Dear Students,

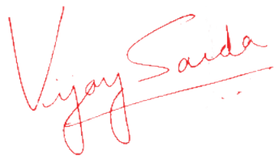
It gives us immense pleasure to present before you a Chart Book on Direct Taxes. This book would not have been a reality but from the tremendous support from "My Love-Pallavi.

Special Thanks to Gonica Praveen Khanna, who has been involved "day & night literally" to fulfill this dream book without whom this would not have been the light of the day.

I Have been blessed to have an extraordinary support terms of colleagues, friends & family who have helped me in every sphere of my journey called this life. All these people deserve much more than a deep thank and love. I express all my gratitude to each and everyone of them for assisting me in all my endeavors.Thanks to the student community: For inviting me into your academics & making me your teacher. I am grateful for the opportunity to be of service to you. The love & affection you have shown is immense & invaluable.
"Padho toh Hadh kardo warna Program radh kardo"

I express my respect, love and gratitude to my PARENTS & my FAMILY for not only giving me life but giving your entire life to me. I am indebted to both of you a lot, indeed more than my life & to my lovely WIFE to bear with me in all the time I spend on making notes.
And last to all my CRITICS because your criticism continuously keep me grounded and give me power to do even better.Every care has been taken to make the presentation is this book from blemish. Nevertheless, it is conceded that no one is infallible, unintended error or omission may have crept in. The user of this book are requested to bring these to the notice of the author & offer, without inhibition , their suggestion for further improvement.
Let us remind you two important things
1. This book is not a substitute for study material issued by ICAI, it's only an aid.
2. There is no short cut to success, it is resolute hard work that pays.

"Quality is what I serve, & my Passion drives it"



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Important note :
Students are hereby requested to refer regular notes or fast trasck notes for indepth bare provision.

The charts are for quick reference and exam oriented only

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FREE RESOURCES :

1) Complete free revision of DT & International tax on Youtube
2) Free Questionnaire discussion on youtube solving over 500 questions.
3) RTP & MTP discussion
4) Judicial updates
5) Relevant Amendments

CH I : TAX CALCULATIONS & ALTERNATIVE TAX REGIME

TAX RATES FOR I/HUF/AOP/BOI/AJP

Individual: In case of every individual viz Male, female, & below the age of 60 years on the last day of PY, any AOP, BOI, HUF, AJP, Non Resident (Irrespective of Age).

Total Income	Amount of tax
Upto ₹. 2,50,000	Nil
Exceeding ₹. 2,50,000 but upto ₹. 5,00,000	5% of (total income less ₹. 2,50,000)
Exceeding ₹. 5,00,000 but upto ₹. 10,00,000	₹12500 + 20% of (TI less ₹. 5,00,000)
In excess of ₹. 10,00,000	₹112500 + 30% of TI

Senior citizens: Individual [Resident] 60 years or more but not more than 80 years

Total Income	Amount of tax
Upto ₹. 3,00,000	Nil
Exceeding ₹. 3,00,000 but upto ₹. 5,00,000	5% of (total income less ₹. 3,00,000)
Exceeding ₹. 5,00,000 but upto ₹. 10,00,000	₹10,000 + 20% of (TI less ₹. 5,00,000)
In excess of ₹. 10,00,000	₹1,10,000 + 30% of TI

Super Senior citizens: Individual [R] who is of age of 80 years or more

Total Income	Amount of tax
Upto ₹. 5,00,000	Nil
Exceeding ₹. 5,00,000 but upto ₹. 10,00,000	20% of (TI less ₹. 5,00,000)
In excess of ₹. 10,00,000	₹1,00,000 + 30% of TI

From AY 21-22, Ind. & HUF have an option to opt for sec 115BAC

NOTES :

a) HEC is applicable @ 4%. [after surcharge or Rebate]

b) Rebate u/s 87A
   1) Assessee is Individual
   2) He is Resident in India
   3) whose TI(From All Heads after Ded^{n}) does not exceed ₹ 5 lakh
   Rebate= ₹ 12500 or 100% of tax payable , whichever is lower
   > Rebate not available for tax computed u/s 112A

c) Rounding Off

S.288A	Round off of Total Income	R/o to nearest multiple of ₹10
S.288B	Round off of Total Tax	R/o to nearest multiple of ₹10

Rule of 5 is applicable.
Eg:- If tax calculated is 81,501 then tax be rounded off to 81,500.

Circular 28/2016 -
If a person is born on 1 April, 1961/1941 then he shall get slab of ₹ 3,00,000/ ₹5,00,000 in PY 31.3.2021.

SPECIAL RATES

Income	Rates
STCG referred to in sec 111A (Securities)	15%
LTCG referred to in sec 112	20%
LTCG U/s 112A Beyond ₹1Lakh	10%
Casual incomes (e.g. Lottery, horse winnings, etc.) (Sec 115BB)	30%
Unexplained Cash/Expenses/Investment-115BBE	60%
Maximum Marginal rate	42.744% [30% + 37% + 4%]

Special Adjustment: If assessee(R) has special income (111A/ 112A/112) & cannot absorb BEL, then he can adjust special income & balance special income liable at special rates.

Surcharge applicable to Individual, HUF,AOP,BOI,AJP - As per Taxation law amendment ordinance 2019. [dt.20/09/2019]

No	Income	Surcharge on Income	
		u/s 111A & 112A & Dividend	Other
1)	TI [Incl Income u/s 111A & 112A & Dividend does not exceed 50L	Nil	Nil
2)	TI [Inc Income u/s 111A & 112A & Dividend exceed 50L but not 1cr.	10%	10%
3)	TI [Incl Income u/s 111A & 112A & Dividend exceed 1cr but not 2cr.	15%	15%
4)	TI [Excl. Income u/s 111A & 112A & Dividend exceed 2cr but not 5cr.	15%	25%
5)	TI [Excluding Income u/s 111A & 112A & Dividend exceed 5cr	15%	37%
6)	TI [Including Income u/s 111A & 112A & Dividend exceed 2cr but not covered by situation 4 & 5.	15%	15%

TAX RATES FOR OTHER ENTITIES

Domestic Co Turnover not exceeding 400Cr in PY 18-19[FA'20]	25%
Other Companies	30%
Foreign Companies	40%
Firm & LLP	30%
Local Authority	30%
Co-Operative Society: For First 10,000 For Next 10,000 For Balance	 10% 20% 30%
Sec 115BAD (New inserted sec subject to conditions) [FA'20]	22%

Surcharge applicable to other entities

Firm/LLP/Local Authority/ Co-op Sty		If Income Exceed 1cr - 12%
Companies	Domestic Co	Upto 1cr- Nil Above 1cr upto 10 cr -7% Above 10cr -12%
	Foreign Co	Upto 1cr- Nil Above 1cr upto 10 cr -2% Above 10cr - 5%

MARGINAL RELIEF

A) In case of an Local Authority & Firm, where TI < ₹1cr,aggregate of income tax & surcharge shall be restricted to: (Tax on ₹1cr) + (Total Income - ₹1cr)

B) In case of an Individual & HUF,

Total Income	Income tax & Surcharge restricted to
₹50L </= ₹1cr	(Tax on ₹50 lakhs) + (Total Income - ₹50 lakhs)
₹1cr </= ₹2cr	(Tax on ₹1 crore with surch @ 10%) + (Total Income - ₹1 crore)
₹2cr </= ₹5cr	(Tax on ₹2 crore with surch @ 15%) + (Total Income - ₹2 crore)
Exceeds ₹5cr	(Tax on ₹5 crore with surch @ 25%) + (Total Income - ₹5 crore)

C) In case of a Domestic / Foreign Company, where TI ₹1cr </= ₹10cr, aggregate of income tax & surcharge shall be restricted to: (Tax on ₹1cr) + (Total Income - ₹1cr)

D) In case of a Domestic Company, where TI > ₹10cr, aggregate of income tax & surcharge shall be restricted to: (Tax on ₹10cr with surch of 7%) + (TI - ₹10cr)

E) In case of a Foreign Company, where TI > ₹10cr, aggregate of income tax & surcharge shall be restricted to: (Tax on ₹10cr with surch of 2%) + (TI - ₹10cr)

SPACE FOR NOTES

SEC 115BAA & 115BAB

	Particulars	Section 115BAB	Section 115BAA
1.	Applicability	Domestic manufacturing company	Any domestic company
2.	Applicability of MAT	Not applicable	Not applicable
3.	Effective rate of tax (including surcharge & HEC) General Rate	17.16% [Tax@15% (+) Surcharge@10% (+) HEC@4%]	25.168% [Tax@22% (+) Surcharge@10% (+) HEC@4%]
	Special Income (111A / 112 / 112A)	Special rate + 10% surcharge + HEC @ 4%	Special rate + 10% surch + HEC @ 4%
	STCG derived from transfer of Capital Asset on which no depreciation is allowed	25.168% (Tax @ 22% + sur 10% + HEC 4%)	25.168% (Tax @ 22% + sur 10% + HEC 4%)
	Adjustment for transaction with close connection by AO	34.32% (Tax @ 30% + sur 10% + HEC 4%)	No adjustment required
	Other Income where no specific rate is provided	25.168% (Tax @ 22% + sur 10% + HEC 4%)	25.168% (Tax @ 22% + sur 10% + HEC 4%)
4.	Conditions to be fulfilled for availing concessional rate of tax and exemption from MAT		
	Conditions to be fulfilled for availing concessional rate of tax and exemption from MAT	i. The company should be set-up and registered on or after 1.10.2019.	No time limit specified. Both existing companies and new companies can avail benefit
		ii. It should commence manufacturing or production of an article or thing on or before 31.3.2023.	Need not be a manufacturing or a production company
		iii. It should not be formed by splitting up or reconstruction except given in Sec 33B	No similar condition
		iv. It should not use P&M previously used.	No similar condition
		v. It should not use building previously used as hotel / conventional centre.	No similar condition
		v. It should not engage in any business other than manufacturing or production of article or thing & research related thereto.	No similar condition

	Particulars	Section 115BAB	Section 115BAA
		Assessee not to engage in the manufcaturing of : (1) Development of computer software in any form or in any media (2) Mining (3) Conversion of marble blocks or similar items into slabs (4) Bottling of gas into cylinder (5) Printing of books/ product- ion of cinematograph films (6) Any other business as may be notified by the Central Govt. in this behalf.	
5.	Common Conditions for Sec 115BAA & 115BAB	(1) Assessee should opt for this scheme. Sec 115BAB - In the first year itself Sec 115BAA - Before due date u/s 139(1) (2) It should not claim deduction & exemption of following section Sec 10AA - SEZ Sec 32(1)(iia) - Additional Depreciation Sec 32AD - Investment allowance Sec 33AB - Tea. Coffee, Rubber development Sec 33ABA - Site restoration Sec 35(1)(ii/iia/iii) - Scientific Research Sec 35(2AA) - National Lab/IIT Sec 35(2AB) - Inhouse research Sec 35AD - Specified business Sec 35CCD - Skill Development Sec 35CCC - Agricculture extension project Sec 80IA-RRB - Part C deduction (3) Without set off of any loss or unabsorbed depreciation related to above deduction. (4) By claiming depreciation without additional depreciation. (5) In the case of a person having a Unit in the IFSC, referred to in section 80LA(1A), which has exercised option for section 115BAA, deduction u/s 80LA would be allowed subject to fulfilment of the conditions specified in that section.	

SEC 115BAD ALTERNATE TAX REGIME FOR CO-OPERATIVE SOCIETY

1) For the resident co-operative society, tax rate will be 25.168% (Tax 22% + surch 10% + HEC 4%)
2) The condition for concessional rate shall be that the total income of co-operative society is computed -
   A) Without claiming the following deductions :
      > Exemption for SEZ unit contained in section 10AA
      > Additional Depreciation u/s 32(1)(iia)
      > Deductions u/s 32AD, 33AB, 33ABA, 35(ii)/(iia)/(iii) (1)/ (2AA) / 35AD / 35CCC
      > Provisions under Chaper VI A
   B) Without Set off of any loss c/f or depreciation from an earlier AY, if the same is attributable to any of the deductions referred in point A. Also, the same cannot be carried forward.
   C) By claiming Depreciation u/s 32 except Additional depre.

3) The concessional rate shall not apply unless option is exercised by the co-operative society in the prescribed manner on/before the due date specified u/s 139(1) of the Act for furnishing the returns of income for any PY relevant to the assessment year commencing on or after 1st April, 2021 and such option once exercised shall apply to subsequentassessment years.

4) Provisions of Sec 115JC, AMT, shall not apply to such Resident Co-operative Society. Similarly, provisions in Sec 115JD relating to carry forward and set off of AMT credit, if any, shall not apply.

5) Option once exercised cannot be withdrawn;

SEC 115BAC ALTERNATE TAX REGIME FOR INDIVIDUAL & HUF

1) The condition for concessional rate shall be that total income of the individual/HUF is computed -
   A) Without exemption / deduction under the foll provisions:
      > Sec 10(5) Leave travel concession;
      > Sec 10(13A) House rent allowance;
      > Some of the allowance mentioned in clause (14) of sec 10;
      > Sec 10(17) Allowances to MPs/MLAs;
      > Sec 10(32) Allowance for income of minor;
      > Exemption for SEZ unit contained in section 10AA
      > Standard deduction, Entertainment allowance & employment professional tax u/s 16;
      > Interest u/s 24 in respect of self-occupied or vacant property referred to in Sec 23(2). (Loss rom house property for rented house not be allowed to be set off under any other head & would be allowed to be c/f as per extant law)
   B) Additional deprecation under section 32(1)(iia);
   C) Deductions under section 32AD, 33AB, 33ABA, 35AD, 35CCC, 35(ii)/(iia)/(iii)/(2AA);
   D) Deduction u/s 57(iiaa)
   E) Any deduction u/c VIA except 80CCd / 80JJAA / 80LA

2) Assessee can claim following allowance : a) Transport allowance for handicap b) Conveyance Allowance c) Daily Allowance d) Travel Allowance

3) Further, amendment to Rule 3, removes exemption in respect of free food & beverage through vouchers provided to the employee, being the person exercising option under this section, by the employer.

4) Without Set off of any loss c/f or depreciation from an earlier AY, if the same is attributable to any of the deductions referred in point A. Also, without settinf off any loss under the head House Property with any other head of income. Both the losses mentioned cannot be c/f.

5) By claiming Depreciation u/s 32 except Additional depre

6) On satisfying above mentioned conditions, Assessee will be eligible to pay tax w.r.t total income at following rates :

Total Income	Rate (%)
Upto ₹ 250000	Nil
₹ 2.5L to 5L	5%
₹ 5L to 7.5L	10%
₹ 7.5L to 10L	15%
₹ 10L to 12.5L	20%
₹ 12.5L to 15L	25%
Excess of ₹ 15L	30%

Surcharge : 10% / 15% / 25% / 37% as the case maybe.

HEC : 4%

Opt the scheme :
1) No business income @ time of filing ROI
2) Business income before due date u/s 139(1)

INCOME TAX AUTHORITIES

SEC 116 - INCOME TAX AUTHORITIES

- ✔ CBDT
- ✔ PC/CIT/DIT/CIT(A)
- ✔ AC/DC/AD/DD
- ✔ TRO
- ✔ PDGIT/PCCIT/CCIT/DGIT
- ✔ JC/JDIT
- ✔ ITO
- ✔ Inspector of Income Tax

SEC 119 POWER OF CBDT

> Board may Issue order instruction/direction/circular notification

> Board is not Empowered to issue following order -

a) Require ITA to make a particular assessment or make assessment in particular manner.

b) Interfere in work of CIT(A).

> The CBDT may relax the provisions of sec 115P,115S, 139,143, 144, 147, 148, 154, 155, 234A, 234B, 234E, 270A, 271C, 271CA & 273. The CBDT can exercise its powers to remove difficulties in the matter of sections 201(1A), 210, 211 & 234C.

My Notes:

a) Decision of Board are not binding on Courts [Delhi Flour Mills]

b) Cir. by Board are binding on Dept [Paper Product ltd v. CCE]

Board May By Order ← Admit Belated Application / Allow Exemption / deduction / Allow Refund / Provide Any other Releif — but Such order can't be issued to CIT[A]

SEC 119A TAX PAYER'S CHARTER [FA'20]

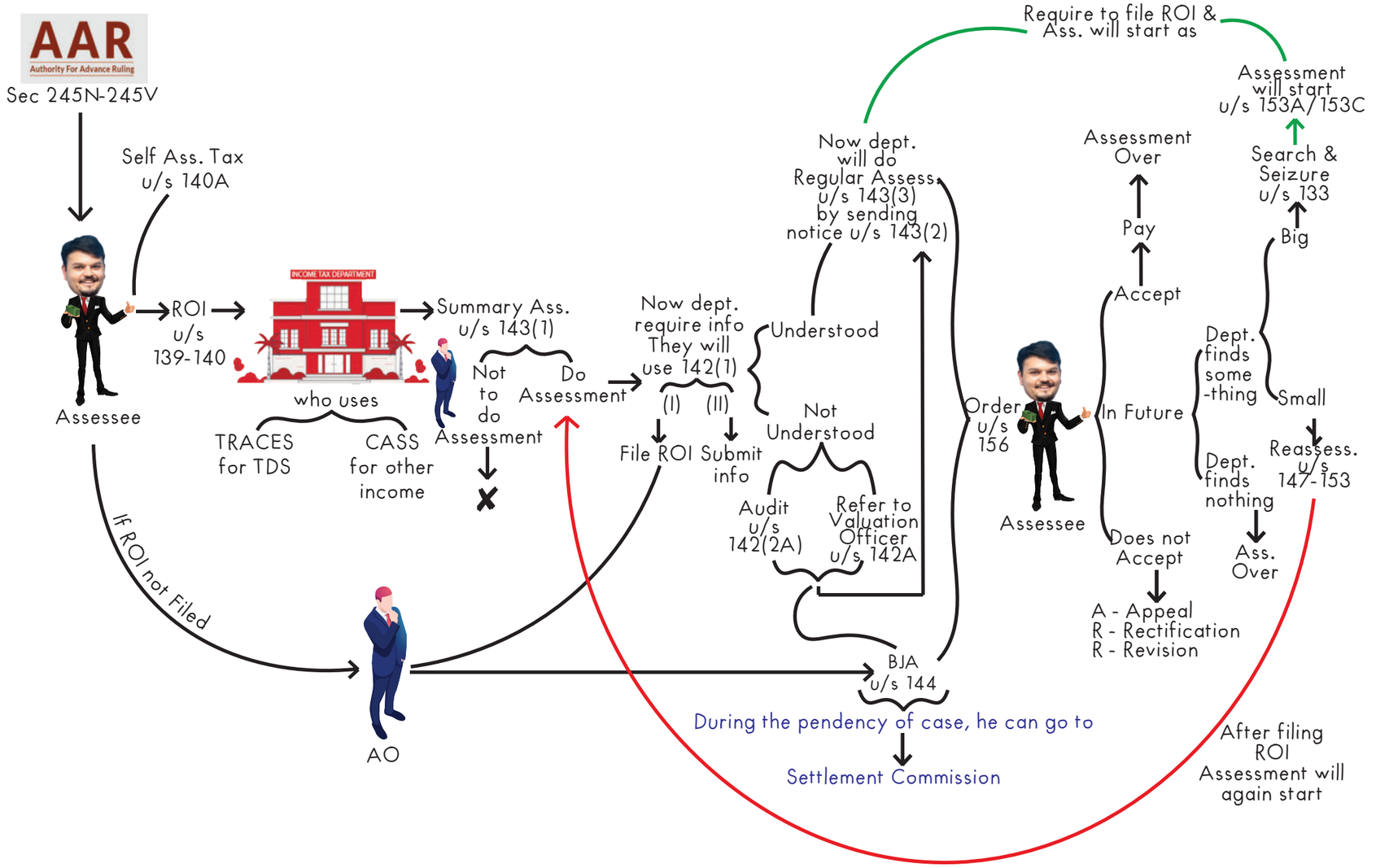
The Board shall adopt & declare a taxpayer's charter & issue such orders, instructions, directions or guidelines to other income tax authorities as it may deem fit for the administration of such Charter.

