall furnish a copy of the certificate issued by the medical authority in the form and manner, with the ROI u/s 139.

Assessees who are eligible for exemption	Assessee who derive any profits or gains from an undertaking, being a unit, engaged in the manufacturing or production of articles or things or provision any service in a Special Economic Zone(SEZ)	
Conditions to claim DEDUCTION	(i) It has begun to manufacture or produce articles or things or provide any service in any SEZ during P.Y 05-06 or any subsequent P.Y. but not later than 31.3.21. (Approval must be taken before 31.3.20) (ii) It has furnished report of CA atleast 1 month prior to due date of ROi u/s 139(1)	
Period	For First 5 A.Y. 100% of export Profit For Next 5 A.Y. 50% of Export Profit For Next 5 A.Y. LOWER OF ↓ -Amount debited to P/L & credited to SEZ reinvestment Allowance reserve a/c OR - 50% of export profit.	
Export Profit	PGBP of unit located in SEZ x $\frac{\text{Export Turnover}}{\text{Total Turnover}}$	
Export Turnover	Consideration in respect of export brought into India in convertible foreign currency within time permitted by RBI. Note - Sales proceeds deemed to have been received in India if such amount is credited to a separate A /c maintained by assessee outside India with approval of RBI.	
Export Turnover & Total Turnover does not include	Freight, Telecommunication charges, Insurance or Expenses for providing service outside India.	Cash Compensatory Support, Duty drawback and profit on sale of import entitlement licenses.

Utilization of SEZ Investment Reserve A/c	-Should be utilized for acquiring new Pl & M put to use within 3 yrs from the end of P.Y. in which reserve was created. -If amount mis-utilized / Non-utilized then deduction claimed earlier shall be taxable as PGBP.
SEZ Investment Reserve A/c should not be utilized for	(i) distribution by way of dividends or profits (ii) for remittance outside India as profits (iii) for the creation of any asset outside India
Deemed Income	If Reserve has not been utilized till the expiry of time limit: of the year immediately following the period of 3 years.
Restriction on other tax benefits	-During the period of deduction, depreciation is deemed to have been allowed on assets. WDV shall accordingly be reduced. -No deduction u/s 80IA/IB shall be allowed to the profits/ gains of undertaking. - Any unabsorbed Dep u/s 32(2) or Business Loss u/s 72(1) or loss under "capital Gain" u/s 74 of Undertaking, shall be allowed to carry forward and set off in subsequent years.

SECTION	RATES	LIMITS/ CONDITIONS
Sec 192 Salary	Slab Rates	TDS deducted at the time of payment
192A PF Accumulated Balance	10% NO PAN - MMR	Service < 5 yrs, Amount ≥ 50K - TDS Applicable. Service≥ 5 yrs - NO TDS
194I Rent Rent kaun deta hai?- Main	P&M - 2% BUILDING - 10%	NO TDS If Aggregate Rent is upto Rs. 2,40,000 TDS is applicable on Non- refundable Deposits
194 C C- Contractor	Ind/HUF - 1% Others - 2%	NO TDS if: • Single Payment is upto Rs. 30,000 • Aggregate amt. during F. Y. is upto 1lac • Contract is for Personal Purpose of Ind/HUF
194 J - JANHIT Professional Fees	Operation of Call Centre - 2% Others - 10% FTS Being a Professional service 10% Others 2% ROYALTY sale, Distribution of films 2% Others 2%	• NO TDS if Fees for professional services / FTS / Royalty / Non compete Fees ≤ 30,000 The Limit of 30,000 is for each payment • Commission/sitting Fees Paid to Non-Executive/Independent Directors. ↳ No Threshold limit • No TDS on personal payments by Ind/HUF for FPS
194H- Hafta. Commission/Brokrage	5 % 5 takka	NO TDS if Amt is upto Rs. 15000. NO TDS on Underwriting Commission or brokrage on Public issue

194M- Man Se Payment of • Contract • Professional fees • Commission/Brokrage	5%	KAUN KAATEGA - Individual/HUF not covered in 194C, 194J, 194H KISKA KATEGA - Any Resident Person LIMIT- Agg. Amt.> Rs. 50 lakh paid. in the P.Y.
Sec 194G- Gamble Lottery sale Commission	5%	NO TDS if Amt is upto Rs. 15000. If Lottery seller wins lottery on unsold tickets, it will be taxable@30%
194D Insurance Commission	5%	NO TDS if Amt is upto Rs. 15000.
194B- Lottery, Puzzles ↳ Badi lottery 194BB - Horse Race ↳ Bhag Bhag	30%	• NO TDS if Amt is upto RS. 10,000 • Deducted at the time of payment only • If winning is in kind, the payer shall release winnings only after ensuring that TDS is paid to Govt
194E → Payment to NR Sportsman, Association, ENTERTAINER	20% + cess 4% (eff. 20.8%)	Sportsperson & Entertainer shall be NR+ Non-Citizen Refer Sec 115 BBA in NR chapter.
Sec 195 Payment made to NR or Foreign co.	Rate in Force ↓ (given in finance at every year)	→ TDS only applicable if amt. recd. by NR or foreign Co. is taxable in India. → If Rates given in DTAA are lower, then those Rates will apply.
194 TDS on Dividend	10% Kaun kaatega- Domestic Company Kiska Katega - Any Resident Person	Deducted at the time of payment only Payment made by ↓ Cash: No limit ↓ any other Mode: No TDS upto Rs. 5000

193 Interest on Securities	10%	No TDS: Int payable on CG or SG Securities Int paid to LIC, GIC
194A- Alag wala Interest Interest other than Int. on securities	10%	LIMIT for Int paid by: -Banks/co-op bank/ Post off. - Rs. 40,000 -Others 5000 ↓ 50,000 for senior citizens
194DA Maturity Proceeds of LIP DA- DAULAT	5% (After 1.9.19)	On Income Component (Maturity less premium paid) NO TDS if:- • If amount less than Rs. 1,00,000 • If Sum is Recd. on death of Insured. • If Maturity exempt u/s 10(10D)
194IA Sale of Immovable Property	1% of Sale Price or SDV w.e. is higher	• No TDS on Rural Agri land • Consideration < 50L → NO TDS ↙ Not SDV ↳ TDS on 50 lacs or more • Consideration includes maintainance fees, parking fees & all other similar charges
194IB TDS on Rent of Immovable Property	5% NO PAN - 20%	• NO TDS IF RENT per month is upto Rs. 50,000 • Deducted at the time of payment/ credit of rent of last month w.e. earlier • Deduction not to exceed Rent for Last month
194 IC - Indira Colony. Consideration for agreement as per Sec 45(5A) ↳ Joint development Agreement	10%	IF CONSIDERATION IN KIND → NO TDS

194 LA Compulsory Acq of Immovable Property	10% of Sale Price	Amount upto Rs. 2,50, 000 → NO TDS Rural or Urban Agri land-NO TDS
194K TDS on Income in respect of units.	10% KAUN KAATEGA - UTI/MF KISKA KATEGA- Resident person	NO TDS if payment is upto Rs. 5000 in a P.Y.
194LB TDs on Interest on Infrastructure Debt fund	5%	KAUN KAATEGA - Inf. Debt Fund KISKA KATEGA - NR/FC.
194N- Nahi Denge TDS on Cash withdrawls in excess of Rs. I crore	When limit is 1 cr: Rate- 2% When limit is 20 lacs:. 20 lakhs to 1 crores- 2% Above 1 crores-5%	→ TDS only applicable on excess amount over and above limit. Eg- withdrawal 1.20 cr TDS applicable on 0.20 Cr only. Limit will be checked separately for different banks → If assessee has not filed ROI for all 3 preceding P. Ys for which Due Date u/s 139(1) is expired, Limit will be Rs. 20 lakhs
1940 TDS on payment by E-commerce Operator	1% KAUN KAATEGA-E-Commerce operator KISKA KATEGA - E-Commerce participant (resident person) 206 AA - If No PAN- 5%	NO TDS if all the following conditions are satisfied: i) E- comm. participants Ind/HUF ii) Gross amount of Sale/Services during P.Y. is upto Rs. 5 lakh iii) PAN or aadhaar furnished.

194P ↓ Pairi Pauna TDS by Bank in case of Senior Citizen	TDS rate- Slab Rate Payer-Specified Bank Payee- Individual Resident aged 75 yrs or more	→ Section only applicable if Senior citizen has ONLY:. Pension Income Interest in any Account in which he receives pension → That Alc should be with the same Bank only.
194Q Purchase of Goods of more than Rs. 50 lakhs during P.Y.	Rate- 0.1% NO PAN- 5% Kaun Kaatega:. Any Buyer whose last year T/O> Rs. 10 crore Kiska Katega: Seller	→ Only applicable on excess amount over 50 lakhs, not whole amount. → TDS under this section not applicable if:. TDS already deducted under any other section eg. 1940 TCS already collected u/s 206C(1H)

Notes:

→ Where both 194Q & 206C (1H) applies, TDS has to be deducted u/s 194Q

→ Where TDS u/s 194Q & TCS u/s 206(1)/(1F)/(1G) applies, TCS has to be collected under above sections.

→ TDS u/s 194Q,194O, 206C(1H) not applicable on securities transactions through RSE.

→ TDS u/s 194Q not applicable on GST/VAT/Excise component. But It will be applicable on whole amount of any Advance payment.

→ If Buyer is NR- 194Q not applicable
If Seller is NR - 206C(1H) not applicable
} But it will be applicable if NR has PE in India

→ For 1st Year of Business, TDS u/s 194Q not applicable since last year T/O is zero.

→ If Whole Income of Seller is Exempt- 194Q not applicable
If Whole Income of Buyer is Exempt - 206C(1H) not applicable

→ For Sec 194Q, Dept. of CG/SG can become buyer, but they can not be seller

Sec 194R Added by F.A. 22 w.e.f. 1/7/22 Any Benifit or Perquisite, whether converted into money or not, arising from Business or Profession	Rate- 10%	Payer - HIJACR Assessee Payee- Any Resident Person NO TDS If: Amt of benifit/perq provided to a person is upto Rs. 20,000 in a Day

Notes:

To whom HIJACR are applicable?

HIJACR ⟶ (1) Assessee other than Individual/HUF

↓

(2) Ind/HUF whose last year T/O > 1 cr in case of Business
G/R > 50 lacs in case of profession.

Master Chart for Remembering all limits

→ NO TDS if amount is upto
↳ No TDS If Amounts ≤ Threshold limit

↓

Which means TDS is only applicable if Amount paid is more than the threshold Limit

↓

All Other sections

→TDS is applicable starting from this Amount

Sec 194IA → TDS applicable if Amt is 50 lakhs or more
→ NO TDS till Rs. 49,99,999

Sec 194DA → TDS applicable if Amt is 1,00,000 or more
→ No TDS till Rs. 99,999

Sec 192A → TDS applicable if Amt is Rs. 50,000 or more
→ No TDs till Rs. 49,999.

Sec 206AB/ 206CCA: TDS/TCS Rate for Non- Filers (F. A 2022)

In case of TDS, if payee has not Filed Returns of last Year, for which due date has expired (P.Y. 20-21)

& TDS deducted is 50,000 or more, then TDS Rate shall be:

- Twice the TDS/TCS Rate
- or 5%

} w.e.is higher

→ This section is not applicable on 192, 192A, 194B, 194BB, 194LBC, 194N & NR payee not having PE in India

→ In case payee/collectee did not furnish PAN: Rate as per Sec 206AA/206CC or 5 % w.e. is higher.

Refund For Denying Liability to Deduct Tax u/s 195 [SECTION 239A]

(i) Application for refund of tax - Where the tax deductible on any income, other than interest, under section 195 is to be borne by the Payer, and such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may file an application before the Assessing Officer for refund of such tax in prescribed form and manner

(ii) Time limit for filing application - Such application may be filed within 30 days from the date of payment of such tax.

(iii) Passing of order by Assessing Officer - The Assessing Officer has to, by an order in writing, allow or reject the application. However, no application would be rejected unless an OOBH has been given to the applicant. The A.O., may, before passing an order make such inquiry as he considers necessary

(iv) Time limit for passing order - The order has to be passed within 6 months from the end of the month in which application for refund is received.

TCS RATES

Sec 206C(1)

(a)	Alcoholic liquor for human consumption	1%
(b)	Tendu leaves	5%
(c)	Timber obtained under a forest lease	2.5%
(d)	Timber obtained by any mode other than (c)	2.5%
(e)	Any other forest produce not being timber or tendu leaves.	2.5%
(f)	Scrap	1%
(g)	Minerals, being coal or lignite or iron ore	1%

Note : No TCS shall be collected if Resident Buyer gives declaration that above goods are to be utilised for the purpose of manufacturing, processing or producing articles or things or for generation of power and not for trading purposes, But Still Buyer have to deduct TDS u/s 194Q if conditions apply.

Sec 206C(1C) : Lease or a licence of parking lot, toll plaza or mine or a quarry

TCS Rate – 2%.

TCS shall be collected by every person who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest in any –

- parking lot or
- toll plaza or
- a mine or a quarry

to another person (other than a public sector company) for the use of such parking lot or toll plaza or mine or quarry for the purposes of business.

Note – Mining and quarrying excludes mining and quarrying of mineral oil i.e. mining and quarrying of petroleum and natural gas.

Sec 206C(1F): Sale of motor vehicle of value exceeding 10 lakhs

TCS shall be collected by seller, on sale of a motor vehicle of the value > Rs. 10 lakhs, from the buyer @1% of the sale consideration.

Note: TCS under this section is not applicable when Manufacturer sells cars to the dealers. Only applicable on Retail Sale

→ Limit of Rs. 10 Lacs has to be checked at each purchase, not on aggregate sale made during the P.Y.

Sec 206C(1G)

TCS on Remittance outside India
OR Sale of Tour Package.

In case of authorized dealer, who receives an amount of more than 7 lacs in p y. from a buyer → who is remitting amount outside India under LRS of RBI, the Auth. dealer is required to collect TCS @ 5% in excess of Rs. 7 Lacs.

In case of Sale of an Overseas tour program package, if seller receives any amount, Seller is required to collect TCS @5%.

Note: If remitted amount is remitted out of educational loan taken from Financial Institution, TCS Rate shall be @ 0.5%

Note: But TCS u/s 206C(1G) is not applicable to a Non-Resident who has visited India during the P.Y.

Sec 206C(1H)

Sale of goods of value exceeding 50 lakh

Seller → (Sells goods exceeding value 50 Lacs in a P.Y.) → Buyer

Seller: Having T/O > 10Cr in Last P.Y.

TCS shall be collected @ 0.1% at the time of receipt of amount in excess of 50 Lacs

→ TCS is not required to be collected under this section if already collected u/s 206C(1)/(1F)/(1G) or if Goods are exported.

→ Where both 194Q & 206C (1H) applies, TDS has to be deducted u/s 194Q

→ TCS u/s 206C(1H) shall be calculated on whole amount including GST.

→ If Collectee did not provide PAN, TCS shall be collected @ 1%

→ In case of Sale of Fuel to NR Airlines, TCS u/s 206C(1H) not applicable

Additional Points

Due Date of Payment of TDS/TCS

	TDS	TCS
For Other Months	7th of Next month	7th of Next month
For March	30th April of Next F.Y.	7th April of Next F.Y.

For Sec 194M,194IA, 194IB:

→ TAN not required as TDS under these sections are deducted ocassionally

Due Date of Return & Payment: 194 IA – Form 26QB; 194 IB – Form 26QB; 194 M – Form 26QB } 30 Days from the end of month in which deducted

Due Date of Return of TDS/TCS

Quarter Ended	TCS Return	TDS
30th June	15th July	31st July
30th September	15th October	31st October
31st December	15th January	31st January
31st March	15th May	31st May

Late Fees: Rs. 200 per day of delay in filing of TDS/TCS Returns

If TDS/TCS Return is filed after 1 year of Due Date → Penalty u/s 271H shall be leviable – 10,000 to max 1,00,000.

Interest for Late Deduction/Collection of TDS/TCS

	TDS	TCS
Late Deduction/Collection	1% per month or part	1% per month or part
Period	Date on which TDS was deductible to date on which it is deducted	Date on which TCS was collectible to date on which it is actually paid
Late Payment	1.5 % per month or part	-
Period	Date on which TDS was deducted to date on which it is actually paid	-

Time of Collecting TCS

(a) at the time of debiting the party or
(b) receipt of consideration
w.e. is earlier

} But for Sec 206C(1F) & 1(H), TCS is collected only at the time of receipt of consideration.

Section 206CC

If Collectee has not provided PAN or Aadhar, TCS Rate shall be:

Twice the TCS Rate
OR
5%
w.e. is higher

↑ In case of Sec 206C(1H), It is 1%

Sec 201: Assessee in Default

If TDS is not deducted
OR deducted but not paid to Govt.

} then, Assessee is treated as assessee in default.

Penalty u/s 221 is attracted → which can be upto 100% of TDS Amount

Payer is not treated as Assessee in Default if :

filed return u/s 139(1)

↑

paid tax on such income ⟵ PayEE Has ⟶ taken into account such income

↓

And Payer has furnished a certificate from his CA in this regard to AO

Some Additional Points:

ensure that tax has been deducted in respect of such benefit or perquisite ***@10% of the value or aggregate of value of such benefit or perquisite***.

(2) Meaning of "Person responsible for providing" [Explanation to section 194R]

"Person responsible for providing" means the person providing such benefit or perquisite. In case of a company, it means the company itself including the principal officer thereof

(3) Cases where benefit or perquisite is wholly in kind or partly in kind and partly in cash [First Proviso to section 194R(1)]

Where the benefit or perquisite, as the case may be, is wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite, the person responsible for providing such benefit or perquisite has to, before releasing the benefit or perquisite, ensure that tax required to be deducted has been paid in respect of the benefit or perquisite.

(4) Cases where no tax is required to be deducted under section 194R [Second and Third Proviso to section 194R(1)]

No tax is required to be deducted under section 194R in the following cases –

- *In case of a resident, where the value or aggregate of value of the benefit or perquisite provided or likely to be provided to such resident during the financial year does not exceed ₹ 20,000; or*
- *Where a person responsible for providing such benefit or perquisite is an individual or HUF, whose total sales, gross receipts or turnover from business or profession does not exceed ₹ 1 crore in case of business or ₹ 50 lakhs in case of profession, during the financial year immediately preceding the financial year in which such benefit or perquisite, as the case may be, is provided by such person.*

(5) Power of CBDT to issue guidelines [Section 194R(2)/(3)]

In case any difficulty arises in giving effect to the provisions of this section, the CBDT may issue guidelines for the purpose of removing the difficulty with the previous approval of the Central Government.

Every guidelines issued by the CBDT would be laid before each House of Parliament, and would be binding on the income-tax authorities and on the person providing such benefit or perquisite.

Accordingly, the CBDT has, with the prior approval of the Central Government, vide ***Circular no. 12/2022 dated 16.6.2022 and Circular no. 18/2022 dated 13.9.2022****, issued the following guidelines –*

Question 1: Is it necessary that the person providing benefit or perquisite needs to check if the amount is taxable under section 28(iv), before deducting tax under section 194R?

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Answer *No. The deductor is not required to check whether the amount of benefit or perquisite that he is providing would be taxable in the hands of the recipient under section 28(iv). The amount could be taxable under any other section like section 41(1) etc. Section 194R casts an obligation on the person responsible for providing any benefit or perquisite to a resident, to deduct tax at source @10%. There is no further requirement to check whether the amount is taxable in the hands of the recipient or under which section it is taxable.*

In the context of section 195 it is a requirement to know whether the payment made by the deductor is income in the hands of the non-resident recipient as section 195 requires deduction on any other sum chargeable under the provisions of this Act at the rates in force. Thus, there is requirement that deductor needs to verify if the "sum is chargeable under the Income-tax Act". The term "rate in force" is defined under section 2(37A) and it allows benefit of agreement under section 90 or section 90A, if eligible, in determining the rate of tax at which the tax is to be deducted at source. Hence, there is further requirement of checking if the amount is taxable under tax treaty and if yes, at what rate. Such a requirement is not there in section 194R, in the absence of these two terms in this section. Hence, there is no requirement for deductor to verify whether the amount is taxable in the hands of the recipient or section under which it is taxable.

These two terms are also not there in section 194E and the Supreme Court in the case of PILCOM vs. CIT West Bengal, held that tax is to be deducted under section 194E at a specific rate indicated there in and there is no need to see the taxability or the rate of taxability in the hands of the non-resident.

Question 2: Is it necessary that the benefit or perquisite must be in kind for section 194R to operate?

Answer *Tax under section 194R is required to be deducted whether the benefit or perquisite is in cash or in kind.*

First proviso to section 194R(1) clearly indicates the intent of legislature that there could also be situations where benefit or perquisite is in cash or the benefit or perquisite is in kind or partly in cash and partly in kind. Thus, section 194R clearly brings in its scope the situation where the benefit or perquisite is in cash or in kind or partly in cash or partly in kind.

Question 3: Is there any requirement to deduct tax under section 194R, when the benefit or perquisite is in the form of capital asset?

Answer *As has been stated in answer to question no 1, there is no requirement to check whether the perquisite or benefit is taxable in the hands of the recipient and the section under which it is taxable.*

Further, Courts have held many benefits or perquisites to be taxable even though one can argue that they are in the nature of capital asset. The following judgments illustrate this point:

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- *Assessee entered into an agreement with "J" for purchase of a plot of land and certain amount was paid as earnest money. However, possession of land was not given to assessee and seller entered into another agreement with a third party to develop the said plot. Assessee filed suit in which a consent decree was passed and in pursuance of same certain amount as paid to assessee. On appeal it was held that such sum received in pursuance of consent decree was liable to tax as business income under section 28(iv). Ramesh Babulal Shah v CIT (2015) 53 taxmann.com 277(Bom).*
- *The amount representing principal loan waived by bank under one time settlement scheme would constitute income falling under section 28(iv) relating to value of any benefit or perquisite, arising from business or exercise of profession. CIT v Ramaniyam Homes (P) Ltd (2016) 68 taxmann.com 289 (Mad).*
- *Value of rent free accommodation, furniture and fixtures given to director was held as taxable under section 28(iv). CIT v Subrata Roy (2016) 385ITR 547 (All).*
- *Where a car was given to an assessee by his disciple, who had been benefited from his preaching, the value of car was held to be taxable in the hands of the assessee being a receipt from the exercise of the vocation carried on by him. CIT (Addl) v Ram Kripal Tripathi (1980) 125 ITR 408 (All)*
- *The assessee was a director of a company. In terms of an agreement with the promoters, shares were allotted to the director. On these facts, it was held that the shares received by the director were benefit or perquisite received from a company by the director and it was a benefit assessable to tax. D. M. Neterwala v CIT (1986) 122 ITR 880 (Bom).*
- *Value of gift of land was held as a receipt by the assessee in carrying on of his vocation and was held as taxable. Amarendra Nath Chakraborty v CIT (1971) 79 ITR 342 (Cal)*

Thus, the asset given as benefit or perquisite may be capital asset in general sense of the term like car, land etc but in the hands of the recipient it is benefit or perquisite and has accordingly been held to be taxable. In any case, as stated earlier, the deductor is not required to check if the benefit or perquisite is taxable in the hands of recipient. Thus, the deductor is required to deduct tax under section 194R in all cases where benefit or perquisite (of whatever nature) is provided.

If loan settlement/waiver by a bank is to be treated as benefit/ perquisite, it would lead to hardship as the bank would need to incur the additional cost of tax deduction in addition to the haircut that he has taken. Will section 194R apply in such a situation?

As per the judgment of CIT v. Ramaniyam Homes (P) Ltd (2016) 68 taxmann.com 289

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(Mad) mentioned above, the amount representing principal loan waived by bank under one time settlement scheme would constitute income falling under section 28(iv) relating to value of any benefit or perquisite, arising from business or exercise of profession

However, it has been clarified, vide circular no. 18/2022 dated 13.9.2022, that one-time loan settlement with borrowers or waiver of loan granted on reaching settlement with the borrowers by the following would not be subjected to tax deduction at source under section 194R:

(i) Public Financial Institution

(ii) Scheduled Bank

(iii) Cooperative bank (other than a primary agricultural credit society)

(iv) Primary co-operative Agricultural and Rural Development Bank

(v) State Financial Corporation

(vi) State Industrial Investment Corporation being a Government company, engaged in the business of providing long-term finance for industrial projects;

(vii) Deposit taking Non-Banking Financial Company

(viii) Systemically Important Non-deposit Taking Non-Banking Financial Company

(ix) Public company engaged in providing long term finance for construction or purchase of houses in India for residential purpose and which is registered in accordance with the guidelines/ direction issued by the National Housing Bank formed under National Housing Bank Act 1987;

(x) Registered Asset Reconstruction Companies

This clarification is only for the purposes of section 194R. The treatment of such settlement/ waiver in the hands of the person who had got benefitted by such waiver would not be impacted by this clarification. Taxability of such settlement/ waiver in the hands of the beneficiary will be governed by the relevant provisions of the Act.

Question 4: Whether sales discount, cash discount and rebates are benefit or perquisite?

Answer *Sales discounts, cash discount or rebates allowed to customers from the listed retail price represent lesser realization of the sale price itself. To that extent purchase price of customer is also reduced.*

These are also benefits though related to sales/purchase. Since TDS under section 194R is applicable on all forms of benefit/perquisite, tax is required to be deducted. However, subjecting these to tax deduction would put seller to difficulty. To remove such difficulty it has been clarified that no tax is required to be deducted under section 194R on sales discount, cash discount and rebates allowed to customers.

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Where a seller is selling its items from its stock in trade to a buyer, the seller offers two items free with purchase of 10 items. In substance, the seller is actually selling 12 items at a price of 10 items. Let us assume that the price of each item is ₹ 12. In this case, the selling price for the seller would be ₹ 120 for 12 items. For buyer, he has purchased 12 items at a price of 10. Just like seller, the purchase price for the buyer is ₹ 120 for 12 items and he is expected to record so in his books.

In such a situation, again there could be difficulty in applying section 194R provision. Hence, to remove difficulty it has been clarified that on the above facts no tax is required to be deducted under section 194R.

It has been clarified that situation is different when free samples are given and the above relaxation would not apply to a situation of free samples.

Similarly, this relaxation should not be extended to other benefits provided by the seller in connection with its sale. To illustrate, the following are some of the examples of benefits/perquisites on which tax is required to be deducted under section 194R (the list is not exhaustive):

- *When a person gives incentives (other than discount, rebate) in the form of cash or kind such as car, TV, computers, gold coin, mobile phone etc.*
- *When a person sponsors a trip for the recipient and his/her relatives upon achieving certain targets*
- *When a person provides free ticket for an event*
- *When a person gives medicine samples free to medical practitioners.*

The above examples are only illustrative. The relaxation provided from non-deduction of tax for sales discount and rebate is only on those items and should not be extended to others.

It has been further clarified that these benefits/perquisites may be used by owner/ director/ employee of the recipient entity or their relatives who in their individual capacity may not be carrying on business or exercising a profession. However, the tax is required to be deducted by the person in the name of recipient entity since the usage by owner/ director/ employee/ relative is by virtue of their relation with the recipient entity and in substance the benefit/perquisite has been provided by the person to the recipient entity.

To illustrate, the free medicine sample may be provided by a company to a doctor who is an employee of a hospital. The TDS under section 194R is required to be deducted by the company in the hands of hospital as the benefit/perquisite is provided to the doctor on account of him being the employee of the hospital. Thus, in substance, the benefit/perquisite is provided to the hospital. The hospital may subsequently treat this benefit/perquisite as the perquisite given to its employees (if the person who used it is his employee) under section 17 and deduct tax under section 192. In such a case it would be

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first taxable in the hands of the hospital and then allowed as deduction as salary expenditure. Thus, ultimately the amount would get taxed in the hands of the employee and not in the hands of the hospital. Hospital can get credit of tax deducted under section 194R by furnishing its tax return. It has been further clarified that the threshold of ₹ 20,000 is also required to be seen with respect to the recipient entity.

Similarly, the tax is required to be deducted under section 194R if the benefit or perquisite is provided to a doctor who is working as a consultant in the hospital. In this case the benefit or perquisite provider may deduct tax under section 194R with hospital as recipient and then hospital may again deduct tax under section for providing the same benefit or perquisite to the consultant. To remove difficulty, as an alternative, the original benefit or perquisite provider may directly deduct tax under section 194R in the case of the consultant as a recipient.

The provisions of section 194R would not apply if the benefit or perquisite is being provided to a Government entity, like Government hospital, not carrying on business or profession.

Question 5: How is the valuation of benefit/perquisite required to be carried out?

Answer: *The valuation would be based on fair market value of the benefit or perquisite except in following cases:-*

	Situation	Value for such benefit/perquisite
(i)	The benefit/perquisite provider has purchased the benefit/perquisite before providing it to the recipient	purchase price
(ii)	The benefit/perquisite provider manufactures such items given as benefit/perquisite	the price that it charges to its customers for such items

It has been further clarified that GST would not be included for the purposes of valuation of benefit/perquisite for TDS under section 194R.

Question 6: Many a times, a social media influencer is given a product of a manufacturing company so that he can use that product and make audio/video to speak about that product in social media. Is this product given to such influencer a benefit or perquisite?

Answer: *Whether this is benefit or perquisite will depend upon the facts of the case.*

In case of benefit or perquisite being a product like car, mobile, outfit, cosmetics etc. and if the product is returned to the manufacturing company after using for the purpose of rendering service, then it will not be treated as a benefit/perquisite for the purposes of section 194R.

However, if the product is retained then it would be in the nature of benefit/perquisite and tax is required to be deducted accordingly under section 194R.

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Question 7: Whether reimbursement of out of pocket expense incurred by service provider in the course of rendering service is benefit/perquisite?

Answer: *Any expenditure which is the liability of a person carrying out business or profession, if met by the other person is in effect benefit/perquisite provided by the second person to the first person in the course of business/profession.*

For example, a consultant is rendering service to a person "X" for which he is receiving consultancy fee. In the course of rendering that service, he has to travel to different city from the place where is regularly carrying on business or profession. For this purpose, he pays for boarding and lodging expense incurred exclusively for the purposes of rendering the service to "X". Ordinarily, the expenditure incurred by the consultant is part of his business expenditure which is deductible from the fee that he receives from company "X". In such a case, the fee received by the consultant is his income and the expenditure incurred on travel is his expenditure deductible from such income in computing his total income.

If this travel expenditure is met by the company "X", it is benefit or perquisite provided by "X" to the consultant.

However, sometimes the invoice is obtained in the name of "X" and accordingly, if paid by the consultant, is reimbursed by "X". In this case, since the expense paid by the consultant (for which reimbursement is made) is incurred wholly and exclusively for the purposes of rendering services to "X" and the invoice is in the name of "X", then the reimbursement made by "X" being the service recipient will not be considered as benefit/perquisite for the purposes of section 194R.

If the invoice is not in the name of "X" and the payment is made by "X" directly or reimbursed, it is the benefit/perquisite provided by "X" to the consultant for which deduction is required to be made under section 194R.

However, it has been clarified, vide circular no. 18/2022 dated 13.9.2022, that in case of a supplier who is a "pure agent" fulfilling the following conditions, the reimbursement would not be treated as benefit/ perquisite for the purpose of section 194R -

i. the supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party on authorization by such recipient;

ii. the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and **12.14**

iii. the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

In case these conditions are not satisfied, such expenditure incurred is included in the value of supply under GST. However, in the abovementioned case of "pure agent", if all the

12.21

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conditions are satisfied, the GST input credit is allowed to the recipient and it is not considered as supply of the pure agent. In such a case, it is clarified that amount incurred by such "pure agent" for which he is reimbursed by the recipient would not be treated as benefit/perquisite for the purpose of section 194R.

Meaning of "Pure Agent" – *A "pure agent" means a person who*

a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

b) neither intends to hold nor holds any title to the goods or services or both, so procured or provided as pure agent of the recipient of supply;

c) does not use for his own interest such goods or services so procured; and

d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Tax deduction under section 194C and 194J is required to be made from the gross amount of bill including the reimbursement. A person has provided service to a company and out of pocket expenses are charged by him to the company along with service fee in the same bill. Company deducts tax under section 194J on both service fee component as well as on out of pocket expense. Is there a noncompliance with the provision of section 194R?

If out of pocket expenses (reimbursement) are already part of the consideration in the bill on which tax is deducted under the relevant provisions of the Act, other than section 194R, it is clarified, vide circular no. 18/2022 dated 13.9.2022, that there will not be further liability for tax deduction under section 194R.

In the above example, out of pocket expense is part of the consideration in the bill for professional fee that is charged to the company and the tax is deducted under section 194J on the entire consideration including on out of pocket expense. In such a case, the out of pocket expense is already included as part of professional fee. Hence, there is no further benefit/perquisite which requires tax deduction under section 194R.

Question 8: If there is a dealer conference to educate the dealers about the products of the company - Is it benefit/perquisite?

Answer: *The expenditure pertaining to dealer/ business conference would not be considered as benefit/ perquisite for the purposes of section 194R in a case where dealer/ business conference is held with the prime object to educate dealers/customers about any of the following or similar aspects:*

(i) new product being launched

(ii) discussion as to how the product is better than others

(iii) obtaining orders from dealers/customers

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(iv) *teaching sales techniques to dealers/customers*

(v) *addressing queries of the dealers/customers*

(vi) *reconciliation of accounts with dealers/customers*

However, such conference must not be in the nature of incentives/ benefits to select dealers/customers who have achieved particular targets.

Further, in the following cases the expenditure would be considered as benefit or perquisite for the purposes of section 194R -

(i) *Expense attributable to leisure trip or leisure component, even if it is incidental to the dealer/ business conference.*

(ii) *Expenditure incurred for family members accompanying the person attending dealer/ business conference*

(iii) *Expenditure on participants of dealer/ business conference for days which are on account of prior stay or overstay beyond the dates of such conference. However, a day immediately prior to actual start date of conference and a day immediately following the actual end date of conference would not be considered as over stay.*

If there is a dealer conference to educate the dealers about the products of the company - (i) is there a requirement that all dealers must be invited in the conference, (ii) how to identify benefit against individual dealers in a group activity?