SEC 120 JURISDICTION OF ITA

Jurisdiction of income tax Authorities

1) ITA, shall exercise their powers & perform their functions in accordance with directions given by the CBDT.
2) The directions of CBDT includes directions to authorise any other ITA, to issue orders in writing to their subordinate authorities.
3) order shall be Based on the following :
   (a) Territorial area;
   (b) Persons or classes of persons;
   (c) Incomes or classes of income; and
   (d) Cases or classes of cases. [APIC]

THE ASSESSMENT AT A GLANCE!



SEC 124 JURISDICTION ON OF AO

Jurisdiction will be Specified by CCIT/CIT/P.

Business	Place of Business
Multi Place of Business	Principal Place of Business
Other	Residence

Sec 124(2):Any ques relating to Jurisdiction shall be determined by DGIT/CCIT/CIT.If both the Ao have different DGIT/CCIT/CIT then it shall be decided mutually. If both the authority are not in agreement matter shall be decided by CBDT

Sec 124(3): Right of Assessee to challenge Jurisdiction

Return Filed - Within 1M from date of service of notice u/s 142 (1)/(2) or before completion of Assessment, whichever earlier.

Return not filed - After expiry of time limit allowed by notice u/s 142(1) or Sec 148 for filing ROI or within time allowed in SCN issued seeking as to why a BJA u/s 144, whichever earlier.

Search is done u/s 132 - Within 1M of service of notice u/s 153A/153C(2) or before completion of Assessment, whichever earlier

SEC 127 POWER TO TRANSFER CASES

> PDGIT/DGIT/PCCIT/CCIT/PCIT/CIT, can Transfer the case from one AO to another after OOBH & recording the Reason.

> No OOBH if transfer is within same city

> No Reissue of Notice is required.

SEC 129 INCUMBENT OF OFFICE

When AO cease to exercise Jurisdiction succeeding AO may continue the proceeding from stage at which proceeding was left. However assessee may demand to relook the matter from the beginning.

THE RETURN OF INCOME

SEC 130 FACELESS JURISDICTION OF INCOME-TAX AUTHORITIES.

W.e.f 01.11.2020 -

(1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of -

(a) exercise of all or any of the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income-tax authorities by or under this Act as referred to in section 120; or

(b) vesting jurisdiction with AO as referred to in sec 124; or

(c) exercise of power to transfer cases u/s 127; or

(d) exercise of jurisdiction in case of change of incumbency as referred to in section 129,

so as to impart greater efficiency, transparency & accountability by—

(i) eliminating the interface between the income-tax authority and the assessee or any other person, to the extent technologically feasible;

(ii) optimising utilisation of the resources through economies of scale and functional specialisation;

(iii) introducing a team-based exercise of powers and performance of functions by two or more income-tax authorities, concurrently, in respect of any area or persons or classes of persons or incomes or classes of income/cases/classes of cases, with dynamic jurisdiction.

SEC 139 FILING OF ROI

Every person, -

(a) being a company or a firm; or

(b) being a person other than a company or a firm, if his total income or the total income of any other person in respect of which he is assessable under this –Act during the PY exceeded the maximum amount which is not chargeable to tax,

(c) A person being resident other than not ordinarily resident in India who is : a) a beneficiary of any asset (incl Financial asset) or signing authority outside India;
b) who is a beneficial owner of any asset (incl Financial asset) or signing authority outside India;

(d) Being an individual / HUF or AOP / BOI / AJP
> if his total income or total income of any other person in respect of which he is assessable under this Act during PY,
> without giving effect to the provisions of Sec 10(38)/ 10A / 10B / 10BA / 54 / 54B / 54D / 54EC / 54F / 54G / 54GA / 54GB / Chapter VI-A
> exceeded max amount which is not chargeable to IT.

(e) Every person who
> has deposited an amount or aggregate of the amounts exceeding 1 cr rupees in one or more current accounts maintained with a banking company or a co-operative bank;
> has incurred expenditure of an amount or aggregate of amounts exceeding 2 lakh rupees for himself / any other person for travel to a foreign country;
> has incurred expenditure of an amount or aggregate of the amounts exceeding one lakh rupees towards consumption of electricity;
> fulfils such other conditions as may be prescribed

shall furnish a return of his income on or before the due date in such form and verified in such manner and setting forth such other particulars, as may be prescribed.

DUE DATE OF FILING ROI U/S 139(1)

Company	Liable to TP Report u/s 92E Others [FA'20]	30th Nov of AY 31st Oct of AY
Others	Liable to tax audit u/s 44AB ~~Working~~ Partner [FA'20] Others	31st Oct of AY 31st July of AY

FEE FOR DEFAULT IN FURNISHING RETURN OF INCOME U/S 234F

Where a person required to furnish a ROI u/s 139, fails to do so within the time prescribed he shall pay,by way of fee, a sum of,

Where the ROI is filled up to 31 December of AY	₹5000
Where the ROI is filled Beyond 31 December of AY	₹10000
If Total Income does not exceed ₹5L	₹1000

SEC 139(4A) CHARITABLE/RELIGIOUS TRUST/INSTITUTION

If total income without giving effect to provisions of sections 11 and 12) exceeds the maximum amount which is not chargeable to income-tax, then trust is required to file ROI.
Audit is also mandatory is Income >BEL.
Due date of Filling ROI - 31st Oct [FA'20]
Sec.272A penalty for Non Compliance ₹100 for every day
Fees is also applicable in Addition to Sec.272A

SEC 139(4B) POLITICAL PARTY

If the total income without giving effect to the provisions of section 13A exceeds the maximum amount which is not chargeable to income-tax, then PP is required to file ROI.
Audit is also mandatory.
due date of Filling ROI - 31st Oct [FA'20]

SEC 139(4C) SPECIFIC ENTITIES

> Section applicable to Every Hospital, Medical Institution, school, college, institution specified u/s 10, Infrastructure Debt Fund, Research Association, News Agency, IEPF/ Core Settlement Gurantee Fund/ BOARD OR AUTHORITY U/S 10[29A]

> if the total income without giving effect to the provisions of sec 10, exceeds the maximum amount which is not chargeable to income-tax, then these entities are required to file ROI.
due date can either be 31st july/ 31st Oct [FA'20]
Sec.272A penalty for Non Compliance Rs.100 for every day .
fees is also applicable in Addition to Sec.272A

SEC 139(4D) UNIVERSITY, COLLEGE, OTHER INSTITUTION

All of the above which are approved u/s 35 - ROI is MANDATORY

SEC 139(4E) BUSINESS TRUST

REIT / INVIT - ROI is MANDATORY

SEC 139(3) LOSS RETURN

If a person has sustained a loss under the head "Profits & gains of business or profession" or under the head "Capital Gains" & claims that such loss should be carried forward u/s 72 / 73 / 73A / 74 / 74A, then he may furnish a return of loss within the time prescribed u/s 139(1) & all provisions of the Income-tax Act shall apply as if it were a return furnished u/s 139(1).

SEC 139(4) BELATED RETURN

Any person who has not furnished a return within the time allowed to him u/s 139(1), may furnish return for any PY at any time
> before the end of relevant AY OR
> before completion of assessment, whichever is earlier.

SEC 139(5) REVISED RETURN

Return Filled U/s 139[1] /139[3] / 139[4] can be revised if discover any ommission or wrong statement in such ROI filed earlier
> Before End of AY or
> Before Completion of Assessment
Whichever is Earlier.

SEC 139(9) DEFECTIVE RETURN

If ROI is considered as defective, rectify defect within time specified in Notice [generally 15 days]
If return rectified & submitted - Valid
If return not rectified - Invalid Return

SEC 139A PERMANENT ACCOUNT NUMBER

Following person must obtain PAN
1. Every person liable to pay tax.
2. Person carrying PGBP having Sales/turnover exceeding ₹5L
3. Every person required to Furnish ROI u/s 139[4A]
4. Being Resident[other than Individual] which enters financial transaction in aggregate exceeding ₹2.5L or more in FY
5. Person who is MD, Director, trustee, Founder, karta, CEO, principal officer.
6. Who intends to enter into such transaction as may be prescribe by Board.

SEC 139A(5E) Inter-changeability of Aadhaar & PAN

(a) has not been allotted a PAN but possesses Aadhaar number, may furnish his Aadhaar number in lieu of PAN, & such person shall be allotted a PAN in such manner as may be prescribed;

(b) has been allotted a PAN, and who has intimated his Aadhaar number in accordance with provisions of sub-sec (2) of section 139AA, may furnish or intimate or quote his Aadhaar number in lieu of the PAN

SEC 139A(6A)/(6B)
Every person entering into such transaction/ receiving any document, shall ensure that PAN or Aadhaar number, as the case may be, has been duly quoted in such document and also ensure that such PAN or Aadhaar number is so authenticated.]

139AA AADHAAR NUMBER

Required Upon	Every person who is eligible to obtain Aadhaar number shall, on or after the 1st day of July, 2017,quote Aadhaar number— a) Pan Application b) Filling ROI
If Don't possesses aadhar	where the person does not possess the Aadhaar Number, Enrolment ID of Aadhaar application
Non Compliance	In case of failure to intimate Aadhaar number, PAN allotted shall be deemed to be ~~invalid~~ inoperative (without declaring it invalid) (ruling confirmed by Binoy Viswam vs. UI, 2017 (SC))& other provisions shall apply as not applied PAN
Sec. not applicable to	1) NR 2) Person having an age of 80 years or above 3) Person is not a citizen of India 4) Person residing in Assam, Meghalaya, J&K

ASSESSMENT PROCEDURE

SEC 140A SELF ASSESSMENT

Where any tax & interest u/s 234A, 234B & 234C & fee u/s 234F is payable by the assessee on the basis of :

1. The Assessee is required to assess his own Income & Tax payable thereon after taking into account

Total Income	xxx
Compute tax on total income After surcharge & HEC	xxx
Less: TDS/TCS//Advance tax releif 89/90/91/115JAA/115JD Tax & Interest u/s 191(2)	[xxx]
Add: Interest u/s 234A/B/234F	xxx
Final Advance Tax payable	xxx

The assessee shall be liable to pay such tax with interest & Fees. Where the amount paid by the assessee falls short of the aggregate of the tax the amount so paid shall first be adj towards the Fees & thereafter interest payable as aforesaid & the balance, if any, shall be adjusted towards tax payable.

Notes :

1. Consequences of Failure to Pay Tax Interest or Fees
   A) Assessee shall deemed to be Assessee in Default & interest is payable u/s 220/221.

After a regular assessment any amount of Advance tax shall deemed to be paid towards regular Assessment.

SEC 143(1) SUMMARY ASSESSMENT

Where a return has been made u/s 139, or in response to a notice u/s 142(1), such return shall be processed in the following manner, namely

a) the total income / loss shall be computed after following adjustments,

- Arithematical Error
- Disallowance of Loss if ROI Filled After Due Date
- Disallowance of expenditure indicated in the audit report
- Incorrect Claim
- Disallowance of Deduction u/s 10AA, 80IA-80IE if ROI filed after due date

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing / electronic mode.

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made.

b) the tax, interest and fee, if any, shall be computed on the basis of the total income computed under clause (a);

Amount Payable	Refund	Loss declared no amount payable or Refund	NO Adjustment Made
Intimation to be sent = Time Limit is 1 years from end of FY in which return is filled.			Ack = deemed Intimation

Sec 241A - Where AO for purpose of making Assessment has issued notice 143[2] has reason that grant of refund adversely affect the revenue Then with previous Approval of PCIT/CIT it can be withheld

REMEDIES AGAINST SUMMARY ASSESSMENT :

Appeal to CIT[A] - Allowed
Revision by CIT - NOT ALLOWED
Rectification u/s 154 - Allowed

SEC 142(2A) SPECIAL AUDIT

AO in following Cases

a) Nature and complexity of accounts
b) Volume of accounts
c) Doubts about the correctness of the accounts
d) Multiplicity of transactions in the accounts
e) Specialised nature of business activity
f) Interests of the Revenue

Previous Approval of PC/CIT is required.

My note: Done by CA / Report in form 6B/ Remuneration is paid by CG/ Mandatory even if audit is done/ OOBH must be given/ report must be given in 180 days

> Direction can be given only when case is pending.
> CA nominated by PC/CIT
> Direction can be given even if accounts are audited.
> Penalty for Non Compliance u/s 272A[1] =10,000

SEC 142A VALUATION OFFICER

AO may for the purposes of assessment or Re-assess ,make a reference to a VO to estimate the value, including FMV, of any asset, property or investment and submit the report to him within a period of 6 months from the end of the month in which the reference is made.

While counting the period of completion of Assessment Time limit for making reference to AO is excluded.

SEC 142(1) INQUIRY BEFORE ASSESSMENT

Inquiry before Assessment: for the purpose of making Assessment AO shall require the Assessee

142[1][i] Filling of ROI
- Ao shall require the Assesssee to File ROi in prescribe time & manner
- The ROI so filled shall deemed to be filed u/s 139

142[1][ii] Providing the Information.
- To produce, or cause to be produced, such accounts or documents as the AO may require, or [Including the statement of Assets & Liability, not for more than 3 years prior to PY
- Previous approval of JC is required if details of all assets & liability are required not included in Account.

This notice can be issued without any time limit Notice [But obviously before the completion of time limit of Assessment u/s 153(1)]

SEC 143(2) NOTICE [SCN]

> Where ROI is filed u/s 139[1] /142[1] AO or PRESCRIBE ITA [Not below ITO] shall ensure that Assessee has not
   a) Understated his Income
   b) Overstated the Loss, depreciation c) Underpaid the tax
> Time Limit = 6 months from the End of FY[BE SERVED] in which ROI is filled. [in case of revised return the time limit is counted from RR]

Non compliance:

a) BJA u/s144 b) Penalty u/s 272A[1] – ₹10000

SEC 143(3) SCRUTINY ASSESSMENT

On the day specified in the notice issued u/s 143(2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as AO may require on specified points, and after taking into account all relevant material which he has gathered, the AO shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on basis of such assessment.

Provided that in the case of a -

a) research association u/s 10(21) ; b) news agency u/s 10(22B)
c) association or institution u/s 10(23A) d) institution u/s 10(23B)
e) Fund / institution u/s 10(23C) - No assessment shall be made without giving effect to Sec 10 unless AO has intimated to govt the contravention of the above section & the approval granted to them has been cancelled.

The order can be passed within time limit u/s 153(1) i.e. before expiry of 12 months from end of AY in which income was first assessable.

REMEDIES AGAINST REGULAR ASSESSMENT :

Appeal to CIT[A] - Allowed
Revision by CIT - Allowed
Rectification u/s 154 - Allowed

SEC 144 BEST JUDGEMENT ASSESSMENT

Mandatory BJA

1. Fails to make a return required U/s.139(1)/(4)/(5) ,or
2. Fails to comply with terms of notice issued U/s.142, or
3. Fails to get special audit u/s.142(2A)
4. Fails to comply with all the terms of notice U/s.143(2)

Optional Mandatory BJA

1. Accounts are incorrect or
2. Accounts are incomplete or
3. where no method of accounting has been regularly employed by the assessee or ICDS is followed [Optional BJA] Sec.145[3]

Order u/s 144 must be passed within 12months from the end of the relevant AY.

SEC 147 INCOME ESCAPING ASSESSMENT

If the A.O. has reason to believe that any income chargeable to tax has escaped assessment for any AY he may Subject to provision u/s 148 to 153

- Assess or reassess such income
- Also any other income chargeable to tax which has escaped assessment & Which comes to his notice subsequently in the course of proceedings under this section,

Recomputed the loss or the depreciation allowance/any other allowance,as the case may be, for the AY.

MEANING OF INCOME ESCAPED- Explanation 2

> No return of income filed ,though income exceeds the basic exemption limit.
> Return is furnished but no assessment has been made & A.O. notices that the assessee has understated the income/claimed excessive loss, deductions etc.
> Where an assessment has been made but –
   # The income chargeable has been under-assessed; or
   # such income is assessed at too low rate; or
   # excessive relief was given
   # excessive loss, depreciation or other allowances has been computed.
> Where an assessee has failed to furnish a report in respect of any international transaction u/s 92E.
> Where a person is found to have any asset (including any financial interest in any entity) located outside India.
> Information / Document u/s 133C

Reasons to Believe	NO Reasons to Believe
1. Later of SC/HC Judgement 2. Retrospective amendment in Law 3. Fresh evidence in possession of AO.	1. Mere gossip, Rumour, or suspicion is not a sufficient cause 2. AO cannot make assessment to make rowing and fishing inquiries 3. Change in opinion of AO [CIT vs Kelvinator India 2010(SC)] 4. Reopening cannot be done as there was no failure on the part of assessee to disclose the true & fair Information. [ACIT vs. ICICI securities primary dealership 2012 SC] 5. Report of DVO is merely as estimation it cannot be reason to believe[ACIT vs. Dhariya construction 2011 SC] 6. Reopening cannot be done on the basis of Audit objection.

SEC 148 NOTICE FOR ASSESSMENT/REASSESSMENT u/s 147

> The A.O. before making an assessment or re-assessment or re-computation U/s.147 shall serve on assessee a notice U/s.148
> The A.O. shall record his reasons for doing.
> If notice is not served properly assessment is illegal and Void

For a return filed in response to notice u/s 148, the notice u/s 143(2) must be served within 6months from the end of FY in which ROI was filed, otherwise, Ass./Reass. u/s 147 shall be void.

SEC 149: Time Limit to Send the Notice

Case	Years	Approval u/s 151
Normal Case	4 yrs	JC
Escaped > 1L	6 yrs	PC/CIT
Assets outside INDIA	16 yrs	PC/CIT

From End of RAY

SEC 150: No Time Limit when Assess/reassess is out of Order of Court or Tribunal

Sec 152 : Other Provisions

In an assessment or reassessment made u/s 147, the tax shall be chargeable at the rates at which it would have been charged had the income not escaped assessment.

SEC 153 TIME LIMIT TO COMPLETE ASSESSMENT

Case	Time Limit	
143/144	12 M from End of AY in which income was 1st Assessed	
147	Notice is served before 01.04.19	9 M from end of FY when notice served.
	Notice is served after 01.04.19	12 M from end of FY when notice served

+ 1years if reference is made to TPO

Sec 153(3) - Notwithstanding anything contained in sub-section (1) & (2), where an assessment is cancelled or is set- aside by an order u/s 254, 263 or 264 and a direction is given to the AO in such order to make a fresh assessment, then such fresh assessment shall not be made after the expiry of 12 months from the end of the FY in which order u/s 254 is received by the CIT or order u/s 263 or 264 is passed by the CIT, as case may be.

Sec 153(4) - Where a reference has been made to the Transfer Pricing Officer u/s 92CA to determine the arm's length price, the time period for completion of assessment/ reassessment shall be increased by 1 year. This is explained below:

Sec 153(5) - Appeal Effect or Revision Effect

Where effect to an order u/s 250 / 254 / 260A / 262 / 263 / 264 is to be given by the AO, otherwise than by making a fresh assessment or reassessment, such effect shall be given within a period of 3 months from the end of the month in which order u/s 250 / 254 / 260A / 262 is received by the Commissioner, or the order u/s 263 / 264 is passed by the Commissioner.

Provided that where it is not possible for the AO to give effect to such order within the aforesaid period, for reasons beyond his control, the Commissioner on receipt of such request in writing from the AO if satisfied, may allow an additional period of 6 months to give effect to the order.

Provided further that where an order u/s 250 / 254 / 260A / 262 / 263 / 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided.

To the assessee, the order giving effect to the said order u/s 250 / 254 / 260A / 262 / 263 / 264 shall be made within the time specified in sub-section (3).

Sec 153(6) - Time Limit for Completion of Assessment or Re-assessment in Certain Cases Pursuant to Directions of Appellate Authorities and Courts

Nothing contained in sub-sections (1) and (2) shall apply to the following classes of assessments, reassessments & recomputation which may, subject to the provisions of sub-sec (3) and (5), be completed—

where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order u/s 250/ 254 / 260 / 262 / 263 / 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, on or before the expiry of 12 months from the end of the month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be; or

where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm u/s 147, on or before the expiry of 12 months from the end of the month in which the assessment order in the case of the firm is passed.

SEC 142B FACELESS ENQUIRY & VALUATION

W.e.f 01.11.2020,

(1) The CG may make a scheme, for the purposes of issuing notice u/s 142(1) / 142(2) / 142(2A) / 142A so as to impart greater efficiency, transparency and accountability by -
(a) eliminating the interface between the income-tax authority or Valuation Officer and the assessee or any person to the extent technologically feasible;
(b) optimising utilisation of the resources through economies of scale and functional specialisation;
(c) introducing a team-based issuance of notice or making of enquiries or issuance of directions or valuation with dynamic jurisdiction.

SEC 142B FACELESS ASSESSMENT OF INCOME ESCAPING ASSESSMENT.

W.e.f 01.11.2020,

(1) The CG may make a scheme, for the purposes of assessment, reassessment or re-computation u/s 147 or issuance of notice u/s 148 or sanction for issue of such notice u/s 151, so as to impart greater efficiency, transparency & accountability by-
(a) eliminating the interface between income-tax authority & the assessee or any other person to the extent technologically feasible;
(b) optimising utilisation of the resources through economies of scale and functional specialisation;
(c) introducing a team-based assessment, reassessment, re-computation or issuance or sanction of notice with dynamic jurisdiction.

FACELESS ASSESSMENT SCHEME 2019

E-Assessment centres -

For the purposes of this Scheme, the Board may set up -

i)a National e-assessment Centre to facilitate the conduct of e-assessment proceedings in a centralised manner, which shall be vested with the jurisdiction to make assessment in accordance with the provisions of this Scheme

ii)Regional e-assessment Centres as it may deem necessary to facilitate the conduct of e-assessment proceedings in the cadre controlling region of a PCCIT, which shall be vested with the jurisdiction to make assessment in accordance with the provisions of this Scheme.

iii)assessment units, as it may deem necessary to facilitate the conduct of e-assessment, to perform the function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under the Act, seeking information or clarification on points or issues so identified, analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of making assessment.

iv)verification units, as it may deem necessary to facilitate the conduct of e-assessment, to perform the function of verification, which includes enquiry, cross verification, examination of books of accounts, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification

v)technical units, as it may deem necessary to facilitate the conduct of e-assessment, to perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter which may be required in a particular case or a class of cases, under this Scheme; and

vi)review units, as it may deem necessary to facilitate the conduct of e-assessment, to perform the function of review of the draft assessment order, which includes checking whether the relevant and material evidence has been brought on record.

Procedure for Assessment -

i)the NEAC shall serve a notice on the assessee u/s 143(2), specifying the issues for selection of his case for assessment.

ii)the assessee may, within 15 days from the date of receipt file his response to the National e-assessment Centre (NEAC)

iii) NEAC shall assign the case selected to a specific assessment unit in any one of Regional unit.

iv) assessment unit, may make a request to the NEAC for - information, documents or evidence or conducting of certain enquiry or verification by verification unit; and seeking technical assistance from the technical unit

v)NEAC will issue appropriate notice for obtaining information, documents or evidence requisitioned by assessment unit

vi)the assessment unit shall, after taking into account all the relevant material available on the record, make in writing, a draft assessment order either accepting the returned income of the assessee or modifying the returned income of the assessee, as the case may be, and send a copy of such order to the National e- assessment Centre.

vii)the assessment unit shall, while making draft assessment order, provide details of the penalty proceedings to be initiated therein, if any.

viii)NEAC will examine the draft order in accordance with the risk management strategy specified by the Board, whereupon it may decide to -
(a) finalise assessment as per the draft assessment order or
(b) provide an opportunity to assessee, in case a modification is proposed,
(c) assign the draft order to review unit in any 1 REAC

ix)review unit shall conduct review whereupon it may decide to -
(a) concur with the draft assessment order & intimate National e-assessment Centre about such concurrence; or
(b) suggest such modification, as it may deem fit, to the draft assessment order and send its suggestions to the National e-assessment Centre

x)the assessment unit shall, after considering modifications suggested by the Review unit, send final draft order to NEAC;

When a show cause notice is given to the Assessee

A)The assessee may, furnish his response to the NEAC on or before the date and time specified in the notice.

B)The National e-assessment Centre shall -
(a) in a case where no response to the show-cause notice is received, finalise the assessment ;
(b) in any other case, send the response received from the assessee to the assessment unit;

C)The assessment unit shall, after taking into account response furnished by the assessee, make a revised draft order & send it to the National e-assessment Centre.

D)The NEAC shall, upon receiving the revised draft order -
(a) in case no modification prejudicial to the interest of the assessee is proposed - finalise the assessment as per procedure
(b) in case a modification prejudicial to the interest of the assessee is proposed -provide an opportunity to assessee,
(c) the response furnished by the assessee

E)The National e-assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the AO having jurisdiction over such case., for -
(a) imposition of penalty;
(b) collection and recovery of demand;
(c) rectification of mistake;
(d) giving effect to appellate orders;
(e) submission of remand report, or any other report to be furnished, or any representation to be made, or any record to be produced before the CIT(A), Appellate Tribunal or Courts, as the case may be;
(f) proposal seeking sanction for launch of prosecution and filing of complaint before the Court;

Penalty proceedings for non-compliance -

NEAC shall, on receipt of such recommendation to levy penalty, serve a notice on the assessee or any other person, as the case may be, calling upon him to show cause as to why penalty should not be imposed on him under relevant provisions of Act. The response to show - cause notice furnished by the assessee or any other person, if any, shall be sent by the NEAC to the concerned unit which has made the recommendation for penalty. The said unit shall, after taking into consideration the response furnished by the assessee or any other person, as the case may be, -
make a draft order of penalty and send a copy of such draft to NEAC; or drop penalty after recording reasons, under intimation to NEAC. The NEAC shall levy the penalty as per the said draft order of penalty and serve a copy of the same on the assessee or any other person, as the case may be.

Appellate Proceedings -

An appeal against an assessment made by the National e-assessment Centre under this Scheme shall lie before the CIT(A)

No personal appearance in the Centres or Units -

A person shall not be required to appear either personally or through authorised representative in connection with any proceedings under this Scheme before the income-tax authority where upon modification an opportunity is provided to the assessee as to why the assessment should not be completed as per the such order, assessee/representative, be entitled to seek personal hearing so as to make his oral submissions or present his case before the ITA & such hearing shall be conducted exclusively through video conferencing, including use of any telecommunication application software which supports video telephony. [incl examination of records.]

APPEAL

SEC 246 APPEAL TO CIT(A)

An assessee or any deductor or any collector aggrieved by any of the following orders may appeal to the Commissioner (Appeals) against such orders u/s 246A:
1. Intimation: 143(1)/200A/206CB
2. Order: 143(3)/144/147/115VP/153A
3. Rectification order:154/155
4. Advance Pricing agreement: 92CD
5. Order: 163/170/171/201/237
6. Penalty order: 221/271A/271AA/271AAA/271B/order by DC

SEC 249 FORM OF APPEAL & LIMITATION

Sec 249(2) & 249(3) - Time limit for presenting an Appeal Appeal should be presented within 30 days of following date:

Cases	30 days from
Where the appeal relates to any assessment or penalty	The date of service of notice of demand
Where appeal is u/s 248, i.e. appeal by person denying liability to deduct tax u/s 195	The date of payment of tax.
In any other case	The date on which intimation of the order sought to be appealed against is served.

The CIT(A) may admit belated application on sufficient cause being shown. Application should be filed with Form No. 35 (i.e., form of appeal).

Sec 249(4) - Pre Deposit of Tax

where return has been filed	Assessee has paid tax due on income returned by him
where no return has been filed by the assessee	The assessee has paid an amount equal to amount of advance tax which was payable by him, However CIT(A) may grant exemption on the basis of merits of the cases.

Note: No Interest u/s 234A, B, C & 140A is payable. Only tax amount to be paid.

Sec 249(1) - Form & Fees

Following documents are required in duplicate for filing an appeal to CIT(A):
a. Form no. 35 (As prescribed in the Income Tax Rules)
b. Memorandum of appeal;
c. Statement of facts
d. Grounds of appeal
e. Copy of the order appealed against; &
f. Notice of demand, in original, if any
g. Copy of Challan for the payment of prescribed fee.

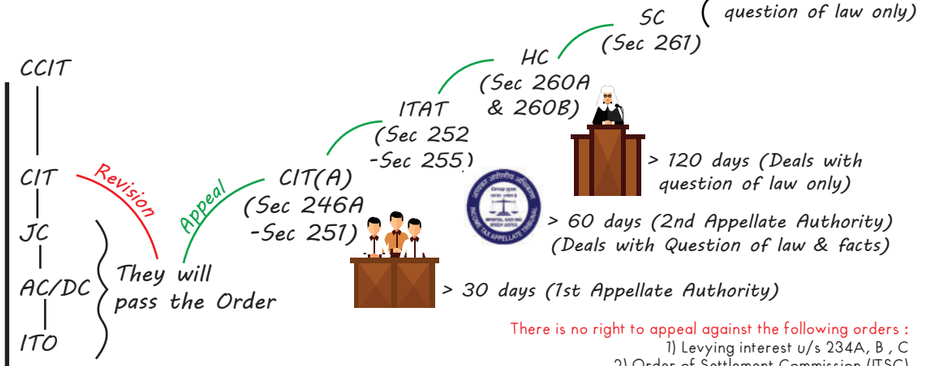
Fees:

Conditions: if Total Income Computed By AO is -	Fees
i. ₹1,00,000 or less	₹250
ii. More than ₹1L but not more than ₹2L	₹500
iii. More than ₹2L.	₹1,000
iv. WHERE SUBJECT MATTER OF AN APPEAL IS NOT COVERED ABOVE	₹250

SEC 251 POWER OF CIT(A)

CIT Can:
1) Against order-he may confirm, reduce, enhance or annul the assessment.
2) Against the order of SC: , to confirm, reduce, enhance or annul the assessment
3) Appeal against penalty- confirm or cancel such order or vary it in such a way as to enhance or reduce the penalty
4) Other cases- may pass such orders in appeal as he deems fit

CIT CANNOT:
1. CIT[A] cannot set aside & direct fresh assessment.
2. CIT[A] cannot cancel penalty order & direct to levy fresh penalty



There is no right to appeal against the following orders :
1) Levying interest u/s 234A, B , C
2) Order of Settlement Commission (ITSC)
3) Order of Authority of Advance Ruling (AAR)
4) Order of CIT u/s 264 (Revision order)
5) Order of ITAT when it is a question of Fact

SEC 250 PROCEDURE IN APPEAL

Hearing: The CIT (Appeals) shall fix a day & place for the hearing of appeal.
Notice: Notice of hearing shall be given to the appellant & the AO against whose order appeal has been filed.
Right of Attendance: The following shall have the right to be heard at hearing of appeal:
a. Appellant, either in person/by an authorized representative.
b. The AO either in person or by a representative.
Adjournment:The CIT (Appeals) shall have power to adjourn the hearing of appeal from time to time.
Inquiry: The CIT (Appeals) may before disposing of any appeal make such further inquiry as he thinks fit/may direct AO to make further inquiry & report result to CIT (A).
Other grounds of appeal:The CIT (Appeals) may at the time of hearing of appeal, allow the appellant to go into any ground of appeal not specified in grounds of appeal if he is satisfied that the omission of that ground was not willful/unreasonable.
Order: The order of CIT (Appeals) disposing of the appeal shall be in writing & shall state the points for determination, the decision thereon and the reasons for the decision.
Communication of Order: On disposal of the appeal, the CIT (A) shall communicate the order passed by him to the assessee and to the CIT.

Sec 250(6B) -

The CG may make a scheme, for the purposes of disposal of appeal by CIT (A), so as to impart greater efficiency, transparency and accountability by-
eliminating the interface between the CIT (A) & the appellant in the course of appellate proceedings to the extent technologically feasible;
optimising utilisation of the resources through economies of scale and functional specialisation;
introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more CIT (Appeals).

RULE 46A WHETHER PRODUCTION OF ADDITIONAL EVIDENCE BEFORE CIT(A) IS PERMISSIBLE?

The appellant shall not be entitled to produce before the Commissioner (Appeals) any evidence, However, in the following cases additional evidence can be admitted :
- where the AO has refused to admit evidence.
- where the appellant was prevented by sufficient cause from producing the evidence
- where the appellant was prevented by sufficient cause from producing before AO
- any evidence which is relevant to any ground of appeal or
- where AO has made the order appealed against without giving OOBH

reason must be recorded in writing.

SEC 252 CONSTITUTION OF ITAT

> The ITAT is constituted by the CG & functions under the Ministry of Law.

Presidents: The CG shall appoint
a) a person who is a sitting or retired Judge of a HC & who has completed not less than 7 years of service or
b) The Senior VP or one of the VPs of the ITAT.

Vice-Presidents (VP):
a) The CG may appoint one / more members of ITAT to be VP(s).
b) They will perform such functions as specified by CG

> ITAT consists of two classes of members Judicial & Accountant

Judicial Member	Account member
A Judicial Member shall be a person – • who has held a judicial service in India for atleast 10 years,or • who has been a member of the Indian Legal Service & has held a Grade II/higher post for atleast 3 yrs or • who has been an Advocate for atleast 10 years?	Accountant Member shall be person – • who has been a practicing Chartered Accountant for atleast 10 years, or • who has been a member of the Indian Income-Tax Service, Group A and has held the post of Additional CIT or higher for atleast 3 years.

SEC 253 APPEALS TO THE ITAT

Order against which an appeal can be filed to ITAT by assessee :

Order by	Section	Particulars
AO	115VZC	AO to exclude tonnage tax co from tonnage tax scheme.
	143(3)/147/144/153A/153C	AO
	154	Order of rectification
CIT(A)	250	Order disposing an appeal
	270A	Order levying penalty for under-reporting & misreporting of income
	271A	Order imposing penalty for failure to keep,maintain or retain books of a/c,docs etc
CIT/ P. CIT	12AA/12AB [FA'20]	Order refusing/canceling registration of trust / institution
	80G	Refusal to grant approval to the Institutions or Fund
	263	Revision of erroneous order
	270A/272A	Penalty order passed
	154 10(23)	Amending the order passed u/s 263 refusing approval of a fund/ institution for charitable purposes or trust or institution for public religious purposes or wholly for public religious & charitable purposes

Note: Order u/s 254 is final order & no appeal is possible against it.

SEC 254 ORDERS OF APPELLATE TRIBUNAL

Sec 254(1) - Appellate Tribunal may, after giving both the parties to appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

Sec 254(2) - The Appellate Tribunal may, at any time within 6 months from the end of the month in which the order was passed, with a view to rectifying any mistake apparent from the record, amend any order passed by it u/s 254(1), if this increase the liability of Assessee OOBH is must.

Sec 254(2A) - Tribunal, may hear and decide such appeal within a period of 4 years from the end of FY in which such appeal is filed
Provided that Tribunal may, after considering the merits of the application, pass an order of stay in any proceedings u/s 253(1), for a period not exceeding 180 days from the date of such order subject to the condition that assessee deposits not less than 20%. of the amount of tax, interest, fee, penalty, or any other sum payable or furnishes security of equal amount in respect thereof [FA'20] & Tribunal shall dispose of the appeal within that period.
Further no extension of stay shall be granted by Tribunal, where such appeal is not so disposed of within the said period of unless the assessee makes an application and has complied with the condition & Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee, so however, that aggregate of the period of stay originally allowed & the period of stay so extended shall not exceed 365 days & Tribunal shall dispose of the appeal within the period / periods of stay so extended or allowed [FA'20]
Provided also that if such appeal is not so disposed of within the period allowed under the first proviso or the period(s) extended or allowed under the second proviso, which shall not, in any case, exceed 365 days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.

SEC 255 PROCEDURE OF ITAT

The President or any other member of the Tribunal authorised in this behalf by the CG may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the AO in the case does not exceed ₹50 lakh, & the President may, for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member & one an accountant member.

SEC 260A/B APPEAL TO HC

An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if HC is satisfied that the case involves a substantial question of law. If the HC is so satisfied, it shall formulate that question. Appeal shall be in prescribe form and along with prescribe fees within 120 days from the date on which order is received by Assessee or CIT.High Court may determine any issue which – a) has not been determined by the ITAT ; or b) has been wrongly determined by the ITAT

SEC 261 APPEAL TO SUPREME COURT

An appeal shall lie to the SC from any judgment of the HC, in a case which the HC certifies to be a fit one for appeal to the SC. The provisions of the Code of Civil Procedure, 1908 in regard to appeal shall apply in the case of all appeals to the SC

FACELESS APPEAL SCHEME 2020

Faceless Appeals Centres -
For the purposes of this Scheme, the Board may set up -
i)a National Faceless Appeal Centre to facilitate the conduct of e-appeal proceedings in a centralised manner, which shall be vested with the jurisdiction to dispose appeal in accordance with the provisions of this Scheme
ii)Regional Faceless Appeal Centres as it may deem necessary to facilitate the conduct of e-appeal proceedings, which shall be vested with the jurisdiction to dispose appeal in accordance with the provisions of this Scheme
iii)Appeal units, as it may deem necessary to facilitate the conduct of e-appeal proceedings, to perform the function of disposing appeal, which includes admitting additional grounds of appeal, making such further inquiry as thinks fit, directing the National e-Assessment Centre or the AO, as the case may be.