It has been clarified, vide circular no. 18/2022 dated 13.9.2022, that it is not necessary that all dealers are required to be invited in a dealer/business conference for the expenses to be not considered as benefit/perquisite for the purposes of tax deduction under section 194R.

There may be expenses during such dealer/business conference which need to be classified as benefit/perquisite and tax is required to be deducted under section 194R. However, there may be practical difficulties in identifying such benefit/perquisite to actual recipient due to the fact that it is a group activity and reasonable allocation is not possible. Non compliance of the provision of section 194R, in such a case, would not only result in disallowance under section 40(ia) but may also result in treating the benefit/perquisite provider as assessee in default under section 201 with all other consequences.

In order to remove these practical difficulties, it has been clarified that if benefit/perquisite is provided in a group activity in a manner that it is difficult to match such benefit/perquisite to each participant using a reasonable allocation key, the benefit/perquisite provider may at his option not claim the expense, representing such benefit/perquisite, as deductible expenditure for calculating his total income. If he decides to opt so, he will not be required to deduct tax under section 194R on such benefit/perquisite and therefore he will not be treated as assessee in default under section 201. Thus, in such a case he must add back the expenditure, representing such benefit/perquisite, to calculate his total income if such expenditure is debited in the account.

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Question 9: Section 194R provides that if the benefit/ perquisite is in kind or partly in kind (and cash is not sufficient to meet TDS) then the person responsible for providing such benefit or perquisite is required to ensure that tax required to be deducted has been paid in respect of the benefit or perquisite, before releasing the benefit or perquisite. How can such person be satisfied that tax has been deposited?

Answer: *The requirement of law is that if a person is providing benefit in kind to a recipient and tax is required to be deducted under section 194R, the person is required to ensure that tax required to be deducted has been paid by the recipient. Such recipient would pay tax in the form of advance tax. The tax deductor may rely on a declaration along with a copy of the advance tax payment challan provided by the recipient confirming that the tax required to be deducted on the benefit/perquisite has been deposited. This would be then required to be reported in TDS return along with challan number. This year Form 26Q has included provisions for reporting such transactions.*

In the alternative, as an option to remove difficulty if any, the benefit provider may deduct the tax under section 194R and pay to the Government. The tax should be deducted after taking into account the fact the tax paid by him as TDS is also a benefit under section 194R. In the Form 26Q he will need to show it as tax deducted on benefit provided.

Company "A" gifts a car to its dealer "B" and deducted tax on this benefit under section 194R. Dealer "B" uses this car in his business. Will he get deduction for depreciation in calculating his income under the head "profits and gains of business or profession"?

It has been clarified, vide circular no. 18/2022 dated 13.9.2022, that once Company "A" has deducted tax on gifting of car in accordance with section 194R (or released the car after dealer "B" showed him payment of tax on such benefit) and dealer "B" has included this benefit as income in his income tax return, it would be deemed that the "actual cost" of the car for the purposes of section 32 shall be the amount of benefit included by dealer "B" as income in his income-tax return. Hence, dealer "B" can get depreciation on fulfilment of other conditions for claiming depreciation.

Question 10: Section 194R would come into effect from 1st July 2022. It provides that the provision of this section does not apply where the value or aggregate of value of the benefit or perquisite provided or likely to be provided to a resident during the financial year does not exceed ₹ 20,000. It is not clear how this limit of ₹ 20,000 is to be computed for the Financial Year 2022-23?

Answer: *It has been clarified that,-*

(i) Since the threshold of ₹ 20,000 is with respect to the financial year, calculation of value or aggregate of value of the benefit or perquisite triggering deduction under section 194R shall be counted from 1st April, 2022. Hence, if the value or aggregate value of the benefit or perquisite provided or likely to be provided to a resident exceeds ₹ 20,000 during the financial year 2022-23 (including the period up to

12.24

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30th June 2022), the provision of section 194R shall apply on any benefit or perquisite provided on or after 1st July 2022.

(ii) The benefit or perquisite which has been provided on or before 30th June 2022, would not be subjected to tax deduction under section 194R.

Question 11: Whether Embassy/High Commissions are required to deduct tax under section 194R?

Answer: *It has been clarified, vide circular no. 18/2022 dated 13.9.2022, that the provision of section 194R is not applicable on benefit/perquisite provided by, an organization in scope of The United Nations (Privileges and Immunity Act) 1947, an international organization whose income is exempt under specific Act of Parliament (such as the Asian Development Bank Act 1966), an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign state.*

Question 12: Whether issuance of bonus share/right share is a benefit or perquisite if issued by a company in which the public are substantially interested and whether tax is required to be deducted under section 194R?

Answer: *In case of bonus shares which are issued to all shareholders by a company in which the public are substantially interested as defined in clause (18) of section 2 of the Act, it has been represented that this does not result in any benefit to shareholders as the overall value and ownership of their holding does not change. Further cost of acquisition of bonus share is taken as nil for capital gains computation when this share is sold. Similar representations have been received seeking clarity on issuance of right shares.*

It has been clarified, vide circular no. 18/2022 dated 13.9.2022, that the tax under section 194R is not required to be deducted on issuance of bonus or right shares by a company in which the public are substantially interested, where bonus shares are issued to all shareholders by such a company or right shares are offered to all shareholders by such a company, as the case may be.

INTEREST LIABILITY ON ASSESSEE IN DEFAULT [SECOND PROVISO TO SECTION 201(1A)]

A person deemed to be an assessee-in-default under section 201(1), for failure to deduct tax or to pay the tax after deduction, is liable to pay simple interest as computed under section 201(1A).

However, where any order is made by the Assessing Officer for the default under section 201(1), the interest shall be paid by the person in accordance with such order.

Note – *The above amendment in section 201(1A) has to be read with the provisions of section 201 discussed in the Study Material.*

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Sec 139(1) → Filing of ROI

For Company & Partnership Firm (incl. LLP)

↓

Return Filing Compulsory

Other Assessees

If Gross Total Income* > Basic Exemption Limit

↓

Return Filing Compulsory

[* GTI → Income before claiming VI-A deduction & before claiming exemption u/s 54,54B,54D,54EC, 54F,54G,54GA,54GB.]

↳ capital Gain exemptions

→ Other than these assesses, few other assessees are required to file ROI:.

1) Resident and Ordinarily Resident CROR)

- Benificial Owner of any asset (incl. financial asset) located outside India.
- Has signing authority in any Account outside India.

OR

Benificiary of Any Asset (incl. financial interest) located outside India

Note: If Beneficial Owner has filed Return, then Beneficiary is not required to file the return.

2) If Any Assessee other than Company or Firm → who is not required to file ROI u/s 139(1) → will be required to file ROI if :

(a) has deposited an amount or aggregate > 1 crore in one or more current accounts maintained with a banking company or a co-operative bank

(b) has incurred expenditure of an amount or aggregate > 2 lakh for himself or any other person for travel to a foreign country

(c) has incurred expenditure of an amount or aggregate > 1 lakh towards electricity bill.

→ Due-Dates for Return filing:-

- Company
- Assessees who gets their Accounts Audited
- Partner of firm which gets its Accounts Audited

↓

31st Oct of A.Y.

Assesses required to furnish Transfer Pricing Report u/s 92E

↓

30th Nov of A.Y.

Other Assessee

↓

31st July of A.Y.

See 139(3) Loss Return

Sec 80:

If you want to Carry Forward these Losses → PGBP loss, Capital Gains(Loss),Loss from owning & maintaining race Horses

↓

Then you have to file Return of Income Before due date of 139(1)

Notes:

→ These Losses Can't be carried forward,
but can they be set-off in the current year? → Yes

→ Sec 35AD Loss Can't be Carried forward if Return is filed beyond due date of 139(1)

→ Sec 35AD Loss, Sec 10AA Deduction, Chapter VI-A 'C' Deductions can't be availed if Return is filed beyond due date.

→ But House property & Unabsorbed Depreciation
↳ can be carried forward even after filing Belated Return.

→ Sec 80 conditions are applicable for the year in which loss is incurred.
For Next year(2nd year), that Loss can be carried forward even after filing Belated Return.

Sec 139(4) - Belated Return

If any Assessee has not filed Return of Income before due date u/s 139(1), he may furnish return of P.Y. any time:

Before 3 Months prior to end of Relevant A.Y.
OR
Before Completion of Assessment
whichever is earlier

If you have filed Belated Return:

- Late Fees of Rs. 5000 u/s 234F will be levied.
- Certain losses can't be carried forward.
- Certain Deductions can't be claimed.

Sec 139(5) → Revised Return

Any return filed u/s 139(1), 139(3) or 139(4) can be revised if → Assessee finds any omission or wrong statement.

Time Limit:

Before 3 Months prior to end of Relevant A.Y.
OR
Before Completion of Assessment
whichever is earlier

Notes:

- Revised Return changes everything except date of the Original return.
  Changes made in the Revised Return shall be deemed to be made on Original date of return only.
- Return can be revised for any number of times.
- Assessee can claim anything before A.O. only by filing Revised return.

Sec 139(9) - Defective Return

Return can become defective in these 3 cases:

- Return not filed in prescribed form
- Tax Audit report not submitted
- Proof of Tax payment not attached with return

Notes:

→ If Return has become defective, A.O. will intimate the assessee & will give time of 15 days to rectify the defect.

→ If Assessee does not rectify the defect within 15 days, the return will be deemed to be invalid → as if Return has not been filed.

Return of Various Entities:

All the provisions of Income Tax Act shall apply to these returns as if these returns are filed u/s 139(1).

These entities will be required to file their ROI if:

Sec 139(4A)
Return of Trust
If Income before giving exemption u/s 11 & 12> Basic exemption

Sec 139(4B)
Return of Political Party
If Income before giving exemption u/s 13A> Basic exemption

Return of Various Entities

139(4C)
Return of Hospitals Institutions regd. u/s 10 etc.
If Income before giving exemption u/s 10 > Basic exemption

Sec 139(4D)
Sec 35 University, Edu. Institution, College etc.
Return Filing is mandatory

139 (4E)
Business Trust
Return filing is mandatory

139 (4F)
Investment Fund
Return filing is mandatory

Author's Note: The Theory of PAN & Aadhar is not covered in these notes. It will be given as Addendum by YK sir on his telegram channel

Rule 12AB: Following Persons shall also be required to file their Reurn of Income u/s 139(1)

	Case	Prescribed transaction(s)	Prescribed Monetary threshold
(1)	(2)	(3)	(4)
(i)	A person carrying on **business**	His **total sales, turnover or gross receipts**, as the case may be, in the business	> ₹ **60 lakhs** during the relevant P.Y.
(ii)	A person carrying on **profession**	His **total gross receipts** in profession	> ₹ **10 lakhs** during the relevant P.Y.
(iii)	(a) A resident individual who is aged ≥ **60 years** at any time during the relevant P.Y.	The **aggregate of TDS and TCS** in his case	≥ ₹ **50,000** during the relevant P.Y.
	(b) Any other person	The **aggregate of TDS and TCS** in his case	≥ ₹ **25,000** during the relevant P.Y.
(iv)	A person having **savings bank account**	The **deposit in one or more savings bank** account of the person, in aggregate	≥ ₹ **50 lakhs** during the relevant P.Y.

(iv) *the deposit in one or more savings bank account of the person, in aggregate, is* ***₹ 50 lakh or more.***

Note – *This amendment has to be read along with the other provisions of section 139(1) discussed in the Study Material.*

EFFECT OF ORDER OF TRIBUNAL OR COURT IN RESPECT OF BUSINESS REORGANISATON [SECTION 170A]

(1) ***Requirement to file Modified Return in ITR-A*** *- In a case of* ***business reorganisation****, where prior to the date of order of a High Court or Tribunal or an Adjudicating Authority as defined in section 5(1) of the Insolvency and Bankruptcy Code, 2016, as the case may be, any return of income has been furnished by the* ***successor*** *under the provisions of section 139 for any assessment year relevant to the previous year to which such order applies, such successor has to furnish, within a period of* ***six months from the end of the month in which the said order was issued****,* ***a modified return*** *in Form ITR-A in accordance with and limited to the said order. The said return of income has to be furnished electronically under digital signature.*

This provision will apply notwithstanding anything contained in section 139.

(2) ***Meaning of "business reorganization"*** *– Business reorganization" means the reorganization of business involving the amalgamation or demerger or merger of business or one or more persons.*

(3) ***Meaning of "successor"*** *– "Successor" means all resulting companies in a business reorganization, whether or not the company was in existence prior to such business reorganization.*

Example: *If A Ltd. merges with B Ltd. with effect from 1.4.2021 vide order of the High Court dated 1.11.2022, and B Ltd. has already filed its return of income for the A.Y.2022-23 on 30th October, 2022, then, B Ltd. has to file a modified return for A.Y.2022-23 in accordance with and limited to the Order of the High Court on or before 31st May, 2023.*

(4) Assessment on the basis of modified return [Rule 12AD(3) & (4)]

	Status of Assessment or reassessment proceedings for an A.Y. relevant to a P.Y. to which the order of the business reorganisation applies	*Completion of Assessment by the A.O. on the basis of modified return*
(i)	***Completed proceedings*** *- If the proceedings have been completed on the date of furnishing of the modified return in accordance with the provisions of section 170A*	*The A.O. has to* ***pass an order modifying the total income of the relevant A.Y.*** *determined in such assessment or reassessment proceedings in accordance with the order of the business reorganisation and the modified return so furnished.*

13.6

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(ii)	***Pending proceedings** - If the proceedings are pending on the date of furnishing of the modified return in accordance with the provisions of section 170A*	*The A.O. has to **proceed to complete the assessment or reassessment proceedings in accordance with the order** of the business reorganisation and the modified return so furnished.*

PERMANENT ACCOUNT NUMBER (PAN) [SECTION 139A]

(1) Persons mandatorily required to apply for allotment of PAN: Section 139A(1) requires the certain persons, who have not been allotted a permanent account number (PAN), to apply to the Assessing Officer within the specified time for the allotment of a PAN.

Further, for widening the tax base, every person who has not been allotted a PAN **and intends to enter into such transaction** as prescribed by the CBDT is also required to apply to the Assessing Officer for allotment of PAN.

Accordingly, Rule 114BA inserted w.e.f. expiry of 15 days from 10.5.2022 to prescribe the following transactions:

(i)	*Every person, who intends to deposit cash in his one or more accounts with a banking company, co-operative bank or post office, if the aggregate amount of cash deposit in such accounts during a financial year is **₹ 20 lakh or more***	*Atleast 7 days before the date on which he intends to deposit cash over the specified limit, i.e., ₹ 20 lakh or more.*
(ii)	*Every person, who intends to withdraw cash from his one or more accounts with a banking company, co-operative bank or post office, if the aggregate amount of cash withdrawal from such accounts during a financial year is **₹ 20 lakh or more***	*Atleast 7 days before the date on which he intends to withdraw cash over the specified limit, i.e., ₹ 20 lakh or more.*
(iii)	*Any person, who intends to open a current account or cash credit account with a banking company or a co-operative bank, or a Post Office*	*Atleast 7 days before the date on which he intends to open such account.*

(2) Quoting and authentication of PAN or Aadhaar number

(a) Every person entering into such prescribed transactions is required to quote his PAN or Aadhaar number, as the case may be, in the documents pertaining to such transactions. Such persons are also required to authenticate such PAN or Aadhaar number in the prescribed manner [Sub-section (6A)].

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(b) Every person receiving such document relating to transactions referred to in (a) has to ensure that PAN or Aadhaar number has been duly quoted in such document. They also have to ensure that such PAN or Aadhaar number is so authenticated. [Sub-section (6B)].

Accordingly, Rule 114BB has been inserted (w.e.f. expiry of 60 days from 10.5.2022) to prescribe that every person has to, at the time of entering into a transaction specified in column (2) of the Table below, quote his permanent account number or Aadhaar number, as the case may be, in documents pertaining to such transaction, and every person specified in column (3) of the said Table, who receives such document, has to ensure that the said number has been duly quoted and authenticated:

(1)	*(2)*	*(3)*
S. No.	***Nature of transaction***	***Person***
1.	*Cash deposit or deposits aggregating to ₹ 20 lakhs or more in a financial year, in one or more account of a person with a bank or a co-operative bank or Post Office.*	*A bank or a co-operative bank or Post Master General of a Post Office.*
2.	*Cash withdrawal or withdrawals aggregating to ₹ 20 lakhs or more in a financial year, in one or more account of a person with a bank or a co-operative bank or Post Office*	*A bank or a co-operative bank or Post Master General of a Post Office.*
3.	*Opening of a current account or cash credit account by a person with a bank or a co-operative bank or Post Office*	*A bank or a co-operative bank or Post Master General of a Post Office.*

***Note** – Quoting of PAN or Aadhaar number is, however, not required in case where the person depositing money as per Sl. No.1 or withdrawing money as per Sl. No.2 or opening a current account or cash credit account as per Sl. No.3 is the Central Government, the State Government or the Consular Office [Notification No. 105/2022 dated 1.9.2022]*

***Note –** The above amendments in relation to section 139A has to be read along with the other provisions of section 139A discussed in the Study Material.*

QUOTING OF AADHAAR NUMBER [SECTION 139AA]

(1) **Mandatory quoting of Aadhar Number**

Every person who is eligible to obtain Aadhar Number is required to mandatorily quote Aadhaar Number, on or after 1st July, 2017:

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However, the tax payer would be liable to pay a fee in accordance with section 234H read with Rule 114(5A).

(5) **Provision not to apply to certain person or class of persons**

The provisions of section 139AA relating to quoting of Aadhar Number would, however, not apply to such person or class or classes of persons or any State or part of any State as may be notified by the Central Government [Sub-section (3)].

Accordingly, the Central Government has, vide Notification No. 37/2017, dated 11.05.2017, effective from 01.07.2017, notified that the provisions of section 139AA relating to quoting of Aadhar Number would **not** apply to an individual who does not possess the Aadhar number or Enrolment ID and is:

(i) residing in Assam, Jammu & Kashmir and Meghalaya;

(ii) a non-resident as per Income-tax Act, 1961;

(iii) of the age of 80 years or more at any time during the previous year;

(v) not a citizen of India

UPDATED RETURN OF INCOME [SECTION 139(8A)]

(1) Option to furnish updated return: *Any person may furnish an updated return of his income or the income of any other person in respect of which he is assessable, for the previous year relevant to the assessment year at any time within 24 months from the end of the relevant assessment year.*

This is irrespective of whether or not he has furnished a return under section 139(1) or belated return under section 139(4) or revised return under section 139(5) for that assessment year.

For example, an updated return for A.Y. 2023-24 can be filed till 31.3.2026.

(2) Non applicability of the provisions of updated return: *The provisions of updated return would not apply, if the updated return of such person for that assessment year –*

(i) is a loss return; or

(ii) has the effect of decreasing the total tax liability determined on the basis of return furnished under section 139(1) or section 139(4) or section 139(5); or

(iii) results in refund or increases the refund due on the basis of return furnished under section 139(1) or section 139(4) or section 139(5)

(3) Updated return can be filed if original return is a loss return and updated return is a return of income: *If any person has a loss in any previous year and has furnished a return of loss on or before the due date of filing return of income under section 139(1), he shall be allowed to furnish an updated return if such updated return is a return of income.*

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For example, if Mr. X has furnished his return of loss for A.Y. 2022-23 on 31.5.2022 consisting of ₹ 5,00,000 as business loss, he can furnish an updated return for A.Y. 2022-23 upto 31.3.2025, if such updated return is a return of income.

(4) ***Updated return to be furnished for subsequent previous year in case (3) above*** *- If the loss or any part thereof carried forward under Chapter VI or unabsorbed depreciation carried forward under section 32(2) or tax credit carried forward under section 115JD is to be reduced for any subsequent previous year as a result of furnishing of updated return of income for a previous year, an updated return is required to be furnished for each such subsequent previous year.*

(5) ***Circumstances in which updated return cannot be furnished:*** *No updated return shall be furnished in the following scenarios –*

S.No.	Scenarios	updated return can not be furnished
(i)	***In case of a person*** • *Where* ***a search has been initiated under section 132*** *or books of account or other documents or any* ***assets are requisitioned under section 132A*** *.* • *Where* ***a survey has been conducted under section 133A*** *(other than survey conducted in relation to TDS or TCS)* • *Where* ***a notice has been issued*** *to the effect that:* - *any money, bullion, jewellery or valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person belongs to such person; or* - *any books of account or documents, seized or requisitioned under section 132 or section 132A in the case of any other person, pertain or pertains to, or any other information contained therein, relate to, such person.*	- ***for the Assessment Year*** *relevant to the Previous Year in which the search is initiated or survey is conducted, or requisition is made* *and* - ***for any A.Y. preceding such assessment year.***
(ii)	*Where a person has furnished an updated return under this sub-section for the relevant assessment year.*	

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(iii)	*Where any proceeding for assessment, reassessment, recomputation, or revision of income under this Act is pending or has been completed for the relevant assessment year.*	*for such relevant Assessment Year.*
(iv)	*Where the Assessing Officer has information in his possession for the relevant assessment year in respect of a person under the Smugglers, and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 or the Prohibition of Benami Property Transactions Act, 1988 or the Prevention of Money-laundering Act, 2002 or the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and the same has been communicated to him, prior to the date of furnishing of updated return.*	
(v)	*Where information for the relevant assessment year has been received under an agreement referred to in section 90 or section 90A in respect of such person and the same has been communicated to him, prior to the date of furnishing of updated return.*	
(vi)	*If any prosecution proceedings under the Chapter XXII have been initiated for the relevant assessment year in respect of a person prior to the date of furnishing of return under this sub-section.*	

(6) Updated return for the relevant assessment year cannot be furnished by such person or belongs to such class of persons, as may be notified by the Board in this regard.

TAX ON UPDATED RETURN [SECTION 140B]

(1) Payment of tax, additional tax, interest and fee before furnishing updated return of income

(a) In a case where no return is furnished earlier [Section 140B(1)]

(I) Tax to be paid along with interest and fee before furnishing of updating return:

Where no return of income under section 139(1) or 139(4) has been furnished by an assessee and tax is payable, on the basis of updated return to be furnished by such assessee under section 139(8A), the assessee would be liable to pay such tax together ***with interest*** ***and fee payable under any provision of this Act for any delay in***

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furnishing the return ***or any default or delay in payment of advance tax,*** *along with the payment of additional income-tax computed under section 140B(3), before furnishing the return.*

The updated return shall be accompanied by proof of payment of such tax, additional income-tax, interest and fee.

(II) Manner of computation of tax payable on the basis of updated return

The tax payable is to be computed after taking into account the following -

(i) the amount of tax, if any, already paid as advance tax;

(ii) any tax deducted or collected at source;

(iii) any relief of tax claimed under section 89;

(iv) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India;

(v) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section; and

(vi) any tax credit claimed to be set off in accordance with the provisions of section 115JAA or section 115JD.

(III) Interest under section 234A if no earlier return has been furnished

In a case, where no earlier return has been furnished, the interest payable under section 234A has to be computed on the amount of the tax on the total income as declared in the updated return under section 139(8A), in accordance with the provisions of section 140A(1A).

(b) In a case where return is furnished earlier [Section 140B(2)]

(I) Tax to be paid along with interest before furnishing updated return:

Where, return of income under section 139(1) or 139(4) or 139(5) has been furnished by an assessee and tax is payable, on the basis of updated return to be furnished by such assessee under section 139(8A), the assessee would be liable to pay such tax together with interest payable under any provision of this Act for any default or delay in payment of advance tax, along with the payment of additional income-tax computed under section 140B(3) ***(as reduced by the amount of interest paid under the provisions of this Act in the earlier return)*** *before furnishing the return.*

The updated return shall be accompanied by proof of payment of such tax, additional income-tax and interest

13.12

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(II) Manner of computation of tax payable on the basis of updated return:

The tax payable has to be computed after taking into account the following -

(i) the amount of relief or tax referred to in section 140A(1), the credit for which has been taken in the earlier return;

*(ii) **tax deducted or collected at source**, in accordance with the provisions of Chapter XVII-B, on any income which is subject to such deduction or collection and which is taken into account in computing total income and **which has not been included in the earlier return;***

*(iii) **any relief of tax** or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India on such income **which has not been included in the earlier return**;*

*(iv) **any relief of tax** claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section on such income **which has not been included in the earlier return;***

*(v) **any tax credit claimed**, to be set off following the provisions of section 115JAA or section 115JD, **which has not been claimed in the earlier return**; and*

The aforesaid tax would be increased by the amount of refund, if any, issued in respect of such earlier return.

(III) Interest under section 234B where earlier return has been furnished [Section 140B(4)]

*In a case where an earlier return has been furnished, **interest payable under section 234B has to be computed on the assessed tax** or, as the case may be, on the amount by which the advance tax paid falls short of the assessed tax.*

"Assessed tax" means the tax on the total income as declared in the updated return to be furnished under section 139(8A), after taking into account the following:

(i) the amount of relief or tax referred to in section 140A(1), the credit for which has been claimed in the earlier return;

(ii) tax deducted or collected at source, in accordance with the provisions of Chapter XVII-B, on any income which is subject to such deduction or collection and which is taken into account in computing such total income, which has not been included in the earlier return;

(iii) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India on such income which has not been included in the earlier return;

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(iv) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section on such income which has not been included in the earlier return;

(v) any tax credit claimed, to be set off in accordance with the provisions of section 115JAA or section 115JD, which has not been claimed in the earlier return; and

The aforesaid tax would be increased by the amount of refund, if any, issued in respect of such earlier return.

(IV) Interest under section 234C if earlier return has been furnished

Interest payable under section 234C, where an earlier return has been furnished, has to be computed after taking into account the total income furnished in the updated return as returned income.

(2) Additional income-tax payable at the time of updated return [Section 140B(3)]

The additional income-tax payable at the time of furnishing the updated return under section 139(8A) would be –

S.No.	Time of furnishing updated return	Additional Income-tax Payable
(i)	If such return is furnished after expiry of the time available under section 139(4) or 139(5) of the assessment year and before completion of the period of 12 months from the end of the relevant assessment year;	**25% of aggregate** of tax and interest payable, as determined in (1) above
(ii)	If such return is furnished after the expiry of 12 months from the end of the relevant assessment year but before completion of the period of 24 months from the end of the relevant assessment year.	**50% of aggregate** of tax and interest payable, as determined in (1) above

Computation of Additional income-tax

For the purpose of computation of Additional income-tax -

- tax would include surcharge and cess, by whatever name called, on such tax.
- the interest payable would be interest chargeable under any provision of the Act, on the income as per updated return furnished under section 139(8A), as reduced by interest paid in the earlier return, if any.

However, the interest paid in the earlier return would be considered to be nil, if no earlier return has been furnished.

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Note - *An updated return furnished under section 139(8A) would be regarded as defective return as referred u/s 139(9) unless such return of income is accompanied by the proof of payment of tax as required under section 140B.*

(3) Power to CBDT to issue guidelines

In case of any difficulty arises in giving effect to the provisions of this section, the CBDT may issue guidelines for the purpose of removing the difficulty, with the approval of the Central Government. Every guideline issued shall be laid before each House of Parliament.

ILLUSTRATION

Mr. X would like to furnish his updated return for the A.Y. 2021-22. In case he furnished his updated return of income, he would be liable to pay ₹ 2,50,000 towards tax and ₹ 35,000 towards interest after adjusting tax and interest paid at the time filing earlier return. You are required to examine whether Mr. X can furnish updated return

(i) as on 31.3.2023

(ii) as on 28.2.2024

(iii) as on 31.5.2024

If yes, compute the amount of additional income-tax payable by Mr. X at the time of filing his updated return.

Would your answer be different with respect to filing of updated return in case of (ii) above, where he has received a notice under section 147 for the said A.Y. 2021-22 on 23.7.2023

SOLUTION

Mr. X may furnish an updated return of his income for A.Y. 2021-22 at any time within 24 months from the end of the relevant assessment year i.e., 31.3.2024.

Accordingly, Mr. X can furnish updated return for A.Y. 2021-22 as on 31.3.2023 and on 28.2.2024. However, he can not furnish such return as on 31.5.2024, since such date falls after 31.3.2024.

Mr. X would be liable to pay additional income-tax

- @25% of tax and interest payable, if updated return is furnished after the expiry of the time limit available under section 139(4) or 139(5) i.e., 31st December 2022 and before the expiry of 12 months from end of relevant assessment year i.e., 31.3.2023
- @50% of tax and interest payable, if updated return is furnished after the expiry of 12 months from end of relevant assessment year i.e., 31.3.2023 and before the expiry of 24 months from end of relevant assessment year i.e., 31.3.2024.

Accordingly, Mr. X is liable to pay additional income-tax in case he furnished his updated return as on

(i) 31.3.2023 - ₹ 71,250 [25% of 2,85,000, being tax of ₹ 2,50,000 plus interest of ₹ 35,000]

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(ii) 28.2.2024 of ₹ 1,42,500 [50% of 2,85,000, being tax of ₹ 2,50,000 plus interest of ₹ 35,000]

He cannot furnish updated return where he has received notice u/s 147, since proceeding for income escaping assessment for the A.Y. 2021-22 are pending.

FACELESS INQUIRY & VALUATION [SECTION 142B]

The Central Government may, for the purpose of giving effect to the Faceless Inquiry and Valuation Scheme, by notification in the Official Gazette, direct that any provision of this Act shall not apply or shall apply with such modification, exceptions and adaptations as necessary [Section 142B(2)].

Accordingly, Central Government has issued Notification no. 19/2022 dated 30.3.2022, to provide that the Faceless Inquiry and Valuation for the purpose of -

(a) issuing notice under section 142(1) or

(b) making inquiry to obtain full information in respect of the income or loss of any person under section 142(2) or

(c) directing the assessee to get the accounts audited by an accountant under section 142(2A) or

(d) making a reference to the valuation officer to estimate the value of any asset, property or investment under section 142A

shall be made in a faceless manner, through automated allocation, in accordance with and to the extent provided in section 144B with reference to making the faceless assessment of total income or loss of assessee.

"Automated allocation" means an algorithm for randomised allocation of cases by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources.

Every such notification issued by the Central Government either under section 142B has to be laid before each House of Parliament as soon as possible [Section 142B(3)].

Note – *The above amendment has to be read along with the other provisions of section 142B discussed in the Study Material.*

REGULAR ASSESSMENT/SCRUTINY ASSESSMENT [SECTION 143(2)/(3)]

If the Assessing Officer or the prescribed income-tax authority [i.e., an income-tax authority not below the rank of an Income-tax Officer who has been authorised by the CBDT to act as income-tax authority] considers it necessary or expedient to ensure that the assessee has not understated his income or has not computed excessive loss or has not underpaid his tax in any manner he can

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Sec 143(1)- Summary Assessment

(Section 143(1)(a) provides for computation of the total income of an assessee after making the following adjustments to the returned income:-

(a) any arithmetical error in the return;

(b) an incorrect claim, if such incorrect claim is apparent from any information in the return;

(c) Disallowance of loss claimed, if return of the previous year for which set-off is claimed was filed beyond due date u/s 139(1);

(d) Disallowance of expenditure or increase in income indicated in the audit report but not taken into account in computing the total income in the return;

(e) Disallowance of deduction u/s section 10AA or under Chapter VI-A 'C'.(80-IA,80-IB, 80-IC, 80IAB, 80 IAC etc), if return is filed beyond due date u/s 139(1);

Notes:

- Summary assessment u/s 143(1) is possible only if Return u/s 139(1) or 142(1) is filed
- Intimation is generated →For payable, refund or loss return.
- If No Adjustment → Acknowledgement is deemed Intimation
- If there is a Refund hai → It will be Granted.
- If Any Amount is Payable → Intimation is considered as demand order u/s 156.
- Before making any adjustments → intimation is given to the assessee requiring him to respond to such adjustments within 30 days.

↓

Any response received is considered before making any adjustment. However, if no response is received within 30 days of issue of such intimation, the processing shall be carried out incorporating the adjustments.

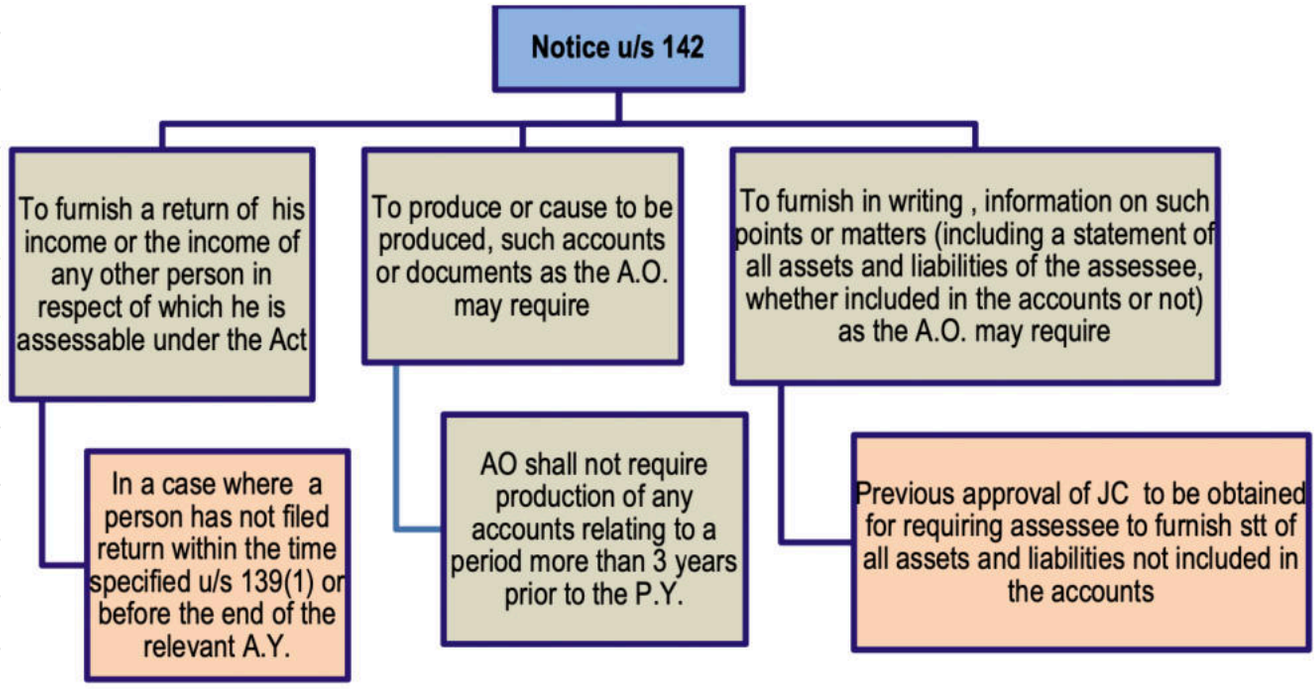
→ **Time limit**:- 9 months from the end of F. Y. in which ROI was filed.