Procedure for Appeal -
i)NFAC shall assign the appeal to a specific appeal unit in any one Regional Faceless Appeal
ii)where the appellant has filed the appeal after the expiration of time specified in sec 249(2) of the Act, the appeal unit may-
(a) in case, it is satisfied - admit appeal;
(b) in any other case, reject the appeal
iii)NFAC shall intimate the admission or rejection of appeal
iv)where the appeal is admitted - the appeal unit may request the NFAC to obtain such further information, document/report / for making further inquiry
v)The appellant or any other person, shall file a response to the notice within time allowed or extnded time allowed.
time specified therein or such extended date and time as may be allowed on the basis of an application made in this behalf, to the National Faceless Appeal Centre
viii)where a report is furnished by the NEAC or AO the NFAC shall send such response or report to the appeal unit.

Procudere for Accepting Additional grounds of Appeal
i)the appellant may file additional ground of appeal to NFAC
ii) where the additional ground of appeal is filed-
(a) NFAC shall send additional ground of appeal to the NEAC or the AO, for providing comments, if any
(b) the NEAC or the AO, shall furnish their comments, within the date and time specified or
(c) where comments are filed by the NEAC or the AO, NFAC shall send such comments to the appeal unit, & where no such comments are filed, inform the appeal unit;
(d) the appeal unit shall, after taking into consideration the comments, if any, received from the NEAC or the AO, as the case may be,
(A) if it is satisfied that the omission of additional ground from the form of appeal was not wilful / unreasonable, admit such ground; or
(B) in any other case, not admit the additional ground
for reasons to be recorded in writing and intimate the National Faceless Appeal Centre

the appeal unit may, after considering the additional evidence and the report, if any, furnished by the NEAC or the AO, as the case may be, admit or reject the additional evidence, for reasons to be recorded in writing, & intimate NFAC.

Where additional evidence is admitted a chance shall be given to authorirties to examine the same

Where the Appeal unit Intend to Enhance Assessment
(a) the appeal unit shall prepare a show-cause notice containing the reasons for such enhancement / reduction, as the case may be,& send such notice to the NFAC
(b) the NFAC shall serve the otice, upon appellant.
(c) the appellant shall, within the date and time specified in the notice file his response to the NFAC
(d) where a response is filed by the appellant, the NFAC shall send such response to the appeal unit, or
where no such response is filed, inform the appeal unit.

The appeal unit shall, after taking into account all the relevant material available on the record
(a) prepare in writing, a draft order u/s 251
(b) send such order to the NFAC along with the details of the penalty proceedings, if any, to be initiated therein;

NFAC shall examine the draft order in accordance with the risk management strategy specified by the Board,
(A) finalise the appeal as per the draft order; or
(B) send the draft order to an appeal unit, other than the unit which prepared such order, in any one Regional Faceless Appeal Centre through an automated

NFAC shall after finalising the appeal & Communicate such order to the appellant / PCCIT / CCIT & to NEAC or the AO, as the case may be, for such action as may be required under the Act;

Penalty proceedings by NFAC -

For Non compliance of any notice, direction or order, NFAC may proveed for penalty & serve a notice on the appellant or any other person, calling upon him to show cause as to why penalty should not be imposed upon him

The appellant shall file a response to the show-cause notice within the date and time specified.

The National Faceless Appeal Centre shall assign the recommendation for initiation of penalty proceedings, to a specific appeal unit .

The appeal unit shall, after taking into account all the relevant material -
(a) prepare a draft order and send a copy of such order to the National Faceless Appeal Centre; or
(b) drop the penalty after recording reasons, under intimation to National Faceless Appeal Centre.

Where the appeal unit has dropped the penalty, intimate to all

Where NFAC is satisfied it shall impose penalty by way of an order.

Rectification Proceedings by NFAC -

With a view to rectifying any mistake apparent from the record the NFAC may amend any order passed by it, by an order to be passed in writing

An application for rectification may be filed with NFAC by the -
(a) appellant or any other person, as the case may be; or
(b) appeal unit preparing/reviewing/revising the draft order; or
(c) the National e-Assessment Centre / AO, as the case may be.

NFAC shall assign such application to a specific appeal unit & appeal unit shall examine the application and prepare a notice for granting an opportunity -
(a) to the appellant or (b) to the NEAC or the AO, or
(c) to the appellant or any other person, NEAC or the AO, where the application has been filed by an appeal unit.

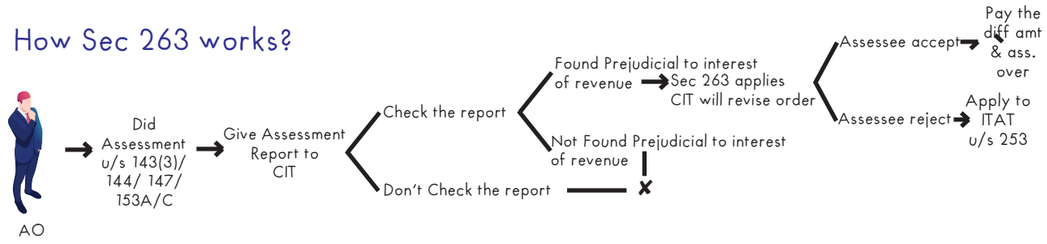
NEAC or AO, calling upon him to show cause as to why rectification should not be carried out & appellant shall file his response in given time. Where a response, is filed by the NEAC or the AO, shall send such response to the appeal unit/ where no such response is filed, inform appeal unit.

The appeal unit shall, after taking into consideration the application and response,send the draft order to the NFAC & after responses and evidence, the final order shall be passed.

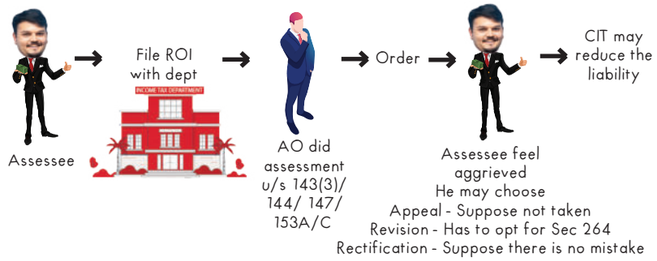
The appeal against the order of NFAC shall lie before the ITAT.

REVISION

How Sec 263 works?



How Sec 264 works?



Sec 263 - Suo Moto by Dept.
Income always
Max time - 2 years ↑
Appeal possible
Partial Merger

Sec 264 - Suo Moto by Dept or Application made.
Income may
Max time - 1 year ↓ ↑
No appeal possible
(Total Merger)

SECTION 264 OTHER REVISION

1. In case of any order other than an order to which sec 263 applies, passed by an authority subordinate to CIT, he may, a) either of his own motion or
b) on an application by the assessee for revision, call for the record of any proceeding under this Act in which such order has been passed and may make further inquiries.

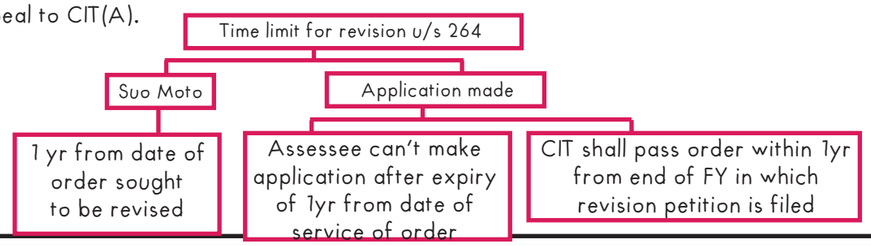
Meaning of "any order other than an order to which sec 263 applies" - An order of AO which has been revised u/s 263 cannot be revised u/s 264. However after revision u/s 264, revision u/s 263 is possible.

Key notes:
a. U/s 264, only the order of AO can be revised.
b. Intimation or deemed intimation u/s 143(1) is not an order & therefore can't be revised u/s 264.
c. CIT u/s 264 can declare the assessment to be void ab – initio.
d. CIT u/s 264 can cancel / set aside order of assessment of the AO & direct him to make a fresh assessment & such directions shall not be prejudicial to the assessee. CIT decline to Interfere does not amount to Prejudicial to Interest of Assessee.
e. Under 264 no order prejudicial to Assessee can be passed
f. Commissioner cannot revise u/s 264 till the time limit for completion of appeal is not over.
g. U/s 264 CIT can entertain fresh grounds /evidence as well.

2. He may also admit the application after expiry of one year.

Note 1: Revision u/s 264 is not possible if an appeal has been file to CIT(A) on any issue.

Note 2: Revision u/s 264 is possible if the assessee has not filed an appeal to CIT (A) and
i. The time period for filing an appeal to CIT(A) has expired or
ii. Where the time for filing appeal to CIT (A) has not expired, the assessee has waived his right to appeal to CIT(A).



SECTION 263 REVISION BY CIT

PC/CIT consider that any order passed by AO is erroneous and prejudicial to the Interest to the Revenue he may after giving OOBH and after making enquiry pass an order enhancing or modifying the assessment or cancel the assessment and direct fresh assessment

Condition:
Revision can be of any matter which has been not decided by Appeal.(Subject to Partial Merger/Total Merger)

Time Limit:
2 years from the end of FY in which order sought to be revised was passed. The Time Limit does not apply where revision is due to order of court or Tribunal

Additional points:
Deemed Erroneous:
- the order is passed without making inquiries or verification
- the order is passed allowing any relief without inquiring into the claim
- the order has not been made in accordance with any order, direction or instruction issued by the CBDT u/s 119;
- the order has not been passed in accordance with any decision of HC/SC.

Power of CIT (A):
a) Power to reduce/confirm the Assessment
b) No power to set aside & refer back to AO for fresh assessment
c) He also doesn't have the power to Review

SEC 264A FACELESS REVISION OF ORDER

(1) CG may make a scheme, for the purposes of revision of orders u/S 263 / 264, so as to impart greater efficiency, transparency and accountability by -
(a) eliminating the interface between income-tax authority & the assessee or any other person to the extent technologically feasible;
(b) optimising utilisation of the resources through economies of scale and functional specialisation;
(c) introducing a team-based revision of orders, with dynamic jurisdiction.

SEC 264B FACELESS EFFECT OF ORDERS

(1) The CG may make a scheme, for the purposes of revision of orders u/s 250, 254, 260, 262, 263 / 264, so as to impart greater efficiency, transparency and accountability by -
(a) eliminating the interface between income-tax authority & the assessee or any other person to the extent technologically feasible;
(b) optimising utilisation of the resources through economies of scale and functional specialisation;
(c) introducing a team-based revision of orders, with dynamic jurisdiction.

RECTIFICATION

Sec 154 : With a view to rectifying any mistake apparent from the record an income-tax authority referred to in sec 116 may, -

Amend any order passed by it under the provisions of this Act;	Amend any intimation or deemed intimation 143(1)	Amend any intimation u/s 200A(1)/206CB [TDS/TCS Intimation]

There is no fees payable by Assessee for rectification nor any form is prescribed.

Income Tax authority

Who is Covered in Income tax Authority [They can rectify their order]	Who is not covered in Income Tax Authority [They cannot rectify there order]
Any other Authority including 1) CIT(A) 2) CIT [Hence order u/s 263 & 264 can be revised.]	1) ITAT [However it can revise the order u/s 254(2) 2)HC 3) SC 4) Settlement Comission

Order:
> Intimation u/s 143(1)
> Intitmation of TDS Statement 200A/206CB
> Assessment order or reassessment order u/s 143(3)/144/147
> Rectification u/s 154
> Revision order u/s 263/264
> CIT(A) order 250
> Order passed by CIT/CCIT u/s 10(23C)/12AA/80G
> Order of partition of HUF u/s 170'

Rectification can be made Suo moto or an application can be received from assessee/where the authority CIT(A) by AO also.

An amendment enhacing the liability or reducing the refund shall not be made unless notice to the assessee has been given (OOBH) & accordingly, if liability arise it shall be deemed to be notice of demand u/s 156 or refund if any shall be granted to assessee

Sec 154(7) - The application for rectification u/s 154 can be filed before the expiry of 4 years from the end of the FY in which the order sought to be amended was passed.

Sec 154(8) - Without prejudice to Sec 154(7), where an application for amendment under this section is made by the assessee or by the deductor or by the collector on or after the 1st day of June, 2001 to an ITA referred to in Sec 154(1), the authority shall pass an order, within a period of 6 months from the end of the month in which the application is received by it,—
a) making the amendment; or
b) refusing to allow the claim.

If the Assessee has made the rectification application within the prescribed period of 4 years and the concerned ITA could not pass the rectification order within the said 4 years, then it is permitted that the ITA can make a belated rectification (after the said four years) TO THE ADVANTAGE OF THE ASSESSEE.

SEC 157A FACELESS RECTIFICATION, AMENDMENTS AND ISSUANCE OF NOTICE OR INTIMATION

The CG may make a scheme, for the purposes of rectification of any mistake apparent from record u/s 154 or other amendments u/s 155 or issue of notice of demand u/s 156, or intimation of loss u/s 157, so as to impart greater efficiency, transparency & accountability by
(a) eliminating the interface between the ITA & the assessee or any other person to the extent technologically feasible;
(b) optimising utilisation of the resources through economies of scale and functional specialisation;

SEC 131(1) DISCOVERY, PRODUCTION OF EVIDENCE

The AO, DC (Appeals), JCIT, CIT (A), PCCIT or CCIT or CIT & the DRP shall, have the same powers as are vested in a civil court:
a) discovery and inspection;
b) enforcing attendance of any person, including any officer or banking company and examining him on oath;
c) compelling the production of books of account & other documents; and
d) issuing commissions.

SEC 131(2) CALLING INFO U/S 90 & 90A

For the purpose of making an inquiry or investigation in sec 90 / 90A,
ACIT shall be competent authority,for calling of information.

SEC 131(3) IMPOUNDING BOA & DOCUMENT

ITA, DRP & other notified authorities may impound and retain books of accounts & documents produced before it in any proceeding under the Act. Provided : 1) Record reason for doing so ; 2) for exceeding 15 days retention, approval of CCIT / CIT is taken

SEARCH & SEIZURE

SEC 133B POWER TO COLLECT INFORMATION

ITA for collecting any information enter—
> any building or place within the limits of the area assigned to such authority ; or
> any building or place occupied by any person in respect of whom he exercises jurisdiction
at which a business or profession is carried on, whether such place be the principal place or not of such business

Time: only during the hours at which such place is open for the conduct of business or profession
For the removal of doubts, it is hereby declared that an ITA acting under this section shall, on no account, remove or cause to be removed from the building or place wherein he has entered, any books of account or other documents or any cash, stock or other valuable article or thing.

SEC 133A SURVEY

Authority: CIT/DIT/JC/JD/AD/DDIT/ITO/TRO
An inspector for inspecting BOA & docs, mark identification, make copies & extract & for survey at function/ceremony who is subordinate to PDGIT / DGIT / CCIT / CCIT(TDS).

Time of Survey:

Business Place [also include other place where books are kept]	only during the hours at which such place is open for conduct of business or profession
Other Place [Including charitable place]	only after sunrise & before sunset
Place of function, ceremony or event	Any time after such function or ceremony

w.e.f 01.11.2020 - No action under this sec shall be taken by an IT Authority without approval of PDGIT / DGIT / PCCIT / CCIT.

Power of person under survey:
> place marks of identification on the books of account
> extracts or copies therefrom,
> Impound and retain [Max 15 days without approval]
> make an inventory of any cash, stock or other valuable article or thing checked or verified by him
> record the statement of any person which may be useful for, or relevant to, any proceeding under this Act

SEC 133A[6] ITA POWERS FOR INSPECTION

If a person is required to afford facility to the ITA to inspect BOA or other documents or cash, stock or other valuable article or to have his statement either refuses or evades to do so, authority shall have all the powers u/s 131(1)
Provided that– [FA'20]
a) No action shall be taken by AD/DD/AO/TRO/inspector without approval of JC/JD - If information is received from such authority.
b) in any other case, No action shall be taken by AD/DD/AO/TRO/inspector without approval of DGIT/ CIT.

SEC 132 SEARCH

Reasons:
1. There exist past/ possible non compliance of notice u/s 142(1) or 131(1).
2. There exist Past/ possible non disclosure of money, bullion, jewellery or other valuable article.

Authority:
CCIT/DGIT/CIT/DIT/JCIT(if Authorised by CBDT)/JDIT

Power:

Deemed Seizure/Constructive Seizure:
Where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order not to deal with the product unless approval is taken

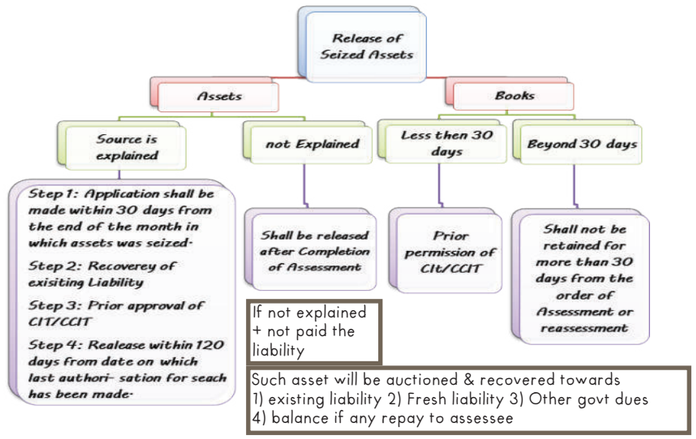
SEC 132(9A) NO JURISDICTION OVER ASSESSEE

Where the authorised officer has NO jurisdiction over the person searched by him, the books of accounts or any money, bullion, jewellery, etc shall be handed over by authorised officer to AO having jurisdiction over such other person within period of 60 days from the date on which search was completed.

SEC 132A REQUISITION

Where the prescribe authority [DGIT/CCIT/DIT/CIT] has reason to believe
> Exist past/possible non compliance of notice 142(1)/131(1).
> There exist past /possible non disclosure of assets being money bullion , jewellery, other valuable article or thing.
> Such books/other assets been in custody by any other officer/ authority
Before requisition Authority shall record the reason in writing it is hereby declared that the reason to believe, as recorded by the ITA under this sub-sec, shall not be disclosed to any person or any authority or the Appellate Tribunal On a requisition being made the officer or authority shall deliver the BOA, other documents or assets to the requisitioning officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody.

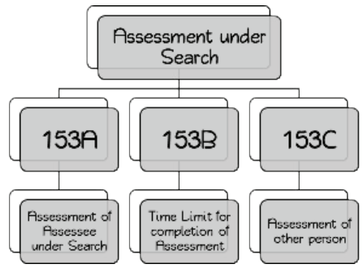
SEC 132B APPLICATION OF SEIZED OR REQUISITIONED ASSETS



a) if the assets consist solely of money, or partly of money and partly of other assets, the AO may apply such money in the discharge of the liabilities referred to in clause (i) and the assessee shall be discharged of such liability to the extent of the money so applied;
b) the assets other than money may also be applied for the discharge of any such liability referred to in clause (i) as remains undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by the Assessing Officer or, as the case may be, the Tax Recovery Officer under authorisation from PCCIT / CCIT / PCIT / CIT u/s 226(5) and AO or, as the case may be, the Tax Recovery Officer may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

Sec 132B(3) - Any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of sub-section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

Sec 132B(4) -
a) The Central Government shall pay simple interest at the rate of 1.5% for every month or part of a month on the amount by which the aggregate amount of money seized u/s 132 or requisitioned u/s 132A, as reduced by the amount of money, if any, released if any
b) Such interest shall run from the date immediately following the expiry of the period of 120 days from the date on which the last of the authorisations for search u/s 132 or requisition u/s 132A was executed to the date of completion of the assessment u/s 153A or under Chap XIV-B.



SEC 153A ASSESSMENT IN CASE OF SEARCH OR REQUISITION

Where search is conducted u/s 132 or requisition is made u/s 132A, AO shall:
a) issue notice to Assessee requiring him to furnish ROI for each AY falling within 6 AYs & for RPY & assess or reassess the total income of all such years.
b) notice can be issued for 10AYs in following case :
1) AO has possession of BOA & docs which reveal escaped amount is 50 lakhs or more in RAY.
2) Income referred in pt 1. has escaped assessment for that year
3) Search is made after 1st April'17.

Assessment or reassessment falling within that 6 AYs & for RAY shall abate.

If the proceeding initiated u/s 153(1) has been annuled, the abated assessment shall be revived.

SEC 153C ASSESSMENT OF INCOME OF OTHER PERSON

Sec 153C(1) - Notwithstanding anything contained in sec 139, 147, 148, 149, 151 & 153, where the AO is satisfied that,-
a) any money, bullion, jewellery or other valuable article / thing, seized or requisitioned, belongs to; or
b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,
a person other than the person referred to in sec 153A, then, the books of account or documents or assets, seized/ requisitioned shall be handed over to the AO having jurisdiction over such other person and that AO shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of sec 153A, if, that AO is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for 6 AYs immediately preceding the AY relevant to PY in which search is conducted or requisition is made and for the relevant AY(s) referred to in sub-section (1) of section 153A

Sec 153C(2) - Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the AO having jurisdiction over such other person after the due date for furnishing the return of income for the AY relevant to the PY in which search is conducted u/s 132 or requisition is made u/s 132A & in respect of such AY—
a) no return of income has been furnished by such other person & no notice u/s 142(1) has been issued to him, or
b) a return of income has been furnished by such other person but no notice u/s 143(2) has been served & limitation of serving the notice u/s 143(2) has expired, or
c) assessment or reassessment, if any, has been made, before date of receiving books of account/docs / assets

seized or requisitioned by the AO having jurisdiction over such other person, such AO shall issue the notice and assess or reassess total income of such other person of such AY in the manner provided in section 153A.

SEC 153B TIME LIMIT FOR COMPLETION OF ASSESSMENT U/S 153A

Sec 153B(1) - AO shall make an order of assessment or reassessment,—
a) in respect of each AY falling within 6 AYs & for RAY, within a period of 12 months from the end of the FY in which the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed;

Simplified Analysis

For 6AY immediately preceding the PY in which search or requisition u/s 132/132A is done	Date on which last authorisation was executed (Panchnama was made)	From the end of FY in which last of the authorisation was executed	From the end of FY in which BOA are handed over u/s 153C to the concerned officer
	Before 01.04.2018	21 months	9 month
	FY 2018-19	18 Months	12Months
	On/ after 01.04.19	12 months	12 months
For the AY relevant to PY in which search was started	Same as above		
Reference to TPO made	Extend the above period from 12months.		

SEC 135A FACELESS COLLECTION OF INFO

(1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of calling for info u/s 133, collecting certain information u/s 133B, or calling for information by prescribed income-tax authority u/s 133C, or exercise of power to inspect register of companies u/s 134, or exercise of power of Assessing Officer u/s 135 so as to impart greater efficiency, transparency & accountability by
(a) eliminating the interface between the ITA & the assessee or any other person to the extent technologically feasible;
(b) optimising utilisation of the resources through economies of scale and functional specialisation;
(c) introducing a team-based rectification of mistakes, amendment of orders, issuance of notice of demand or intimation of loss, with dynamic jurisdiction. w.e.f 01.11.20

TIME LIMIT - SUMMARY

Sec	Particulars	Time Limit
139(1)	Time limit to file ROI - For TP cases - For Company / Partner / Audit case - For others	 - 30th Nov of AY - 31st Oct of AY - 31st July of AY
139(4) & (5)	Filing of belated & revised return	End of the AY or before completion of assessment whichever is earlier.
142(2A)	Time allowed for Special Audit	Time specified in the notice or Max 180 days
142A	VO sent copy of report to AO & assessee	6 months from end of month in which ref was made
143(3)	Intimation issue	12 months from the end of FY in which return was filed.
143(2)	Service of Scrutiny Assessment	6 months from the end of FY in which return was filed
153(1)	Assessment completion u/s 143(3) & 144	12 months from the end of relevant AY
144C	Direction issued by DRP to AO	9 months from the end of month in which draft order forwarded by AO to assessee.
149(1)	Notice u/s 148 for making - Assessment u/s 147 - Income escaping is 1 lakh or more - Income escaping relates to foreign assets	 - 4 yrs from end of relevant AY - 6 yrs from end of relevant AY - 16 yrs from end of relevant AY
153(2)	Time Limit to complete assessment u/s 147	12 months from the end of FY in which notice u/s 148 was served (if notice served before 01.04.2019 then 9 months)
153B	Time Limit to complete assessment u/s 153A	12 months from end of FY in which search is completed (Search conducted in FY 18-19 then 18 months & earlier was 21 months)
	Time Limit to complete assessment u/s 153C (other person)	Time given above or 12 months from end of FY in which BOA or assets handed over to the AO having jurisdiction over the person

INCOME TAX SETTLEMENT COMMISSION

SEC 245B CONSTITUTION OF ITSC

Sec 245B(1) - The CG shall constitute a Commission to be called the ITSC for the settlement of cases under this Chapter.

Sec 245B(2) - The ITSC shall consist of a Chairman and as many Vice-Chairmen and other members as the CG thinks fit and shall function within the Dept of the CG dealing with direct taxes.

Sec 245B(3) - The Chairman, Vice-Chairman & other members of the ITSC shall be appointed by CG from amongst persons of integrity & outstanding ability, having special knowledge of, and, experience in, problems relating to direct taxes and business accounts.
Provided that, where a member of the Board is appointed as the Chairman , Vice-Chairman or as a member of the ITSC, he shall cease to be a member of the Board.

SEC 245C APPLICATION

Assessee may, at any stage of a case relating to him, make an application in the prescribed form and manner, containing a full and true disclosure of his income which has not been disclosed before the Assessing Officer.

Condition = Case Pending + Additional Income Disclosed

Case	Additional Income Disclosed
Search & Seizure	50L
Other	10L

> Additional Tax is paid and Proof of payment attached with ROI before application is made.
> Application can be made by Assessee or specified Person.
> Application shall be attached with a fees of Rs.500.
Application once made cannot be withdrawn.

SEC 245 POWERS OF ITSC

> provisionally attach the property (provisional attachment is valid for a period of 6 months, after which it ceases to have effect.)
> Order shall be conclusive. Have all Power vested in Income Tax Authorities.
> granting immunity to any person from prosecution shall record the reasons in writing in the order passed by it.(Not from 234A/B/C).
> Proceeding to be Judicial Proceeding

SEC 220[2] POWER TO WAIVE INTEREST

ITSC has power to waive Interest u/s 220[2]
Power to Waive Interest u/s 234A/B/C:
ITSC Cant waive off interest u/s 234A/B/C however if CBDT grant power relief can be provided to that extent as also held in
CIT Vs. Anjum Ghaswala[2001]SC
CIT Vs. Santram Jewllers [2003] SC

SEC 245D PROCEDURE ON RECEIPT OF APPLICATION

> SC shall issue a notice to the applicant, requiring him to explain as to why the application made by him be allowed to be proceeded with, within 7 days from the date of receipt of application.
> SC shall either accept or Reject the application within 14 days & of not communicated it shall be deemed to be accepted.
> shall call for a report from the PCIT/CIT within 30 days from the date of application .
> SC can also pass an order declaring the application as invalid on the basis of the report of the PCIT/CIT. Such order should be passed in writing within 15 days of the receipt of report after giving the applicant an opportunity of being heard.
> If PCIT/CIT has not furnished the report within the prescribed time, the Settlement Commission shall proceed further in the matter without the report
> SC shall call records and make Inquiry and may pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application but referred to in the report of the Principal Commissioner or Commissioner
> Time Limit for Order: Within 18 months from the end of the month in which the application was made.
> Settlement shall be void : if it is subsequently found that order was obtained by fraud or any misrepresentation of facts by the applicant
> It tax liability is determined by SC it shall be paid within 35 days if not paid assessee is liable to pay Interest @ 1.25% for every month or part thereo
> SC may amend any order passed by it under section 245D(4) within a period of 6 months from the end of month in which he order was passed;

SEC 245H POWER TO GRANT IMMUNITY FROM PROSECUTION & PENALTY

1. Applicability: If the applicant-
   a. Has co-operated with settlement commission.
   b. Made full & true disclosure of his income, and the manner in which income has derived.
2. Immunity:
   ITSC should record reason before grant of immunity.
3. No immunity from:
   a. Prosecution for any offence under the Indian Penal Code or under any Central Act other than IT Act and the Wealth-tax Act.
   b. Prosecution instituted before date of receipt of application u/s 245C.
4. Withdrawal:
   An immunity granted shall be withdrawn, if applicant-
   a. Fails to pay the sum as per order u/s 245D, within time/ extension allowed, or
   b. Fails to comply with other conditions of that order, or
   c. Has concealed any particulars or given false evidence.

SEC 245A MEANING OF CASE

Case means any proceeding for assessment under the Income-tax Act 1961, of any person in respect of any AY/(s) which may be pending before an Assessing Officer on the date on which an application under section 245C(1) is made.

Case pending Includes : 143(3)/144/147/153A/C/cases reopen after 263 also.

Ineligible cases at ITSC:
1. Appellate proceeding before CIT[A],ITAT,SC,HC.
2. Rectification u/s 154
3. Revision u/s 263 /264
4. Intimation 143[1], 200A, 206CB.

SEC 245I ORDER OF SETTLEMENT TO BE CONCLUSIVE

Order of ITSC is final & conclusive

Appeal possible ✘ Reopening of case ✘ Revision ✘
HC/SC ✔ [Jyotendrasingji vs S I Tripathi]
Rectification possible ✔ u/s 254

Under foll exceptions only, writ petition to HC is possible:
> when Principles of Natural Justice are violated;
> when mandatory procedural requirements of law not been complied with
> where reasoning given in order of ITSC contradicts with conclusion drawn in such order

INCOME FROM SALARY

SEC 15 CHARGING SECTION

CHARGEABLE INCOME :
Where there exists a relationship of employer and employee. Where an individual is bound to follow the instructions of other it is said that there exists a relationship of ER and EE.

WHEN IS SALARY CHARGED TO TAX :
Salaries charged to tax either on DUE or RECEIPT whichever matures earlier
Exception : Following salaries charged to tax only on receipt basis
a. Advance Salary
b. Bonus
c. Salary in lieu of notice period
d. Arrears of Salary

COMPUTATION :
Basic + Taxable Allowance + Taxable Perquisite

FULLY TAXABLE PART OF SALARY

a. Basic b. Bonus c. Fees d. Advance/Arrears
e. Commission f. Leave Encashment
g. Uncommuted Pension

PARTLY EXEMPT ALLOWANCES

Name of Allowance	Nature of allowance	Exemption
Allowance for transport Employee	Any allowance granted to an employee working in any transport system to meet his personal expenditure during his duty performed	Lower of : i) 70% of such allowance; or ii) ₹10,000 pm
Children Education Allowance	Any allowance given for children education of employee(s). Deduction is available even if not spent.	₹100 pm per child, max upto 2 children.
Hostel Expenditure Allowance	Any allowance given for meeting hostel expenditure of child/children of employee(s).	₹300 pm per child, max upto 2 children.
Transport allowance [Deduction withdrawal with Intro of of Std Ded^{n}]	Transport allowance granted to an employee, other than the employee working in any transport system, to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty.	In case EE is blind/ handicapped, ₹3200 pm. [Still Available]
Underground allowance	Underground allowance is granted to an employee who is working in unnatural climate in underground.	₹800 pm
High altitude allowance	This allowance granted to the member of the armed forces operating in high altitude areas.	Exemption : a) for altitude of 9,000 to 15,000 ft. ~ ₹1060pm b) for altitude above 15,000 ft.~ ₹1600pm
Tribal Area	The tribal areas of Madhya Pradesh, Tamil Nadu, Uttar Pradesh, Karnataka, Tripura, Assam, West Bengal, Bihar & Orissa.	₹200 pm

ALLOWANCES

Fully Taxable	Fully Exempt (amount spent)	Partly Taxable
>Basic >Advance salary >Arrears of salary >Bonus >Commission as a % if Turnover >Fees >Dearness Allowance >City compensatory allowance >Entertainment allowance >Fixed medical allowance >Family allowance >Leave encashment received during service >Lunch/Tiffin allowance >uncommuted pension >Non practicing allowance >Overtime allowance >Servant allowance >Warden allowance >Interim allowance >Project allowance >Telephone Allowance >Transport Allowance >Any other cash allowance	>Travelling allowance >Daily allowance >Conveyance allowance >Helper allowance >Academics allowance >Uniform allowance >Amount received from UNO. >Allowance to High >Court or supreme court Judge.	>Children education allowance >Children hostel allowance >Running allowance >Tribal area allowance >Underground allowance

SEC 10(13A) HOUSE RENT ALLOWANCE

Exemption is not available if
a) Accommodation is owned by him.
b) If he has not paid the rent for accommodation.

Exemption is lower of
i) Actual amount
ii) Rent Paid (-) 10% of salary
iii) 50% of salary in respect of the relevant period, if such accommodation is situated in Mumbai, Calcutta, Delhi or Chennai (40% of salary if it is situated at any other place)

Notes
Salary = Basic + DA(R) + Commission (T).
If there is change in any factor namely Salary, HRA, Period, place of business etc.HRA needs to be calculated separately.
Any Advance Salary shall be excluded for purpose of this calculation.
Exemption is also not available if Rent paid is less than 10 % of Salary.
The basis for calculation is location of accommodation & not of Service.

SEC 16 DEDUCTIONS

Sec.16(i)	Standard Deduction	Lower of 1. Rs.50000 [FA,2019] 2. Salary For Salary and Pension [Not Family Pension]
Sec.16(ii)	Entertain-ment Allowance	Non Govt EE: Not Available Govt EE: Lower of a) Actual b) 20% of Basic Salary c) ₹5000 p.a.
		> First Add Entertainment allowance in gross salary and then take deduction. > Deduction shall be irrespective of actual expense incurred, Whether for office or for personal purposes.
Sec.16(iii)	Professional Tax	Professional tax means tax on employment, profession, trade, etc. levied by a state under article 276 of the Constitution. Deduction = Actual Amount Paid If Employer has paid the amount, 1st Add in salary and then take the deduction.

SEC 10(10) GRATUITY

Meaning of Salary	Covered in Gratuity Act	Basic +DA
	Not Covered in Gratuity Act	Basic salary + D.A. (R) + commission based on fixed % of turnover.
	Average Salary	Avg. monthly salary calculated on basis of avg. salary for 10 M immediately preceding month in which employee has retired. For instance if employee retires on Dec, avg. salary will be calculated till November.
Received from more than 1 employer	While claiming the statutory deduction of ₹20L any amount earlier claimed as deduction shall be reduced from ₹20L.	
Relief U/s 89(1)	Available.	

During his Employment → Totally Taxable to all Employee however relief can be claimed u/s 89.

At the Time of Retirement → Government Employees → Fully exempt

At the Time of Retirement → Non Government Employees →
- Employees covered under The Payment of Gratuity Act, 1972:
  Minimum of
  1) Actual received
  2) 15/26 x Last drawn x No. of yrs of completed service / part in excess of 6 M
  3) Maximum ₹20L
- Employees not covered under The Payment of Gratuity Act, 1972:
  Minimum of
  1) Actual received
  2) 1/2 x Avg Salary x No. of yrs of completed service
  3) Maximum ₹20L [Not. 16/2019]
  No difference if seasonal Employee

After the death of Employee → payment to Widow/legal heir is not taxable

>In case of seasonal employment period of 15 days shall be replaced by 7 days.
>Complete year of service: For calculating complete year of service any period of more than 6 M shall be taken to be full year.

For Personal Notes

SEC 10(10A) PENSION

During his Employment → Totally Taxable to all Employee

At the Time of Retirement → Taxable to all including Govt EE
- Govt EE (Whether gratuity is received or not) → Exempt u/s 10(10A)(i)
- Non Govt EE
  - Non-Govt EE who have received Gratuity → Section 10(10A)(ii)

Actual Amount Recd	XX
(-) 1/3rd of Full Value of Pension	(XX)
Taxable	XX

  - Non-Govt EE who have not received gratuity → Section 10(10A)(ii)

Actual Amount Recd	XX
(-) 1/2 of Full Value of Pension	(XX)
Taxable	XX

After the death of Employee → Taxable under IFOS

Notes :
Pension received from UNO is not taxable.
Relief u/s 89(1) available for commuted pension.
Full Value of Pension = Amount Received / % of Commutation

SEC 10(10B) RETRENCHMENT COMPENSATION

As per Scheme of Central Gov → Nil

Other →

Actual Amount Recd	XX
(-) Lower of : a) Actual received b) Amount calculated as per Industrial Dispute Act, 1947 c) Maximum ₹ 5L	(XX)
Taxable (eligible for relief u/s 89)	XX

Notes :
> If amount determined as per industrial dispute act is not given:-
15/26 x Avg salary of Last 3M x No of year of completed service /part thereof in excess of 6 M.
However as per Guru Jambeswar Case instead of 15/26 take 15/30.
> Salary for this purpose:- Basic+ DA(R)
> If retrenchment compensation is received in scheme framed by CG then whole retrenchment compensation is Exempt.
> Any compensation in excess of above limit will be taxable as salary.

SEC 10(10C) VOLUNTARY RETIREMENT

Conditions
(i) 10 years of service or 40 years of age
(ii) For all employees (except directors of the company)
(iii) Overall Reduction in number of employees
(iv) Not to be filled up
(v) No same management

Exemption

Actual Amount Recd	XX
(-) Lower of : a) Actual Amount b) Rs.500000 c) Amount higher of i) Last drawn salary x 3 x No of yrs Completed Service. ii) Last Drawn Salary x Balance no of M left for service	(XX)
Taxable	XX

SALARY

Notes :
Deduction under this sec is available only once in lifetime.
Salary = Basic + DA (R) + Commission (T).
If assessee claims relief u/s 89(1) for VRC then he cannot claims exemption u/s 10(10C) in that year or any other AY.