→ **Remedies Available:**

* Rectification us 154
* Appeal to CIT(A) u/s 246A
* Revision u/s 264 → (Intimation is considered as Order for the purpose of Sec 264)

→ **Sec 241A:** A.O. for the interest of Revenue → can stop the refund of the Assessee if the assessee is a habitual tax offender.

See 142(1) → INQUIRY BEFORE ASSESSMENT



Sec 142(1)

(i)

- File ROI → If not filed u/s 139(1)
  (Return in response to notice)
- This Return is deemed Normal.
  143(1) is also done with this return.
- If ROI not filed:
  10,000 Penalty - For non-compliance of AO's Order
  BJA us 144

(ii)

Submit Information

- Any Details relevant to return can be asked for.
- Current year + Prior 3 P.Ys
- For Details other than detais mentioned in ROI/BS(personal assets), Prior approval of JC will be required
  JC → Highest AO.

Sec 142A :- REFERENCE TO VALUATION OFFICER

→ when A. O. has issues in Valuation of any ASSET, PROPERTY or INVESTMENT, then he can refer case to Valuation officer.

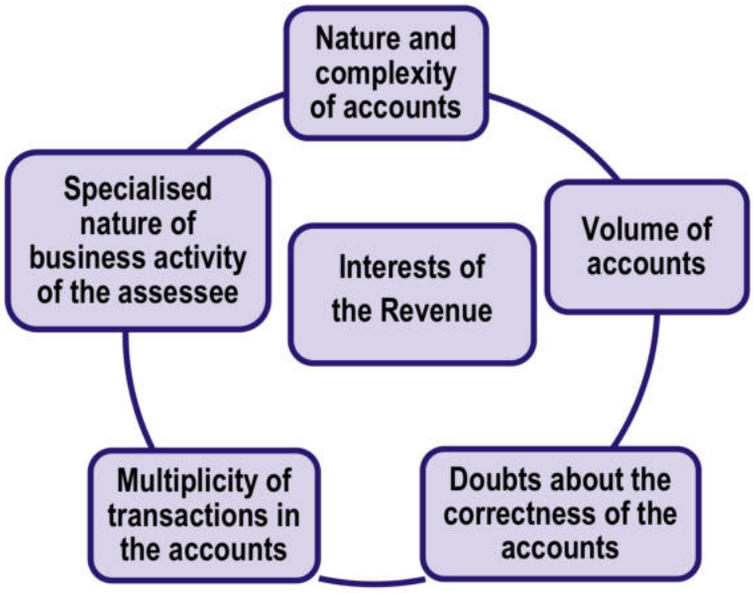
→ Time limit: 6 months from the end of month in which reference was made.
This time will be excluded from Time limit of completing Assessment

→ V. O. Order- Not binding- because it is for reference.

→ AO. can make a reference to Valuation officer whether or not he is satisfied about the correctness or completeness of the A/cs.

Sec 142(2A): SPECIAL AUDIT

→ A.O. directs for Special Audit in case of the following issues:



Who Conducts:	Department appointed CA - nominated by CIT/PCIT.
Who will bear Expenses:	Department will Bear → Sahara case.
Time Limit:	Max 180 days → Total period Time period will be mentioned in notice.
Approval Before Audit :	Approval of CIT/PCIT is required.

→ OOBH must be given before Audit.

→Audit is done Already → Then also special Audit will be done.

→ Refused for Special Audit:

10,000 penalty

BJA u/s 144

Search can also be initiated.

Sec 143(2) : NOTICE OF SCRUTINY

Notice u/s 143(2) is mandatory: Assessment Invalid if Notice is not given.

Time Limit: shall be served within 3 months from the end of F.Y. in which ROI was filed.

Non-Compliance: 10,000 ki penalty
& BJA u/s 144.

Time Barred Notice: If Notice is Time Barred & Assessee replies & cooperates with the notice & appears in the proceeding → then Assessee can't raise objection later that Notice was time barred or notice was not given to him.[Sec 292BB]
But he can still raise objection before completion of assessment.

See 143(3): REGULAR ASSESSMENT/ SCRUTINY ASSESSMENT

→ A.O. or prescribed ITO shall ensure that:

- Income is not understated ↓
- Loss is not overstated ↑
- Tax is not underpaid ↓

→ A. O. may order:

- Amount payable or
- Refund due or
- Reduce loss or
- Increase the Returned Income

→ In 143(3) A.O. can increase or descrease Income.

→ A.O. also has the power to reject Exemption or Deduction.

→In case of Charitable Trust (whose Object is Advancement of any other object of General public Utility), Commercial receipts>20% of Total Receipts
↳ A. O. shall not grant Exemption u/s 11 or 12 for the P.Y.

→ For Trusts registered under Section 10 (21), (22B), (23A), (23B), sub-clauses (iv), (v), (vi) and (via) of clause (23C)
↳ the A.O. cannot deny exemption u/s 10 without intimating Central Government or prescribed authority of the contravention of the provisions and till the approval granted to these funds, trusts, institutions, hospitals etc has been withdrawn or notification is rescinded.

The time period for completing the assessment in such cases will exclude the period between the date on which the A.O. gives the intimation of the default and date on which copy of the order withdrawing the approval is received by the A.O.

→ Where the AO is satisfied that any trust or institution referred u/s 10(23C) or 11, has committed any violation specified in Sec 12AB(4),

↓

he shall send a reference to the PCIT/CIT → to withdraw the approval or registration

↓

& no order of Assessment of Income or Loss shall be passed

↓

without giving effect to the order passed by the PCIT/CIT u/s 12AB(4).

Remedies:

Appeal- 246 A, Rectification - 154, Revision - 264

Space for Notes:

Sec 144 - BEST JUDGEMENT ASSESSMENT/EX-PARTE ASSESSMENT

A.O. shall make an assessment to the best of his judgement and knowledge if Assessee:

- Fails to furnish ROI - 139(1), 139(4), 139(5), 139(8A)
- Fails to comply notices - 142(1)
- Fails to comply direction - 142(2A)
- Fails to comply with scrutiny Notice- 143(2)

} COMPULSORY

→ Income can only be increased u/s 144. It can never be decreased.

Sec 145(3) - Discretionary Best Judgement Assessment

→A.O. has doubts about correctness & completeness of A/cs & documents of the assessee.

→Method of Accounting not regularly employed by the assessee.

→ Income not computed by following ICDS.

} DISCRETION OF A.O.

Sec 144A- Power of JC to issue direction

On his own motion ↑

on Application of assessee ← Joint Commissioner may call to examine record of any pending assessment proceeding. → On reference made by A.O.

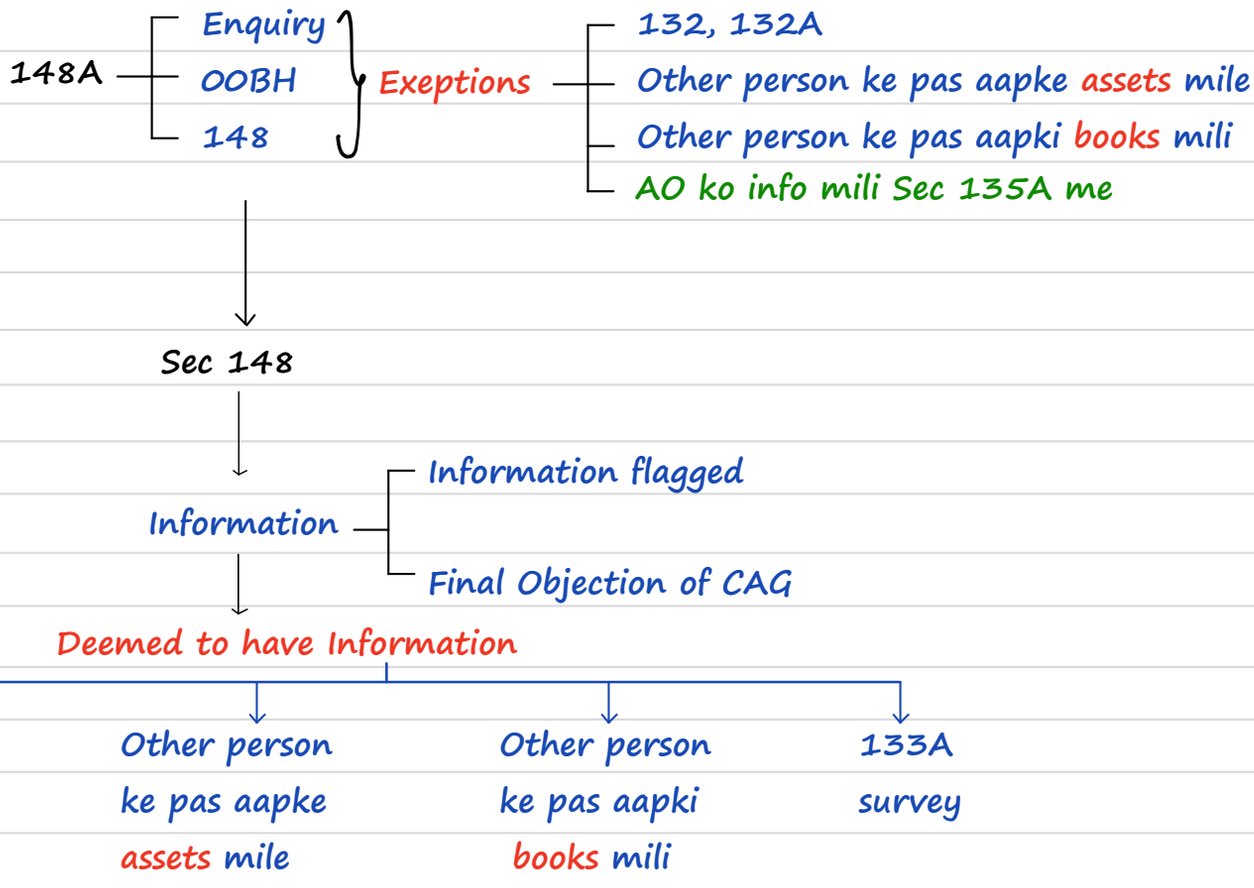
- If JC thinks fit, he may give directions to A.O. → These directions are Binding on AO.
- OOBH must be given to the assessee → If direction is prejudicial to assessee.

Space for Notes:

REASSESSMENT

Reassessment Chart:

For doing → Sec 147, You have to follow this procedure:



Sec 147: Re-assessment/Income Escaping Assessment

If any Income changeable to tax has escaped assessment for any A.Y. in case of an assessee, he shall assess or re-assess such Income and any other Income which comes to his notice, subsequently.

→ AO. may assess any income which has escaped assessment and subsequently comes to his notice during the course of his proceedings. The procedure of 148A is not required in this case.

→ Income can only be increased & never decreased.

Assessor Re-assess?-What does that mean?

143(3) is done already → 147 POSSIBLE

143(3) not done → 147 POSSIBLE

144 is done earlier → 147 POSSIBLE

147 is done earlier → 147 POSSIBLE

Section 148A- Conducting Inquiry, Providing OOBH before 148 notice

- Inquiry
- OOBH
- Considering Reply
- Decide

(i) Conducting Enquiry: Inquiry shall be done with prior approval of specified Authority w.r.t. any info that has escaped assessment.

(ii) Providing OOBH: OOBH shall be given by serving a show cause notice as to why 148 Should not be done in your case.

(iii) Time given: 7- 30 days from the date of issue of notice

(iv) Decide: A.O. has to decide weather it is a fit case for issuing Sec 148 notice by passing an order.

↳ with the approval of specified Authority

↓

Time of Passing Order by A.O.

If reply is received	If reply is not received
↓	↓
One month from the end of month in which reply was received.	One month from the end of month in which allowed time expires.

→ 148A is not required in following cases:

Search u/s 132 is initiated OR BOA or any asset is requisitioned u/s 132A in case of the assessee.	A.O. is satisfied with prior approval of CIT/PCIT that BOA or ASSET seized under 132 or requisitioned u/s 132A in case of other person → Belongs to the Assessee.	A.O. has received faceless collection of info. u/s 135A for tax escaping assessment for any A.Y.

Note : Basically in above 3 cases, OOBH is not given, directly notice us 148 can be given.

*(R.A.Y- Relevant Assessment Year)

#SabKarLenge

Sec 148: Notice for assessment u/s 147

For making Assessment us 147, A.O. has to serve notice to the assessee u/s 148, to file his return for period mentioned in the notice.

↳ This return is considered as return filed u/s 139 and all the provisions of the act shall apply.

→ **Conditions:** Notice can only be issued when:

- A.O. has INFORMATION that Income has escaped assessment for R.A.Y.
- Prior approval of specified Authority is received by A.O.

INFORMATION

- Any Information flagged in case of the assessee which suggests that Income has escaped Assessment.
- Any Final Objection raised by CAG in case of the assessee.
- Any info. received under DTAA
- Any Info. received by AO u/s 135A
- Any info. received due to order of court or tribunal

→ Cases Where AO shall be deemed to have INFORMATION

- Search u/s 132 is initiated OR BOA or any asset is requisitioned u/s 132A in case of the assessee.
- A Survey u/s 133A is conducted on or after 1.4.21 in case of the assessee.
- A.O. is satisfied with prior approval of CIT/PCIT that BOA or ASSET seized under 132 or requisitioned u/s 132A in case of other person → Belongs to the Assessee.

Sec 148B: Prior approval for assessment, reassessment or recomputation in certain cases

Where Search u/s 132 is initiated or Survey is conducted u/s 133A in case of assessee (other than TDS/TCS survey) → then assessment or reassessment shall not be made by AO below the rank of JC,

↓

except with the approval of JC/JD/Add.CIT/Add. DIT.

Sec 149 - TIME LIMIT TO SEND THE NOTICE

NEW PROVISION		OLD PROVISION	
Normal Case →	Upto 3 years from the end of Relevant Assessment Year	Normal Case →	4 years
Income Escaped → 50 Lacs or more	Upto 10 years from the end of R.A.Y.	Escaped Income>1 Lac →	6 years

V. Imp. Note: No Notice u/s 149 Shall be issued on or after 1.4.21 if:

↓

It could not be issued as per the old provision because of expiry of the time limit. i.e. 6 Years from the end of Relevant Assesment year.

↳ This note is not applicable where notice u/s section 153A or 153C is issued in relation to search u/s 132 or requisition 132A

↳ On or before 31.3.21

[Sec 149(1A)]

→ Where the income in the form of an asset or expenditure in relation to an event or occasion of the value of Rs. 50 lakhs or more, ⟶ has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one PY's,

↳ a notice u/s 148 shall be issued for every such AY for assessment or reassessment.

Sec 151: Meaning of Specified Authority

In case where 3 years or less than 3 years have elapsed from the end of Relevant A.Y.

↓

CIT / DIT
PCIT / PDIT

In case where more than 3 years have elapsed from the end of Relevant AY.

↓

CCIT / DGIT
PCCIT / PDGIT

Sec 150: Assessment by the order of Court/Tribunal

→ There will be no time limit for issue of notice u/s 148 if:

↓

Notice is in consequence of order of:

Any court under any other law.	Any authority in an appeal, revision or reference.

Sec 152: Tax Rates will be taken of the Respective Assessment Year in which Income is earned.

Sec 153: TIME LIMIT FOR ASSESSMENT

Case	Time Limit
For Sec 143(3)/144	
AY. 19-20 & AY. 20-21	→ 12 months from end of A.Y. in which Income was assessed.
A-Y. 21-22 & thereafter	→ 9 months from the end of A.Y. in which Income was assessed.
Sec 147	→ 12 months from end of F.Y. in which notice was served: + 1 Year if reference is made to T.P.O.

Note: Where updated return u/s 139(8A) is furnished, Assessment Order u/s 143(3)/144 shall be made within 9 months from end of F.Y. in which such return was furnished.

Sec 156: Demand Notice

Where any tax/interest/fees/penalty or any other sum payable under the act due to any order, then A.O. Serves Demand Notice for Recovering the payment.

Sec 156A: Modification and Revision of notice in Certain Cases

Where demand notice has been issued u/s 156 ⟶ & demand is reduced due to order of the Adjudicating Authority(AA) under IBC, 2016,

↓

then AO shall modify demand payable as per order of AA and shall thereafter serve a revised notice of demand on the assessee.

Where the order of AA is modified by the NCLT or the Supreme Court → the modified notice of demand as referred above, issued by the AO shall be revised accordingly.

Sec 131 Powers | Sec 132 Search | Sec 133 Power + Survey | Income Tax Authorities Basics

Sec 131: POWERS of IT Authority

Sec 131(1):- IT Authority shall have all the powers vested in a civil court under code of Civil Procedure Code, 1908:

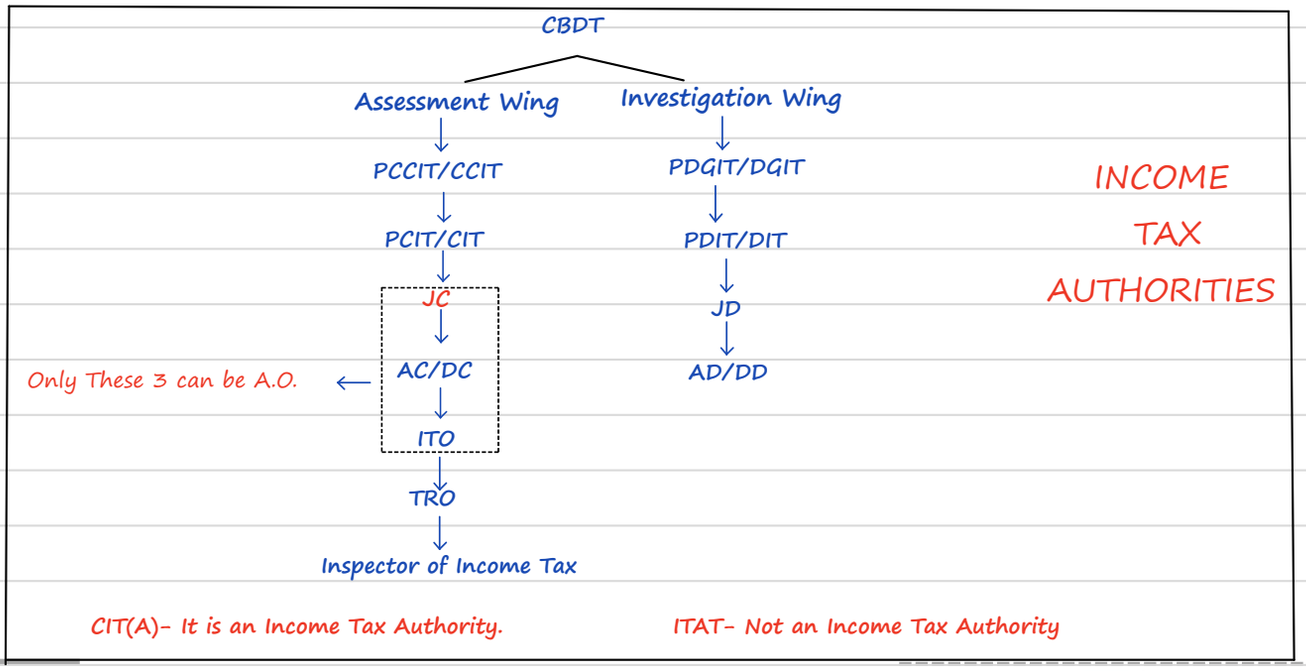
- Discovery & Inspection.
- Enforcing the attendance of any person & examining such person on Oath.
- Compelling the production of Books of A/cs & Documents.
- Issuing Summons

Sec 131(2) :- IT Authority (not below the rank of AC) has power in relation to DTAA, for making an inquiry or investigation.

Sec 131(3) :- Impounding of Books of A/cs or Other docs produced before them (Max- 15 working days) → after recording reasons.

If he wants to retain to more than 15 days, he has to take permission from:

CCIT DGIT
CIT DIT
+ their principal



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Section 133: POWER + SURVEY (133A)

Sec 133: POWER TO CALL FOR INFORMATION	Sec 133B: POWER TO COLLECT INFORMATION	Sec 133C: POWER TO COLLECT INFO FROM INCOME TAX DEPARTMENT
→IT Authority can call for Information which will be useful or relevant for any proceeding under the Act. → Rent, Interest, Commission, Royalty, Brokerage. ↓ IT Authority can ask for name & address of people to whom these amounts are paid. → Generally in questionnaire form. → No physical presence required. → IT Authority can also ask for info from Brokers & Bankers. →If no Proceeding is pending: See Note Below	→ IT Authority can visit Business Premises for collecting info. ↳ only Business premises not Home. → Whether it is a principal place of Business or not. → IT Authority can collect info. from proprietor, employee or any other person. → only at Business hours → No Impounding of Books of A/cs, only collection of Information. → No Impounding of any stock, Cash, valuable articles.	→ Case is given to Central cell or Central ward for Inquiry by Department. →Department processes this info & make available the outcome. →to use for Assessment by the Income Tax Authority.

NOTE for Sec 133: If No proceeding is pending:

(a) CIT & Above: IT Auth. of CIT & above can call info without any permission.

(b) Below CIT: IT auth. below the rank of CIT has to take prior permission from Senior Authority for calling any info.

(c) JD AD & DD: However, JD AD & DD can exercise this Power without any permission.

133A- POWER OF SURVEY:

- Normal Survey
- TDS/TCS Survey
- Expenditure Survey

NORMAL SURVEY:

Where it can be done:
- Any place where BOA are kept.
- Business premises ✓
- Any House where BOA are kept ✓
- Any 3rd place where BOA are kept ✓

Timing :
- Business Place - Only during Business Hours.
- Other place - After sunrise before sunset.

(This is time of Entering & not leaving.)

Powers:

→ Books of Accounts & Other Documents -> IT Authority can Impound for 15 Days.

For retaining beyond 15 days, IT Authority has to take permission from:

CCIT DGIT + their principals

CIT DIT

→Stock, cash or other valuable other articles -> Can only Value them,
Can not Impound.

→ IT Authority can record statement of any person.
→Survey can be done on Charitable Institutions. (Eg. School, Colleges, Hospitals.)
→ But Survey can't be done on Wholly Religious Trust.
→ Survey can be be done by an Income Tax Authority with prior permission of:
CCIT + P, DGIT + P

TDS/TCS SURVEY:

→ Conducted by Income tax Authority to verify whether TDS/TCS has been deducted/collected & paid.
→ After sunrise before Sunset.
→ Impounding of Books of Accounts can not be done.
→ Making of Inventory can't be done.

EXPENDITURE SURVEY:

→ IT Authorities keep eyes on big events as payments are mostly made in cash in such big events.
→ can only be done after the ceremony is over.
→ can require any person to furnish info and statement can be recorded.

SECTION 132: SEARCH & SEIZURE(RAID)

Who Authorises Search: (Authorising Officer)	DGIT+P/ DIT+P ↓	CCIT+P/CIT+P	JD/ JC/ Additional Commissioner/ Additional Director (If empowered by CBDT) ↓
Who conducts Search: (Authorized Offer)	Additional Director/ JD/ AD/DD	Additional Commissioner/ JC/AC/DC/ITO	AD/DD/ AC/DC/ITO

When Search is Conducted → The above authorities has REASON To BELIEVE that:

Reason 1:
- Summon of Section 131
- Notice of Section 142(1)

} Both these notices were issued & Assessee failed to Reply/Respond.

- Notices under both the sections issued but Assessee failed to follow notices. (PAST)
- Assessee might fail to follow above notices. (PROBABLE)

Reason 2: Money, Bullion, Jwellery & other Valuable articles:
Assessee possess it → But has not disclosed or would not disclose for Income Tax Purpose.

What are the Powers: IT Authority can:

→ Enter any Building, Place, Vessel, Vehicle, Aircraft or any other place.

→ Break open the Lock if keys are not provided.

→ can search any person who is entering or going out if he suspects that the person has secreted any info about BOA & Assets.

→ can ask for password if BOA is in Electronic form, from the person in control.

→ Can seize any BOA, docs, money, Bullion, jwellery etc found under search.
(Exception- Stock can not be seized.)

→ Place Identification marks or make copies of Books of Accounts.

→ Authorized officer may also requisition service of police officers of Central Gov to assist him during search.

→ Powers Outside Jurisdiction & without warrant:

- Outside Jurisdiction: IT Authority can exercise powers outside Jurisdiction if delay would be prejudicial to the interest of Revenue.

- Without Warrant: IT authority can search in other place also which was not specified in the warrant -> He can take permission from CIT+P /CCIT+P before doing that.

SOME IMPORTANT NOTES:

→ Deemed/Constructive Seizure:

Where it is not possible to take physical possession of any asset due to volume/weight /nature etc, then Authorised Officer may serve an order on the owner of the asset that he shall not remove/deal with/part with such asset without the approval of authorised officer.

↳ Not applicable to Stock in Trade

→ Prohibitory Order/Order of Restraint:

If except { Volume, Weight, Nature } ⟶ there is any other reason due to which, it is not possible to take physical possession of any BOA or Other Assets, then the Authorised Officer may serve an order on the owner of the asset that he shall not remove/deal with/part with such asset without the approval of authorised officer.

↓

This Order is valid for Max 60 Days.

→Presumptions during search:

Where BOA + documents + Assets + Money + Bullion + Jwellery is found in the possession of Assessee during course of search us 132 or Survey u/s 133A, then It may be presumed that:

a) It belongs to the assessee.

b) Content of the books/documents are true.

c) Signature or any part of the book or handwriting belongs to the assessee.

Sec 132(9A):

→ Where the authorised officer has No Jurisdiction over the person whose BoA, asset, money, bullion, jewellery is found during search,

↓

He shall transfer/ hand it over to the officer who has jurisdiction over such assessee.
Within 60 Days from Completion of Search

→ Sec 132(9B)Provisional Attachment:

During the search or within 60 days from completion of Search, the Authorised Officer can Provisionally attach the properties of the Assessee if:

- Interest of Revenue is Involved.
- Reasons have been recorded in writing

↓

The Provisional Attachment is Operational for 6 Months,
after which it gets automatically vacated.

→Sec 132A:Power of Requisition:

→If Already Search is going on under any other Act.
Eg. FEMA, Gst etc.

↓

Then Authorised officer can make a requisition to other officer/ authority under any other law to deliver/hand over the BOA/Assets after their Search is Over.

↓

It is deemed that these BOA & assets are seized by Authorised Officer u/s 132 and all other provisions of search & seizure shall apply.

→Sec 132B : Application of Seized Assets:

Explained Assets:

If assessee makes an application within 30 days from the end of the month in which asset was seized.

↓

And explains The nature and source of such asset to the satisfaction of the AO.

↓

Then the AO can release the asset with the prior approval of CCIT/CIT after adjusting any existing liability. Such Release shall be made within 120 days from the conclusion of search under section 132.

BOA & Docs:

BOA and Other Docs under Sec 132 Shall not be retained beyond a period of 30 days from the date of Order of assessment u/s 147.

↓

If Auth Officer wants to retain for more than 30 Days:

- Reasons have to be recorded.
- Approval of CCIT/CIT +P is required.

Other Assets:

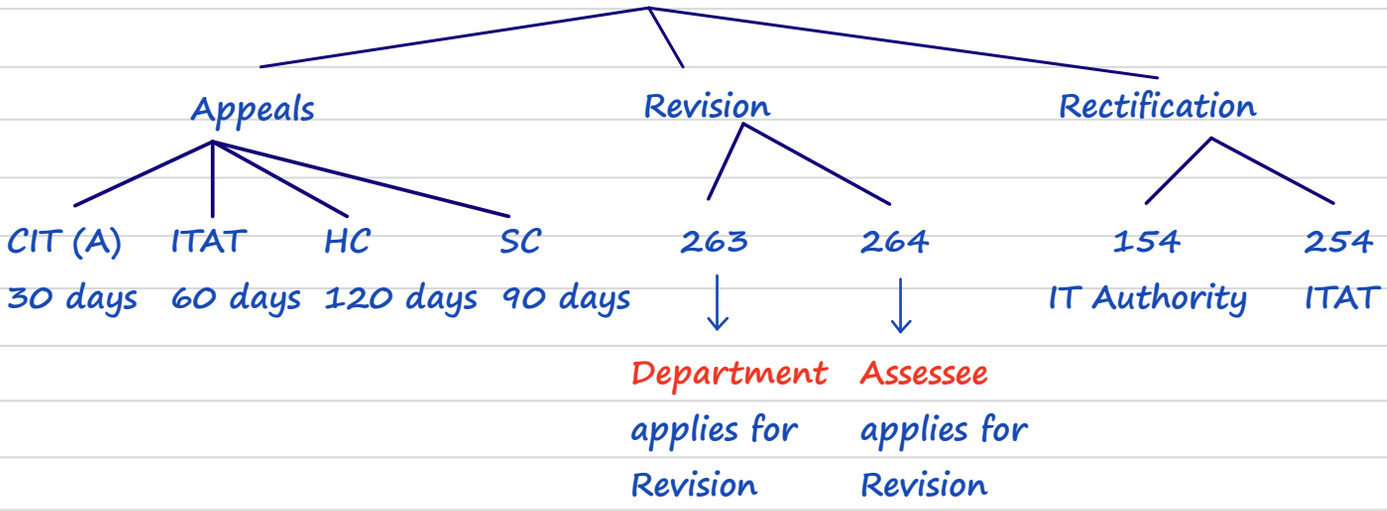
→Seized Assets can be utilized to recover EXISTING liability & NEW liability(on completion of assessment)

→ First, Seized Money shall be used to recover liability. ⟶ If Money Falls short, Assets can be Sold to recover liability. ⟶ If Assets still left after recovering liabilty, it shall be given back to the assessee.

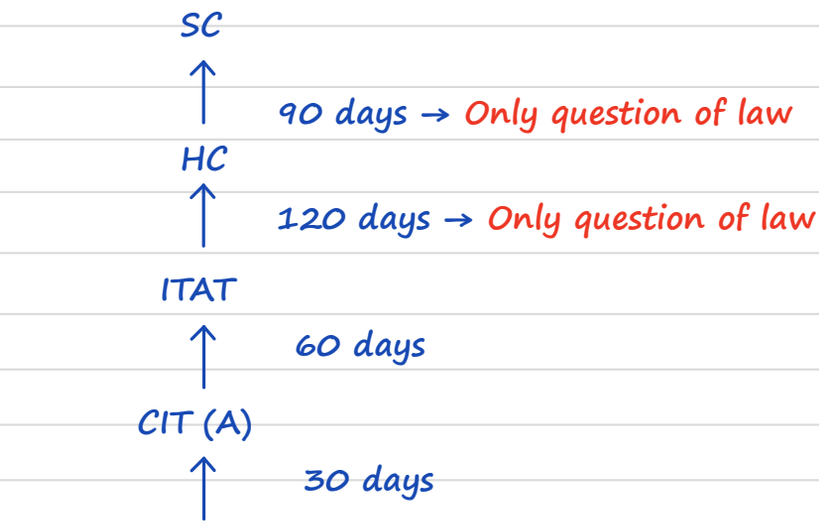
a) The CG shall pay Interest of 0.5% per month or part on the amount given back to the assessee.

b) Existing liability does not include Advance Tax payable.

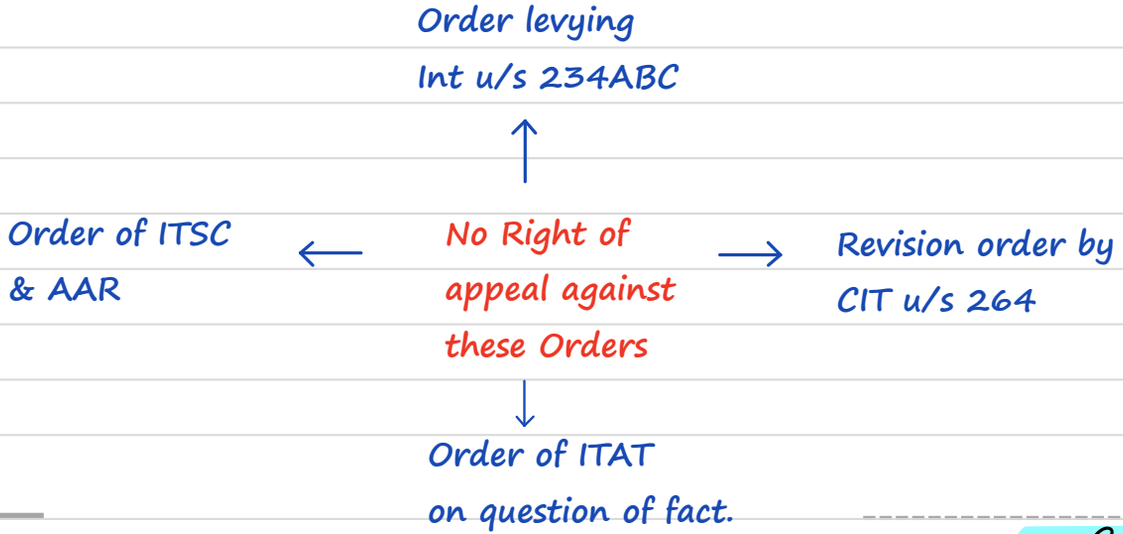
Author's Note: Do Income Tax Authority Basics from Study Mat, Sec 116-123 & Question Bank



→ Appellate Authority hierarchy



→ No Right of Appeal against these orders:



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[Abbreviations: DRP-Dispute Resolution panel,
ALP- Arm's Length Price, APA- Advance Pricing agreement]

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APPEAL TO CIT(Appeals)

→ Orders which can be appealed against to CIT(A) — Generally orders of A.O.

Assessment Order	Intimation	Rectification Order	Any Other Order of A.O.
143(3), 144, 147 Except, Order passed by A.O. due to GAAR & DRP.	143(1) 200A - TDS 206CB-TCS	Sec 154	- Denial by A.O. to approve tonnage Scheme. - ALP computation order as per APA. - Any Order Imposing penalty.

→ Time limit of filing appeal by Assessee: 30 days from the date of receiving Order of A.O.. However, Delay can be condoned by CIT(A).

30 days are calculated from

Sec 248	Assessment/Penalty	Any Other Order
Date of Payment of Tax	Date of service of notice of Demand	Date on which order sought to be appealed against was served.

→ Time limit of passing judgement by CIT (A): 1 year from end of year in which appeal was filed.

→ <u>Recovery of Demand(Tax):</u>

can still be done by IT Authorities even if appeal is filed.
But assessee can apply to Stay of Demand to

A.O. under section 220(6)	Appellate Authority before whom appeal is pending.

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Notes:

→ CIT(A) can enhance/reduce/ confirm the assessment but can never refer back to A.O. for fresh Assessment. But ITAT can.

→ CIT(A) can rectify its order u/s 154. But ITAT can not, because ITAT is not an Income Tax Authority. ITAT can rectify u/s 254.

FEES:

Total Income upto 1Lac = Rs. 250

Total Income> 1Lac upto 2 lac = Rs. 500

Total Income> 2 Lac = Rs. 1000

Any other case = Rs. 250

→ Sec 248: Appeal by person denying to deduct tax u/s 195:

If a Resident Assessee pays any amount(except interest) to NR & TDS was deducted u/s 195 and paid to Government.

↳ But such tax was actually not deductible, & it is borne by the assessee himself.

↓

Then Assessee(Resident) can apply to CIT(A) for a declaration that No Tax was deductible on such Income.

APPEAL TO Income Tax Appellate Tribunal

→ Orders which can be appealed against to ITAT ↗ generally orders of CIT & above

- Order of CIT(A)
- Order of A.O. u/s 143(3)/147 due to DRP & GAAR
- Revision order u/s 263.
  - ↳ Rectification of 263 order u/s 154
- Penalty u/s 270A & 272A
- Any other order of
  - CIT
  - CCIT
  - DIT
  - DGIT

Space for Notes:

→ Time limit of filing : 60 days from the date of receipt of copy of order.
appeal to ITAT

Time limit of filing Memorandum of Cross objection (MOCO) → The Other party (Respondant) can file MOCO within 30 days of receipt of notice of appeal.

Note: However, ITAT can accept even after expiry of 30 days if he is satisfied that delay is due to sufficient cause.

→ Time limit of passing : 4 years from the end of year in which appeal was received.
order by ITAT

Notes:

→ ITAT appeal is heard by a bench, a panel of 2 members having One Judicial Member, One Accounting Member

→ If Total Income of Assessee is upto Rs. 50 lacs:
↳ Then appeal can be heard by a single member .

→ Decision is always taken by Majority.
↓
In case of any conflict → Case is referred to President
↓
President calls other members for the case & decision is again taken by Majority of all members including members who first heard it.

→ ITAT is the final fact finding authority.

STAY OF DEMAND

→ Assessee can apply for Stay of Demand. → ITAT may grant stay after considering merits for 180 days.
↓
→ only if assessee deposits atleast 20% of (Tax + Interest + Penalty+ fees)

→ Can This period be extended? → Yes, if ITAT fails to give judgement within 180 days & delay is not attributable to the assesseee.

Max period-365 days (original + extended)

→ After 365 days, he stay shall stand vacated automatically, even if delay is not attributable to the assessee.

Case Law- DCIT v/s Pepsi Foods Ltd(2021)

Conclusion: If the appeal is not disposed off by ITAT the even after expiry of 365 days, then

When delay is attributable to the assessee.
↓
Stay shall vacate automatically.

When delay is not attributable to the assessee.
↓
Stay Shall not vacate

FEES:

Total Income upto 1Lac = Rs. 500
Total Income> 1Lac upto 2 lac = Rs. 1500
Total Income> 2 Lac = 1% of Assessed Income
Any other case = Rs. 500

No Fees
- Filing of MOCO
- Appeal filed by AO in direction of CIT/PCIT

→ Sec 254 : Rectification of Mistake by ITAT

Own motion
6 months from the end of month in which order was passed.

on application of AO/Assessee
↓
even after 6 months
↓
But the application must be made within 6 months from the end of month in which order was passed.

Power to review its own Order

CIT(A)	ITAT	HC	SC
X	X	✓	✓

Admission of Additional Evidence

CIT(A)

→ Assessee produced, but A.O. Rejected.

→ A.O. completed assessment without considering evidence.

→ A.O. demanded but Assessee did not produce for sufficient cause.

→ Where A. O. didn't demand for evidence.

ITAT

→ If ITAT thinks that IT Authority has completed assessment without giving sufficient opportunity to assessee.

→ If ITAT requires additional evidence/docs

APPEAL TO HIGH COURT

Appeal against order of ITAT can be filed before High Court if HC is satisfied that it involves Question of law.

→ **Who can file appeal:** CCIT+P/CIT+P or Assessee

→ **Bench Strength:** The appeal shall be heard by bench of not less than 2 Judges of High Court.

→ **How Decision is taken:** The appeal should be decided according to the decision of majority.

↳ In case of any conflict, they should bring more Judges and decide by majority of all Judges including those who first heard it.

→ The high court may determine any issue which

- Has not been determined by ITAT
- Has been wrongly determined by ITAT

APPEAL TO SUPREME COURT

→ Appeals can be filed to Supreme Court against order of High Court within 90 days.

→ Both High Court & Supreme court has power to review its order.

See 268A- Special Provision of Appeal by Department

CBDT has fixed a monetary limit → For Appeal by Department.

→ Dept can only file appeal if Tax Effect is more than:

For Appeal to:

ITAT > 50 lakh

HC > 1 Crore

SC > 2 Crore

Note: If Department did not file an appeal against any assessee for a particular year,

↳ It can not stop department from filing appeal on the same issue.

- In case of same assessee for another year.
- In case of another assessee for any year.

REVISION

Revision u/s 263	Revision u/s 264
• Passed by- CIT+P/CCIT+P	• Passed by- CIT+P/CCIT+P
• Orders prejudice to the interest of Revenue. (Erroneous as well as prejudicial)	• Orders prejudical to Assessee
• On his own motion	• On his own motion OR On application of Assessee.
• Income always Increases.	• Income may decrease.
• Time limit of passing order: 2 years from the end of FY in which order of A.O. was passed.	• Time limit of passing Order: on his own motion → 1 year from date of order of A.O.; on application of assessee → 1 year from end of F.Y. in which application was made

- Time limit for application by → Assessee: Assessee can apply within 1 year from the date of receiving order of A. O.

- CIT/CCIT can not revise MATTERS involving appeal u/s 263.
  - ↳ Doctrine of Partial Merger applies
- Order of 263 can be appealed to ITAT

- If any ORDER is under appeal, it can not be revised u/s 264.
  - ↳ Doctrine of Total Merger applies.
- Order of 264 can't be appealed to ITAT as it is final Order.
- Order of 263 cannot be revised u/s 264.

- Assessee can apply for Revision only if:
  - Time limit of filing appeal is expired OR
  - Assessee has waived off his right of filing appeal.

Sec 154: Rectification of Mistake

→ Income Tax Authority (Sec 116) can rectify any mistake apparent from record in:

- Any Order passed by an IT Authority
- Intimation u/s 143(1)
- TDS Intimation-200A, TCS Intiation-206 CB

→ It can be done by IT Authorities on its own motion or on application of the assessee

- If done on own motion: 4 years from the end of F.Y. in which order was passed.
- If done on application of Assessee: 6 months from the end of month in which application is received by IT Authority.

→ Assessee has to apply for Rectification within 4 years from the end of F.Y. in which order is passed.

→ If the assessment is enhanced or refund is reduced → OOBH shall be given to the Assessee.

→ Appeal to CIT(A) can be filed against order of 154.

Mistake Apparent from Record:

Mistake Apparent From Record

- Subsequent decision of SC
- Retrospective amendment in law.

eg: Expense is allowed earlier.
Later, It has been disallowed by S.C. retrospectively. Then it will be disallowed.

Mistake not apparent from Record

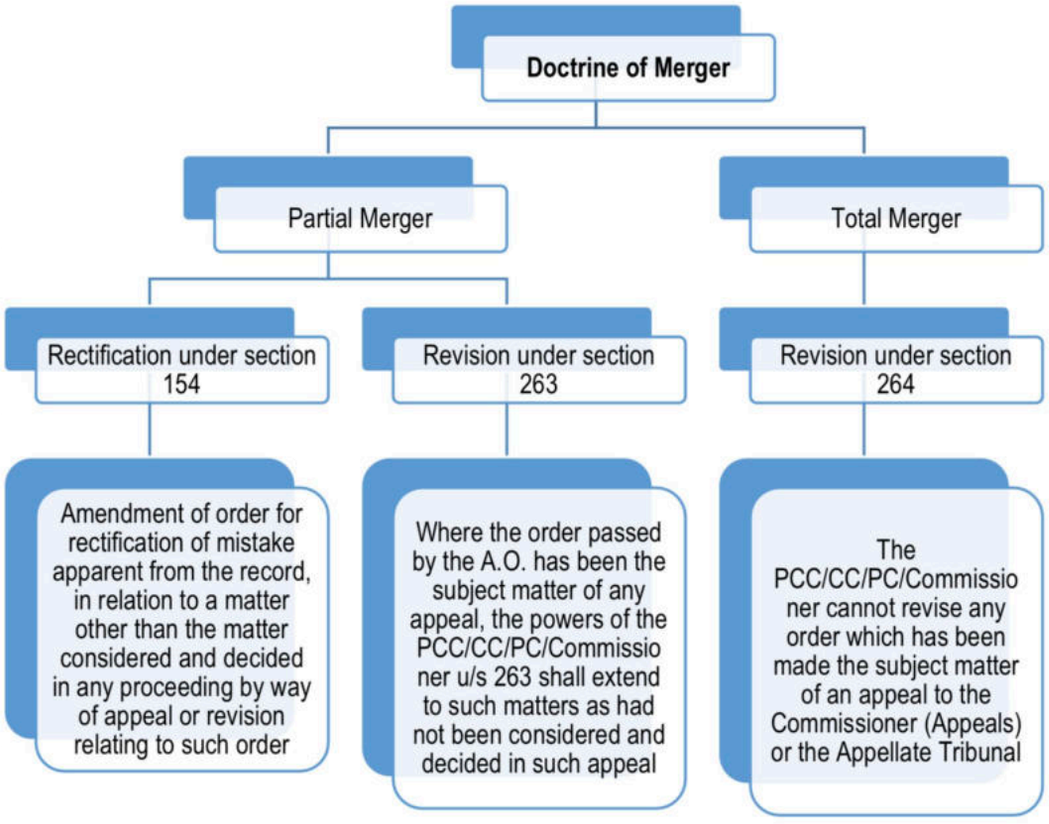
Mere change in opinion of A.O. can't be basis for Rectification.

Some Extra Points:

→ For section 154, Doctrine of Partial Merger Applies.

→ Rectification: Sec 154 → IT Authorities including CIT(A)
Sec 254 → ITAT

DOCTRINE OF TOTAL MERGER & DOCTRINE OF TOTAL MERGER



Example: In case of Assessee

Income 1- In appeal

Income 2- not in appeal.

For Income 1- 154 & 263 not possible

For Income 2- 154 & 263 are possible

↳ only partial effect on single matter.

Example: In case of Assessee:

Income 1- In appeal

Income 2- Not in appeal.

For Income 1 - 264 not possible

for Income 2 - 264 not possible

For both matter, 264 not possible, total effect on the Order.

Special Provisions for Avoiding Repetitive Appeals

Sec 158A - By Assessee

- If Appeal is pending in case of Assessee → Before HC/SC
  ↳ for any earlier AY
- And Identical point is pending for subsequent A.Y. in case of Same Assessee before A.O./CIT(A)/ITAT
- Then assessee can furnish declaration before A.O./CIT(A)/ITAT

that if you apply decision of HC/SC in the current case, then I will not file the appeal

AO/CIT(A)/ITAT → may accept OR Reject

Sec 158AB - By Department

- If case is pending on Question of law in case of Assessee → Before HC or SC

↓

Against order of ITAT or HC in favour of Assessee.

And On Same question of Law, decision of CIT(A)/ITAT is given in favour of assessee.

Then on decision of Collegium, CIT/PCIT directs A.O. to make an application to →ITAT/HC within 120 days from order of CIT(A)/ITAT stating that

↳ appeal to ITAT/HC may be filed after decision of first case

But CIT/PCIT can do this only if Assessee accepts it.

If assessee denies: - File appeal to ITAT/HC right now.

→ If decision of SC comes in favour of department, then CIT/PCIT will direct A.O. → to file appeal to ITAT within 60 days or HC within 120 days against order of CIT(A)

Collegium: means a collegium comprising 2 or more CCIT/PCIT/CIT

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Section 208: Obligation to pay Advance Tax arises → in every case where the advance tax payable is 10,000 or more.

Note - An assessee who is liable to pay advance tax < Rs. 10,000 → will not be liable u/s 234B and 234C. However, Interest u/s 234A - Interest for belated filing of return would be attracted.

Exemption from payement of Advance Tax

Senior citizens(Resident) of age 60 or more → who have passive income like interest, rent, etc., & doees not have PGBP Income is exempt from payment of advance tax

How to calculate :

Estimated Total Income	xxx			
Tax Calculation	xx			
Less: TDS/TCS**	(xx)			
Relief u/s 89	(xx)			
MAT/AMT		(xx)		
Relief u/s 90/90A/91			(xx)	
Advance Tax Liability		xx		

** TDS/TCS can be reduced while calculating advance tax liability only if it has been actually deducted/collected.

TDS/TCS deductible/collectible but not actually deducted/collected can not be reduced while calculating such liability.

Due Dates for payment of Advance Tax

Due date of instalment	Amount payable
On or before 15th June	≥ 15% of advance tax liability
On or before 15th September	≥ 45% of advance tax liability
On or before 15th December	≥ 75% of advance tax liability
On or before 15th March	≥ 100% of advance tax liability

Note: Any Amount paid on or before 31st march, shall be consider as Advance Tax paid during financial year.

Sec 44AD & 44ADA Assessee: Whole amount payable in 1 installment on or before 15th March of Financial year

234A	234B	234C
Interest for delayed filing of Return	Interest for non/short payment of advance tax	Interest on delay in Installments
Tax as per ROI [after adj. of TDS,TCS,adv tax etc]	Adv. Tax Short paid/not paid	Deferred Amount
x	x	x
1% per month or part	1% per month or part	1% per month or part
x	x	x
From due date u/s 139(1) to actual date of filing retun	From 1st April of A.Y to Date of Assessment u/s 143(1)/143(3)	month 15/06 15% 3M 15/09 45% 3M 15/12 75% 3M 15/03 100% 1M

Note: No Interest u/s 234C if Assessee paid 12% & 36% in 1st & 2nd Installments Respectively

234D :INTEREST ON EXCESS REFUND GRANTED AT THE TIME OF SUMMARY ASSESSMENT

Applicability: Levies on excess refund granted.

-Where no refund is due on regular assessment and yet amount of refund paid.

-Amt refunded u/s 143(1) > amount refundable on regular assessment.

Rate : 0.5% per month or part

Period of Int: From the date of grant of Refund to the date of such regular assessement.

234E : FEE FOR DEFAULT IN FURNISHING TDS/TCS STATEMENT.

Fees: Rs. 200 everyday for late filing

[However, the amount of fees shall not exceed the the amt of TDS/TCS filed in TDS/TCS statement]

Penalty u/s 271H – minimum 10,000 to 1,00,000

Fees & penalty

Where TDS/TCS statement furnished within one year – Only Fees of 234E levied

-if filed beyond one year– Both Fess & penalty of 271H levied.

234F: FEE FOR DEFAULT IN FURNISHING RETURN OF INCOME

Income ≤ 5,00,000 = Rs. 1000

Income > 5,00,000 = Rs. 5000

234H :FEE FOR DEFAULT RELATING TO INTIMATION OF AADHAR No. u/s 139AA(2)

Penalty Amount shall be Rs. 1000

Sec 234G: Fees for default in Filing Statement

Donee Trust/institution referred u/s 35(1)(i)/(iia)/(iii) or 80G(5) fails to submit statement to PDGIT(System) or certificate of donation to donor upto 31st May of next FY then such institution/Trust required to pay fees of Rs. 200 per day during which failure continues.

Provided this fees shall not exceeds amount in respect of which failure occurred.

Sec 234H: Fees for default in Linking Aadhar with PAN

If such person fails to intimate his Aadhar Number on or before the date notified in section 139AA(2) i.e., 31st March, 2022, then, at the time of subsequent intimation of his Aadhaar number to the prescribed authority, such person would be liable to pay, by way of fee, an amount equal to,—

(a) 500, in a case where such intimation is made within three months from the date referred in section 139AA(2) i.e., by 30.06.2022; and

(b) 1,000, in all other cases.

However, if a person fails to link Aadhaar with PAN on or before 31.3.2022, his PAN shall become inoperative after the said date in the prescribed manner [Proviso to section 139(2)]

Chapter 17: Penalties

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Tax Audit

271A, 271B,

221(1)

Transfer pricing

271AA, 271BA,

271

G GA GB

Cash loan/Advance

271

D DA E

SS ST T

269

Under-reporting/Undisclosed

270A, 271

AAB AAC AAD

SFT

271FA, 271FAA

1) Cash Loan & Advances

	loan or deposit taken	Any Transaction received	loan/deposit paid
269	SS ↓ 20,000	ST ↓ 2,00,000	T ↑ 20,000
271 Penalty	D 100% of amount of loan	DA 100% of amount received	E 100% of amount of loan

2) Under reporting/ Undisclosed

270 A - Under-reporting/ Mis-reporting of Imcome

	↓	↓
Penalty	50% of Tax on URI	200% of Tax on URI

URI= Under-reported Income

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271AA

271AAB
Undisclosed Income found in Search
↓
30%/ 60% of Undisclosed Income

271AAC
Unaccounted Income 68-69D
↓
10% of Tax on unaccounted Income u/s 115BBE

271AAD
False entry or Omission to evade tax liability.
↓
100% of such false or omitted entry.

(3) Tax Audit

271A
Failure to keep & maintain books as per section 44AA.
↓
Rs. 25,000

271B
Failure to get Books of Accounts audited u/s 44AB
↓
0.5% of Turnover or Gross Receipts
Max 1,50,000

Note: If Assessee has not maintained BOA, penalty shall only be leviable u/s 271A & not 271B because if BOA are not maintained, the question of getting them audited doesn't arise

221(1) Failure to pay any tax - Self Assessment Tax, TDS, TCS, tax demand
↓
Penalty → Maximum: Amount of Tax in Arrears

4) Transfer pricing

271AA

Failure to

- keep & maintain docs as per sec 92D
- Report such docs. when required
- maintain/ Furnish Correct info.

2% of Transaction Value

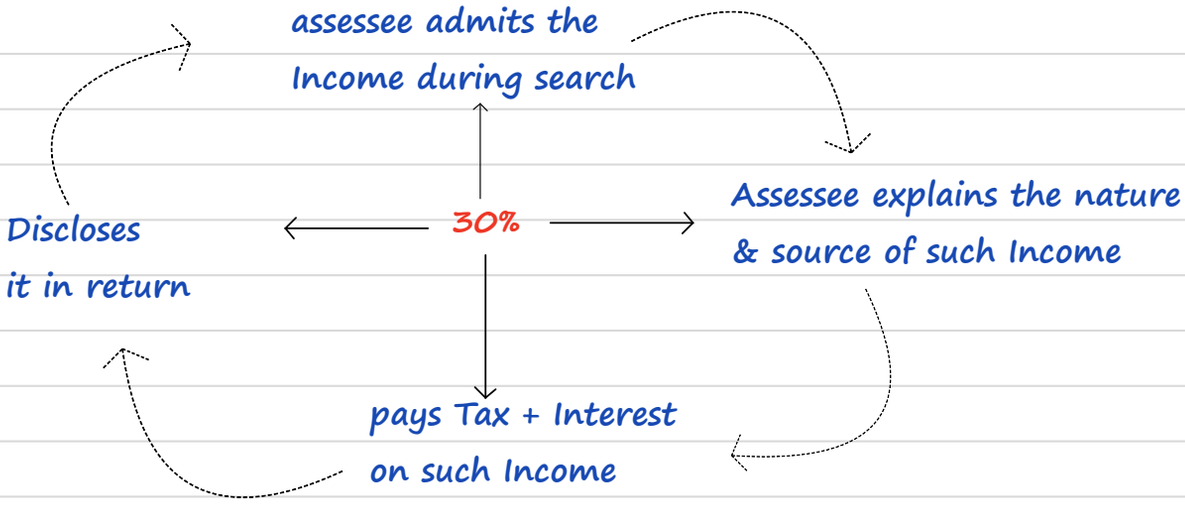
271BA
Failure to furnish report of CA u/s 92CE
Rs. 1,00,000

271

- G
  - Failure to furnish info as per sec 92D
    - 2% of value of International Transaction
- GA
  - 2% of Transaction Value
    - Failure to furnish u/s 285A
      - Where transaction has effect of transferring right of management
  - Rs.5,00,000
    - Failure to furnish report or furnishing inaccurate report u/s 285A
- GB
  - Failure to furnish/ Inaccurate reporting in respect of International Group.
    - Rs. 5000 per day upto one month
    - Rs.15000 per day thereafter

Notes:

30%/60% - 271AAB



60%- If even 1 condition is not satisfied, 60% penalty will be leviable.

270A Calculation

Order of Assessment
143(1)
↓
143(3)
↓
147

Penalty amount- 50%/200% of Tax as calculated below

If Return is filed:

	Tax on Baad Wali Income	-	Tax on pehle Wali Income
At the time of:			
Scrutiny Assessment	Tax on Income u/s 143(3)	-	Tax on Income u/s 143(1)
Re-assessment	Tax on Income u/s 147	-	Tax on Income u/s 143(3)

Under Reported Income = Income u/s [143(3) - 143(1)]
Income u/s [147 - 143(3)]

If Return is not filed: Tax On Assessed Income

URI = Company/firm - Assessed Income
Other Cases = Assessed Income u/s 144 - Basic Exemption

If there is loss: Tax on Difference in loss (Reduction of loss/Increase in Income)

Penalty = Underreporting - 50 % of Tax
Misreporting - 200% of Tax

270A(6): Cases which are not considered as under-reporting

- The amount of income in respect of which the assessee offers an explanation
- The amount of under-reported income determined on the basis of an estimate
- The amount of under-reported income represented by any addition made in conformity with the ALP determined by the TPO.
- The amount of undisclosed income on account of a search operation

Statement of Financial Transactions(SFT)

Due Date for filing SFT: 31st May of the year immediately following the F.Y. in which the Transaction is recorded.

See 271FA- PENALTY FOR NON-FILING OF SFT

→ On failure to furnish SFT or Reportable Accounts
↳ Penalty is Rs.500 per day till the period of Notice

→ On failure to pay the same till expiry of notice:
↳ Penalty would be Rs. 1000 per day after expiry of notice.

Sec 271FAA: Inaccurate Info in SFT or Reportable A/cs

↓

Penalty = Rs. 50,000

Sec 271K - Where any College / University / Research Association regd. u/s 35
Institution ⇢ regd u/s 80G

↓

Fails to deliver a prescribed statement in prescribed time → Penalty: Rs. 10,000- 1,00,000

Sec 272A- Penalty on non- compliance of AO's Order.

Sec 271 AAE-
Any Trust regd. u/s 11/10(23C) gives any benefit to related person u/s 13(1) (eg.Benefit to trustee, founder etc.)

Penalty
1st Violation : 100% of the Amount
Subsequent Violation: 200% of the Amount

→ **Deemed dividend covered by section 2(22)(a) to 2(22)(e):**

According to section 2(22), the following receipts are deemed to be dividend.

(1) **Section 2(22)(a) – Distribution of accumulated profits, entailing the release of company's assets**

Any distribution of assets by a company to each shareholders to the extent the company possesses accumulated profit (capitalized or not).

Notes–

(i) In case of bonus shares there is no release of assets hence issue of bonuses is not deemed as dividend.

(ii) When assets are distributed under section 2(22)(a)/(c)/(d), the FMV of the asset on the date of distribution has to be taken for computing the dividend.

(2) **Section 2(22)(b) – Distribution of debentures, deposit certificates to shareholders and bonus shares to preference shareholders**

(i) Any distribution to its shareholder by company of debentures, debentures stock or deposit certificates, and

(ii) Any distribution to its preference share holders of shares by way of Bonus.

To the extent to which company possesses accumulated profit (capitalized or not)

(3) **Section 2(22)(C) – Distribution of Assets on liquidation.**

Any distribution of assests by company on liquidation to the extent to which company possesses accumulates profits (capitalized or not).

(4) **Section 2(22)(d) – Distribution on reduction of capital**

Any distribution to its shareholder by company on reduction of its capital to the extent to which company possesses accumulates profits (capitalized or not).

(5) **Section 2(22)(e) – Advance or loan by a closely held company to its shareholder/ specified concern/ Any Person.**

→ **ShareHolder:**

Closely held co. / unlisted co. in which public are not substantially interested.

↓

Advance any loan to shareholders who is beneficial owner of >10% of voting power.

↓

will be deemed to be dividend to the extent of the accumulated profits.

→ **Specified concern:**

Closely held co. / unlisted co. in which public are not substantially interested.

↓

Advance any loan to any concern (i.e. HUF, Firm, AOP, BOI, company) shareholders have beneficial ownership of >10% of Eq. Share is member/partner in which he has substantial interest.

↓

will be deemed to be dividend to the extent of the accumulated profits.

→ **Following should not be consider as deemed dividend.**

(i) If the loan is granted in the ordinary course of its business and lending of money is a substantial part of the company's business, then it is not deemed to be dividend.

(ii) Any dividend paid by a company which is set off by company against the loan which has been deemed as dividend u/s 2(22)(e).

(iii) Payment on buyback of shares won't be consider as deemed dividend.

(iv) Shares allotted to shareholders of demerged company by resulting company under scheme of demerger.

(v) Any distribution made u/s 2(22)(c)/(d), in respect of preference share, then it should not be consider as deemed dividend.

→ **Points to be noted.**

- Loans or advance is treated as deemed dividend to the extent to which company possesses accumulated profit.
- Substantial interest means 20% or more voting power or share in profit at any time during the PY.
- Loan is repaid/ company charges market rate of interest doesn't nake any difference in applicability of sec-2(22)(e). [matalb market rate se jyada rate me interest pay kr rhe hai, tb bhi, it will consider as deemed dividend].
- Sec-2(22)(e) is not applicable in case where trade advance means advance which is in the nature of commercial transaction.
- If loan and advance given to concern then it is treated as deemed dividend in hands of concernbut as per some court judgements', it is taxable in hands of Shareholders.
- Some illustrations /examples of trade advances/commercial transactions held to be not covered under section 2(22)(e) are as follows:
  (a) Advances by a company to a sister concern and adjusted against the dues for job work done by the sister concern. It was held that amounts advanced for business transactions do not to fall within the definition of deemed dividend under section 2(22)(e).
  (b) Advance by a company to its shareholder to install plant and machinery at the shareholder's premises to enable him to do job work for the company so that the company could fulfil an export order. It was held that as the assesses proved business expediency, the advance was not covered by section 2(22)(e).
  (c) A floating security deposit given by a company to its sister concern against the use of electricity generators belonging to the sister concern. The company utilised gas available to it from GAIL to generate electricity and supplied it to the sister concern at concessional rates. It was held that the security deposit made by the company to its sister concern was a business transaction arising in

the normal course of business between two concerns and the transaction did not attract section 2(22)(e).

- Interim dividend – Interim dividend would be deemed to be the income of the previous year in which such dividend is unconditionally made available by the company to the members who is entitled to it.

TP- Tax Planning

TA- tax Avoidance

TE- Tax Evasion

GAAR- General Anti Avoidance Rule

→ These are the methods of reducing Tax liability-Tax Planning, Tax Evasion, Tax Avoidance

→ **Tax Planning**

- Tax planning may be defined as an arrangement of one's financial affairs in such a way that, without violating in any way the legal provisions, full advantage is taken of all tax exemptions, deductions, concessions, rebates, allowances and other reliefs or benefits permitted under the Act so that the burden of taxation on the assesses is reduced to the minimum.
- In Short, Availing tax exemptions or tax privileges offered by the Government, strictly in accordance with law.
- Example:
  (i) Choosing the suitable form of assessable entity (individual, firm, company).
  (ii) Choosing suitable forms of investment (share capital, loan capital, lease) considering deductions available in respect of interest, exemption available in respect of dividend etc.
  (iii) Diversification of the business activities.

→ **Tax Evasion**

- Tax evasion refers to any attempt to avoid payment of taxes by using illegal means.
- Manoeuvre involving an element of deceit, misrepresentation of facts, and falsification of accounting calculations or downright fraud. In simple terms, tax evasion refers to any attempt to avoid payment of taxes by using illegal means.
  Note: GAAR has to be covered from study Mat.

Miscellaneous Provisions

→ Taxation in case of ESOP

<table>
<tr><td>Basic</td><td>As per sec-17(2) ESOPs/Sweat equity shares are taxable as perquisite in hands of employee in the year in which shares allotted to employee.</td></tr>
<tr><td>Taxable Amount</td><td>FMV of shares on the date on which option Exercised xxx
(-) Amount paid by Employee for ESOP's xxx
Taxable Amount xxx</td></tr>
<tr><td>Calculation of FMV as per Rule 3(8)</td><td>(1) On the date of exercising option, company is listed on recognized stock exchange.
<table>
<tr><td>Company listed on recognized stock exchange</td><td>- FMV shall be Average of Opening + Closing of share on that date on said stock exchange</td></tr>
<tr><td>Company listed on more than one stock exchange</td><td>- FMV shall be Average of Opening + Closing of the share on the recognised stock exchange which records the highest volume of trading in the share.</td></tr>
</table>
Provided further that where, on the date of exercising of the option, there is no trading in the share on any recognized stock exchange, the fair market value shall be :
(i) the closing price of the share on any recognised stock exchange on a date closest to the date of exercising of the option and immediately preceding such date; or
(ii) the closing price of the share on a recognised stock exchange, which records the highest volume of trading in such share, if the closing price, as on the date closest to the date of exercising of the option and immediately preceding such date, is recorded on more than one recognized stock exchange.

(2) On the date of exercising the option - Company is not listed on recognised stock exchange
FMV shall be such value of the share in the company as determined</td></tr>
</table>

	by a merchant banker on the specified date.
Sale of Shares by Employee	Computation of capital gain Full value of consideration xxx (sale value of consideration) (-)Cost of acquisition xxx (FMV of shares as per rule 3(8) Capital Gain xx Period of holding as per sec 2(42A) From Date of allotment of ESOPs to the date of transfers of shares by employee.
Taxability of ESOPS in case of Start-ups referred u/s 80-IAC	Eligible Start-up require to deduct TDS on salary in case of ESOPS within 14 days from: (i) After expiry of 48 months from the end of the relevant AY; or (ii) From the date of sale of such specified security/ sweat equity share by the assessee; or (iii) From the date of the assessee ceasing to be the employee of the start-up - whichever is the earliest, - on the basis of rates in force for the financial year in which the said specified security or sweat equity share is allotted to employee.

19.1 INTRODUCTION

Income-tax Settlement Commission (ITSC) constituted by the Central Government for settlement of cases ceases to operate with effect from 1st February, 2021. Consequently, no application under section 245C for settlement of cases before the Settlement Commission can be made on or after 1st February, 2021. In order to dispose off the pending settlement applications as on 31.01.2021, the Central Government has constituted seven Interim Boards for Settlement vide Notification No. 91 of 2021 dated 10.08.2021.

While pending disputes are being resolved or adjudicated through the Interim Boards for Settlement, it is also necessary to prevent tax disputes in future and settle the issues at initial stage. Therefore, in order to provide early tax certainty to small and medium taxpayers, with effect from 1st April, 2021, new scheme of Dispute Resolution has been formulated for constitution of one or more Dispute Resolution Committee(s) (DRC).

19.2 DISPUTE RESOLUTION COMMITTEE [SECTION 245MA]

(1) ***Constitution of Dispute Resolution Committee:*** *The Central Government is empowered to constitute, one or more Dispute Resolution Committees, in accordance with the rules made under this Act. Dispute Resolution Committee would resolve dispute in the case of* ***such persons or class of persons, as may be specified by the CBDT****, who opt for dispute resolution under Chapter XIX-AA in respect of dispute arising from any variation in the* ***specified order*** *in his case and* ***who fulfils the specified conditions****.*

(2) ***Meaning of Specified order:*** *Specified order means such order, including draft order, as may be specified by the CBDT, and,*

(i) aggregate sum of variations proposed or made in such order does not exceed ₹ 10 lakhs.

(ii) such order is not based on

- *search initiated under section 132 or*
- *requisition under section 132A in the case of assessee or any other person or*
- *survey under section 133A or*
- *information received under an agreement referred to in section 90 or section 90A.*

(iii) where return has been filed by the assessee for the assessment year relevant to such order, total income as per such return does not exceed ₹ 50 lakh.

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(3) Specified Conditions: *Specified conditions in relation to a person means a person who fulfils the following conditions:*

(I) He should not be a person,

(A) in respect of whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

Such order of detention should not have been revoked before the expiry of the time stipulated under the relevant provisions of such Act, either on the basis of report of Advisory Board or review under the relevant provisions of that Act. Further, such order of detention should not have been set aside by a court of competent jurisdiction.