SEC 10(10AA) LEAVE SALARY

- During his Employment → Totally Taxable to all Employee
- At the Time of Retirement
  - Govt EE → Fully Exempt
  - Non Govt EE → Minimum of (1) Actual received (2) Avg. salary x10 months (3) Maximum 3,00,000 (4) Leave Credit for 30 days
- After the death of Employee → Not Taxable in hands of legal heir

> Employees are entitled to various types of leave while in service. The leave may either be availed by them or in case not availed of, these may either lapse/are allowed to be encashed every year or these are accumulated and encashed after retirement or death.
> Salary Means Basic +DA(R) + C (T).
> Relief u/s 89(1) available.
> How to Find out leave Credit:

a) Find out duration of service without any fraction- 12yrs & 7M=12 yrs
b) Find out leave allowed: (Max allowed as per rule 30 days per yr) if period of leave credited is more than 30 days then take 30 days for calculation & it is less than 30 days then same can be taken.
c) Period of leave earned = (Leave Credit x Avg Salary) / 30

SPECIFIED & NON SPECIFIED EMPLOYEE

If any of the 3 condition is satisfied an employee is treated as specified employee. [17(2)(iii)]
a. Employee + Director
b. Employee + Substantial Interest. S 2(32) An employee holding atleast 20% voting power in a company
c. Income from Salary less salary in kind exceeds ₹ 50,000

If none of the conditions are satisfied then employee is treated as non specified employee.

RULE 3(1) PERK : VALUATION OF RESIDENTIAL ACCOMODATION

- Unfurnished
  - Govt EE
  - Non Govt EE → Owned / Hired / Hotel
- Furnished

Where accommodation is provided by Union/State Govt to their employees	License Fees Less: Anything Recovered Perk	xxx (xxx) xxx
Accommodation owned by him.	Population of the city (as per 2001 census) where accommodation is provided, Population — Perk Beyond 25Lakh — 15% Above 10Lakh-25 Lakh — 10% Below 10 Lakh — 7.5% Deduction for any amount paid by the employee: The amount so calculated shall be reduced by rent , if any, actually paid by EE	
Accommodation is hired /leased	Lower of a) 15% of Salary or b) Actual amount paid.	

	Deduction for any amount paid by EE: The amount so calculated shall be reduced by rent,if any, actually paid by the employee. Salary for such period only: Salary for this purpose should be taken only for the period during which accommodation is occupied by EE	
Provided in Hotel	Upto 15 days	Nil
	Beyond 15 days	24% of salary xxx Less: Recovered (xxx) Perk xxx

Particulars	₹
Value as Per Unfurnished	xxx
Add: Value of Furniture	xxx
If Owned:- 10% of actual Cost	Xx
Hired:- Actual Hire Charges	Xx
Less: Anything Recovered	(xxx)
Perk	xxx

Notes-
1. Salary: Basic+ DA(R)+ Bonus + Commission + All taxable Allowance
2. "Accommodation" incl. house, flat, farm house, hotel accommodation motel,service apartment guest house,caravan, mobile home, ship etc.
3. Where an employee is transferred from one place to another & he is provided with an accommodation at new place also. The value of perquisite shall be taken for only one such house having lower value for period not exceeding 90 days. Thereafter, the values of both.

RULE 3(2) PERK : VALUATION OF MOTOR/OTHER VEHICLE

Situation	Use	Tax Treatment
Car owned & maintained by Employer	Official use	Exempt
	Private use	10% of cost OR Actual hire charges (+) Running & Maintenance exp. (-) Amount recoverable
	Partly official partly private	Taxable amount = For/below 1.6 ltr.CC = 1,800 pm Above 1.6 ltr.CC = 2,400 pm (Nothing deductible on account of a mount recovered)
Car owned by Employer & maintained by Employee	Official use	Exempt
	Private use	10% of cost OR Actual hire charges (-) Amount recoverable
	Partly official partly private	Taxable amount = For/below 1.6 ltr.CC = 600 pm Above 1.6 ltr.CC = 900 pm If Chauffer provided = 900pm (Nothing deductible on account of amount recovered)
Car owned & maintained by Employee	Nothing is Taxable	

Car owned by Employer & maintained by Employer	Official use	Nil	
	Private use	Amount of Expenditure	
	Partly official partly private	Actual Expenditure (-) 1800 pm / 2400 pm (Depending on CC) (-) 900 pm if chauffer is provided Taxable	xxx (xxx) xxx
Any other automotive owned by Employer	Official use	Nil	
	Private use	Amount of Expenditure	
	Partly official partly private	Actual Expenditure Less: Rs. 900 p.m. (Greater deduction can be allowed if as perofficial records it is established that expense was for official use)	

1. month denotes completed month. Any part of M shall be ignored
2. Chauffer is added only if provided.
3. When more than 1 car is provided to EE, otherwise than wholly & exclusively for such car than value of perquisite for.
4. 1 car shall be taken as used for partly official & partly for personal

GIFT FROM EMPLOYER

Cost Doesn't Exceed ₹5000 pa	Nil
Cost Exceed ₹5000 pa	Alternative 1: Followed BY ICAI & Our Class Amount exceeding ₹5,000 fully taxable Alternative 2: ICAI Provides an alternative that if it exceed ₹5000 only excess portion is taxable .

PERK : CREDIT CARD FACILITY

Official Purpose	Nil	
Other Purpose	Actual Cost to Employer Less: Recovered Perk	xxx (xxx) xxx

Conditions:
a) Complete details in respect of such expense are maintained by the employer which may, inter-alia, include date & nature of expense; and
b) The employer gives a certificate for such expense to the effect that same was incurred wholly & exclusively for the performance of official duty.

PERK : CLUB FACILITY

Official Purpose	Nil [It should be certified By Employer]		
Given Uniformly to all Employee	Nil		
Corporate Membership for all Employee	Initial Fees	Nil	
	Other	Actual Cost Less: Recovered Perk	xxx (xxx) xxx

PERK : ESOP

FMV on the date of Exercise [-] Amount Recovered

APPROVED SUPER ANNUATION FUND

EE's Contribution is eligible for deduction u/s 80C
ER's Contribution
less than ₹ 150,000 - Exempt from Taxable
more than ₹ 150,000 - chargeable to tax to the extent it exceeds Interest on accumulated balance is exempt from tax
Overall Cap Limit Introducted By Finance Act 20
Following sub-clauses (vii) and (viia) shall be substituted for the existing sec 17(2)(vii) by the Finance Act, 2020, w.e.f. 1-4-2021:
> the amount or the aggregate of amounts of any contribution made to account of the assessee by the employer—
  (a) in a recognised provident fund;
  (b) in the scheme referred to in sec 80CCD(1); and
  (c) in an approved superannuation fund,to the extent it exceeds ₹7,50,000 in a PY;
> annual accretion by way of interest, dividend or any other amount of similar nature during the PY to the balance at the credit of fund or scheme referred to in sub-clause (vii) to the extent it relates to the contribution referred to in the said sub-clause which is included in total income under the said sub-clause in any PY computed in such manner as may be prescribed;

PERK : USE OF MOVABLE ASSETS

Owned by ER	10% of actual Cost Less: recovered Perk	xxx (xxx) xxx
Hired by ER	Actual Cost to ER Less: recovered Perk	xxx (xxx) xxx
Comp & Laptop	Nil	

SALE OF MOVABLE ASSETS

Particulars	Electronics/ computer	Car	Other Assets
Depreciation Rate	50%	20%	10%
Depreciation Method	WDV	WDV	SLM
Actual Cost	Xxx	Xxx	Xxx
Less: Depreciation for each completed year from date of acquisition	(xxx)	(xxx)	(xxx)
WDV	Xxx	Xxx	Xxx
Less: Sale Value	(xxx)	(xxx)	(xxx)
Perk	Xxx	Xxx	Xxx

PERK : INTEREST FREE OR CONCESSIONAL LOAN

For Specified Diseases & Loan upto ₹20000 → Perk: NIL

Loan Beyond ₹20000

=/> than SBI rate as on 1st day of PY.	Nil
Lower than SBI rate as on 1st day of PY.	Maximum Outstanding Monthly Bal(i.e. the aggregate outstanding bal for each loan as on last day of eachmonth after EMI) Less: Recovered

MEAL FACILITY

- Tea & Coffee During Office Hours → NIL
- Provided in Remote Area or Offshore Installation → NIL
- Other → Actual Cost to Employer xxx; (-) Rs.50 per Meal/day (xxx); Perk xxx

SALARY

PROVIDENT FUND

Particulars	SPF	RPF	URPF	PPF
EE Contri	Deduction u/s 80C		No deduction u/s 80C	Deduction u/s 80C
ER Contri	Exempt from tax	> Exempt up to 12% of salary; > Any excess over is taxable. Salary = Basic+ DA(R) + C(T)	Not treated as income of year in which contribution is made.	NA as there is only EE's contribution.
Interest on PF	Exempt from tax	Exempt from tax upto 9.5% p.a.; excess, if any, will be included in the salary.	Not treated as income of year in which interest is credited.	Exempt from tax
Re-payment of lump-sum at the time of retirement etc.	Exempt from tax u/s 10(11)	Exempt from tax,subject to fulfillment of certain conditions	Receipts of: > EE's own contri, is exempt. > Interest on EE's contri, is taxable under "other sources". > Any other receipts will be taxable under the head "salaries".	Exempt from tax u/s 10(11)

Overall Cap Limit Introducted By Finance Act 20
Following sub-clauses (vii) and (viia) shall be substituted for the existing sec 17(2)(vii) by the Finance Act, 2020, w.e.f. 1-4-2021:
> the amount or the aggregate of amounts of any contribution made to account of the assessee by the employer—
(a) in a recognised provident fund;
(b) in the scheme referred to in sec 80CCD(1); and
(c) in an approved superannuation fund, to the extent it exceeds ₹7,50,000 in a PY;

> annual accretion by way of interest, dividend or any other amount of similar nature during the PY to the balance at the credit of fund or scheme referred to in sub-clause (vii) to the extent it relates to the contribution referred to in the said sub-clause which is included in total income under the said sub-clause in any PY computed in such manner as may be prescribed;

PERK : TAXABLE ONLY IN CASE OF SPECIFIED EE

GAS / ELECRTICITY / WATER FACILITY

Connection in the name of

Employer - Taxable only to specified EE	
Manufacturing cost Per Unit	xxx
Less: Recovered	(xxx)
Taxable	xxx

Employee -Taxable to all employee	
Actual Cost to ER	xxx
Less: Recovered	(xxx)
Taxable	xxx

EDUCATION FACILITY

School Maintained by ER	
Cost pm doesn't exceed 1000pm	Nil
Cost exceed 1000pm	Cost in similar school (-) Recovered

Education cost Reimbursed
Cost to ER (-) Recovered

TRAVEL FACILITY

Cases	Tax	
If employer is engaged in transportation business.	Rail/Air	NIL
	Other	Amount charged from public for such facility is taxable in the hands of specified employee (-) Recovered.
In any other case	Actual cost of employer for such facility is taxable in the hands of all employees (-) Recovered.	

MEDICAL FACILITY

The perquisite in respect of medical facility is generally taxable only in case of 'specified employees'. Where however, bills are issued in the name of the employee & the employer makes payment thereof, then it is a perquisite taxable in the hands of all employees

In India	Exempt	1) Treatment in Hospital Maintained by Employer 2) Government Hospital 3) Approved Hospital 4) Any health Insurance/ Group Insurance
	Taxable	Reimbursement in Private Hospital is Fully Taxable
Outside India	Medical Treatment	Exempt upto an amount specified by RBI
	Stay Abroad	Exempt upto an amount specified by RBI
	Travel	Gross total Income upto 2L Nil Gross total Income beyond 2L Total taxable

FULLY EXEMPTED PERKS

The following are not included for TDS u/s 192 -
> Tea or snacks provided during working hours.
> Free meals provided during working hours in a remote area or an offshore installation.
> Perquisites allowed outside India by Govt to citizen of India for rendering service outside India.
> Employer's contribution to staff group insurance scheme.
> Free educational facility provided in an institute owned/maintained byemployer to children of ee provided cost/value doesn't exceed ₹1,000 pm per child (no limit on no. of children).
> Interest-free/concessional loan of an amount not exceeding ₹20,000.
> Comp/laptop given (not transferred) to EE for official/personal use.
> Transfer without consideration to an employee of a movable asset (other than computer, electronic items or car) by employer after using it for a period of 10 years or more.
> Traveling facility to employees of railways or airlines.
> Rent-free official residence & Coveyance to a HC/SC Judge.
> Conveyance facility provided to an EE between office & residence.
> Accommodation provided on transfer of an employee in a hotel for not exceeding 15 days in aggregate.
> Interest free loan for medical treatment of nature given in Rule 3A.
> Periodicals and journals required for discharge of work.

FOR PERSONAL NOTES

INCOME FROM HOUSE PROPERTY

SEC 22 CHARGING SECTION

- Asseessee must be owner
  - Owner include demeed owner Sec.27
- Annual Value of Land, Building appartenant thereto
- Property must not be used for own business & profession

Income under this head may be charged irrespective of income actually received or not

COMPOSITE RENT

If letting of such property is separable	letting is the main business	a) Income from property- "house property" b) Income from other asset- "PGBP"
	letting is not the main business	a) Income from property- "house property*" b) Income from other asset- "Other sources"
If letting of such property is not separable	letting is the main business	Entire income will be taxable under "PGBP".
	letting is not the main business	Entire income will be taxable under "Othersources".

* Except the case where letting out is for the purpose of carrying on the business in the efficient manner and letting is not the main business.

INCOME FROM HP OUTSIDE INDIA

Assessee is ROR	Assessee is RNOR/NR
Taxable in India whether property is in India or Outside India	Taxable in India Only if rent is received in India

GROSS ANNUAL VALUE

GAV shall be higher of RER or ARR

Reasonable Expected Rent:	
Step 1 : Municipal Value	Xxx
Step 2 : Fair Rent	Xxx
Step 3 : Expected Rent (Higher of Step 1 / 2)	Xxx
Step 4 : Standard Rent	Xxx
Step 5 : RER (lower of Step 3 / 4)	xxx

Actual rent received or receivable	
Actual rent for let out period	Xxx
Less: Unrealized Rent Subject to conditions of Rule 4	Xxx
ARR	Xxx

Municipal Value	This is value as determined by the municipal authorities for levying municipal taxes on house property.
Fair Rent	Fair rent is the rent which a similar property can fetch in the same or similar locality.
Standard Rent	The standard rent is the maximum rent which can be collected by landlord. This is fixed under Rent control act
Unrealized Rent	Rent due from tenant but not received. Deduction is allowed is condition is satisfied if nothing is mentioned assume that condition is satisfied.

RER cannot exceed expected Rent: (SC) & Amolak Ram Khosla vs. CIT [1981]

MUNICIPAL /PROPERTY/CORPORATION TAX

Conditions for Benefit	a) It should be Borne by Assessee (Not Tenant). b) It should be actually paid during the year.
Deductions	Paid for PY in the current year - Allowed Paid for Current Year - Allowed Advance Paid - Not allowed because it is notDue
Other Benefit	Benefit for Sewerage Tax and Water Tax Also Available
Paid outside India	Allowed as per CIT v. R. Venugopala Reddiar (Mad.)
Adjustments	Given in Cash : Take Actual Amount % is given : Take % of Municipal Value and Not of GAV

SEC 24 DEDUCTIONS FROM ANNUAL VALUE

Standard Deduction	a) 30% of NAV b) Available only if NAV is Positive. c) If standard deduction is available deduction for other expenses are not available eg: Repairs, Insurance.
Interest on Borrowed Capital	a) Deduction is available on Accrual Basis. b) Interest on unpaid interest is not allowed as deduction under this sec. c) Any brokerage or commission paid for raising such loan is not allowed. d) Interest on new loan taken to repay original loan is considered as loan taken for such acquisition, construction, etc. (Refer CBDT Circular No. 28 dated 20-8-1969). f) Sec.80EE Provides additional benefit Out of Gross Total Income. g) Deduction = 1/5th of Pre construction + 100% of Post Construction. Post Construction interest - 100% allowed as deduction Pre Construction Interest - 1/5th of Total Interest Paid suring pre construction period Pre Construction Period a) Repayment Precedes Construction — Date of Borrowing to date of Repayment b) Construction precedesRepayments — Date of Borrowing to 31st March Prior to date of Completion.

SEC 25 DEDUCTION OF INTEREST NOT ALLOWED IN CERTAIN CASES

Interest chargeable under this Act which is payable outside India shall not be deducted if:

a) tax has not been paid or deducted from such interest and

b) there is no person in India who may be treated as an agent u/s 163.

SEC 23(2) COMPUTATION - SOP

Conditions:-

1. The property was not let out for any part of the year
2. No other benefits has been derived from the property
3. Number of self occupied property shall not exceed 2

Particulars	₹
Annual value u/s 23(2)	Nil
Less:- Municipal tax actually paid	Nil
NAV	Nil
Less:- Deduction u/s 24	
a) Standard Deduction	Nil
b) Interest on borrowed capital	(xxx)
1. Upto Rs. Maximum of ₹200000 [Aggregate Amount of Deduction]	
Conditions:-	
a. Loan is taken for acquisition or construction	
b. After 1.4.1999	
c. Acquisition or construction is complete within 5 years from the end of financial year in which capital is borrowed.	
2. Upto maximum of ₹30000[Aggregate Amount of Deduction]	
a. If condition given in 1 is not satisfied	
b. Loan is taken for repairs and maintenance	
Loss from House Property	(xxx)

SEC 23(4) MORE THAN 2 SOP

Particulars	Option 1			Option 2		
	F1 SOP	F2 SOP	F3 DLOP	F1 SOP	F2 DLOP	F3 SOP
GAV	Nil	Nil	Xxx	Nil	Xxx	Nil
Less: Municipal tax actually paid	Nil	Nil	(xxx)	Nil	(xxx)	Nil
NAV	Nil	Nil	Xxx	Nil	Xxx	Nil
Less: Deduction						
Standard deduction	Nil	Nil	(xxx)	Nil	(xxx)	Nil
Interest on borrowed capital	(xxx) [limited]	(xxx) [limited]	(xxx) [unlimited]	(xxx) [limited]	(xxx) [unlimited]	(xxx) [limited]

Particulars	Option 3		
	F1 DLOP	F2 SOP	F3 SOP
GAV	Xxx	Nil	Nil
Less: Municipal tax actually paid	(xxx)	Nil	Nil
NAV	Xxx	Nil	Nil
Less: Deduction			
Standard deduction	(xxx)	Nil	Nil
Interest on borrowed capital	(xxx) [unlimited]	(xxx) [limited]	(xxx) [limited]

Romance: - Choose the option which has lower taxable income or higher loss

Notes:-

a) This option can be changed year after year in a manner beneficial to the assessee.

b. In case of deemed let-out property, the Annual value (i.e. reasonable expected rent) shall be taken as the GAV.