The proviso to clause (a)(I)(A) of Explanation to section 245MA reads as follows -

(i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or

(ii) such order of detention being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under section 9(3), or on the report of the Advisory Board under section 8, read with section 9(2), of the said Act; or

(iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of the said section, or on the basis of the report of the Advisory Board under section 8, read with section 12A(6), of the said Act; or

(iv) such order of detention should not have been set aside by a court of competent jurisdiction;

Note - *Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 provides for preventive detention in certain cases for the purposes of conservation and augmentation of foreign exchange and prevention of smuggling activities and for matters connected therewith. Under this Act, the Central and State Government are empowered to detain a person (including a foreigner) to prevent such a person from smuggling of goods or acting in a manner prejudicial to conservation of foreign exchange. For detailed understanding of the above-referred provisions of the said Act, refer https://www.incometaxindia.gov.in/pages/acts/conservation-foreign-exchange-prevention-smuggling-activities-act.aspx*

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(B) *in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code, the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prohibition of Benami Transactions Act, 1988, the Prevention of Corruption Act, 1988 or the Prevention of Money-laundering Act, 2002 has been instituted and he has been convicted of any offence punishable under any of those Acts;*

(C) *in respect of whom prosecution has been initiated by an income-tax authority for any offence punishable under the provisions of this Act or the Indian Penal Code or for the purpose of enforcement of any civil liability under any law for the time being in force, or such person has been convicted of any such offence consequent upon the prosecution initiated by an income-tax authority;*

(D) *who is notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992;*

(II) He should fulfill such other conditions, as may be prescribed.

(4) Powers to reduce or waive any penalty imposable under this Act or grant immunity from prosecution: *The Dispute Resolution Committee, subject to such conditions, as may be prescribed, shall have the powers to reduce or waive any penalty imposable under the Income-tax Act, 1961 or grant immunity from prosecution for any offence punishable under the Act in case of a person whose dispute is resolved under Chapter XIX-AA.*

(5) Faceless Scheme for Dispute Resolution: *The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of dispute resolution under this Chapter, so as to impart greater efficiency, transparency and accountability by -*

(a) eliminating the interface between the Dispute Resolution Committee and the assessee in the course of dispute resolution proceedings to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialization;

(c) introducing a dispute resolution system with dynamic jurisdiction.

The Central Government may, for the purposes of giving effect to the scheme by notification in the Official Gazette, direct that any of the provisions of this Act will not apply or will apply with such exceptions, modifications and adaptations as may be specified in the said notification. However, no such direction shall be issued after the 31st March, 2023.

Every notification issued shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

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ITSC

the due date for furnishing the return of income for the relevant previous year (due date for P.Y. 2024-25).

Chapter 19: Dispute Resolution

Dispute Resolution Committee and E-Dispute Resolution Scheme, 2022 [Notification No. 26/2022 and 27/2022 dated 05.04.2022]

In order to provide early tax certainty to small and medium taxpayers, a new scheme of Dispute Resolution has been formulated with effect from 1st April, 2021 for constitution of one or more Dispute Resolution Committees (DRCs). Under section 245MA, the Central Government is empowered to constitute one or more dispute resolution committees, in accordance with the Rules made under the Act.

Accordingly, Part IX-AA Dispute Resolution Committee has been inserted in the Income-tax Act, 1961, which comprises of Rules 44DAA, 44DAB, 44DAC and 44DAD.

Rule 44DAA – Constitution of Dispute Resolution Committee

Har PCCIT ke region me ek DRC constitute karte hai

(1) **Constitution of DRC** - The Central Government would constitute a Dispute Resolution Committee (DRC) for every region of Principal Chief Commissioner of Income-tax for dispute resolution.

(2) **Composition of DRC** - Each DRC would consist of 3 members, as under:-

i. 2 members would be retired officers from the Indian Revenue Service (Income-tax), who have held the post of Commissioner of Income-tax or any equivalent or higher post for five years or more; and → 2 members → Retired IRS - CIT for atleast 5 years

ii. 1 serving officer not below the rank of Principal Commissioner of Income-tax or Commissioner of Income-tax as specified by the Board. 1 Serving CIT/PCIT

(3) **Time period** - The members would be appointed by the Central Government for a period of 3 years.

(4) **Fee to be paid to member** - The Central Government may fix a sum to be paid as fee to a member, who is retired officer, on a per case basis, along with a sitting fee, so decided by the Board. → CG fix karega.

(5) **Decision of DRC** - The decision of the DRC shall be by majority. → majority me decision hoga

(6) **Removal of member** - The Central Government may remove any member from the DRC after recording reasons in writing and after giving an opportunity of being heard.

Rule 44DAB – Application for resolution of dispute before the DRC

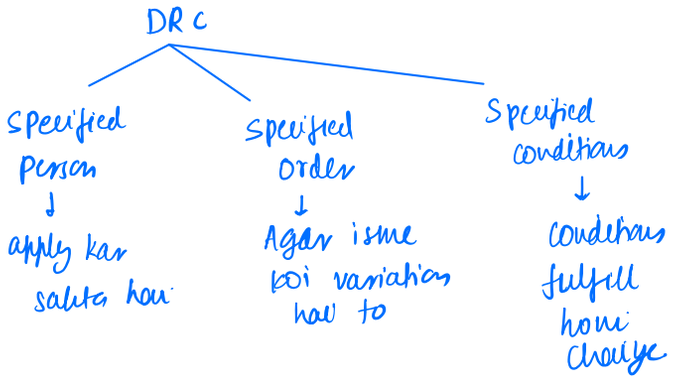
Such persons or class of persons, as may be specified by the Board, and who fulfill the specified conditions may opt for dispute resolution under Chapter XIX-AA in respect of dispute

Application kaun kar sakta hai?

→ Person who fulfill the specified conditions

→ Fees - ₹ 1,000

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arising from any variation in the specified order in his case. Such person has to make an application for resolution of dispute before the DRC in the prescribed form accompanied by a fee of ₹ 1,000.

Meaning of specified condition - Person fulfilling the specified conditions means –

(i) a person in respect of whom the conditions mentioned in (I) specified in pages 19.3 and 19.4 of the Study Material are satisfied; **and**

(ii) proceedings under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 have **not** been initiated for the assessment year for which resolution of dispute is sought.

Time limit for filing application - Such application has to be filed –

	Case	Time limit
(i)	In cases where appeal has already been filed and is pending before the Commissioner (Appeals)	within such time from the date of constitution of the Dispute Resolution Committee, as may be specified by the Board
(ii)	in any other case	within one month from the date of receipt of **specified order**

Meaning of specified order

"Specified order", in relation to a dispute under section 245MA, means:—

(a) a draft order as referred to in section 144C(1) in respect of a person in whose case variation arises as a consequence to order of the TPO passed under section 92CA(3) or a non-corporate non-resident;

(b) an intimation under section 143(1) after processing income-tax returns or under section 200A(1) after processing of TDS statements or section 206CB(1) after processing of TCS statements, where the assessee or the deductor or the collector objects to the adjustments made in the said order;

(c) an order of assessment or reassessment, except an order passed in pursuance of directions of the Dispute Resolution Panel;

(d) a rectification order made under section 154 having the effect of enhancing the assessment or reducing the loss; or

(e) an order made under section 201 or an order made under section 206C(6A) deeming a person as an assessee-in-default for failure to deduct/collect tax at source or remit the same as required under the Act, after deduction/collection [the variation in the specified

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Specified order
aggregate variation does not exceed ₹ 10 lakhs
Total Income as per ROI furnished does not exceed ₹ 10 lakh.

order relating to default in deduction or collection of tax at source would refer to the amount on which tax has not been deducted or collected in accordance with the Act]

and in respect of which the following conditions are satisfied, namely:—

(A) the aggregate sum of variations proposed or made in such order does not exceed ₹ 10 lakh;

(B) the return has been furnished by the assessee for the assessment year relevant to such order and the total income as per such return does not exceed ₹ 50 lakhs; and

(C) the order in the case of the assessee is not based on,—

(I) search initiated under section 132 or requisition made under section 132A in the case of the assessee or any other person; or

(II) survey carried out under section 133A; or

(III) information received under an agreement referred to in section 90 or 90A.

Screening of application by DRC

(i) **Examination of application** - The DRC has to examine the application with respect to the specified conditions and criteria for specified order. Upon such examination, where the DRC considers that the application for dispute resolution should be rejected, it has to serve a notice calling upon the assessee to show cause as to why his application should not be rejected, specifying a date and time for filing a response.

(ii) **Provision of opportunity of being heard** - The assessee can request for an opportunity of being heard. If the DRC receives a request from the assessee, it has to provide him an opportunity of being heard through video telephony or video conferencing facility, to the extent technologically feasible.

(iii) **Furnishing response to SCN within the specified date** -The assessee has to furnish a response to the show-cause notice referred to in (i) above within the specified date and time or such extended time as may be allowed on the basis of application made in this behalf, to the DRC;

(iv) **Rejection of application by DRC** - The DRC may, after considering the response furnished by the assessee, reject the application or proceed to decide the application on merits in accordance with the procedure laid out in (v) and (vi) below. Where no such response is furnished by the assessee, the DRC may reject the application [In such a case, the assesee may file an appeal to the Commissioner (Appeals). The period taken by the DRC in deciding on the admission has to be excluded from the period available to file such appeal].

Screening of Application by DRC

DRC application examine karta hai → Fir DRC OOBM dega → Fir Assesee response dega SCN ka → DRC accept karega or DRC Reject karega. → DRC assesee ko communicate karega. → Application admit hone ke 30 days me. → Assesee proof submit karega.

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No appeal is pending

application before DRP withdraw ho gayi hai

(v) **Communication of decision of DRC to assessee** - The decision of the DRC that the application for dispute resolution should be allowed to be proceeded with or rejected, has to be communicated to the assessee on his registered e-mail address;

(vi) **Submission of proof of withdrawal of appeal/application before DRP** - Within 30 days of receipt of the communication that the application is admitted, the assessee is required to submit a proof of withdrawal of appeal filed under section 246A or withdrawal of application before the Dispute Resolution panel, if any, to the DRC or convey that there is no aforesaid proceeding pending in his case. If the assessee fails to do so, the DRC may reject the application.

Procedure to be followed by the DRC

DRC records manywaega ↓ AO se bhi report manwa sakta hai ↓ DRC further info manwa sakta hai ↓ Fir assessee bole hue time pe response de dega ↓ Fir DRC decide karega

(i) **Calling for records for further examination** - Upon admission of the application and subsequent to the receipt of the response of the assessee, the DRC may call for records from the income-tax authority and further examine, as it may deem fit, with respect to the issues covered in the application;

(ii) **Seeking report from Assessing Officer** - The DRC may seek a report from the Assessing Officer on the issues covered in the application or on any other issue arising during the course of proceedings;

(iii) **Calling for further information** - The DRC may before disposing off the application, call for further information from the assessee or any other person by sending an email to his registered email address;

(iv) **Submission of response within specified time** - The assessee has to electronically submit its response to the DRC, within the time specified or such time as may be extended by the DRC on the basis of an application in this behalf;

(v) **Decision of DRC** - After considering the material available on record, including any further information or evidence received from the assessee, income-tax authority or any other person, the DRC may decide —

To not make modification

To make modifications to variations in specified order

To not make modification to variations in specified order

(a) to **make modifications to the variations in specified order**, which are not prejudicial to the interest of the assessee, and decide for waiver of penalty and immunity from prosecution in accordance with the provisions of rule 44DAC, and pass an order of resolution, accordingly; or

(b) to **not make modifications to the variations in the specified order**. However, the DRC may decide to waive penalty and grant immunity from prosecution provisions in accordance with the provisions of rule 44DAC, and pass an order of resolution accordingly. Such an order will be treated as an order not prejudicial to the interest of the assessee; or

Both these orders → will be considered as order not prejudicial to interest of the assesee.

within 6 months from the end of month in which application for dispute resolution is admitted.

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(c) to **not make any modification to the specified order, and pass an order disposing off the application**. Such an order will be treated as an order 'not prejudicial to the interest of the assessee',

within six months from the end of the month in which application for dispute resolution is admitted by the DRC. The order of the DRC for the resolution of a dispute has to be in accordance with the provisions of the Act.

AO aur assesse ko copy of order dega.

(vi) **Serving copy of order to AO and assessee** - The DRC has to serve a copy of the order of resolution or order disposing off the application, as the case may be, upon the assessee and also the Assessing Officer for giving effect to the same, if so required;

modified order ke against appeal possible nahi hai.

(vii) **No appeal or reference will lie against the modified order -** Where the specified order is an order of the eligible assessee as referred to in section 144C(1), the assessee will not be eligible to file any reference to the DRP or an appeal to the Commissioner (Appeals) against the modified order**.**

AO assesse ko order ki copy dega aur demand order dega

(viii) **Serving copy of modified order to assessee** – The Assessing Officer has to serve a copy of the modified order along with notice of demand upon the assessee specifying a date for making payment of demand. No appeal or revision would lie against the modified order.

Assessee pay karega demand

(ix) **Assessee to furnish proof of payment of demand** -The assessee has to furnish proof of payment of the said demand to the DRC and also to the Assessing Officer.

fir DRC immunity grant karega & waiver of penalty karega

(x) **Grant of immunity from prosecution and waiver of penalty** – The DRC shall, on receipt of confirmation of payment of demand, by an order in writing, grant immunity from prosecution and waiver of penalty if applicable, in accordance with the provisions of rule 44DAC.

Termination of dispute resolution proceedings

The DRC may, at any stage of the dispute resolution proceedings, if considered necessary, for reasons to be recorded in writing and after giving an opportunity of being heard to the assessee, decide to terminate the dispute resolution proceedings if, -

(i) the assessee fails to cooperate during the course of dispute resolution proceedings; or → If assesse co-operate nahi karta

(ii) the assessee fails to respond to, or submit any information in response to, a notice issued to him; or → assesse respond nahi karta.

(iii) the Committee is satisfied that the assessee has concealed any particular material to the proceedings or had given false evidence. → assesse conceal kar raha ho info

(iv) the assessee fails to pay the demand as required in notice of demand.

↳ assesse demand nahi pay karta.

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Where the dispute resolution proceedings are terminated, the DRC has to intimate the income-tax authority for taking necessary action as per the provisions of the Act.

Rule 44DAC – Power to reduce or waive penalty imposable or grant immunity from prosecution or both under the Income-tax Act, 1961

Conditions for grant of waiver of penalty or immunity from prosecution - The DRC, upon receipt of confirmation from the assessee of payment of demand, should grant to the person who made the application for dispute resolution under section 245MA, waiver of penalty imposable or immunity from prosecution or both, in respect of the order which is the subject matter of resolution, if it is satisfied that such person has,

- **paid the tax due on the returned income in full** if available; and
- **co-operated with the DRC** in the proceedings before it.

Reasons to be recorded in writing - The DRC would grant such waiver of penalty or immunity from prosecution or both, subject to such conditions as it may think fit to impose for the reasons to be recorded in writing.

No immunity if prosecution proceedings were initiated before application - No immunity would, however, be granted by the DRC in a case where the proceedings for the prosecution for an offence have been initiated before the date of receipt of the application for dispute resolution from the assessee fulfilling the specified conditions.

Withdrawal of immunity - An immunity granted to a person would stand withdrawn, if such person fails to comply with any of the conditions subject to which the immunity was granted. On such withdrawal, the provisions of the Income-tax Act, 1961 would apply as if such immunity or waiver had never been granted.

PART – II: INTERNATIONAL TAXATION

Chapter 2: Non-resident Taxation

Computation of exempt income of specified fund, attributable to the investment division of an offshore banking unit for the purposes of section 10(4D) [Notification No. 6/2022 dated 14.01.2022]

Section 10(4D) provides an exemption to a specified fund on certain income accrued or arisen to or received by it to the extent such income accrued or arisen to, or is received, *inter alia,* is attributable to the investment division of offshore banking unit computed in the prescribed manner.

Accordingly, Rule 21AJA has been inserted to provide for the manner of computation of exempt income of specified fund, attributable to the investment division of an offshore banking

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TEST YOUR KNOWLEDGE

Question 1

What is the need for constitution of Dispute Resolution Committee (DRC)? Can an assessee make an application before DRC against an order which is based on information received under an agreement referred to in section 90 or section 90A?

Answer

In order to provide early tax certainty to small and medium taxpayers, with effect from 1st April, 2021, new scheme of Dispute Resolution has been formulated for constitution of one or more Dispute Resolution Committee(s) (DRC).

Specified order *inter alia* does not include an order which is based on information received under an agreement referred to in section 90 or section 90A. Thus, an assessee can not opt for dispute resolution before DRC in respect of an order which is based on information received under an agreement referred to in section 90 or section 90A.

Question 2

Can an assessee opt for dispute resolution before DRC if prosecution for any offence punishable under the provisions of the Indian Penal Code has been instituted against him and he has been convicted in respect of the same under the said Act?

Answer

Dispute Resolution Committee would resolve dispute in the case of such persons or class of persons, as may be specified by the Board, who may opt for dispute resolution under this Chapter in respect of dispute arising from any variation in the specified order in his case and who fulfils the specified conditions.

Specified conditions in relation to a person means a person who *inter alia* is not a person in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code has been instituted and he has been convicted of any offence punishable under the said Act.

Thus, a person in respect of whom any prosecution has been instituted and who is convicted of any offence punishable under the Indian Penal Code, cannot opt for resolution of dispute in respect of specified order before DRC.

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In order to provide parity in the tax treatment in case of dividends received by Indian companies from specified foreign companies vis-à-vis dividend received from domestic companies, the concessional rate of 15% provided under section 115BBD would not be applicable with effect from A.Y. 2023-24. Accordingly, dividend received by an Indian company from foreign companies would also be chargeable to tax at normal rates applicable to such company.

Note – *On account of withdrawal of section 115BBD, students are advised to ignore the content discussed in Page No. 7.40 and 1st para in Page no. 7.15 of Chapter 7: Fundamentals of Base Erosion and Profit Shifting in Module 4 [Part II - International Taxation].*

TAXATION OF VIRTUAL DIGITAL ASSETS

There has been a phenomenal increase in transactions in virtual digital assets. Further, a market is emerging where payment for the transfer of a virtual digital asset can be made through another such asset. Accordingly, for the taxation of virtual digital assets, a scheme has been introduced by the Finance Act, 2022.

Meaning of virtual digital asset [Section 2(47A)]

It means -

(a) any information or code or number or token (not being Indian currency or foreign currency),

- *generated through cryptographic means or otherwise, by whatever name called,*
- *providing a digital representation of value exchanged with or without consideration,*
- *with the promise or representation of having inherent value, or*
- *functions as a store of value or a unit of account including its use in any financial transaction or investment, but not limited to investment scheme; and*
- *can be transferred, stored or traded electronically;*

(b) a non-fungible token or any other token of similar nature, by whatever name called;

The non-fungible token means such digital asset as may be notified by the Central Government.

Accordingly, the Central Government has, vide notification no. 75/2022 dated 30.6.2022, specified a token which qualifies to be a virtual digital asset as non-fungible token. However, it shall not include a non-fungible token whose transfer results in transfer of ownership of underlying tangible asset and the transfer of ownership of such underlying tangible asset is legally enforceable.

(c) any other digital asset, as may be notified by the Central Government.

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However, the Central Government may, by notification, exclude any digital asset from the definition of virtual digital asset subject to specified conditions.

Accordingly, the Central Government has, vide notification no. 74/2022 dated 30.6.2022, notified that the following virtual digital assets would be excluded from the definition of virtual digital asset–

(i) Gift card or vouchers, being a record that may be used to obtain goods or services or a discount on goods or services;

(ii) Mileage points, reward points or loyalty card, being a record given without direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate or promotional program that may be used or redeemed only to obtain goods or services or a discount on goods or services;

(iii) Subscription to websites or platforms or application

Taxability of income from transfer of virtual digital assets [Section 115BBH]

(1) Tax rate on transfer of virtual digital asset – *Where the total income of an assessee includes any income from the transfer of any virtual digital asset, such income would be taxed @30% under section 115BBH.*

(2) No deduction allowed – *In computing the income from transfer of virtual digital asset, no deduction would be allowed under any provisions of the Act in respect of any expenditure or allowance except cost of acquisition, if any. Further, no set off of any loss is allowed to the assessee from such income.*

(3) Set off or carry forward of loss from transfer of virtual digital asset not allowed – *Loss from transfer of virtual digital asset would **not** be allowed to be set off against income computed under any provision of this Act to the assessee and such loss would not be allowed to be carried forward to succeeding assessment years.*

(4) Virtual digital asset need not to be a capital asset - *The definition of "transfer" under section 2(47) would apply to any virtual digital asset, whether it is a capital asset or not.*

Taxability of receipt of virtual digital asset as gift or for inadequate consideration [Section 56(2)(x)]

In order to tax gift of virtual digital asset in the hands of the recipient, section 56 has been amended to include virtual digital asset within the definition of "property". For this purpose, it is immaterial whether the virtual digital asset is a capital asset or not.

Accordingly, if virtual digital asset is received by any person from any person

*(i) **Without consideration:** The aggregate fair market value of such virtual digital asset on the date of receipt would be taxed as the income of the recipient, if it exceeds ₹ 50,000.*

*(ii) **For inadequate consideration:** If the difference between the aggregate fair market value and such consideration exceeds ₹ 50,000, such difference would be taxed as the income of the recipient.*

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However, the exclusions from the applicability of section 56(2)(x) will apply to gift virtual digital asset also. For example, if virtual digital asset is received as a gift by an individual from his relative, the value of the same would not be treated as income.

TDS on payment on transfer of virtual digital asset [Section 194S] [w.e.f. 1.7.2022]

(1) Applicability and rate of TDS – *Section 194S requires any person who is responsible for paying to any resident any sum by way of consideration for transfer of a virtual digital asset to deduct tax @1% of such sum.*

(2) Time of deduction – *The deduction is to be made at the time of credit of consideration to the account of the resident or at the time of payment of such sum by any mode, whichever is earlier.*

Where consideration is credited to any account in the books of account of the person liable to pay such sum, such credit of the sum is deemed to be the credit of such sum to the account of the payee and tax has to be deducted at source. The account to which such sum is credited may be called "Suspense Account" or by any other name.

(3) ***Cases where the consideration for transfer of virtual digital asset is wholly in kind or partly in kind and partly in cash*** *– In a case where the consideration for transfer of virtual digital asset is*

- *wholly in kind or in exchange of another virtual digital asset, where there is no part in cash; or*
- *partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such transfer,*

the person responsible for paying such consideration has to, before releasing the consideration, ensure that tax required to be deducted has been paid in respect of such consideration for the transfer of virtual digital asset.

(4) Non applicability of TDS under section 194S – *No tax is required to be deducted under section 194S, where the consideration is payable by the person referred to in column (2) of the table below and aggregate value of such consideration during the financial year does not exceed the threshold limit in the corresponding row of column (3) of the table below:*

(1)	*Consideration is payable by (2)*	*Threshold limit (3)*
(i)	*Specified person, being an individual or a Hindu undivided family* - *whose total sales, gross receipts or turnover from his business or profession does not exceed ₹ 1 crore in case of business or ₹ 50 lakhs in case of profession, during the financial year immediately preceding the financial year in which such virtual digital asset is transferred; or*	*≤ ₹ 50,000*

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	- not having any income under the head "Profits and gains of business or profession".	
(ii)	Other than specified person mentioned in (i) above	≤ ₹10,000

(5) Due date of remittance to Government Account [Rule 30] and Furnishing statement and certificate of TDS u/s 194S [Rules 31A and 31]

Sl. No.	(1) Particulars	(2) Specified Person	(3) Exchange	(4) Any other person
(i)	**Rule 30** – Time of payment to Government Account	30 days from the end of the month of deduction	In case of tax deducted in March, on or before 30th April. In any other case, on or before 7 days from the end of the month of deduction.	
(ii)	**Rule 31A** – Furnishing of Statement of TDS u/s 200(3)			
	Form	Form 26QE	Form 26QF	Form 26Q
	Time	Within 30 days from the end of the month of deduction	Common for Exchange and any other person	

Qtr ending	Due date
30th June	31st July
30th Sep	31st Oct
31st Dec	31st Jan
31st March	31st May

(iii)	**Rule 31** – TDS Certificate	Form 16E to be furnished within 15 days from the due date of furnishing TDS statement in Form 26QE.	Form 16A to be furnished within 15 days from the due date of furnishing TDS statement in Form 26QF/Form 26Q.

ILLUSTRATION 1

Compute the income-tax payable by Mr. Abhinav, aged 32 years, who has the following income for the A.Y.2023-24:

(i) Interest on fixed deposits with SBI (Gross) ₹1,10,000

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(ii)	*Interest on savings bank account with SBI*	*₹ 15,000*
(iii)	*Consideration received for transfer of VDA*	*₹ 62,000*
(iv)	*Cost of acquisition*	*₹ 21,000*
(v)	*Expenses on transfer of VDA*	*₹ 1,000*

Assume that the transfer of VDA took place on 1st October, 2022.

SOLUTION

Total income (excluding Income from transfer of VDA) is below the basic exemption limit of ₹ 2,50,000. Therefore, tax on income, other than income from VDA, is Nil. Income of ₹ 41,000 (₹ 62,000 – ₹ 21,000) from transfer of VDA would be taxable@30% (plus cess of 4%), even if the total income including income from transfer of VDA is less than the basic exemption limit. The tax on income from transfer of VDA would be ₹ 12,792, being 31.2% of ₹ 41,000. The expenses on transfer of VDA is not allowable as deduction.

Section 194S provides for deduction of tax on payment on transfer of virtual digital asset to a resident at the rate of 1% of consideration. Hence, the transferor would have deducted tax of ₹ 620, being 1% of ₹ 62,000.

Tax@10% under section 194A would have been deducted by SBI from ₹ 1,10,000. TDS u/s 194A = ₹ 11,000

Net tax payable by Mr. Abhinav would be ₹ 1,172 (₹ 12,792 – ₹ 11,000 (TDS u/s 194A) – ₹ 620 (TDS u/s 194S).

ILLUSTRATION 2

Compute the income-tax payable by Mr. Siddhanth, aged 24 years, who has the following income for the A.Y.2023-24

(i)	*Income from Salaries (computed)*	*₹ 4,50,000*
(ii)	*Interest on savings bank account with Axis Bank*	*₹ 12,000*
(iii)	*Consideration received on transfer of VDA to Mr. Harsh*	*₹ 50,000*
(iv)	*Cost of acquisition of VDA transferred*	*₹ 5,000*

Mr. Harsh is employed with ABC Ltd. on a monthly salary of ₹ 50,000. In addition, he has interest on savings bank account with Bank of India.

Assume that the transfer of VDA took place on 1st October, 2022.

SOLUTION

Total income (excluding income from transfer of VDA) is ₹ 4,52,000 (i.e., ₹ 4,50,000 + ₹ 12,000 – Deduction u/s 80TTA ₹ 10,000). Tax on income, other than income from VDA, would be ₹ 10,504 [i.e., ₹ 10,100 (being 5% of ₹ 2,02,000 (₹ 4,52,000 – ₹ 2,50,000)) plus

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₹ 404, being cess@4%]. Income of ₹ 45,000 (₹ 50,000 – ₹ 5,000) from transfer of VDA would be taxable@30% (plus cess of 4%). The tax on income from transfer of VDA would be ₹ 14,040, being 31.2% of ₹ 45,000. Tax liability of Mr. Siddhanth is ₹ 24,544 (i.e., ₹ 10,504 + ₹ 14,040).

Section 194S provides for deduction of tax on payment on transfer of virtual digital asset to a resident at the rate of 1% of consideration. However, TDS u/s 194S is not attracted where consideration is payable by a specified person and the consideration payable does not exceed ₹ 50,000. Mr. Harsh is a specified person since he does not have income under the head "Profits and gains of business and profession" and the consideration payable by him does not exceed ₹ 50,000. Accordingly, Mr. Harsh need not deduct tax u/s 194S on consideration payable to Siddhanth.

Net tax payable by Mr. Siddhanth would be ₹ 24,544

ILLUSTRATION 3

Compute the income-tax payable by Mr. Raj, aged 32 years, who has the following income for the A.Y.2023-24

(i)	*Business loss*	*(₹ 3,18,000)*
(ii)	*Interest on fixed deposits with HDFC Bank*	*₹ 18,000*
(iii)	*Consideration received on transfer of VDA*	*₹ 4,20,000*
(iv)	*Cost of acquisition of VDA transferred*	*₹ 20,000*

Assume that the transfer of VDA took place on 1st October, 2022.

SOLUTION

As per section 71, business loss of the current year can be set off against income from other sources of that year. Therefore, business loss of ₹ 3,18,000 can be set off against interest of ₹ 18,000 from fixed deposits.

As per section 115BBH, business loss cannot be set of against income from transfer of VDA. Therefore, balance business loss of ₹ 3,00,000 cannot be set off against Income from VDA of ₹ 4,00,000 (₹ 4,20,000 – ₹ 20,000). The same has to be carried forward to A.Y.2024-25 for set-off against business income of that year.

Tax on Income from VDA would be ₹ 1,24,800 (i.e., 31.2% of ₹ 4 lakh).

Section 194S provides for deduction of tax on payment on transfer of virtual digital asset to a resident at the rate of 1% of consideration. Hence, the transferor would have deducted tax of ₹ 4,200, being 1% of ₹ 4,20,000.

Net tax payable by Mr. Raj = ₹ 1,24,800 – ₹ 4,200 = ₹ 1,20,600.

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(6) ***Non-applicability of section 203A and 206AB on specified person -*** *The provisions of section 203A containing the requirement of obtaining TAN and section 206AB requiring higher rate of TDS for non-filers of income-tax return would* ***not*** *be applicable in case of specified person referred in 4(1).*

(7) ***Cross application of section 194-O and section 194S -*** *In case of a transaction where tax is deductible under section 194-O along with the section 194S, then, the tax shall be deducted under section 194S and not section 194-O.*

(8) ***Power of the CBDT to issue guidelines –*** *In case any difficulty arises in giving effect to the provisions of this section, the CBDT is empowered to issue guidelines, with the prior approval of the Central Government, for the purposes of removing the difficulty.*

Every guideline issued by the CBDT shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person responsible for paying the consideration on transfer of such virtual digital asset.

Accordingly, the CBDT has, with the prior approval of the Central Government, vide Circular no. 13/2022 dated 22.6.2022, issued the following guidelines. These guidelines would apply only in cases where transfer of virtual digital asset is taking place on or through an Exchange. In other cases (like peer to peer and others) provisions of section 194S would apply and so far as these guidelines are concerned clarifications provided only in Question 6 shall apply.

Question 1: Who is required to deduct tax when the transfer of virtual digital asset is taking place on or through an Exchange and payment is made by the purchaser to the Exchange (directly or through broker) and then from the Exchange it goes to seller directly or through the broker?

Answer: *According to section 194S, any person who is responsible for paying to any resident any sum by way of consideration for transfer of virtual digital asset is required to deduct tax.*

Thus, in a peer to peer (i.e. direct buyer to seller) transaction, the buyer (i.e person paying the consideration) is required to deduct tax under section 194S. The tax so deducted is required to be deposited with Government in accordance with the time and procedure prescribed in the Act read with the relevant provisions of the Income-tax Rules, 1962.

After deduction, the deductor is required to furnish a quarterly statement (in Form No. 26Q) for all such transactions of the quarter on or before the due date prescribed in the Income-tax Rules, 1962. For specified person Form 26QE has been introduced.

It may be clarified that the TDS shall be on consideration for transfer of virtual digital asset less GST. ***[Clarified by the CBDT vide circular no. 14/2022 dated 28.6.2022 for all other transactions not conducted on or through Exchange]***

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However, if the transaction is taking place on or through an Exchange, there is a possibility of tax deduction requirement under section 194S at multiple stages. Hence, in order to remove difficulties for transactions taking place on or through an Exchange, the following clarifications have been issued by CBDT :-

(i) ***In a case where the transfer of virtual digital asset takes place on or through an Exchange and the virtual digital asset being transferred is owned by a person other than the Exchange:*** *In this case, buyer would be crediting or making payment to the Exchange (directly or through a broker). The Exchange, then, would be required to credit or make payment to the owner of virtual digital asset being transferred, either directly or through a broker. Since there are multiple players, to remove difficulty it has been clarified that:*

1. *Tax may be deducted under section 194S only by the Exchange which is crediting or making payment to the seller (owner of the virtual digital asset being transferred). In a case where broker owns the virtual digital asset, it is the broker who is the seller. Hence, the amount of consideration being credited or paid to the broker by the Exchange is also subject to tax deduction under section 194S.*

2. *In a case where the credit/ payment between Exchange and the seller is through a broker (and the broker is not seller), the responsibility to deduct tax under section 194S shall be on both the Exchange and the broker. However, if there is a written agreement between the Exchange and the broker that broker shall be deducting tax on such credit/ payment, then broker alone may deduct the tax under section 194S. The Exchange would be required to furnish a quarterly statement (in Form 26QF) for all such transactions of the quarter on or before the due date prescribed in the Income-tax Rules, 1962.*

(ii) ***In a case where the transfer of virtual digital asset takes place on or through an Exchange and the virtual digital asset being transferred is owned by such Exchange:*** *In this case, there are no multiple players. The buyer is required to deduct tax under section 194S. However, there may be a practical issue as the buyer may not know whether the virtual digital asset being transferred is owned by the Exchange or not. Hence, there may be genuine doubt in the mind of buyer with regard to its responsibility to deduct tax under section 194S. This difficulty would also be there if the buyer is buying virtual digital asset from an Exchange through a broker.*

To remove this difficulty, it has been clarified that while the primary responsibility to deduct tax under section 194S, in this case, remains with the buyer or his broker, as an alternative the Exchange may enter into a written agreement with the buyer or his broker that in regard to all such transactions, the Exchange would be paying the tax on or before the due date for that quarter. The Exchange would be required to

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furnish a quarterly statement (in Form 26QF) for all such transactions of the quarter on or before the due date prescribed in the Income-tax Rules, 1962. The Exchange would also be required to furnish its income tax return and all these transactions must be included in such return. If these conditions are complied with, the buyer or his broker would not be held as assessee in default under section 201 for these transactions.

Meaning of certain terms:

(i) The term "Exchange" means any person that operates an application or platform for transferring of virtual digital assets, which matches buy and sell trades and executes the same on its application or platform.

(ii) The term "Broker" means any person that operates an application or platform for transferring of virtual digital assets and holds brokerage account/accounts with an Exchange for execution of such trades.

Question 2: Question no 1 was with respect to transactions where the consideration for transfer of virtual digital asset is not in kind. How will this operate in a situation where it is in kind or in exchange of another virtual digital asset?

Answer: *In the above situation, the buyer will release the consideration in kind after seller provides proof of payment of such tax (e.g. Challan details etc.). In a situation where virtual digital asset "A" is being exchanged with another virtual digital asset "B", both the persons are buyer as well as seller. One is buyer for "A" and seller for "B" and another is buyer for "B" and seller for "A". Thus both need to pay tax with respect to transfer of virtual digital asset and show the evidence to other so that virtual digital assets can then be exchanged. This would then be required to be reported in TDS statement along with challan number. Form 26Q has included provisions for reporting such transactions. For specified persons, Form 26QE has been introduced.* ***[Also clarified by the CBDT vide circular no. 14/2022 dated 28.6.2022 for all other transactions not conducted on or through Exchange]***

However, if the transaction is through an Exchange there is practical issue in implementing this provision. In order to address this practical issue and to remove difficulty, it is clarified that in such a situation, as an alternative, tax may be deducted by the Exchange. Such an alternative mechanism can be exercised by the Exchange based on written contractual agreement with the buyers/sellers.

If such an alternative mechanism is exercised,

(i) the Exchange would be required to deduct tax for both legs of the transactions and pay to the Government. In the Form 26Q it will need to report it as tax deducted on both legs of the transaction.

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(ii) the buyer and seller would not be independently required to follow the procedure prescribed under proviso to section 194S(1) i.e., to ensure that the tax required to be deducted has been paid by the other person, before releasing the consideration.

(iii) The tax withheld in kind under section 194S and converted into INR shall be deposited in the Government Account as per the time line and process given in the Income-tax Rules 1962.

It has been clarified that there would not be any further TDS for converting the tax withheld in kind in the form of virtual digital asset into INR or from one virtual digital asset to another virtual digital asset and then into INR.

Question 3: Whether the provision of section 194Q is also applicable on transfer of virtual digital asset?

Answer: *Without going into the merit whether virtual digital asset is goods or not, it is clarified that once tax is deducted under section 194S, tax would not be required to be deducted under section 194Q.* ***[Also clarified by the CBDT vide circular no. 14/2022 dated 28.6.2022 for all other transactions also not conducted on or through Exchange]***

Question 4: Whether the consideration for transfer of virtual digital asset shall be on Gross basis after including GST/commission or it shall be on "net basis" after exclusion of these items.

Answer: *In order to remove difficulty, it is clarified that the tax required to be withheld under section 194S shall be on the "net" consideration after excluding GST/charges levied by the deductor for rendering service.*

Question 5: In transactions where payment is being carried out through payment gateways, there may be tax deduction twice. To illustrate that a person "XYZ" is required to make payment to the seller for transfer of virtual digital asset. He makes payment of ₹ 1,00,000 through digital platform of "ABC". On these facts liability to deduct tax under section 194S may fall on both "XYZ" and "ABC". Is tax required to be deducted by both?

Answer: *In order to remove this difficulty, it is provided that in the above example, the payment gateway will not be required to deduct tax under section 194S on a transaction, if the tax has been deducted by the person ("XYZ") required to make deduction under section 194S. Hence, in the above example, if "XYZ" has deducted tax under section 194S on ₹ 1,00,000, "ABC" will not be required to deduct tax under section 194S on the same transaction. To facilitate proper implementation, "ABC" may take an undertaking from "XYZ" regarding deduction of tax.*

Question 6: Section 194S shall come into effect from the 1St July 2022. The liability to deduct tax under section 194S applies only when the value or aggregate value of the

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consideration for transfer of virtual digital asset exceeds ₹ 50,000 during the financial year in case of consideration being paid by specified person and ₹ 10,000 in other cases. It is not clear how this limit of ₹ 50,000 (or ₹ 10,000) is to be computed?

Answer: *It is clarified that,-*

(i) Since the threshold of ₹ 50,000 (or ₹ 10,000) is with respect to the financial year, calculation of consideration for transfer of virtual digital asset triggering deduction under section 194S shall be counted from 1st April, 2022. Hence, if the value or aggregate value of the consideration for transfer of virtual digital asset payable by a person exceeds ₹ 50,000 (or ₹ 10,000) during the financial year 2022-23 (including the period up to 30th June 2022), the provision of section 194S shall apply on any sum, representing consideration for transfer of virtual digital asset, credited or paid on or after 1st July 2022.

(ii) Since the provision of section 194S applies at the time of credit or payment (whichever is earlier) of any sum, representing consideration for transfer of virtual digital asset, such sum which has been credited or paid before 1st July 2022 would not be subjected to tax deduction under section 194S.

REDUCED ALTERNATE MINIMUM TAX RATE FOR CO-OPERATIVE SOCIETIES [SECTION 115JC(4)]

Under section 115JC, a person other than a company is required to pay alternate minimum tax at the rate of 18.5% of adjusted total income, if the regular income-tax payable is less than alternate minimum tax. In such a case, adjusted total income shall be deemed to be the total income of the person.

Levy of AMT @9% of Adjusted Total Income in case of a unit located in IFSC: Where the person subject to AMT is a unit located in an International Financial Services Centre (IFSC) deriving its income solely in convertible foreign exchange, AMT would be leviable @9% of Adjusted Total Income, instead of 18.5%.

Levy of AMT @9% of Adjusted Total Income in case of a co-operative society: Where the person subject to AMT is a co-operative society, ***AMT would be leviable @15% of Adjusted Total Income, instead of 18.5%.***

Note – *This amendment has to be read along with the provisions of section 115JC discussed in the Study Material.*

RELIEF FROM TAXATION IN RESPECT OF INCOME FROM RETIREMENT BENEFIT ACCOUNT MAINTAINED IN A NOTIFIED COUNTRY [SECTION 89A]

Where a specified person has income accrued in a specified account, such income shall be taxed in such manner and in such year as may be prescribed.

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TRANSFER PRICING SMART CHART

Transfer pricing Kya hai?

↓

2 Associated Enterprises ke bich me galat price pe transactions hue hai, Uski Correct Pricing nikaalna.

ASSOCIATED ENTERPRISES

Kya hote hai?

Sec 92A

↓

10 Conditions

Kaunse TRANSACTIONS

hote hai ye!?

- Sec 92B — International Transactions
- Sec 92 BA — Specified Domestic Transactions

CORRECT PRICING

kaise nikaalenge?

↓

we have to calculate ARM'S LENGTH PRICE

Arm's length Price (correct Price) Kaise Nikaalenge?

Sec 92C

5 methods se calculate Kar lo:

CUP, RPM, CPM, PSM, TNMM

↓

Kuch cases me ALP A.O. determine Karta hai → Sec 92C(3)

Sec 92 CA

Reference to TPO

(Transfer Pricing officer)

Sec 92CC

Pehle se hi Decide Kar lo → APA (Advance Pricing Agreement)

↓

Jis Saal decide Kiya Uske pehle ke 4 saal pe bhi apply ho Sakta hai.

(Roll-Back Provisions)

ALP calculate Kar liye.

But More than 1 ALP aa gayi.

If No. of ALP is less than 6 → AIRTHMATIC MEAN Sec 92C(2)

If No. of ALP is 6 or more → RANGE CONCEPT Rule 10CA

Ab ALP nikaal liye to Compare Kar lenge Actual Price se and difference nikaal lenge.

Agar Income Kam hui hai Hamari, To Difference ko Income me add Kar do and assesssee & uske AE Ke Books me adjust Kar do.

- Primary Adjustment
- Secondary Adjustment Sec 92CE

Jo paisa India se bahar gaya hai (Excess Money) Usko India me leke aane ka Intezaam Karo. (Repatriation).

Agar Paisa (Excess money) India me nahi laaye to 2 options hai.

Interest add hoga Income me

OR

tax pay Karo

(Non-repatriation)

Agar prescribed time me India me paisa nahi laaya

↓

To Advance Maan liya jayega aur Interest Income me add Karenge.

Agar Interest nahi Bharna hai to Additional Tax pay Kar do

↓

18 % + 12% + 4%

Tax surcharge cess

Sec 92CE(2A)

Agar Apai AE se loan liya hai aapne to pura Interest allow nahi hoga as a deduction.

↓

Excess Interest disallow hota hai Sec 94B

↓

Agar aapki alag alag countries me organisation faili hui hai to kuch documents and reports file Karna padta hai Master File, CBC reporting etc.

↓

Nahi file Karoge to penalties pay Karna padega

Transfer Pricing Provisions are applicable when

- The Transaction is between 2 or more Associated Enterprises.
- The Transaction is an International or Specified Domestic Transaction
- The Transaction is not at Arm's length Price.

Sec92: Computation of Income from International Transaction with regards to ALP

- → Income
- → Expenditure
- → Interest
- → Allocation of cost

→ In relation to International Transaction or Specified Domestic transaction

↓

shall be computed with regard to ARM'S LENGTH PRICE

Note: If on applying ALP, Income is reduced or loss is increased, Transfer Pricing Provisions will not apply.

Sec 92B: Meaning of International Transaction

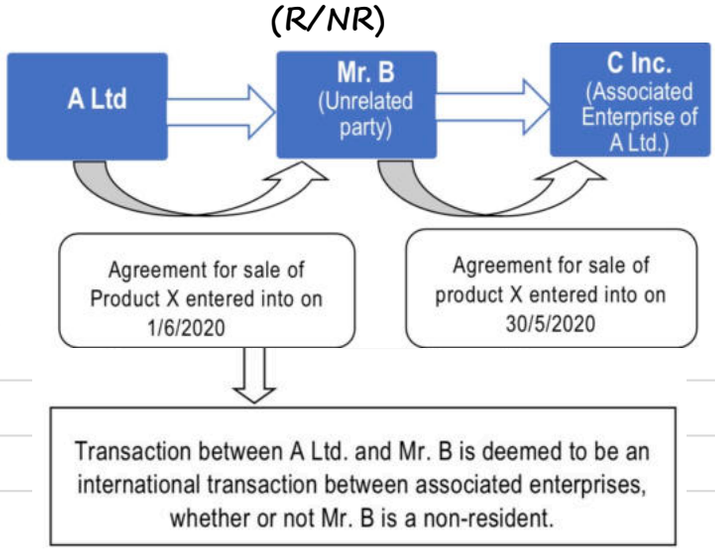
(1) It means:

- Atleast one must be Non-Resident (NR)
- The transaction between 2 or more Associated Enterprises(AE)

(2)Transaction between an Enterprise and Unrelated person shall be deemed to be a transaction between Associated Enterprises if:-

(i) There exists a prior agreement between Unrelated party and AE

(ii) Terms of transaction are determined by AE.



Prior Agreement

Notes:

1) Transaction can be in the nature of:

- Sale, Purchase, lease of Tangible, Intangible property
- Provision of services lending/Borrowing/guarantee
- Business restructuring or reorganization

2) R – R ✗
R – NR ✓
NR – NR ✓ → Transfer pricing will apply only if Income of one NR is taxable in India.

Sec92A: Meaning of ASSOCIATED ENTERPRISES

Two Enterprises shall be deemed to be AE, if at any time during the P. Y. :-

i) One enterprise holds (directly or indirectly) at least 26% voting power (shares) in other enterprise or in each of such (two) enterprise.

ii) One Enterprise appoints more than half of Board of Directors or 1 or more executive directors in other enterprise or each of such enterprise.

iii) Loan given by one Enterprise is 51% or more of Total assets of other enterprise.
↳ Book value

iv) One Enterprise guarantees not less than 10% of borrowings of other enterprise.

v) Business, Mfg. or processing of goods of one enterprise is wholly dependent on knowhow, copyright, patent, trademark, franchisee etc. of other enterprise.

vi) 90% or more raw materials required by one enterprise is supplied by other enterprise & Seller is defining terms.

vii) Goods mfg. and sold by one enterprise to other enterprise & price and other conditions are influenced by other enterprise.
↳ Buyer is influencing the price.

viii) One enterprise is controlled by an individual & other enterprise is also controlled by such Individual or relative or jointly by them

ix) One Enterprise is controlled by HUF & other enterprise is controlled by Member of HUF, or relative of member or jointly by them.

x) One Enterprise holds atleast 10% interest in other enterprise being a partner in Firm , AOP or BOI.

Sec 92C : Computation of Arm's Length Price

The arms length price shall be computed as per the most appropriate method of the following:

1. Comparable uncontrolled price method
2. Resale price method
3. Cost plus method
4. Profit split method
5. Transactional net margin method
6. Any other method prescribed by the board

→ Can two methods be appropriate? – No, only one method can be most appropriate.

1) Comparable Uncontrolled Price Method

Price charged by independent party in similar uncontrolled transaction	xxx
(+/-) Adjustments on account of functional differences (eg. warranty, discount, cif/fob)	xxx
Arm's length Price	xxx

2) Resale Price Method

Resale Price method is used when we purchase goods from a AE and sell it to unrelated party in the market.

Resale price charged to unrelated party	xxx
(-) Normal Gross profit margin in similar transaction	xxx
(-) Expenses on purchase of goods (Freight, insurance & customs duty)	xxx
Arm's length price	xxx

3. Cost Plus Method

Direct cost + Indirect Cost of production	xxx
(+) Normal GP margin (on Cost) in similar transactions	xxx
(+/-) Adjustment on account of functional differences in gross profit margin	xxx
Arm's length Price.	xxx

Note : Cost plus method is generally used when goods are manufactured by Indian enterprise and sold to its Foreign AE.

4. Profit Split Method

This method is applicable mainly in international transactions of joint venture between associated enterprises. These enterprises are so interrelated that they can not be evaluated separately. So we have to calculate the profit of total group/joint-venture and then divide it in the ratio of functions performed, assets employed and risk assumed by such enterprises.

5. Transactional net margin method

In this method, Net profit margin charged by other enterprise in a similar uncontrolled transaction is computed and applied to compute Arm's length price subject to functional differences between international transaction and comparable uncontrolled transaction.

See 92C(3):. Determination of ALP by AO.

ALP is not computed as per sec 92C

↑

When the A.O. is of the opinion that

- Data used for computing ALP is not reliable or not correct. ←
- → Assessee has failed to furnish information within prescribed time as per Sec 92D.
- ↓ Documents not maintained by the Assessee as per Sec.92D

* provided that OOBH shall be given to the assessee.

Sec 92C(4) : Effect of ALP on Total Income

When AO determines ALP under section 92C(3), he may compute total income of the assessee having regard to the following:

- Deduction under Section 10AA and chapter VI-A will not be allowed on increased amount of income.
- When AO increase income of one enterprise, the income of other enterprise will not be computed for the purpose of TDS, i.e. other party cannot claim refund of TDS.

		After applying ALP
Eg. 1. Income	100	130
- Dedn u/s 10AA	50	50
Income	50	80

On increased income of 30, Deduction u/s 10AA will not be allowed.

Eg. 2 Unilever India —(ALP=60, Royalty=100, TDS=10)→ Unilever UK

After applying TP, TDS will not be recomputed to 6, it will remain 10.

Sec 92D: Maintainance & keeping of Information & Documents

- Any person who has entered into International transaction shall keep and maintain such records & documents as may be prescribed. - TP Study Report
  - ↳ not applicable if value of International Transaction is upto Rs. 1 CR
- Info is required to be kept for 8 years
- A.O. or CIT(A) may require any assessee to furnish such info. or docs. within 30 days from date of receipt of notice. (may be extended by 30 days on application of the assessee).
- Constituent entity of an international group shall maintain info. & docs as prescribed (Master File). It shall be applicable even when there is no International transaction undertaken by such constituent entity.

Sec 92CA :Reference to Transfer Pricing Officer (TPO)

- A.O. with prior approval of CIT/PCIT, may refer the calculation of ALP to TPO.
- TPO for determining ALP, may call for Info & require assessee to produce evidence.
- TPO has the power to compute ALP of an International transaction noticed by him in the course of proceedings, even if:-
  - It is not referred by A.O.
  - It is not reported by taxpayer in TP report.
- The order of TPO shall be binding on A.O.
- On the basis of material & evidence, TPO shall compute ALP & pass an order computing ALP before 60 days prior to the last date for completion of Assessment allowed u/s 153.

- When any case is referred to TPO, then time limit allowed Us 153 is increased by 1 year.

Sec 92C(2) More than One ALP? What to do?

When we determine ALP using the most appropriate method & more than one ALP is determined then:

- If the values are less than 6 → Arithmetic Mean of the values shall be ALP
- If the values are 6 or more → Range Concept Rule 10CA

Note: If the difference between ALP & Actual Transaction price is upto 3% (1% in case of wholesale trading) of Actual transaction price, then ALP determined shall be ignored.

Rule 10CA Range Concept

→ Not applicable on Profit split method.

→ Arrange the dataset in the ascending order.

→ A Range from 35th percentile to 65th percentile of the dataset shall be constructed.

→
- If actual transaction price falls between the range (35%- 65%) → Then Actual Transaction Price shall be ALP
- If actual transaction Price does not fall between the range (35%-65%) → Median (50%) of the data set shall be ALP.

→
- If 35%, 65%, 50% are not whole numbers → we have to consider value at next whole number for range/ median.
- If 35%, 65%, 50% are whole numbers → We have to consider mean of values at that number & next number.

Example 1-

Given: Actual Transaction Price = 100

S no.	ALP cc	Arrange it in Ascending order
1.	102	94
2.	105	97
3.	108	102
4.	105	105
5.	97	108
6.	94	105
7.	115	115

Construct range by calculating 35th & 65th percentile:

7×35% = 2.45 } Next whole numbers { 3

7×65% = 4.55 } will construct range { 5

Range will be from 3rd value to 5th value. i.e. 102 to 108.

Now we will check if Actual transaction price falls within 102 to 108

If Yes	If No
Actual Trans. price will be ALP	Median will be ALP.

In this case Actual Transaction price is 100, it does not fall within range,

Therefore 105 will be ALP.

7 x 50% = 3.5 -> we will take next higher number here i.e. 4th value.

4th value is -> 105

Therefore 105 will be ALP.

Example 2:

Actual Transaction price = 125

SR No.	1	2	3	4	5	6	7	8	9	10
Values	94	98	102	106	109	115	118	121	125	130

SR No.	11	12	13	14	15	16	17	18	19	20
Values	132	134	135	137	139	141	144	148	150	153

Total values = 20 -> construct range by calculating 35th & 65th percentile

35th percentile = 20 × 35% = 7 since both are whole numbers, Avg. of

65th percentile = 20 × 65% = 13 these values& next value shall be taken

7 & 8

$\frac{118+121}{2} = 119.5$

13 & 14

$\frac{135+137}{2} = 136$

Range is from 119.5 to 136.

Since Actual Transaction price (125) falls between this range , Actual Transaction price is ALP i.e. 125

Suppose, if Actual Transaction Price is 118, then Median 50% will be ALP i.e. 10th value.

20 × 50% =10 since 10 is a whole number, we will take avg. of 10th & 11th value.

130 +132/2 = 131. 131 will be ALP of transaction

Range Concept, if multiple years data is given:

In case of RPM, CPM and TNMM, if data is given for multiple years, then we have to take Weighted Average of multiple years data.

Example:

S.No. (1)	Name of the Company (2)	Year 1 (3)	Year 2 (4)	Year 3 (Current Year) (5)	Aggregation of OC and OP (6)	Weighted Average (7)
1	A	OC= 200 OP =30	OC= 300 OP =35	OC= 450 OP = 40	OC = 950 OP = 105	9.05
2	B	OC= 150 OP =45	OC= 100 OP =40	OC= 150 OP =55	OC = 400 OP = 140	2.86
3	C	OC= 225 OP= 45	OC= 250 OP =25	OC= 180 OP =55	OC = 655 OP = 125	5.24
4	D	OC= 220 OP= 33	OC= 175 OP =45	OC= 200 OP =50	OC= 595 OP = 128	4.65
5	E	OC= 140 OP =10	OC= 150 OP = 12	OC= 165 OP = 28	OC = 455 OP = 50	9.1

6	F	OC= 75 OP =10	OC= 115 OP =15	OC= 155 OP = 30	OC =345 OP = 55	6.27
7	G	OC= 150 OP = 35	OC= 175 OP = 30	OC= 225 OP =45	OC =550 OP = 110	5
8	H	OC= 200 OP =15	OC= 185 OP =30	OC= 220 OP =55	OC = 605 OP = 100	6.05

The data set shall be constructed as follows:-

S.No	1	2	3	4	5	6	7	8
Values	2.86	4.65	5	5.24	6.05	6.27	9.1	9.05

Total no.of entries = 8

35th Percentile is = 8*35/100 = 2.8

Since this is not a whole number, the number succeeding the above no. is considered as the 35th percentile, i.e. 5.

65th percentile is = 8*65/100 = 5.2

Since the above no. Is not a whole number, the number succeeding the above no. will be treated as 65th percentile, i.e. 6.27.

Therefore the arms length range is 5 – 6.27.

So if the transaction falls within this range, it is deemed to be the arms length price and no adjustment is required.

If the transaction falls outside this range, say 7.5, then the median has to be calculated.

Median = Total no. of entries * 50/100

= 8*50/100 = 4

Since this is a whole number, the average of this value and the value succeeding this value has to be calculated.

I.e. (5.24+6.05)/2 = 5.645.

Therefore the arms length price is 5.645 and the necessary adjustment will be made.

Sec 92E: Report of CA

Every person who has entered into an International Transaction is required to file report of CA in Form No. 3CEB upto 31st Oct. of A.Y.

Penalties:

			Penalty
Sec 271AA			
(1) Failure to →	Keep & Maintain / Report / Maintain/furnish	Info & docs / Transactions / correct info./docs. →	2% of Transaction value
(2) Failure to →	Furnish Master File [Sec92D(4)]	→	Rs. 5,00, 000
Sec 271G: Failure to furnish any info required by AO as per Sec 92D(3)		→	2% of Transaction value
Sec 271BA Failure to furnish report of CA as per Sec 92E		→	Rs. 1,00,000
Sec 270A Failure to report any transactions that would amount to Misreporting of Income		→	Penalty is 200% of Tax.

See 92CC - ADVANCE PRICING AGREEMENT (APA)

↳ Not applicable an specified Domestic Transaction.

→ CBDT may enter into APA with any person, with the approval of Central Government determining: -

- ALP, or specifying the manner of calculation of ALP in relation to an international transaction to be entered by that person.
- Income referred to in section 9(1)(i), or specifying the manner in which such income is to be determined, as is reasonably attributable to activities carried out in India by a non- resident or its PE.

- The manner of determination may include methods given in section 92C or any other method, with variations on adjustments.

→ APA shall be binding on:

- the person who has entered into APA in relation to a transaction.
- the CIT and AO in relation to said person and said transaction.

→ If there is a change in law or facts -> APA shall not be binding.

→ APA shall be valid for Max 5 consecutive years.

→ CBDT may, by order declare an APA to be void ab initio, if it finds that APA has been obtained by fraud or misrepresentation of facts.

→ APA is entered into, for transactions to be entered i.e. future transactions [5 years] but APA can also be entered into for international transactions already entered by assessee in the past i.e. past transactions [4 years]. This is called Roll Back.

ROLL BACK PROVISION

When Assessee enters into APA, he can apply for Roll Back for preceding 4 Previous years.

- He can either opt for all 4 years or none.
- Roll Back is only possible for those previous years whose return has been filled as per section 139(1) & report of CA has been submitted as per form 3CEB.
- Roll Back is not possible for year for which order has been passed by ITAT- on question of fact.
- Income after applying roll back can never go below Returned Income.

eg. ROI=10 crore Income assessed by TPO = 12 Crore

After applying Roll Back provisions → If Income is 11 crore ✓

→ If Income is 9 crore x

↳ In this case, Income of that year shall be taken as 10 Crore only as it can never be less than ROI Income.

- If the asessee has filed revised return u/s 139(5) of return filed u/s 139(1) of a particular year, he would be eligible for rollback in that year as revised return replaces the original return.

→ Merger & Demerger - Provisions of Roll Back will apply or will be available to only that entity which also existed before Merger/Demerger.

→ Roll Back is optional.

Example:

Merger	DEmerger
Reliance ltd, Mukesh ltd → Jio Ltd	B ltd → A ltd, C ltd
In this can Jio ltd. will not be eligible for Roll Back provisions.	In this case as none of B Ltd & C ltd existed before Demerger, no one shall be eligible for Roll back.
Reliance ltd, Jio Ltd → Jio Ltd	NesTea Itd, Nescafe Itd → Nescafe Itd
Now if Jio ltd applies for APA, it will also be eligible for Roll Back provisions as it existed before merger.	Now if Nescafe Ltd applies for APA, it would also be eligible for Roll back as it existed before demerger.

Sec 92CD: Effect of APA

RETURN	ASSESSMENT	
	Pending on the date of modified return	Completed on the date of modified return
Where any person enters into APA and prior to such date, return has already been filed u/s 139 for the previous year to which such APA applies, then	↓ A.O. shall complete such assessment as per APA, taking into consideration, the modified return furnished.	↓ A.O. shall pass an order modifying the total Income.
↓ The person shall file a MODIFIED RETURN within 3 months from the end of month in which such APA was entered.	↓ The time of completion of Assessment u/s 153 will be extended by 12 months	↓ within 1 year from the end of financial Year in which modified return was furnished ↓ The A.O. shall not re-assess the income again.

PRIMARY ADJUSTMENT & SECONDARY ADJUSTMENT

Primary Adjustment : "Primary adjustment" to a transfer price means the determination of transfer price in accordance with the arm's length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee.

Secondary Adjustment: "Secondary adjustment" means an adjustment in the books of accounts of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

Cases Where Secondary Adjustments has to be made	Cases Where Secondary Adjustment is not required
When primary adjustment: (a) has been made suo motu by the assessee in his ROI; or (b) made by the AO & has been accepted by the assessee; or (c) is determined by an APA entered on or after the 1.4.2017; or (d) is made as per the safe harbour rules (e) is arising as a result of the mutual agreement procedure under DTAA u/s 90 or 90A	Such secondary adjustment, however, shall not be carried out if, the amount of primary adjustment made in any previous is upto Rs. 1 crore or the primary adjustment is made for A.Y.2016-17 or an earlier assessment year.

Excess Money



Non-Repatriation of money to India

In simple words, when there is increase in Income or reduction of loss due to Primary adjustment to transfer price, is not repatriated to India within prescribed time, it shall be treated as Advance and interest on such advance shall be added to Income of the assessee.

What Choices Assessee has to Repatriate Money?

OPTION 1	OPTION 2	OPTION 3
The AE, with whom assessee has carried out the international Transaction Can Repatriate within 90 days from the prescribed date.	Any other AE of the Assessee who is a NR can repatriate within 90 days from the prescribed date.	If Option 1 & Option 2 is not opted, and AE doesn't repatriate the excess money, the assessee can pay additional tax at 18% +12% surc.+4% cess effectively 20.9664%

Notes relating to option 3:-

- This is final payment of Tax & no credit is allowed against such payment.
- Assesses can't claim the tax paid as revenue expenditure
- Assesses shall not be required to make secondary adj & pay interest from the date of payment tax.

Interest rate to be changed if excess money not repatriated:

(i)Where the international transaction is denominated in Indian rupee:

At the one year marginal cost of fund lending rate of SBI as on 1st April of the relevant P.Y. + 3.25%

(ii) Where the international transaction is denominated in foreign currency:

At six month London Interbank Offered Rate (LIBOR) as on 30th September of the relevant P.Y. + 3.00%

Excess Money shall be repatriated to India within:-

CASE	DATE	PERIOD OF INTEREST
(i) If primary adjustment is made suo-motu by the assessee in his ROI.	90 days from due date of ROI u/s 139(1)	from due date of filing of ROI u/s 139(1)
(ii) If primary adjustment is made by AO or the appellate authority & accepted by the assessee	90 days from date of order of AO or App. Authority	From date of order of AO or App. Authority
(iii) If primary adjustment is determined by APA u/s 92CC for a P.Y.		
• If the APA has been entered on or before the due date of ROI for the P.Y.	90 days from DATE of Filing of ROI u/s 139(1)	From due date of ROI u/s 139 (1)
• If the APA has been entered after the due date of ROI for the P.Y.	90 days from the end of month in which APA was entered	From the end of month in which APA was entered.
(iv) If Assessee has opted safe harbour rules u/s 92CB	90 days from due date of ROI u/s 139(1)	from due date of ROI u/s 139(1)
(v) If primary adjustment is determined under Mutual Agreement Procedure (MAP)	90 days from date of giving effect of MAP by A.O.	from the date of giving effect of MAP by AO.

Sec 92 BA: Specified Domestic Transactions

- Any of the following transactions where the aggregate value of such transactions in the P. Y. > Rs. 20 Cr.
- Any transaction referred to in see 80IA(8) or 80IA(10)
- Any transaction referred in see 80A
- Any business transaction between the persons referred to in Sec 115 BAB (4)

- Any transactions referred in any other section under chapter VI-A or Sec 10AA to which provision of see 80IA(8) /80IA (10) applies.

Section 94A- Notified Jurisdictional Area

Section 94A allows the Indian Government to notify the non-cooperative countries or islands, i.e. those locales that abstain from sharing information, as Notified Jurisdictional Area (NJA)

- All parties → Deemed to be Associated Enterprises.
- All Transactions → Deemed to be an International Transaction
- All provisions of Transfer Pricing shall apply except variance of 1%/3%.
- Payment to any person in NJA -> TDS rate will be 30%
- If Assessee recieves any funds from a person located in NJA, then assessee have to offer explaination about the source of funds in the hands of that person.
  - ↳ If Assessee does not give satisfactory explanation, then that funds will be taxable as Income in the hands of the assessee.

See 94B: Excess Interest

BEPS Action Plan 4 suggests → For Removal of Thin Capitalization→ That's why Sec 94B was introduced.

- Applicable to Indian Co. or PE of Foreign Co. in India.
- Enterprise who takes loan from NR/AE who pays Interest more than 1 crore
- Interest allowed → 30% of EBITDA

Excess Interest:-

i. Total Interest - 30% of EBITDA
ii. Interest paid to AE

} w.e. is lower

Excess Interest can be c/f for 8 years

- This section is not applicable if interest is paid for debt issued by a lender which is a PE in India of a NR, being a person engaged in Business of Banking
- Where the debt is issued by a Unrelated lender(not AE) but an Associated Enterprise either:

a) provides an implicit or explicit guarantee to such lender or

b) deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.

Country by Country Reporting:

CBC Report has to be submitted by → Parent entity of an International Group

↓

to prescribed authority in its Country of Residence.

→ MNEs have to report annually
- Amount of revenue
- Profit before Income Tax
- Income Tax paid & accrued.

→ MNEs also have to report
- Total employment
- Capital
- Accumulated earnings Capital
- Tangible assets

See 286- Furnishing of Report in respect of International Group.

Parent Entity of International Group → If it is Resident in India → is required to furnish report to DGIT → within 12 months from the end of year

↓

If total Group revenue for last A/cing year as per CfS is Rs. 6,400cr or more

→ If Constituent Entity(CE) is from India -> whose Parent Entity(PE) is NR.

↳ Then, the constituent entity has to Report these 2 things->atleast 2 months prior to due date of CBC Report:

If CE is an Alternate Reporting Entity **OR** Details of PE & Alternate Reporting Entity

→ Constituent Entity Resident in India has to furnish CBC report in India if :

If Parent Entity is Resident of a country which doesn't require CBC Reporting	If Parent Entity is Resident of a Country which doesn't share CBC Report with India	There is a systematic Failure

Master File

→ The master file provides a high-level overview in order to place the MNE group's transfer pricing practices in their global economic, legal, financial and tax context.

→ The master file would provide an overview of the MNE groups business, including:

(1) the nature of its global business operations,

(2) its overall transfer pricing policies, and

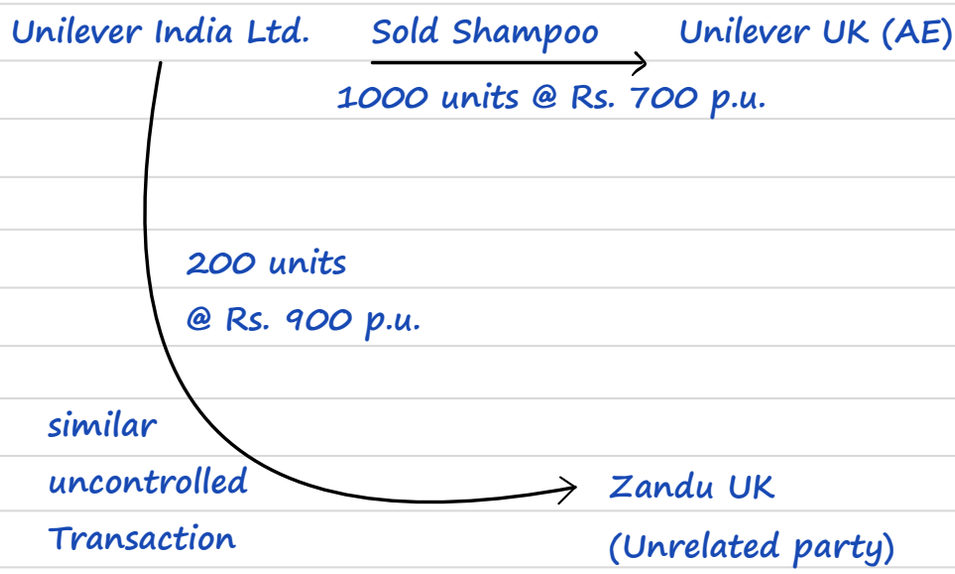
(3) its global allocation of income and economic activity

in order to assist tax administrations in evaluating the presence of significant transfer pricing risk.