The Maximum Interest of both Self occupied property cannot exceed 2,00,000/30,000

SEC 23(1)(c) LET OUT PROPERTY VACANT FOR WHOLE YEAR

Particulars	₹
GAV	Nil
Less: Municipal tax actually paid by the owner	(xxx)
NAV	(xxx)
Less: Deduction	
Standard deduction	Nil
Interest on borrowed capital	(xxx)
Income from House Property	Xxx

Where the property consisting of any building or land appurtenant thereto is held as stock-in-trade and property or any part of the property is not let during the whole or any part of the PY,the annual value of such property or part of the property, for period up to 2 year from end of financial year in which the certificate of completion of construction of property is obtained from the competent authority, shall be taken to be nil.

SEC 23(3) PROPERTY LET OUT FOR PART & SELF OCCUPIED FOR PART YEAR

Income shall be calculated for the whole year as deemed let out property.

Particulars	₹
GAV	Xxx
Less: Municipal tax actually paid by the owner for PY	(xxx)
NAV	xxx
Less: Deduction	
a) Standard deduction	
b) Interest on borrowed capital (Unlimited)	xxx
Income from House Property	(xxx)
	Xxx

PROPERTY A PORTION OF WHICH IS LET OUT & PORTION SELF OCCUPIED

There is no need to treat the whole property as a single unit for computation of income from house property

Particulars	LOP	SOP
GAV	Xxx	Nil
Less: Municipal tax actually paid by the owner for the whole year	(xxx)	Nil
NAV	(xxx)	Nil
Less: Deduction		
Standard deduction	xxx	Nil
Interest on borrowed capital	(xx)(unltd)	Xxx(ltd)
Income from House Property	Xxx	Xxx

SEC 23(1)(c) LET OUT PROPERTY KEPT VACANT FOR PART OF YEAR

Particulars	₹
Step1: RER	
Step2: ARR (Excluding unrealized Rent) Higher shall be GAV	
Step 3: AR	Xxx
Less: Municipal tax actually paid	(xxx)
NAV	Xxx
Deduction u/s 24	
1. Standard deduction @ 30%	(xxx)
2. Interest on borrowed capital	(xxx)
Income from house property	Xxx

- AR > RER → AR = GAV
- RER > AR
  - only due to vacancy → AR = GAV
  - other reason → RER (-) loss due to vacancy = GAV

CLUBBING

SEC 25AA,25B RECOVERY OF UNREALIZED RENT & ARREARS

Unrealized rent	Arrears of rent
a) Taxable in the hands of the assessee whether he is the owner of that property or not. b) Taxable as income of the PY in which he recovers the unrealized rent. c) 30% of the amount of arrears shall be allowed as deduction. d) Unrealized rent means the rent which has been deducted from actual rent in any previous year for determining annual value.	a) Taxable in the hands of the assessee whether he is the owner of that property or not. b) Taxable as income of the year in which he receives the arrears of rent. c) 30% of the amount of arrears shall be allowed as deduction. d) Arrears of rent are in respect of rent not charged to income-tax for any PY.

SEC 26 CO-OWNED PROPERTY

Following points should be noted:

a) Where property is owned by two or more persons, whose shares are definite & ascertainable, then the income from such property cannot be taxed as income of an AOP.

Co-owned Property

- Used as SOP → Both can claim SOP benefits & both are allowed deduction of IOBC upto 30,000 / 2L
- Used as LOP → Step 1 : Calculate HP as if no co-ownership
  Step 2 : Divide the final income in appropriate ratio

SEC 27 DEEMED OWNERSHIP

As per section 27, the following persons, though not legal owners of a property, are deemed to be the owners for sec 22 to 26-

a. Transfer to Spouse for Inadequate Consideration
   Exception: Transfer to spouse in connection with an agreement to live apart, the transferee will be the owner of the house property
b. Transfer to a minor child for Inadequate Consideration
   Exception: In case of transfer to a minor married daughter, the transferor is not deemed to be the owner.
c. Holder of an impartible estate which is not legally divisible
   Example: Transfer by Mr. Raja who is one of the ex-Rulers of former princely State.
d. Member of a co-operative society etc to whom a building or part thereof is allotted or leased under a House Building Scheme of a society/company/association
e. Person in possession of a property
   This would include cases where the-
   a) possession of property has been handed over to the buyer
   b) sale consideration has been paid or promised to be paid to seller by the buyer
   c) sale deed has not been executed in favor of buyer, although certain other documents like power of attorney/agreement to sell/ will etc. have been executed. In above case, buyer would be deemed to be owner of property although not registered in his name

BASICS OF CLUBBING

The income, shall be first computed in the hands of recipient and all expenditure related to such income shall be allowed as provisions of the Act and thereafter the net income shall be clubbed.E.g. Standard deduction u/s. 24(a) from income from house allowed in the hands of the recipient and thereafter the net income shall

If the clubbed income is eligible for deduction u/s. 80C, then such deduction shall be allowed to the assessee in whose hands such income is clubbed e.g. if interest on NSC of the minor is clubbed in the hands of parent u/s. 64(1A) then parent can claim deduction u/s. 80C.

Clubbing Shall be Made in the same Head in which such person has earned it. e.g. Bank interest of minor child shall be clubbed under the head "Income from other sources" of parent.

Negative Income is also Clubbed

Clubbing Provisions are mandatory

SEC 60 TRANSFER OF INCOME WITHOUT TRANSFER OF ASSETS

If any person transfer any Income without transfer of Assets then such income is taxable in the hands of transferor.

SEC 61 REVOCABLE TRANSFER OF ASSETS

Income arising to any person by virtue of revocable transfer shall be included in total income of trasnferor.

Revocable transfer of asset:transfer shall be deemed to be revocable if-it contains any provision for re-transfer of the whole or any part of the income or assets to the transferor, orit gives transferor a right to re-assume power over the whole or any part of income or assets.

Provision of sec 61 shall not apply to transfer which is revocable after the life time of the beneficiary or transferee.

SEC 64[1A] MINOR'S INCOME

- All other income except specified shall be Taxable
  - Parent Marriage Subsist → Clubbed in the hands of parent having Greater Income
  - Parent Marriage Do not Subsist → Clubbed in the hands of parent Who maintain the Child
- Following shalhot be clubbed Taxable in the hands of minor himself.
  1. Earned out of skill & Talent
  2. Earned out of manual work done
  3. Income earned by a minor Handicap covered u/s 80U.

where any such income is once included in total income of either parent, any such income arising in any succeeding year shall not be included in total income of the other parent, unless AO is satisfied, after giving that parent an opportunity of being heard, that it is necessary so to do.

Once the Income of minor is clubbed then exemption of Rs.1500 per child shall be available[irrespective of no of child][Sec 10(32)]

Child includes step child: Child in relation to an individual, includes step-child and an adopted child.

Minor child includes minor married daughter:
Provision of sec 64(1A) shall apply in case of minor married daughter also

No clubbing after attaining majority: Where the minor child become major during the previous year, provision of this section will apply till such date

SEC 64(1)(iv) TRANSFER TO SPOUSE FOR INADEQUATE OR WITHOUT CONSIDERATION

- Income from HP → Taxable in HP in the Hands of tranferor u/s 27 as deemed owner.
- Other Income → Taxable in Hands of Transferor u/s 64

Note: This Section is Not Applicable in following cases

1. If the relation of husband and wife does not subsist either at the time of transfer or at the time of accrual of income from such asset.

2. If transferred for adequate consideration or under agreement to live apart

Other Note:

A. Change in shape: Where the assets transferred has changed its shape and identification then, income from such changed assets is to be clubbed.

B. CG on sale of transferred asset: Where the assets transferred is sold by the transferee, the CG arising to transferee, if any, is to be clubbed in the hands of transferor.

C. Acquisition of asset out of pin money:Provisions of clubbing won't applywhen such assets is acquired by the spouse out of pin money (i.e. small allowances given by her husband for her personal expenses).

SEC 64(1)(vi) TRANSFER TO SON'S WIFE

If Assets are transfered to sons wife for inadequate or without consideration& Income is earned then such income is clubbed in the hands of transferor.[father in Law].

Exception: If it is transferred for adequate consideration.

SEC 64(1)(vii),(viii) ASSETS TRANSFERRED TO 3RD PERSON FOR BENEFIT OF WIFE/SON'S WIFE

If the Assets is transfered for the benefit of wife/sons wifethen income from such property shall be clubbed in hands of transferor

Exception- The asset is transferred otherwise than for adequate consideration.

SEC 64(1)(ii) SALARY, COMMISSION EARNED BY SPOUSE

If the spouse has earned remuneration from a concern where Individual has substiantial interest & spouse does not posses any professional & technical Qualification then such remuneration shall be clubbed in handsof transferor.

Meaning of substantial interest:
(i) in a case where the concern is a company: 20% of Voting Right.
(ii) in any other case: 20% of Profit

Notes:

1. Whether both husband & wife has substiantial interest:
The income shall be clubbed in the hands of person havinf greater income before this clubbing

2. Whether holding of relative is also considered:
Yes holding of relative shall also be counted while considering the substiantial Interest. 'Relative' in relation to individual means the husband,wife, brother or sister or any lineal ascendant/descendant.

BUSINESS OUT OF GIFTED MONEY

A. Profit earned in the business shall be clubbed in the following manner

$$\text{profit} \times \frac{\text{Gifted Amount}}{\text{Total Capital Employed}}$$

B. Investment in the firm: However where such asset is invested in the nature of contribution of capital as a partner in a firm then, the amount of interest to be included in the total income of the individual in that previous year will be calculated as under

$$\text{Interest from such firm} \times \frac{\text{Investment in firm for inadequate consideration as on the first day of the previous year}}{\text{Total investment in the business by the transferee as on the first day of the PY.}}$$

SEC 64(2) TRANSFER OF ASSET TO HUF

If any Individual transfers any asset to his HUF without/for inadequate consideration then Income from such asset is received by HUF but taxable in the hands of the Transferor (Member)
After Partition of HUF, Income from such asset received, by spouse shall be clubbed in hands of Transferor
Note :

a) Income includes loss
b) Where an asset transferred is converted into other form, income derived from such converted asset shall be clubbed
c) Natural love & affection is not adequate consideration for Sec 64
d) If asset transferred is sold by transferee then CG is income & clubbed
e) If there are 2 transactions both interconnected & part of same transaction, shall be considered evasion of tax & therefore clubbed

CROSS TRANSFERS

In the case of cross transfers also (e.g., A making gift of ₹50,000 to the wife of his brother B for the purchase of a house by her and a simultaneous gift by B to A's minor son of shares in a foreign company worth ₹50,000 owned by him), the income from the assets transferred would be assessed in the hands of the deemed transferor if the transfers are so intimately connected that they form part of a single transaction, and each transfer constitutes consideration for the other by being mutual or otherwise. Thus, in the instant case, the transfers have been made by A and B to persons who are not their spouse or minor child so as to circumvent the provisions of this section, showing that such transfers constituted consideration for each other.
The Supreme Court, in case of CIT v. Keshavji Morarji [1967], observed that if two transactions are inter-connected and are parts of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted. Accordingly, the income arising to Mrs. B from the house property should be included in the total income of B and the dividend from shares transferred to A's minor son would be taxable in the hands of A. This is because A and B are the indirect transferors to their minor child and spouse, respectively, of income-yielding assets, so as to reduce their burden of taxation.

PROFIT GAINS FROM BUSINESS OR PROFESSION

Sec 28 Charging Section

Following Income shall be taxable under the head PGBP

1) Any profit/gain of any Business/Profession
2) Profit on sale of Import Entitlement License
3) Cash Compensatory support or duty drawback
4) Profit on sale of DEPB (Duty entitlement pass book scheme)/ Duty free Replenishment Certification (DFRC)
5) Any Amount received under Key-Man Insurance Policy
6) Any gift/benefit/perquisite arising due to Business/Profession
7) Any Interest, salary, bonus, commission received by partner from Partnership firm [to extent allowed u/s 40(b) to firm]
8) Non-compete Fees (not carrying out any activity in relation to any business or profession or not sharing any know-how, patent, copyright, trade-mark etc.)
9) Income derived by a trade, professional or similar association from specific service perform for its member
10) FMV of inventory as on date on which it is converted into CA.
11) Any Compensation or other payment due to/received by, any person, at or in connection with termination/modification of terms & conditions, of any contract relating to his business
12) Sale of Asset whose whole cost is allowed as deduction.

Sec 41 Deemed PGBP

Sec.41[1] if Assessee was allowed deduction in earlier years by way of expenses or loss, Trading Liability & now during the current PY, assessee has obtained a refund of such Liability or there is remission or cessation of such trading liability, then such refund or remission or cessation shall demmed to be pgbp

Sec. 41[2] Balancing charge: Already discussed with power generating unit

Sec. 41[3] Sale of scientific research assets wihtout being used.

Sec. 41[4] Recovery of bad Debts in the CY.

Sec 44ADA Presumptive Income for Professional

1. Any Assessee
2. Gross receipt does not exceed 50L
3. Presumptive Income= Higher of Declared income or 50% of gross receipt.
4. Advance Tax is applicable
5. All deductions u/s 30-37(1)
6. 80C - 80U to be allowed
7. Set off losses allowed
8. Lower profit can be declared - yes [Maintain Accounts & Do Audit.]

Sec 44AD Presumptive Income for other

1. Individual ,HUF,Firm(Not LLP)
2. Gross receipt/Turnover does not exceed 2cr.
3. Not engaged in following : Agency,Profession,Commission,GTA activity
4. Presumptive Income= Higher of Declared income or 8% /6% of gross receipt(payment in precribe mode 6% otherwise 8%).
5. Advance Tax is applicable
6. All deductions u/s 30-37(1)
7. 80C - 80U to be allowed
8. Set off losses allowed
9. Remuneration to partner u/s 40b not allowed.
10. Continuously opt for the scheme for the 5 years else this option is not available for next 5 years
11. Lower profit can be declared - yes [Maintain Accounts & Do Audit.]

Sec 44AE Presumptive Income for GTA

1. Any assessee
2. The number of vehicle
3. Presumptive Income= Higher of Declared income or
   Heavy Goods vehicle- 1000 x per ton x per month x per vehicle
   Other Than Heavy goods vehicle: 7500 per month per vehicle
   [Heavy goods vehicle : exceed 12ton]
5. Advance Tax is applicable
6. All deductions u/s 30-37(1)
7. 80C - 80U to be allowed
8. Set off losses allowed
9. Remuneration to partner u/s 40b not allowed.
10. Lower protfit can be declared - yes [Maintain Accounts & Do Audit.]

Sec 145 Method of Accounting

Income Chargeable under PGBP / IFOS shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee

Sec 145B Taxability of Certain Income

Interest received on any compensation / on enhanced compensation, shallbe deemed to be income of PY in which it is received. Subsidy /grant /cash incentive/duty drawback/waiver by CG/SG shall be income of PY in which it is received if not charged in any earlier PY

Sec 30 & Sec 31

Section 30. Rent, rates and taxes of premises	Section 31. Insurance, repairs of plant, machinery & furniture (PMF).
Rent of the premises paid to others / Firm is allowed as deduction	Rent of the PMF paid to others / Firm is allowed as deduction u/s 37
Insurance of premises is allowed as deduction.	Insurance of PMF is allowed as deduction
Municipal tax, land revenue subject to S 43B is allowed as deduction.	-
Current repairs is allowed as deduction. On capital repairs depreciation can be claimed.	Current repairs is allowed as deduction. On capital repairs depreciation can be claimed

Sec 32 Depreciation [Mandatory]

1. Assets must be used for the purpose of business & profession
2. Assets should be owned by the Assessee
3. Depreciation should be on block of assets @ prescribed
4. Assets must be put to use

Sec 32(1) (iia) Additional Depreciation

Assessee is engaged in manufacturing or power generating unit or distribution units or transmission unit
Assessee acquire new plant & machinery
Acquired & installed after 31.03.2005
Additional Depreciation 20% of actual cost.However, w.e.f AY16-17. Balance 50% of additional depreciation to be allowed in subsequent year, where plant & machinery is put to use for less than 180 days during the PY of acquisition & installation
Additional depreciation @ 20% to be allowed to Assessee setting up manufacturing unit in Notified Backward areas of the state of AP/ Bihar / Telangana / West bengal.New P&M (other than ship & aircraft) for the purpose of said enterprises between 01.04.2015 to 31.03.2020
Assessee engaged in publishing & printing are also eligible for AD

Sec 32(1) Depreciation in case of Amalgamation

Step 1 : Calculate the depreciation on asset so transferred by assuming that suchtransfer has taken place

Step 2 : Amount of depreciation so calculated shall be apportioned between ransferor & transferee in the ratio of number of days for which asset are used by them during the PY in which such transfer has taken place (The day of transfer shall be counted in the hands of TRANSFEREE)

Sec 32(2) Set off & carry forward of unabsorbed depreciation

Step 1 : Depreciation allowance of Current PY first deductible from PGBP

Step 2 : If depreciation allowance is not fully deductible under PGBP because of absence or inadequancy of profit, it is deductible from income under other heads of income (except Salary) of current PY

Step 3 : If depreciation allowance still remainsa unabsorbed, it can be c/f to subsequent AYs by same assessee

Notes :

1. Unabsorbed depreciation can be c/f & set off, even if ROI is filed after due date of furnishing of ROI
2. In subsequent AYs, unabsorbed depreciation can be set off against any income whether chargeable under PGBP or other head (except Salary)
3. In matter of set off the following order of priority is followed in subsequent AYs :
   a. Depreciation of current PY
   b. Brought forward business loss
   c. Brought forward absorbed depreciation
   If in the subsequent AYs, there is no brought forward loss, b/f unabsorbed depre can be added to depreciation of current PY for claiming depreciation
4. Revaluation of assets does not have any impact on Income Tax Act 1961
   For the year of calculation of depreciation, revaluation should be ignored.

Rate of Depreciation

Block	Nature of Assets	Rate
Building	Residential building other than hotels & boarding [Employee Quarter]	5%
	Non-residential building, godown, office, factory etc. including hotels and boarding	10%
	Temporary construction	40%
Furniture	Any furniture including electrical fittings	10%
P&M [Sec 43(3)]	In general [if nothing is mentioned] Oil well	15%
	Motor car including lorries, buses, used for hiring purposes A.C.	30%
	> Computer including computer software > Books owned by a professional [whether annual publication or not] > Energy saving device > Annual Publication of books > Life saving equipment > Windmill [before 01.04.2014 15%] > Pollution control equipment	40%
Intangible	Acquired after 31.3.1998	25%
Other	Ship/ Vessel/speed boats	20%
	Aeroplanes	40%
	Motor bus /lorries on running them on hire	30%
	Renewable energy device installed after 31/03/2014	40%
	Renewable energy device installed before 31/03/14	15%

Sec 43A Asset from Foreign Country

Any asset is acquired from a foreign country through a loan in Foreign Currency / Foreign Suppliers Credit, any loss/gain arising at the time of payment shall be adjusted within the Block of Asset.

Note :

1) Adj is made only at the time of actual payment of the foreign loan/ suppliers credit
2) If there is a gain then reduce from Block of asset & if there is loss then added to the block of the asset.

Sec 35CCA Expense for Rural Development Programmes

Assessee contribute for : i) National Fund for Rural Development;
ii) National Urban poverty Eradication Fund

The assessee shall be allowed a deduction of the amount of such expenditure incurred during the PY.