→ Information in master file would be more comprehensive than the existing regular transfer pricing documentation.

→ The master file shall be furnished by each entity to the tax authority of the country in which it operates.

CUP Method Example



→ Functional differences

1) Unilever UK → CIF Zandu UK → FOB
Ins & Freight cost → Rs. 50

2) Sales to Unilever Uk is in Bulk
Discount given → Rs. 150 p.u.

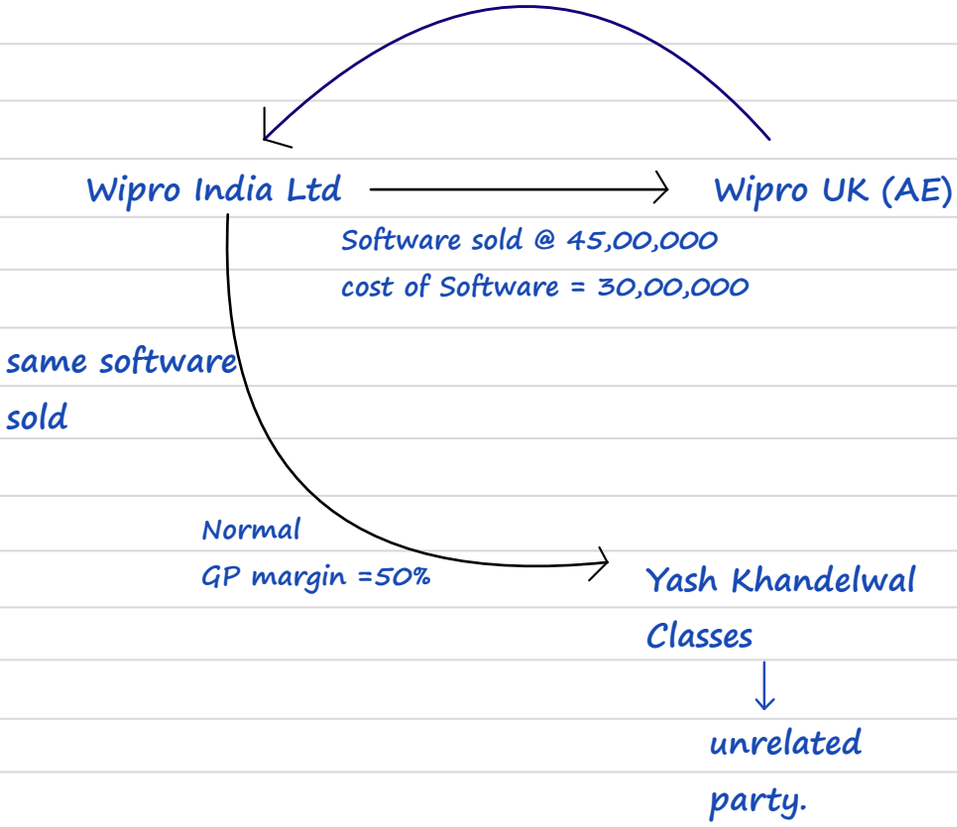
3) Unilever India gave warranty to AE → Unilever UK for 9 months. .
Cost of warranty Rs. 120 p.a.

Solution:

Price charged in comparable Uncontrolled Transaction		900
Add/less	Functional adjustments	
	+ cost of Ins & freight	50
	- Discount	(150)
	+ Warranty (120 x 9/12)	90
	ALP	890

Increase in Income of Unilever India ltd = 1000×[890-700]
= 1000 X 190
= 190,000

Cost plus method example



→ Functional differences

1) Wipro UK gives technical support to Wipro India, YKC doesn't give.

value - 5% of GP margin

2) Wipro India gives credit period to Wipro UK but not to YKC

Value - 3% of GP margin

3) Work for Wipro Uk is in bulk, so quantity discount of 8% is given.

Solution:

Calculation of ALP

Cost of software	30,00,000	
GP margin	50 %	
Add/less Functional adjustments		
(-) Technical support [50% ×5%]	(2.5)	
+ Credit period [50%×3]	1.5	
(-) Quantity discount [50×8%]	4	
	45	

G.P. $\frac{30,00,000}{55} \times 45$

= 24,54,545

Cost - 30,00,000

24,54,545

54,54,545

Increase in Income of WIPRO India = 54,54,545 - 45, 00,000 = 9,54,545.

Indian Enterprise → Sale → Sale Price ↓ → ALP ↑ → Income ↓ → Income Tax ↓ → Add in Income

Indian Enterprise → purchase/ Exp. → Sale price ↓ → Income ↓ → Income Tax ↓ → Add In Income

Resale Price Method example

Unilever UK (AE) —Purchased from AE @ 50,000 / Expenses 20,000→ Unilever India Ltd. (Normal GP Margin = 20%) —sold @ 80,000→ Zandu Ltd (Unrelated party)

Price changed from unrelated party	= 80,000
(-) Normal GP Margin (20%)	= (16,000)
(-) Expenses	= (20,000)
	44,000

Purchase = 50,000
ALP = (44000)
Diff = 6000 → To be added in Income

TNMM Example

Apple India (AE) —cost of products - 25 lakhs, products sold @ 30 lakhs→ Apple Inc USA (AE)

Samsung India
Operating profit margin = 40%

Calculation of ALP:

Cost of products to Apple India	= 25 lakhs
+ op. profit margin of Samsung India[25 lakhs X 40%]	= 10 lakhs
ALP	35 lakhs

Increase in Income of Apple India 35- 30 lakhs = 5 lakhs

Chapter 2: Non-Resident Taxation

#SabKarLenge

Things we will study

- Residential status
  - Individual
  - Company
    - POEM
- Section 9
  Income deemed to accrue or arise in India
  - Business connection
  - Interest, Royalty FTS, Dividend
- Special Tax Rates
  115AB, AC, AD,
  115 BBA, Chap XII-A- NRI

Residential Status

2 Basic Conditions → Resident, even if 1 Basic Condition Satisfied

2 Additional Conditions → Both Conditions Satisfied?
- Yes- ROR
- No - R-NOR

Basic Conditions:

- Stay in India 182 days or more in a P. Y.
- OR
- Stay in India for 60 days or more in a P.Y. And 365 days or more in last 4 P.Y.s.

Additional Conditions:

- Resident for 2 P.Ys in last 10 P. Ys
- Stay in India for 730 days or more in last 7 P. Y,

Note: Day of entering India & Day of leaving India - is added while calculating Stay in India.

Basic condition no. 2 not applicable

→ 3 Cases where only Basic Condition No.1 is applicable:

Indian citizen leaving India during the P.Y. for Employment outside India

Indian, Citizen being a crew member of Indian Ship, leave India during the P. Y. * (note)

Indian citizen or Person of Indian origin

↓

whose employment & Business is set up outside India & visit India during P. Y. and his total Income (other than Foreign Source) is upto Rs. 15 lakhs.

↓

He can be ROR

*Note: In this case, stay in India is calculated by excluding:.

Date on which Continuous Discharge Certificate is signed on Joining Ship → To → Date on which Continuous Discharge Certificate is signed on Leaving ship.

Amendment (F. A. 20) : Very Important

An Indian citizen or Person of Indian origin having total Income (other than foreign source) more than 15 lakh can be resident in India in 2 Cases:

Normal

He stays in India for more than 182 days or more in a P. Y.

↓

Check additional conditions

↓

can be ROR

New Section

He Stays in India for 120 days or more in P. Y. and 365 days or more in last 4 P.Y.s.

↓

No need to check Additional conditions

↓

Always R-NOR

Note: Income from foreign Source means:.

Income which accrue or arise outside India but shall not include:.

- Income which are deemed to accrue or arise in India (Sec 9)
- Income derived abroad from Business Controlled from India
- Income derived abroad from a profession set up in India

Section 6(1A) Deemed Resident

If any Indian citizen

↓

whose Total Income (other than foreign Source) during P.Y. is > 15 lakhs

↓

If he is not liable to tax in any country or territory by reason of domicile orresidence

↓

He will be deemed to be Resident and his Income will be taxable in India. → He will always be R-NOR

Residential Status of HUF

If Control & Management of its affairs is

- Wholly or Partly in India → Resident
- Wholly Outside India → Non- Resident

Note: If Karta Satisfies both the additional conditions

- YES → HUF -> ROR
- NO → HUF -> RNOR

Residential Status of Firm/AOP/BOI/ Local Authority/Artificial Juridical Person

If Control & Management of its affairs

- wholly or Partly in India → Resident
- Wholly Outside India → Non- Resident

RESIDENTIAL STATUS OF COMPANY

Indian Co. → Always Resident

Other Co. → If its Place of Effective management:

Is in India → Resident

If not → Non-Resident

How to determine POEM? (Applicable only if Turnover> 50 crore)

1. Companies satisfying ABOI Test
2. Companies not satisfying ABOI test

1) Companies satisfying ABOI Test

2 conditions to determine if POEM is outside India.

- If Co. has active Business outside India → ABOI → 4 conditions
- Majority meetings of Board held outside India

1. If passive Income is not more than 50% of its total Income.
2. Less than 50% of its total Assets are situated in India
3. Less than 50% of its total Employees are situated in India or are resident in India
4. The payroll expenses on such employees is less than 50% of its total payroll Expenses.

Notes:

(1) Passive Income:

(i) Royalty, Dividend, Capital Gain, Rental Income, Interest (not for Banking Company)

(ii) Purchase and Sale → Both is with AE.

Eg: HUL UK —purchase→ HUL India —Sale→ HUL Japan

(2) Income → If other country has tax law → Income as per law.

If not -> Income as per Books of Accounts.

(3) Value of Asset → Depreciable Asset: WDV as per Income tax law of that country

Other Asset: Value as per Books of Accounts.

(4) Number of Employees: Average of employees at the beginning & at the end of the year → Shall include contract employees.

(5) Pay Roll : Salaries, bonus, wages and all other employee compensation.

No. of Board Meetings

If majority meetings of BOD are held outside India but Board is not exercising its powers, and the powers are actually exercised by

Holding Co. resident in India **OR** any other person Resident in India

Then POEM will be in India

(2) Companies not Satisfying ABOI Test

First stage

Identify the persons who take key management or Commercial Decisions

Second Stage

Determine the places where Decisions are taken.

Note: Place where Management decisions are taken would be more important than the place where those decisions are implemented.

Note:- For determining POEM, Substance would be conclusive over form.

Note:. There are different guiding principles, which decides where the POEM of the company is, according to different situations. Students can refer the situations from Pg. No. 2.711 (ICAI Study MAT)

The determination of POEM is based on the following categorization of foreign companies:

Active Business Outside India (Business Test)

Companies fulfilling the test of ABOI

- *POEM outside India, if majority BOD meetings are held outside India*
- *If de facto decision making authority is not BOD but Indian parent or resident, POEM shall be in India*

Companies other than those fulfilling the test of ABOI

Stage 1: *Identification of persons who actually make the key management and commercial decision for conduct of the company's business as a whole*

Stage 2: *Determination of place where these decisions are, in fact, made*

What is ABOI test?

A company is said to be engaged in ABOI, if it fulfills the cumulative conditions of:

- Its passive income* (wherever earned) is 50% or less of its total income
- Less than 50% of its total assets situated in India
- Less than 50% of the total number of employees are situated in India or are residents in India
- Payroll expenses incurred on such employees are less than 50% of its total payroll expenditure

Scope of Total Income in case of Individual & HUF

ROR -> World Income is Taxable in India

RNOR -> Indian Income & Foreign Income

↳ From Business & profession controlled from India

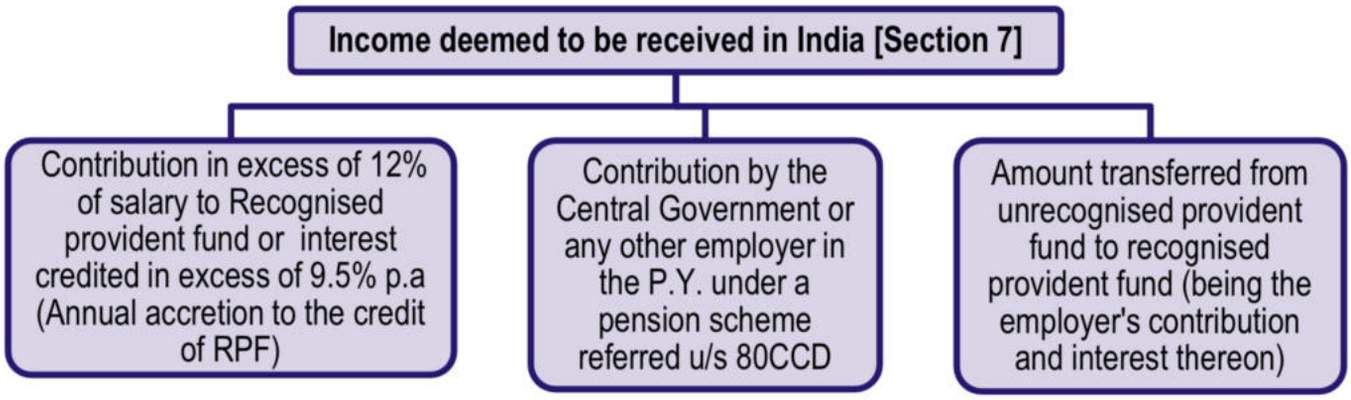
NR-> Only Indian Income.

Scope of Total Income in case of Other Assessee

Resident -> World Income taxable in India.

Non- Resident -> Only Indian Income taxable in India.

Sec 7 → Income deemed to be received in India



SECTION 9

Sec 9(1) (i) Business connection

(ii) Property

(iii) Asset or Source of Income.

(iv) Transfer of Capital Asset (vodafone Case)

Space for Notes:

Sec 9(1)(i): BUSINESS CONNECTION

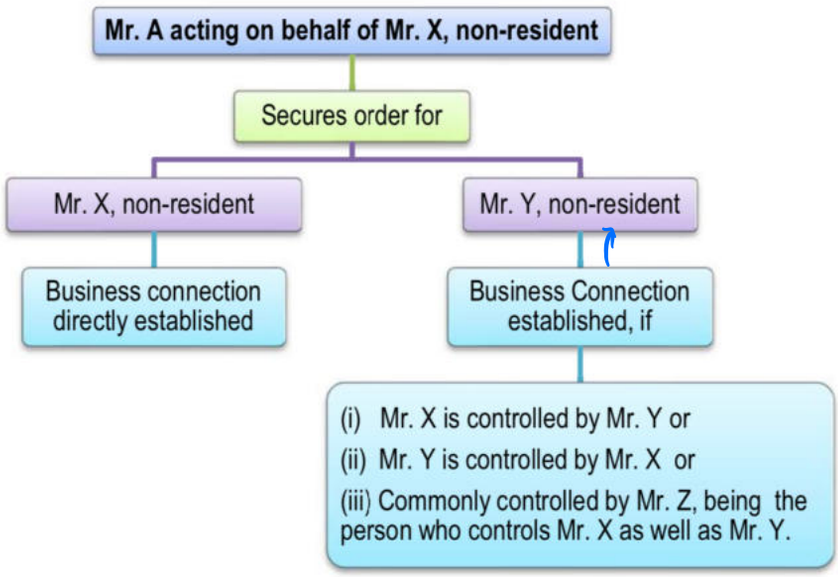
Business Connection means a person acting on behalf of NR:.

1) He must
- have authority to habitually conclude contracts OR
- habitually concludes contracts OR
- plays principal role in concluding contracts

} On Behalf of NR

2) Habitually maintains a stock- from which he regularly delivers on behalf of NR

3) Habitually Secures order in India → Mainly or wholly for NR.



Note : Agent having Independent status

If any agent, broker, general commission agent is working in Independent capacity → Not wholly for NR

↳ Then No Business Connection

Space for Notes:

Now we will discuss

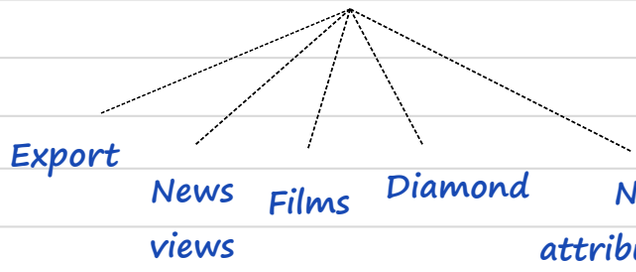
What is Business connection?

i) Significant Economic Presence

ii) Income attributable to the operations carried out in India.

Discussed later

What is not a Business connection?



1) Purchase of goods in India for Export
2) Collection of News & views in India for transmission out of India.
3) Shooting of cinematographic films in India by Individual/firm/Company
   - Not a citizen of India
   - partner
   - shareholder

   (partner & shareholder: not a citizen of India.)
4) Display of Uncut/Unassorted diamonds in Special zones notified by CG
   - ↳ By Foreign Co. having Mining Business
5) Income not attributable to operations carried out in India.

What is Business Connection?

i) Significant Economic Presence

- Transaction of any Goods/services/property, download of data or software
  By NR → with any person in India

  Having aggregate payment > 2 crores
- Systematic and Continous Soliciting of Business Activities
  OR
  Engaging in interaction with users in India
  Users → Aleast 3 lakhs

Note:-significant economic presense is not affected by following factors

- Place of entering agreement
- Residence or place of Business weather in India or not.
- Rendering of Services

} whether in India or not.

Note: If Business Connection is establish only income attributable to these transactions will be deemed to accrue or arise in India.

ii) Income attributable to operations carried out in India:

Income attributable to the operations carried out in India includes:

Income from advt. targetting customers residing in India or accessing advt. thro IPA located in India	Income from sale of data collected from persons residing in India or using IPA located in India	Income from sale of goods and services using data collected from persons residing in India or using IPA located in India

IPA – Internet Protocol Address

The above provisions would also apply to the income attributable to the transactions or activities referred to in Explanation 2A to section 9(1)(i).

Sec 9(1)(ii) &(iii) → Income from Property / Asset / source of income } situated in India } Is deemed to accrue or arise in India.

Sec 9(1)(iv) : Income through Transfer of Capital Asset situated in India. (Vodafone Case)

Income through Transfer of Capital Asset situated in India

↓

is deemed to accrue or arise in India, irrespective of:

- Place of Asset
- Consideration on Transfer of Asset
- Asset-Tangible/ Intangible/ movable/Immovable.

} Within India or Not

Explanation 5:

A Capital Asset

↓

Being Any Share or interest in foreign Company → is deemed to be situated in India → If the Share or Interest of Foreign Co. derives its value substantially.

↓

From Assets located in India.

→ Shares of foreign co. will be deemed to be situated in India if it derives value substantially from Indian Asset.

↳ If anyone transfers such shares of foreign co., Capital Gains will be taxable in India.

Note: Explanation 5 not applicable to Foreign Institutional Investors and Foreign Portfolio Investors.

Note: Declaration of Dividend by such Foreign Company Outside India is not deemed to accrue or arise in India as per Sec 9(1)(i).

Explanation 6:

Substantial value means:

It represents 50% of Value of total Asset, Held by Foreign company

AND

FMV of Indian Assets held > 10 crores

Explanation 7

Income shall not be deemed to Accrue or Arise in India in the hands of a Non-resident if:

Transferor does not hold → Directly or Indirectly

Right of management or Control

5% of Total Voting power/Shares

at any time during the last 12 months.

Sections We will Study:-

Section 9 → Income deemed to accrue or arise in India.

Sec 115A → Tax on Royalty,FTS, Interest, Dividend in case of NR/FC

Sec 44DA → Special provisions for Computing Income by Royalties etc. in case of NR/FC(PE)

Sec 9 - Income Deemed to Accrue or Arise in India

(i) Any Income earned through any Business connection in India. (Discussed above)

(ii) Income earned under the head SALARIES if it is earned in India. It includes:-

→ Salary payable by Government of India to Indian citizen for service outside India. (iii)

→ Salary payable for services rendered in India.

→ Salary payable for rest period/leave period preceeded & succeeded by services rendered in India and forms part of service of employment.

↳ If any NR is working in India & he gets Salary for Rest period/leave period preceded or succeeded by the period of service in India, then salary received for such rest period/leave period will also be taxable in India

Note: Any allowance or perquisite paid or allowed as such outside India by the Govt. to Citizen of India for rendering services outside India shall be exempt from tax.

(iv) DIVIDEND paid by Indian Company Outside India

(V) Income by way of INTEREST payable by:-

→ Government of India

→ a person who is Resident, for debt incurred or money borrowed, and used for

- Business or profession carried on in India.
- Earning any Income from any source in India.

→ a person who is Non-Resident for debt incurred or money borrowed, and used for

- Business or profession carried on in India.
- ~~Earning any Income from any source in India.~~

Note: If one NR takes loan from another NR, for any purpose other than Business or profession, then that Interest paid by NR will not be deemed to accrue or arise in India.

Eg:- If a Non-Resident 'Mr. Iron Man' takes loan from another Non- Resident 'Mr. Thor' and invests the amount in shares of Indian Company, then Interest payable by Iron Man to Thor will not be deemed to accrue or arise in India.

(vi) Income by way of ROYALTY payable by:-

→ Government of India

→ a person who is Resident, when the royalty is payable for rights, property or information used to

- Business or profession carried on in India.
- Earning any income from any source in India.

→ a person who is Non-Resident when the royalty is payable for rights,property or information used for

- Business or profession carried on in India.
- Earning any Income from any source in India.

(Vii) Income by way of FEES for TECHNICAL Services payable by:-

→ Government of India

→ a person who is Resident, where the fees is payable for services utilized in a:

- Business or profession carried on in India.
- Earning any Income from any source in India.

→ a person who is Non-Resident where the fees is payable for services utilized in a

- Business or profession carried on in India.
- Earning any Income from any source in India.

viii) Income arising Outside India, being any sum of Money referred to in Sec 56(2)(x) paid by a person Resident in India to a Non-Resident or foreign company.

↳ Which means this section is only applicable on Sum of Money, any other gift(in kind) will not come under this section.

Sec 115A → Tax on Interest in case of NR/FC

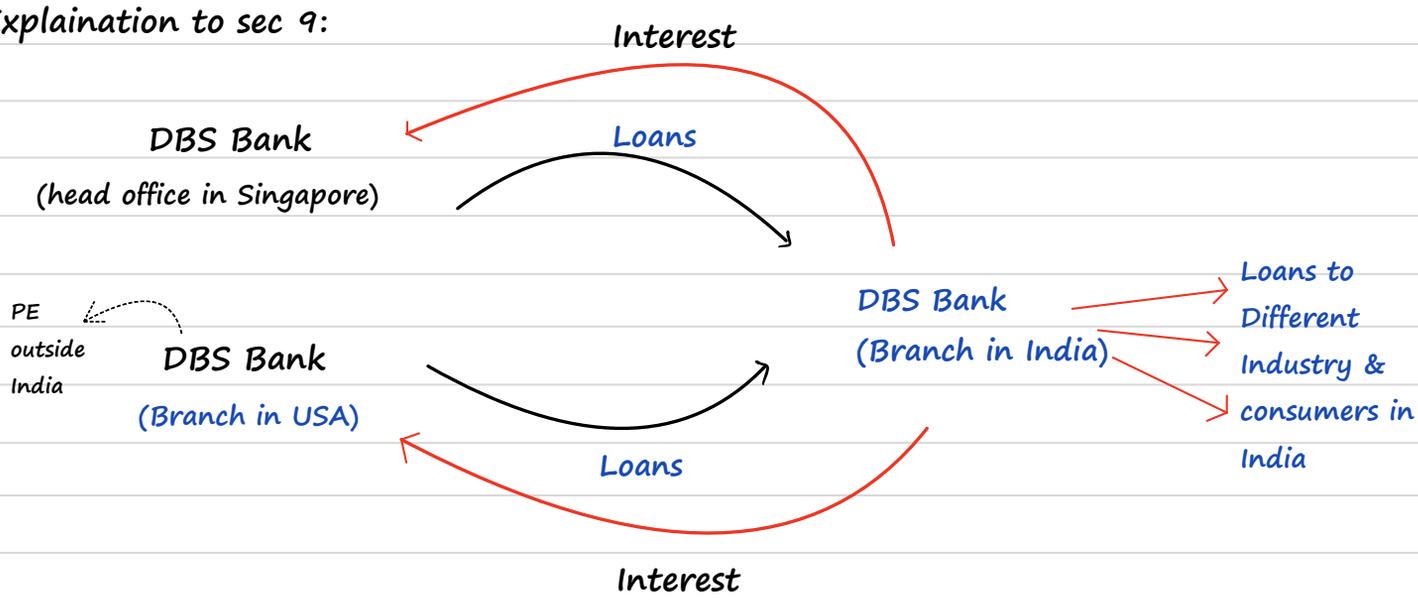
Particulars	Rate of Tax
(I) Interest Recieved from Indian Government or Indian concern other than II,III,IV,V below [Money Borrowed in foreign Currency]	20%
(II) Interest recieved u/s 194LB from an Infrastructure Debt fund referred in sec 10(47) [No condition of Investment in Foreign Currency]	5%
(III) Interest payable by Indian Company or Business Trust on:- → Loan Agreement, Rupee Denominated Bonds. Any other long term Bard	5%
→ When any RDB or Other long term Bond is listed only on recognised Stock exchange in IFSC [Money Borrowed in foreign Currency]	4%
(IV) Interest Payable to Foreign Institutional Investor or Qualified Foreign Investor for Investment in: • RDB of Indian Co. • Govt. Security • Municipal Debt Security [No condition of Investment in Foreign Currency]	5%
(V) Distributed Income in the nature of Interest from SPV recieved from Business Trust [No condition of Investment in Foreign Currency]	5%

Notes:

(1) As per sec 10(15), Interest payable to NR/FC by a unit in IFSC on moneys borrowed by it on or after 1.9.2019 is completely EXEMPT FROM TAX.

(2) As per section 10(4C) , Interest on RDB issued by Indian co. or Business Trust during the period 17.9.2018 - 31.3.2019 is completely EXEMPT FROM TAX.

Explaination to sec 9:



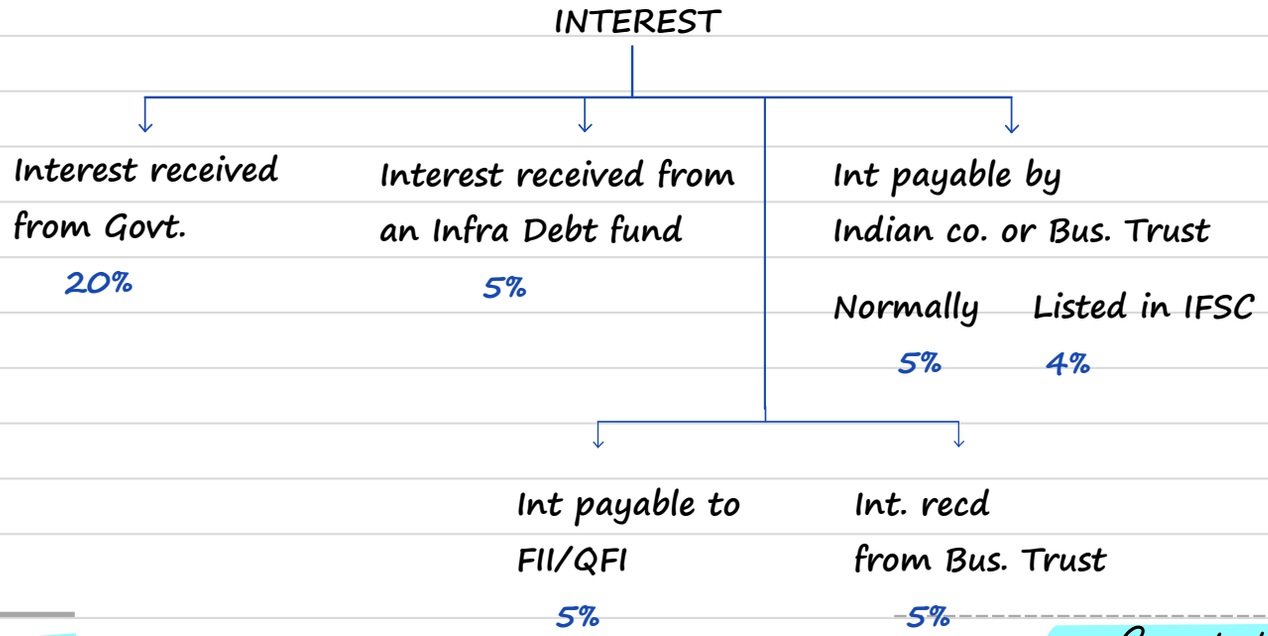
→ The Interest paid by Indian Branch(PE) of Foreign Bank to → its Head Office & Other foreign branches is deemed to accrue or arise in India & taxable in the hands of Foreign Bank(HO) & Foreign Branches.

→ Indian PE shall be treated as separate PE and its Income is taxable in India. Interest paid to H.O. and other foreign branch is deductible as an expense in India as per DTAA.

→Indian Branch will get deduction of Interest Expese & it has to deduct TDS on such Interest.

If not deducted:

- Such Interest shall be disallowed in hands Indian PE.
- Interest & penalty shall be levied for non-deduction of TDS.



Sec 115A:. Tax On Dividends & Income recieved on Units in case of NR/FC.

Rate of Tax on Dividend Income given below- 20%.

Where the total Income of a foreign Co. or NR includes any Income by way of:-

1) Dividend Income on shares weather purchased in Indian currency or Foreign Currency.

2) Income recieved in respect of Units of Mutual fund purchased in Foreign Currency specified via 10(23FD) or of UTI.

Note:

Units of UTI means:

- Units of Specified Company
- Units of Administrator of Specified Undertaking

Sec 115A → Tax on Royalty and FTS in case of NR/FC

Royalty or Fees for Technical Services other than Income referred in Section 44DA:-

a) Recieved from Government of India

b) Recieved from an Indian concern in persuance of an agreement approved by Central Government.

Rate of Tax - 10% or rate as per DTAA, whichever is lower.

Notes:

1) Royalty Includes:.

Rent, Hire Charges, Lease charges of machinery and equipment

But Does not include:-

Hire charges of Oil rigs covered by section 44BB.

2) Royalty includes consideration recieved for transfer of any rights, license in respect of:

Copyright, literary, scientific or artistic work including films or video tapes for use in connection with radio broadcasting.

3) Few Deduction under chapter VI-A are available if any, in respect of Income above:

↳ Deduction is allowed u/s 80GGB 80GGC and 80G & you know very well where this money goes.

4) Explaination 4 to sec 9

Payment recieved by NR from a resident for transfer of rights or license of using a software is always treated as Royalty.

5) Explaination 5 to Sec 9:

Every credit card swipe transaction is verified by server situated outside India. Payment made by Indian Banks to Foreign server situated outside India is treated as Royalty.

6) Explaination 6 to sec 9:

Indian TV channels make payment to foreigners for use of satellite to transmit their TV serials outside India. This payment is also treated as Royalty.

7) CIT v/s Alcatel Lucent Canada (Delhi)

High Court held that: If payment is made for hardware, in which software is embedded & software does not have independent functional existence.

No amount can be attributed to Royalty for software.

Some Important Notes on Sec 115A:

(Common for Interest,Royalty,FTS,Dividend)

1) The assessee is not required to file ROI if:-

- Total Income consists only if Income u/s 115A
- TDS has been deducted at rate not less than u/s 115A.

(2) No deduction of any expenditure us 28-44C & sec 57 is deductible while computing above Income.

(3) Deduction under chapter VI-A is not allowed on above Income.

Exception:

But deduction u/s 80LA shall be available to the unit of NR/FC located in an IFSC.

→ Dividend & Interest recieved by that unit will be allowed as deduction u/s 80LA.

[Sec 80LA- Deduction is allowed on profits of 10 A.Y.s out of Block of 15 A.Ys, which means 100% deduction will be available on dividend Income.]

(4) Unabsorbed Depreciation can't be set off against above Income - current as well as Brought Forward.

(5) Set-off & carry forward of losses is Allowed against above Income.

(6) Deduction of payment is allowed to the payer only if TDS is deducted and paid, otherwise disallowance u/s 40(a)(i) will be attracted.

(7) Special Rate is applicable to above Income only, Other Income is taxable at Normal Tax Rates.

See 44DA:- Special Provisions for computing Income by way of Royalties, FTS in case of NR/FC

Taxability of Royalty & FTS in hands of NR/FC

Sec 115A	Sec 44DA
where NR/FC does not have any PE or fixed place of Business or profession in India.	Where NR/FC has PE in India or performs professional services through a fixed place in India & Royalty-FTS is effectively connected with such PE.
Tax Rate:- 10% + surcharge (2% or 5%)+ cess 4%	Tax Rate:- Normal Tax Rates Foreign Co. 40% Foreign Firm 30%
→No need to maintain BoA & documents. → No Audit requirement	Compulsory maintenance of BoA & other Documents. Compulsory Audit requirement.
→ Deduction under chapter VI-A allowed.	Deduction under chapter VI-A allowed.
→ Losses of Other Business in India can be set-off	→ Losses of Other Business in India can be set-off
→ No deduction of Expenses is allowed while computing such Income.	All expenses will be allowed as deduction while computing Income under PGBP.

No deduction shall be allowed:

- For any expenditure which is not wholly & exclusively incurred for business of such PE or fixed place.

- For any amount paid by PE to its head office or other offices

Note: Deduction shall be allowed for reimbursement of Actual Expenses incurred by HO or other offices if such expenses are incurred for such PE in India.

Sec 44C : Deduction in case of Head office Expenses in Case of Non - Resident.

Deduction of Head Office expenditure in case of Non-residents while computing Profit and gains from business or profession

Lower of

5% of adjusted Total Income	Amount of Head Office expenditure incurred by the Non-resident attributable to the business or profession in India
Meaning of Adjusted Total Income	**Meaning of Head Office expenditure**
Total Income, without giving effect to: (i) Head Office expenditure (ii) Unabsorbed depreciation (iii) Capital expenditure on family planning (iv) Losses carry forward: - Business loss u/s 72(1) - Speculative business Loss u/s 73(2) - LTCL/STCL u/s 74(1) - Loss from owning and maintaining race horses u/s 74A(3) (v) Deductions under Chapter VI-A from GTI	Executive and general administration expenditure incurred by the NR outside India, including: (a) Rent, rates, taxes, repairs or insurance of any premises outside India used for business or profession (b) Salary, wages, perquisites etc. to any employee or other person managing the affairs of any office outside India (c) Travelling expenditure by any employee or other person managing the affairs of any office outside India (d) Such other executive and general administration expenditure prescribed

NR – SPECIAL RATES OF TAX

	Sec 115AB	Sec 115AC	Sec 115AD
1) Applicable to:	Overseas Financial Organisation	Non- Resident incl. Foreign co.	Foreign Institutional Investor or specified Fund
2) Applicable on:	Units of UTI & Mutual fund acquired in Foreign Currency	Bonds of Indian co. or GDR acquired in Foreign Currency.	Securities Other than Units of UTI & Mutual fund.
3) Tax Rates:	LTCG → 10% Dividend→10%	LTCG → 10% Dividends→10% Interest→10%	LTCG – 10 % STCG – 30 % Interest & Dividend: FII→ 20% Specified fund→10% LTCG u/s 112A: 10% in excess of Rs.100,000 STCG u/s 111A:- 15%
4) TDS	10% on LTCG & Dividend (Sec 196B)	10% on LTCG, Dividend & Interest (See 196C)	Interest & Dividend: FII → 20% Specified Fund→ 10%

Sec 115AB- Tax on Income of OFO on units of UTI/MF purchased in Foreign Currency

Overseas Financial Organisation means any fund, Institution , association or body, whether Incorporated or not, established under the laws of a country outside India, which has entered into an agreement for investment in India with any public sector bank or public financial institution or a mutual fund specified u/s 10 (23D). Such agreement should be approved by SEBI.

Rate – 10%

→ LTCG @ 10% excess of Rs.1 lakh on units of Equity oriented fund u/s 112A.

→ STCG @ 15% on units of Equity oriented Fund u/s 111A.

Notes on Sec 115 AD:-

Specified fund means:

- A fund which is registered as Category III Alternative Investment Fund regulated by SEBI.
- which is located in any IFSC
- of which all the units are held by non-residents other than units held by sponsor or manager.

→ In case of Specified fund, the provisions of this section shall apply to the extent of Income that is attributable to the units held by NR. (not being PE of NR in India)

→ Higher Surcharge of 25%,37% will not apply in case if NR is a foreign fund in case of dividend, capital Gain u/s 111A & 112A.

Sec 115BBA :Income of NR Sportsperson, Sports Association & Entertainer

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Tax Rate - 20% →TDS u/s 194E

a) A Sportsman - Non-Resident & not a citizen of India Any Income recieved or recievable by way of:

- Participation in India in any game (other than sec 115BB)
- Advertisement
- Contribution to articles for any game in India in newspapers, magazines or Journals.

b) A NR Sports Association or Institution

Any amount paid or payable to such association or institution in relation to any sports(other than sec 115BB)

c) An Entertainer - Non-Resident & not a citizen of India.

Any Income received or receivable from his performance in India.

Note:- Umpire or Referee does not come under this section.

Some Common points about see 115A, 115BBA, 115 AB, 115 AC and 115AD

- Sec 28 to 44C & section 57 not available.
- Chapter VI-A deductions not available.
- Indexation benifit not available.
- Other Income Taxable at Normal Tax Rates
- Benefit of Basic Exemption limit not available.

- These provisions are mandatory.

Special Provisions for NRI → Chapter XII-A

Section 115C- 115I

In case of NRI, there is an option to choose:.

Specific Provisions Chapter XII-A - see 115C- 115I.	General Provisions ie. Sec 112&115 A
• See 115F is available. • Exemption of Rs. 100,000 not available on CG u/s 112A • 2nd proviso to sec 48(indexation) not available	• See 115 F is not available. • Exemption of Rs.100,000 is available on CG u/s112A • 2nd proviso to sec 48(indexation) not available
• First proviso to sec 48:- Unlisted Shares- Available Listed shares sold in: Stock Exchange- Available Off Market - Available	• First proviso to see 48:- Unlisted Shares: Not available Listed shares sold in: Stock Exchange → Not available Off Market - Available.

Section 115C

NRI means:- NR + Indian Citizen / Person of Indian Origin

Foreign Exchange Assets- Any of the following assets purchased in Convertible Foreign Exchange:

- Shares of Indian Company - Private or Public.
- Debentures of Public Ltd. Indian Co.
- Deposits of Public Ltd. Indian Co
- Government Securities.

LTCG - LTCG from foreign Exchange Assets

Investment Income: Dividend and Interest from Foreign Exchange Assets.

Section 115E: Tax Rates:-

- LTCG - 10%
- Investment Income- 20%
- Other Income - Normal Tax Rates

Section 115D

(1) Investment Income:- Section 28 to 44D, Section 57, Chapter VI-A } Not available

(2) Long Term Capital Gains - Chapter VI-A not available

(a) 1st proviso to sec 48(TTBR/TTSR) - Available

(b) 2nd proviso to sec 48(Indexation) - Not available

(3) Other Income - Normal Provisions

Sec 115 F:

LTCG on Forex asset shall be exempt if:-

- Net consideration is utilized for purchasing another forex Asset.
- It is purchased within 6 months of transfer

$$\text{Exempt Amount} = \text{LTCG} \times \frac{\text{Cost of New Asset}}{\text{Net Consideration}}$$

Lock in period = 3 Years, if sold before 3 years, Exempt LTCG shall be taxable.

Sec 115G:- Exemption from Filing ROI

ROI is not required to be filed if:.

- Total Income includes only Investment Income and/or LTCG.
- TDS has been deducted.

Sec 115H: Chapter to apply even if NRI becomes Resident.

When NRI becomes Resident, he can choose the option to be Governed by this chapter.

- Investment Income will be taxed @ 20%
- Dividend Income & LTCG will be taxed normally.

Sec 115I: This chapter is Optional

Presumptive Taxation for Non-Residents

44B Shipping Business	44 BBA Operation of Aircraft	44BB Services for prospecting/ extraction/production of mineral oils	44BBB services for Turnkey Projects.
7.5% of	5% of	10% Of	10% Of
1) Freight(Money) received in India- Irrespective of from where goods/passenger is loaded. 2) Freight on Goods/Passengers loaded from India- Irrespective of where money is received		Gross Amt. recieved or recievable in India for Services.	Amount recieved or recievable for Such services

Exempt Income of Non-Resident

Sec 10(4D) Income accrued or arising to or received by specified fund -

(i) on transfer of a capital asset, being a bond of an Indian Company or a public sector company (sold by the Government and purchased by the specified fund in foreign currency), GDR or RDB of an Indian company or derivative or any other notified security, on a recognized stock exchange located in any IFSC and where the consideration is paid or payable in convertible foreign exchange; or

(ii) on transfer of securities (other than shares in a company resident in India); or

(iii) from securities issued by a non- resident (not being a permanent establishment of a non-resident in India) and where such income otherwise does not accrue or arise in India; or

(iv) from a securitisation trust which is chargeable under the head "Profits and gains of business or profession", A specified fund to the extent such income accrued or arisen to, or is received, is attributable to units held by non-resident (not being the permanent establishment of a non- resident in India) or is attributable to the investment division of offshore banking unit, as the case may be, computed in the prescribed manner.

Sec 10(4E) Any income accrued or arisen to, or received by, a non-resident as a result of transfer of non-deliverable forward contracts entered into with an offshore banking unit of an IFSC as referred to in section 80LA(1A), which fulfils prescribed conditions.

Sec 10(4F) Any income of a non-resident by way of royalty or interest, on account of lease of an aircraft in a previous year, paid by a unit of an IFSC referred to in section 80LA(1A), if the unit has commenced its operation on or before 31.3.2024.

"Aircraft", here, means an aircraft or a helicopter, or an engine of an aircraft or a helicopter, or any part thereof.

10(23FE) Dividend, interest or long-term capital gains arising to specified person from an Investment made by it in India, whether in the form of debt or share capital or unit, if such investment

(i) is made between 1.4.2020 and 31.3.2024;

(ii) is held for at least 3 years

(iii) is in a business trust, a company/ enterprise/ entity in developing/ operating/ maintaining an infrastructure facility or

(iv) a SEBI Category I or II AIF having not less than 50% investment in one or more of the company or enterprise or entity referred to in (iii) or in (v) or in (vi) or in an Infrastructure Investment Trust or

(v) a domestic company, set up and registered on or after 1.4.2021, having minimum 75% investments in one or more of the companies or enterprises or entities referred to in (iii) or

(vi) a NBFC registered as an Infrastructure Finance Company or in an Infrastructure Debt Fund, having minimum 90% lending to one or more of the companies or enterprises or entities referred to in (iii).

Specified person, being

(i) a wholly owned subsidiary of the Abu Dhabi Investment Authority

(ii) a sovereign wealth fund

(iii) Pension fund

satisfying the prescribed conditions

10(23FF) Income of the nature of capital gains on account of transfer of share of a company resident in India, by the resultant fund or a specified fund to the extent attributable to units held by non-resident (not being a PE of a non- resident in India) in such manner as may be prescribed, and such shares were transferred from the original fund, or from its wholly owned special purpose vehicle, to the resultant fund in relocation, and where capital gains on such shares were not chargeable to tax if that relocation had not taken place.

Remuneration received by officials of Embassies etc. of Foreign States [Section 10(6)(ii)]

The remuneration received by an individual, who is not a citizen of India, for services as an official by whatever name called of an embassy, high commission, legation, commission, consulate or trade representation of foreign state, or a member of staff of any of these official, for service in such capacity is exempt.

Conditions:

(a) The remuneration received by our corresponding Government officials resident in such foreign countries should be exempt.

(b) The above-mentioned member of the staff of such officials should be the subjects of the respective countries and should not be engaged in any other business or profession or employment in India.

Remuneration received for services rendered in India by a Foreign National employed by Foreign Enterprise [Sec 10(6)(vi)]

The remuneration received by a foreign national as an employee of a foreign enterprises, for services rendered by him during his stay in India is exempt from tax.

Conditions

(a) The foreign enterprise is not engaged in any business or trade in India:

(b) The employee's stay in India does not exceed in the aggregate a period of 90 days in such previous year, and

(c) The remuneration is not liable to be deducted from the income of the employer chargeable under the Income-tax Act, 1961.

Salary received by a non-citizen for services rendered in connection with employment on foreign ship [Sec 10(6)(viii)]

Any income chargeable under the head "Salaries" received by or due to, non-citizen, India who is also a non-resident as remuneration for services rendered in connection with his employment on a foreign ship is exempt provided his total stay in India does not exceed 90 days during the previous year.

Remuneration received by Foreign Government employees during their stay in India for Specified Training [Sec 10(6)(xi)]

Any remuneration received by employee of the Government of a foreign state from their respective Government during his stay in India, is exempt from tax, if remuneration is received in connection with training in any establishment or office of or in any undertaking owned by,-

(a) the Government; or

(b) any company owned by the Central Government or any State Government or partly by the Central Government and partly by one or more State Government; or

(c) any company which is subsidiary of a company referred to in (b) above, or

(d) any statutory corporation; or

(e) any society registered under Societies Registration Act, 1860 or under any law and wholly financed by the Central Government or any State Government(s) or partly by the Central Government and partly by one or more State Governments.

Note: Only the important Income Exempt for NR is taken in these notes. Students can refer page 2.45 to 2.63 from ICAI Study MAT for other Income.

Chapter 3: DOUBLE TAXATION RELIEF

#SabKarLenge

Double Taxation - Taxation of 1 Income 2 Times

→ All countries tax the Income as per 2 rules i.e. Residence Rule & Source Rule.

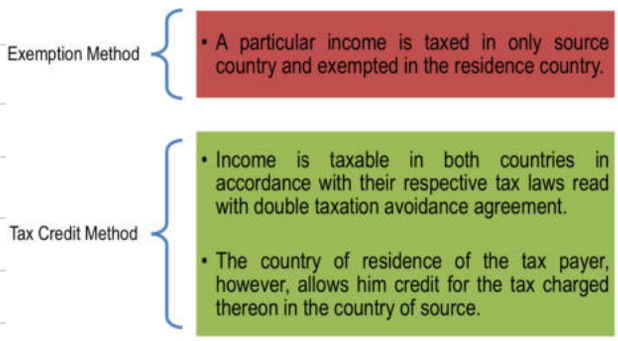
→ Where a person is resident in one country but has a source of Income in another country, it leads to double taxation.

→ There are 2 types of Relief for such Double Taxation:

Bilateral Relief [Sec 90]

Countries enter into DTAA with each other.

It can be given through 2 methods.



Unilateral Relief [Sec 91]

When there is no agreement(No DTAA) between 2 countries, only,Country of Residence provides relief

Sec 90: Agreement with foreign Countries (DTAA)

Central Govt. may enter into agreement with Govt. of any country or specified territory

→ For avoidance of Double taxation, without creating opportunities for non-taxation/ tax evasion/tax-avoidance (including through treaty shopping).

→ For exchange of Information.

→ For Recovery of Income Tax.

Notes:

(1) If there is a conflict between DTAA & Income Tax Act, DTAA provisions shall prevail to the extent they are more benificial to the assessee.

So basically,For Assessee:- Provision of DTAA OR Provision of Income Tax } Whichever is more benificial to the assessee shall apply.

However, Provision of GAAR overrides DTAA provisions. Provisions of GAAR will apply even if such provision are not benificial to Assessee.

(2) The charge of tax in respect of Foreign Company at a higher rate than domestic Company shall not be considered less favourable.

(3) If a NR to whom DTAA applies wishes to claim relief , he has to furnish Tax Residency Certificate, of his being resident in any foreign country or specified territory. In addition to TRC , the assessee would be required to provide the following documents:

- PAN of Assessee
- Status of Assessee
- Nationality (Individual)
- County of Incorporation (In case of others)
- Assessee Tax Identification number outside India
- Period for which residential status is applicable, as mentioned in the certificate.

Sec 91: Countries with which DTAA does not Exist

If there is a country with which India does not have DTAA and the Assessee:-

- Is Resident in India.
- His Income accrue or arise from outside India.
- Has paid Income tax in Foreign country as well as India,

then he shall be entitled to deduct an amount of relief us 91

↓

From Income Tax payable in India on such Doubly Taxed Income

→ Amount of Relief:

(a) Compute Net Total Income(NTI) = Indian Income + Foreign Income
(After claiming deduction u/s Chapter VI-A)

(b) Compute Tax + surcharge + Cess on Total Income
(Do not claim TDS/TCS/MAT/ AMT/Self Assessment Tax/ Advance Tax)

(c) Find Average Rate of tax in India=

$$\frac{\text{Gross Tax (Tax + cess + surcharge)}}{\text{NTI}} \times 100$$

(d) Find out rate at which tax paid/deducted in foreign country.

(e) Find out lower rate of (c) & (d)

(f) Relief u/s 91- Foreign Doubly Taxed Income x Lower Rate.

→ Concept of Permanent Establishment(PE)

PE means a Fixed Place of Business -> Through which Business of Enterprise is wholly or partly carried on.

→ Every DTAA has a Speific clause for PE.

→ Business Income of NR will be taxed in India only if he has a PE in India.

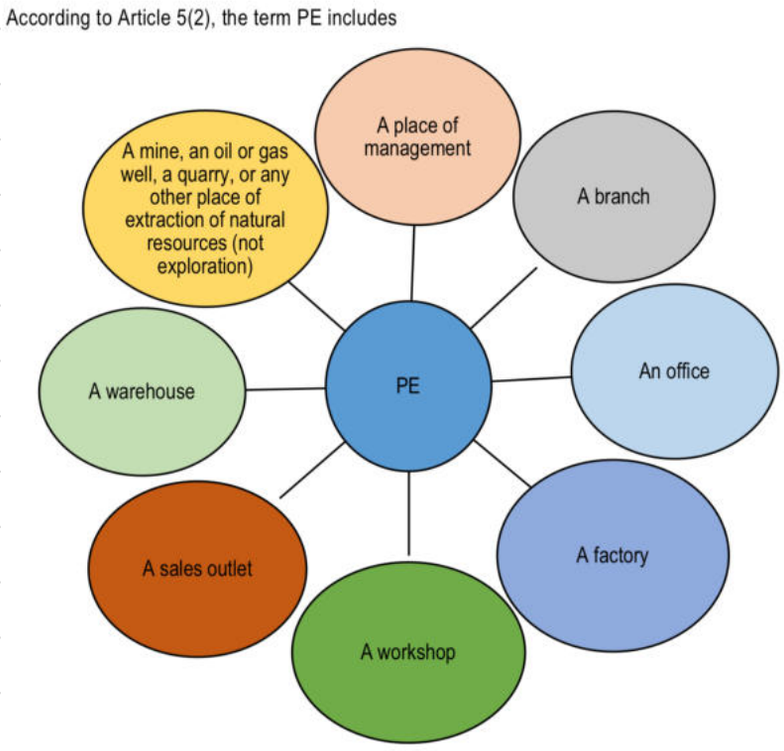
Income of Non-Resident

- Taxability under Income Tax Act
  - Governed by Sec 9
    - On the basis of Business Connection
- Taxability under the DTAA
  - Governed by DTAA
    - On the basis of Permanent Establishment

→ Does Liason Office Constitute a PE?

Liason office as Remittance Service or as Communication Channel:

It does not constitute a PE because only activity of anciliary, preparatory or auxiliary nature are carried on from such Liason office. No Core-Business activity is taking place.



Taxation of BPO units

→Business Process Outsourcing Unit of NR in India:

- If there is a Business Connection: BPO will be considered PE of NR in India.
- No Business Connection: BPO will be treated as separate Entity.

→ NR/FC will be liable to tax only if: IT enabled BPO constitutes its PE

→ If BPO is PE of NR in India → Profit attributable to such PE shall be taxable in India.

→ Transactions between PE- Head Office will be undertaken at Arm's length Price.

Chapter 4 :EQUALISATION LEVY

#SabKarLenge

Applicable to NR advertisement portals → Who do not have PE in India

Resident Assessee pay to → these portals — Advertisement Portals

↓

Not having PE in India

↓

Not taxable in India

↓

That's why equalization levy came.

↓

Extends to whole of India except the state of Jammu & Kashmir.

specified service means:.
a) Online advertisement
b) Any provision of digital adv. space or any other facility or online advertisement

Sec. 165

→ Taxable @6% if amount> 1 lakh

↓

applicable if payment for specified service (ads) received/receivable by NR from:

- A person Resident in India & carrying on Business or Profession
- OR
- Non- Resident having PE in India.

→ Equalisation levy not applicable if:.

- NR is having P. E in India & service is connected with such PE
- Where payment is made not for the purpose of Business or profession
- Aggregate amt. received by NR is upto Rs. 100,000 in P.Y.

→ Eq. levy under this section has to be deposited up to 7th of Next month.

Smart Notes
CA Yash Khandelwal

Sec 165A:

Charge of Equalisation levy on e-commerce supply of service:

Taxable @2% on consideration received or receivable by an e-commerce operator for e-commerce supply or services made or provided or facilitated by it:.

- To a person Resident in India
- To a person who buys such goods or services or both using IP address located in India.
- To a NR on
  - Sale of adv. which targets customer resident in India or a person who orders through IP Address located in India.
  - Sale of Data collected from a person resident in India or a person who uses IP address located in India

→ Equalisation levy under this section is not applicable

- where the E-commerce operator has a PE in India
- Where Eq. levy is leviable u/s 165
- Sales T/O or Gross Reeiepts of ECO from such Services is less than Rs. 2 crores during the P. Y.

↓

Eq Levy Leviable if Value is 2 cr. or more

→ Eq. levy us 165A by e-commerce operator is payable quarterly on 7th of July/ October/January & 31st March for last quarter.

Amendments (FA. 2021)

→ Consideration received for
- E-commerce Services
- Specified Services (Advt)

↓

shall not include the consideration which are taxable as Royalty or FTS

→ Consideration received for E-commerce Services shall not include:

↓

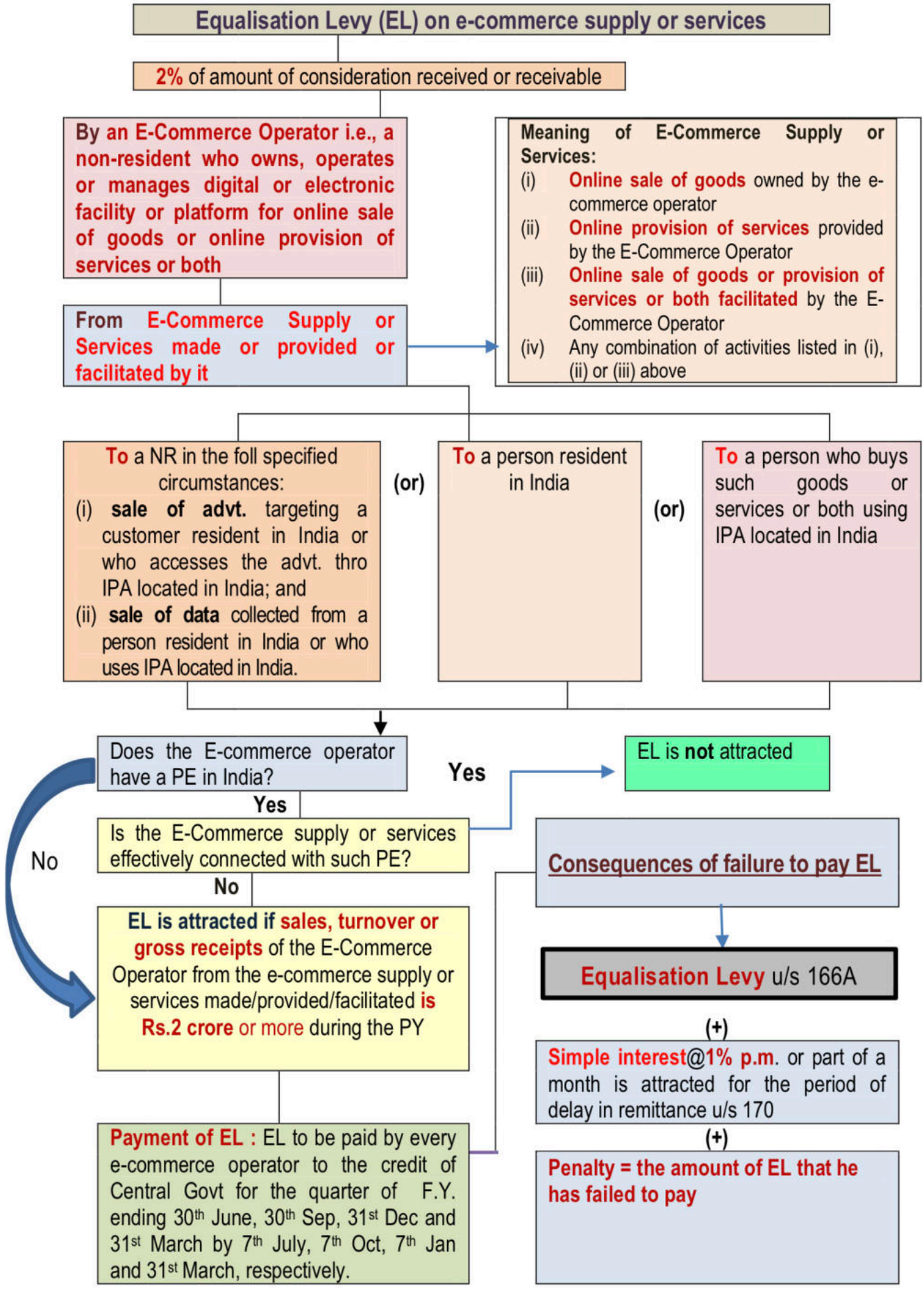
Consideration for
- Sale of Goods
- or
- provision of Services

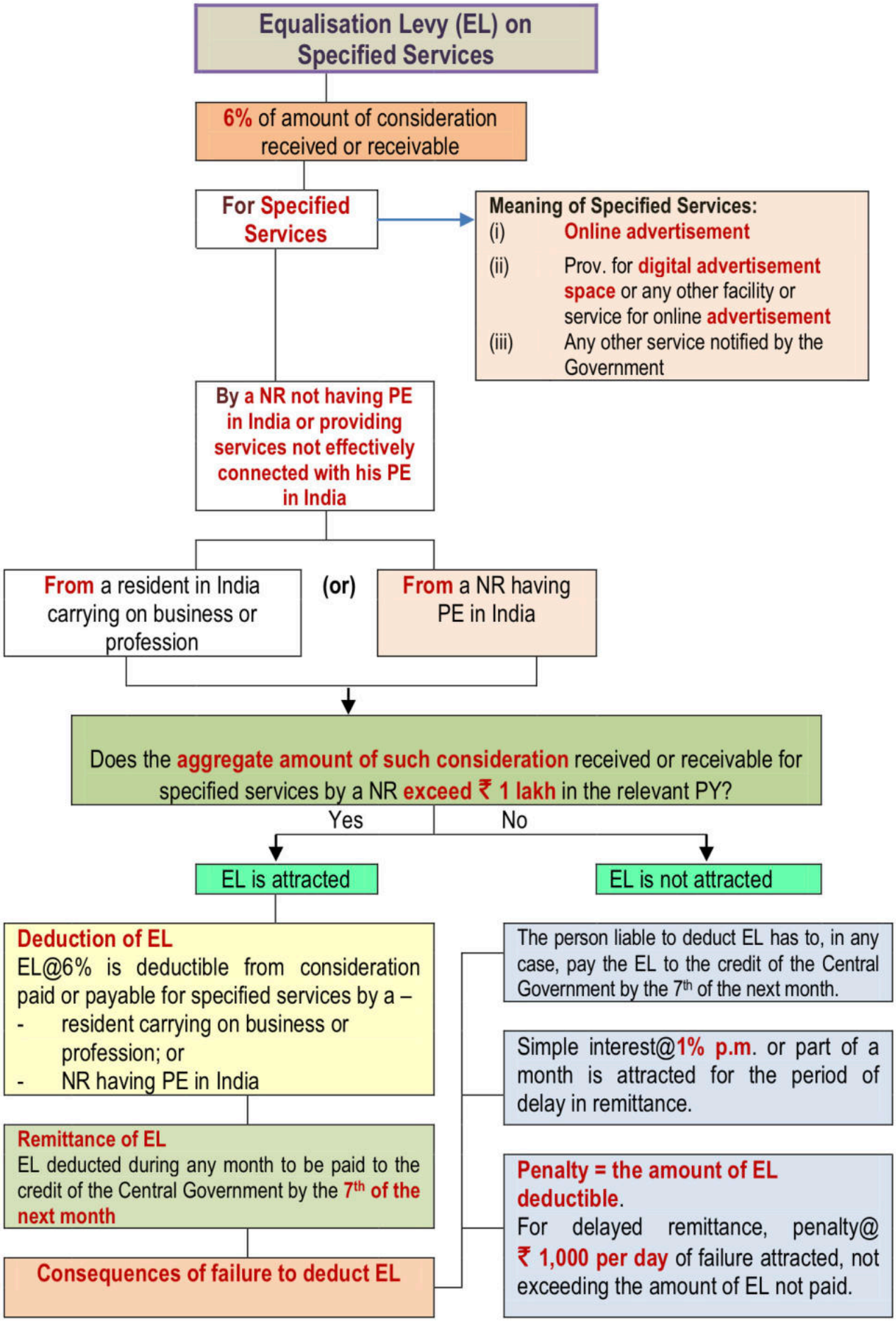
If such goods → are owned
services → are provided

↓

By a person Resident in India or PE of NR in India.

Eg: Resident / OR / PE of NR —goods / services→ eBay —goods / services→ Resident


Equalisation Levy (EL) on e-commerce supply or services
2% of amount of consideration received or receivable
By an E-Commerce Operator i.e., a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both
From E-Commerce Supply or Services made or provided or facilitated by it
Meaning of E-Commerce Supply or Services:
(i) Online sale of goods owned by the e-commerce operator
(ii) Online provision of services provided by the E-Commerce Operator
(iii) Online sale of goods or provision of services or both facilitated by the E-Commerce Operator
(iv) Any combination of activities listed in (i), (ii) or (iii) above
To a NR in the foll specified circumstances:
(i) sale of advt. targeting a customer resident in India or who accesses the advt. thro IPA located in India; and
(ii) sale of data collected from a person resident in India or who uses IPA located in India.
(or)
To a person resident in India
(or)
To a person who buys such goods or services or both using IPA located in India
Does the E-commerce operator have a PE in India?
Yes
No
Is the E-Commerce supply or services effectively connected with such PE?
Yes
No
EL is not attracted
EL is attracted if sales, turnover or gross receipts of the E-Commerce Operator from the e-commerce supply or services made/provided/facilitated is Rs.2 crore or more during the PY
Payment of EL : EL to be paid by every e-commerce operator to the credit of Central Govt for the quarter of F.Y. ending 30th June, 30th Sep, 31st Dec and 31st March by 7th July, 7th Oct, 7th Jan and 31st March, respectively.
Consequences of failure to pay EL
Equalisation Levy u/s 166A
(+)
Simple interest@1% p.m. or part of a month is attracted for the period of delay in remittance u/s 170
(+)
Penalty = the amount of EL that he has failed to pay


Equalisation Levy (EL) on Specified Services
6% of amount of consideration received or receivable
For Specified Services
Meaning of Specified Services:
(i) Online advertisement
(ii) Prov. for digital advertisement space or any other facility or service for online advertisement
(iii) Any other service notified by the Government
By a NR not having PE in India or providing services not effectively connected with his PE in India
From a resident in India carrying on business or profession
(or)
From a NR having PE in India
Does the aggregate amount of such consideration received or receivable for specified services by a NR exceed ₹ 1 lakh in the relevant PY?
Yes
No
EL is attracted
EL is not attracted
Deduction of EL
EL@6% is deductible from consideration paid or payable for specified services by a –
- resident carrying on business or profession; or
- NR having PE in India
Remittance of EL
EL deducted during any month to be paid to the credit of the Central Government by the 7th of the next month
Consequences of failure to deduct EL
The person liable to deduct EL has to, in any case, pay the EL to the credit of the Central Government by the 7th of the next month.
Simple interest@1% p.m. or part of a month is attracted for the period of delay in remittance.
Penalty = the amount of EL deductible.
For delayed remittance, penalty@ ₹ 1,000 per day of failure attracted, not exceeding the amount of EL not paid.

Advance Ruling:.

Ruling decided in advance by Authority of Advance Ruling (AAR) for a future transaction or a transaction already undertaken, which may be related to question of law/fact.

Sec 245Q: Application to AAR

(1) Non-Resident:	A transaction already undertaken or proposed to be undertaken by him.
(2) Resident:	Tax liability of NR in respect of Transaction (future or past) with him. It can be question of law or fact
(3) Resident entering in transaction valuing 100 cr or more	Tax liability of Resident in such transactions or transactions (past or future).It can be question of law or fact.
(4) Resident (PSU):	Any issue relating to computation of Total Income which is pending before any IT Authority or ITAT. It can be question of law or fact
(5) Resident or NR:	wheather an arrangement, which is proposed to be undertaken by such applicant is an Impermissible Avoidance Agreement.(GAAR)

Notes:

→ Application to AAR should be made in prescribed form and manner & in quadripulate.

→ Application can be withdrawn within 30 days from the date of application.

Fees for Application:

- PSU: Rs. 10,000
- Other assessee based on Transaction value
  - upto Rs. 100 cr: Rs. 2,00,000
  - > 100cr upto Rs. 300 Cr: Rs. 5,00,000
  - > Rs. 300cr: Rs. 10,00,000

Appeal is pending:- Can Assessee apply for Advance Ruling?

	Normal Assessee	PSU
IT Authority	x	✓
ITAT	x	✓
HC	x	x
SC	x	x

Sec 245R: Procedure of Advance Ruling

1. AAR shall forward a copy to PCIT/CIT to check wheather case is pending in Appeal or not, & call for records if required.

2. AAR shall reject the application for Advance Ruling in following cases:.

- In Case where appeal is pending
  - PSU → Before HC or SC
  - Other Assessee → IT Auth./ITAT HC/SC
- Question involves determination of Fmv of any property
- Question in the application for transaction which is prima facie designed for avoidance of Tax.
  - 2 exceptions
    - Application to confirm wheather it is Impermissible Avoidance Agreement or not.
    - If application made by PSU

3. AAR will pronounce its ruling within 6 months from the date of receipt of application by the assessee

4. Copy of order shall be forwarded to
   - Assessee
   - CIT/PCIT

5. The Advance Ruling shall be binding on:.
   - The applicant
   - To the Transaction for which ruling is taken.
   - Income Tax Authority upto level of CIT.

[SECTION 245P] VACANCIES, ETC. NOT TO INVALIDATE PROCEEDINGS

No proceeding before, or pronouncement of advance ruling by, the Authority shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the Authority.

ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES [SECTION 245T]

Advance Rulings shall be void if it has been obtained by the applicant by fraud or misrepresentation of facts. Its effect will be such that if such advance ruling had never been made.

Sec 245-OB Board For Advance Rulings

- One or more Boards for Advance Rulings, as may be necessary, shall be constituted by the Central Government for giving advance rulings w.e.f. 01/09/21
- BAR shall consist of 2 members, each being an officer not below the rank of Chief Commissioner, as may be nominated by the Board.
- Vacancies in the BAR, shall not make the Rulings void.
- Application will be in quadripulate & fess will be Rs. 10,000.
- Application pending on 1.9.21 which was made before AAR, shall be transferred to BAR.
- The order of BAR shall not be Binding

Appeal to High Court [Section 245W(1)]

- The applicant who is aggrieved by any ruling pronounced or order passed by BAR or the Assessing Officer, may appeal to the High Court against such ruling or order.
- He has to do so within 60 days from the date of the communication of that ruling or order, in the prescribed form and manner. But HC can give extension of 30 days for filing such appeal.