DEDUCTION ALLOWED : 100%

Sec 43CA Special provision for full value of consideration for transfer of assets other than capital assets in certain cases

Where the consideration received or accruing as a result of the transfer by an assessee of an asset (other than a capital asset), being land or building or both, is less than the value adopted or assessed or assessable by any authority of a SG for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration received or accruing as a result of such transfer. Provided that where value adopted or assessed or assessable by the authority for payment of stamp duty does not exceed 110% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.

Sec 35 Expense on Scientific Research

In house research : Research should be related to the business	Contribution to outsiders Research may or may not be related to the business
Revenue Expenditure - 100% ALLOWED	National Laboratory / IIT's - 100%
Capital expenditure however capital expenditure does not include cost of Land. Further no Depreciation shall be allowed on such assets - 100% ALLOWED	Approved University, Colleges, institution - 100%
Current year expense – allowed Previous year expense- allowed. PY means 3 years before the commencement of business.	Social statistical research - 100% Company having main object as research - 100% [FA'20]

Sec 35(2AB) Assessee engaged in manufacturing/biotechnology

ASSESSEE : Assessee engaged in manufacture or biotechnology
CONDITION : Incur inhouse expenditure
DEDUCTION : 100% of Actual cost of new assets

Sec 38 : If expense is partly business or partly personal, then business expense will be allowed

Sec 35D Amortisation of preliminary expenses

Eligible Expenses : Incurred before COB (trial run) or incurred for extension / expansion of business

Applicability & Amount of Deduction

1. Indian Co : 5% of Cost of project or Capital employed whichever is higher OR Eligible Expense
2. Other : 5% of cost of project or eligible expense whichever is lower

Cost of Project - All cost of assets
Capital Employed - Share Capital + long term loans

Sec 35DD Amalgamation and Demerger expenses

Assessee an Indian company can take the deduction on 1/5th basics over 5 years starting from year of expenses.

Sec 35DDA Expenditure related to VRS

Any Assessee incurring the expenditure on VRS deduction on 1/5th basics over 5 years starting from year of expenses.

Sec 35CCC

Any Assessee incur any expense on agriculture extension project as notified by board
Deduction = 100% of actual expenses on land or building are not allowed

Sec 35CCD

Any company incur expense on skill development project notified by Board
Deduction = 100% of actual expenses on land or building are not allowed

Sec 40A(7)

No deduction for any gratuity or its provision except approved gratuity

Sec 40A(9)

No deduction for any PF or its provision except DPF, RPF, PPF.

For Personal Notes

PROFIT GAINS FROM BUSINESS OR PROFESSION

Sec 36(1) Amount expressly allowed as deduction

36(1)(I) 36(1)(II)	Insurance premium of stock in trade is allowed as deduction Premium paid by fedral milk co operative society on life of cattle owned by member
36(1)(ib)	Insurance premium on health of employees is allowed if : a. Health insurance is taken on health of all employees & b. Health insurance premium is not paid in cash
36(1)(ii)	Bonus or commission to employees is allowed as deduction 43B : Bonus allowed if actually paid
36(1)(iii)	Interest on borrowed capital used for the purpose of business or profession is allowed as deduction. Interest till asset put to use is not allowed as deduction. As per Sec 43B if interest to Banks / FI is actually paid then deduction allowed
36(1)(iv)	ERs contribution paid towards RPF or an approved super-annuation fund is allowed as deduction. However, Sec 40A(7)-Contribution towards Unapproved gratuity fund is not allowed as deduction. As per Sec 43B if ERs contribution to above funds is actually paid in respective funds then deduction allowed.
36(1)(iva)	ERs contribution towards pension scheme u/s 80CCD is allowed as deduction (Max.10% of salary)
36(1)(v)	ERs contribution paid towards an approved gratuity fund is allowed as deduction. As per Sec 40A(9) : Contribution towards any Non Statutory fund or unapproved fund is not allowed as deduction. Also, contribution made towards any other fund not allowed as deduction
36(1)(va)	Employee's contribution to RPF & Super Annuation Fund.
36(1)(vii)	Bad debts is allowed as deduction if debt was treated as income in earlier PY. Recovery of bad debts is taxable under PGBP if earlier it was allowed as deduction. However, provision for bad debts is not allowed as deduction. NBFC can also claim upto 5% of GTI. BAD DEBTS as per ICDS is allowed as deduction. (INDIAN CO?) For Indian Banks (8.5% of GTI [before this deduction (+) 10% of aggrigate avg advancs from Rural Branches.
36(1)(ix)	Applicable to COMPANY who incurs expense on promotion of family planning amongst employees Revenue Expense - allowed u/s 37 Capital Expense - allowed 1/5th
36(1)(xii)	Securities transaction paid allowed as deduction if profit from shares is charged under PGBP
36(1)(xvi)	Commodity Transaction tax - transaction should be entered in course of business & income from such transaction is included in PGBP. CTT levied = 0.01%
36[1](xiii)	Banking Cash transaction Tax paid is allowed as deduction
36[1](xviii)	marked to market loss or other expected loss as per ICDS
36[1][iiia]	pro rata amount of Discount aon Zero coupon Bond over the life of such bond
36[1](xvii)	Exp incured by co-op sty for purchase of sugarcane at a price equal to less than price set by Govt.

Sec 40(a)(i)/(ia) Payment made without TDS

Any Payment made to NR on which TDS is deducted or deducted but not paid shall be disallowed = 100% Assessee will not be treated as assesee in deafult if the payee has submitted the ROI & has considered this as Income and Paid the tax due there on.	Any Payment made to R on which TDS is deducted or deducted but not paid shall be disallowed = 30% Assessee will not be treated as assesee in deafult if the payee has submitted the ROI & has considered this as Income and Paid the tax due there on.

Sec 40(a)(ib) If Equalisation levy not deducted then 100% disallowance will be attracted

Sec 44AA Maintenance of Books

Income from Business/profession exceeds 2,50,000 or total sales/gross receipts exceeds 25,00,000 in any 3 preceeding PY or likely to exceed in case of individual & HUF Other than Individual & HUF : 1.2 Lakhs & 10Lakhs	Gross receipts exceeds 1,50,000 (in all 3 years immediately preceeding the PY or likely to exceed if the profession is newly setup) If assessee declare lower income under 44AD

1. Books are maintained for 6 years from end of relevant AY
2. Penalty for Non compliance = 25,000 [Sec 271A]

Sec 44AB Audit of Accounts

BUSINESS - Total sales or gross receipts exceed 1 crore

The Turnover Limit shall be 5 cr in the following case -
a) Out of total receipts, cash receipt is upto 5% in PY
b) Out of total payments, cash payment is upto 5% in PY

PROFESSION - Gross receipt exceed 50lakhs
Business referred to u/s 44AD/AE/AF & declaring lower income but exceeding basic exemption limit.

Other points :
1. Penalty for non compliance - 150,000 or 0.01% of sales [Sec 271B]
2. Audit report of CA on or before 30 Sept of relevant AY

Sec 38(2) Asset used partly for business/ profession

Above expense shall be approtioned to that part of asset which is used for business

Sec 40A(2) Unreasonable payment to relative/substantial interest

Unreasonable payment to relative as determined by AO not allowed as deduction. Parket Price determined as per Arm length Price

Sec 40A(3) Cash Expenditure

APPLICABILITY	NON APPLICABILITY - Rule 6DD
Expenses in cash exceeding 10,000 in a single day to same person shall not be allowed as deduction Note : for truck operator take 35,000	1. Payment made when bank is closed 2. Payment to Banks,FI,Govt, Co-op bank 3. Payment to farmer for its produce 4. Payment made at a place not served by Bank 5. Payment is made by Dr. / cr. card, NEFT, Net banking, IMPS, BHIM

Sec 43B Certain expenses allowed on actual basis

Payment Covered	
1. Interest payment to banks 2. Indirect tax payment to govt 3. ERs contribution to PF, Gratuity Fund, leave salary,bonus & commission 4. Payment to Indian Railway for use of its assets	5. Interest payable on loan from deposit or Non deposit taking NBFC. 6. Payment of leave credit.

Timing of Deduction

Payment to Indian Railways for use of its assets
Deduction is allowed only if Payment is made before ROI

Sec 40(a) Expenses not Deductible

1) Salary, interest, royalty etc for Non resident (without TDS)
2) Interest, Commission, royalty etc for Resident (without TDS)
3) Fringe Benefit Tax
4) Income Tax / Dividend tax
5) Wealth tax
6) Royalty/fees/service charges paid by State govt(SG) undertaking to SG

Sec 40(b) Disallowance for Partnership Firms

> Payment of interest to any partner
> Minimum of a) as per deed OR b) 12% pa
> For payment of salary, bonus to working partner

Book Profit	Remuneration Allowable
On the first 3,00,000 of Book profit or in case of loss	1,50,000 or @ 90% of book profit, whichever higher
On the balance of Book Profit	60% of book profit

Sec 35AD Deduction of certain specified business

Specified Business	Commence	Deduction
laying and operating a cross-country natural gas/crude /petroleum pipeline	1.4.2009	100%
setting up and operating a cold chain facility	1.4.2009	100%
setting up & operating a warehousing facility for storage of agriculture produce	1.4.2009	100%
The business of building and operating a new hotel of 2 star or above category,anywhere in India.	1.4.2010	100%
The business of building & operating of a new hospital anywhere in India with at least 100 beds for patients.	1.4.2010	100%
a housing project under a scheme for slum redevelopment or rehabilitation .	1.4.2011	100%
developing and building a housing project under a scheme for affordable housing .	1.4.2011	100%
Capital expense for a new plant or newly installed capacity in any existing plant for production of fertilizers	1.4.2012	100%
setting up & operating an Inland Container depot or container freight Station notified or approved under Custom Act	1.4.2012	100%
Bee-keeping & production-Honey & Beewax	1.4.2012	100%
Setting up & operating warehouse facility for Storage of Sugar	1.4.2012	100%
Laying & operating a slurry pipeline for the transportation of iron ore	1.4.2014	100%
Setting up & operating Semi-conductor wafer fabrication manufacturing unit notified by CBDT	1.4.2014	100%
Developing or maintaining & operating/ developing, maintaining & operating new infrastructure facility	1.4.2017	100%

Deduction:
-100% deduction of capital expenditure incurred during the PY
-100% of capital expenditure incurred prior to commencement
-Capital expense not include land, goodwill & financial instrument

Conditions:
- Business should be new business i.e. should not be formed by splitting/ reconstruction of old business.
- Business should not be set up by transfer of old plant and machinery. Old plant & machinery should not be more than 20% of total plant and machinery used for the business
- Deduction under Chapter VI- A shall not be allowed in respect of such business for any assessment year
- Actual cost of the asset for which deduction has been allowed under Sec 35 AD shall be taken as NIL
- Further, receipts on account of sale of those assets be taxable under head PGBP only, whatever the amount maybe.

Expense by way of payment to associations & institutions for carrying out rural development program [Sec 35CCA]

Assessee contribute for-
1) National fund for rural development
2) National Urban poverty Education fund
The assessee shall be allowed a deduction of amount of such expense during the P.Y
Deduction=100%

Sec 50 capital gains in sale of depreciable Assets

Depreciable Asset is not eligible for indexation. Hence, the gain will always be STCG.
If asset is stolen or damaged & no insurance compensation is received.
1. There are other assets in block: No seperate tax treatment is required. Loss shall be contained in WDV & depre will be allowed over the number of period

2. No other assets in the block: The block shall become NIL & Sec 50C shall not be attracted. Hence, it is a dead loss.

CIT v. Rajiv Shukla (Delhi) - The assessee can claim exemption u/s 54F, if the assets are held for more than 36 months even though in case of depreciable asset the gain is Short term.

Sec 37 General Deductions

> CSR exp. not allowed
> Contri/donation to Political party / Electoral Trust

a) Expenditure is not covered u/s 30 to 36
b) Expenditure is incurred wholly & exclusively for the purpose of business
c) Expenditure is not of capital in nature.
d) Expenditure is not personal nature
e) Expenditure should not be in nature of offence or prohibited by Law

Important Note :
> Sec 37(2b) - No deduction allowed for adv in souvenier/brochure/ pamphlet published by political party (allowed u/s 80GGB/GGC)
> Exp related to CSR or donation to various entities not allowed.
> Cir.5/2012 - Freebies to medical practioner- not allowedSEC 37 GENERAL DEDUCTIONS
> Tax interest or penalty related to direct taxes not allowed. Whereas, tax and interest of indirect taxes is allowed but penalty of indirect tax not allowed.
> Dividend & DDT paid not allowed.
> Circ. 38/2016 - Premium paid by firm on keyman isnurance policy of partner is allowed.

Sec 43B Dedcution allowed on Actual Payment basis

Following expenses are allowed only if following payments are made before filing ROI
a) Any tax, duty, cess
b) Employer's contribution towards SPF, RPF, Approved Gratuity Fund, Approved Super Annuation Fund, New Pension scheme, any funds as per law
c) Bonus, Commission to Employees
d) Interest on loan to any PFI, State Financial corp, state industrial investment corp, scheduled banks [scheduled bank include co-operative bank other than a primary agricultural credit society or a primary co-operatie agricultural & rural development bank]
e) Leave encashment to employees
f) Any sum payable to Indian railways for use of railway assets
g) Interest on any loan or borrowing from a deposit taking non-banking financial company or systematically important non-deposit taking NBFC.

If payment is made after the due date then deduction will be allowed in the year of paymentSEC 43B DEDUCTION ON ACTUAL PAYMENT

PROFIT GAINS FROM BUSINESS OR PROFESSION

SEC 33AB TEA, COFFEE, RUBBER DEVELOPMENT

Business	Assessee must be engaged in the business of growing & manufacturing of tea or rubber or coffee in India.
Deposit	Assessee has, within 6 months from the end of the PY or before furnishing of ROI whichever is earlier, deposited any amount with - a) NABARD under any approved scheme, or b) Deposit Account opened by assessee in accordance with the above scheme.
Audit	The accounts of the assessee should be audited & report (Form 3AC) along with ROI.
Deduction	Lower of a) Amount Deposited b) 40% of profit of such Business before deduction u/s 33AB, & 72.
Withdrawal Of Deposit	

Closure of Business	Taxable
Dissolution of firm	Taxable
Death of Assessee	Not Taxable
Partition of HUF	Not Taxable
Liquidation of Company	Not Taxable
Amount realized not used	Taxable as PGBP

Aggregation of Income

Rule	Nature of Business	Agri Income	Non Agri Income
7A	Sale of Latex (Rubber)	65%	35%
7B	Sale of grown,cured coffee roasted coffee	75% 60%	25% 40%
8	Grow & Manufacture Tea	60%	40%

SEC 33ABA SITE RESTORATION FUNDS

Business	Any person carrying the business of prospecting for or extraction/production of petroleum/natural Gas/both In India and who has entered into agreement with CG.
Deposite	Assessee has before furnishing of ROI deposited any amount with - a) SBI under any approved scheme, or b) Deposit Account opened by assessee in accordance with the above scheme.
Audit	The accounts of the assessee should be audited under this Act & report (Form 3AC) thereof is filed along with ROI.
Deduction	Lower of a) Amount Deposited b) 20% of profit of such Business before deduction u/s 33AB, & 72.
Withdrawal Of Deposit	

Closure of Business	Taxable
Dissolution of firm	Taxable
Death of Assessee	Not Taxable
Partition of HUF	Not Taxable
Liquidation of Company	Not Taxable
Amount realized not used	Taxable as PGBP

SEC 35ABA RIGHT TO USE SPECTRUM FOR TELECOMMUNICATION SERVICES

> Capital Expense incurred for acquiring any right to use spectrum for tele communication services either before/after the commencement of business for the payment actually made
> Amount paid shall be appropriated over the years of license
> Where the deduction is allowed under the sec & subsequently there is any failure to comply with provisions of this Sec deduction allowed would be treated as wrongly allowed & AO may recompute income for the said PY by making necessary rectification.

SEC 35ABB EXPENSE ON OBTAINING LICENSE TO OPERATE TELECOMMUNICATION SERVICES

> Capital Expense incurred for acquiring any right to use spectrum for tele communication services either before/after the commencement of business for the payment actually made
> Amount paid shall be appropriated over the years of license
> Where the deduction is allowed under the sec & subsequently there is any failure to comply with provisions of this Sec deduction allowed would be treated as wrongly allowed & AO may recompute income for the said PY by making necessary rectification.

License Obtained before Commencement [License Fees Already paid of Business] → Deduction will be allowed from PY in which business commence till PY in which license Expires

License Obtained after Commencement [License Fees paid in Installments] → Deduction will be allowed from PY in which Fees paid till PY in which license expires

Sale of license- tax treatment

Full License Sold	
Cost of License	XXX
[-] Deduction for years	(XXX)
Unamortized Fees	XXX
[-]sale Price	(XXX)
Profit	Taxable in PGBP
Loss	Allowed as Deduction i.e. Dr to P&L

Part of the License Sold	
Cost of License	XXX
[-] Deduction for years	(XXX)
Unamortized Fees	XXX
[-]Sale Price	(XXX)
Balance	XXX
Allowed as deduction over balance year of license	

Note: Where deduction under this sec has been claimed & allowed in any PY, no deduction on account of depreciation shall be allowed.

common points for 35ABA/35ABB.
Depreciation shall not be allowed is deduction is claimed.
In case of business re-org deduction be available to resulting co.

SEC 35E DEDUCTION ON EXPENSE ON PROSPECTING ETC FOR CERTAIN MINERALS

Assessee	> Indian Company > Resident Assessee Engaged in prospecting/extraction/production of specified minerals.
Incurred	> Incurred Qualified Expense other than on Land/Site, P&M, Furniture for which depreciation u/s 32 is allowed > Expense should be incurred during year of commercial production & 4 years immediately preceding that year.
Deduction	Lower of a) 1/10th of Such Expenditure b) Income out of such Business
Audit	Where the assessee is a person other than a company or a co-operative society, no deduction shall be admissible unless the accounts of the assessee for the year(s) in which the expenditure specified is incurred have been audited by an accountant as defined in the Explanation below sec 288(2), before the specified date referred to in section 44AB and the assessee furnishes for the first year in which the deduction under this section is claimed, the report of such audit by that date [FA'20] in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

SEC 43CB COMPUTATION OF INCOME FROM CONSTRUCTION & SERVICE CONTRACTS

1. Any profit & gains arising from construction contract/contract from providing service shall be determined on % completion method in accordance with the ICDS

2. Rule of Computation

With duration not more than 90 days	Project Completion basis
Involving indeterminate number of acts over a specific period	SLM Basis

3. For the Purpose of % completion method/Project completion/SLM
   a) Contract revenue shall include Retention money
   b) Contract cost shall not be reduced by any incidental Income in nature of Interest , dividend/Capital Gains w.r.e.f 01.04.2017.

RULE 9A : TAXATION OF FILM PRODUCER/ DISTRIBUTOR

Rule 9A deals with Film Producers whereas Rule 9b deals with Film Distributors. The rules relate to the manner in which the cost of the film shall be written-off. Treatment of cost of film shall depend on whether producer/distributor sells it outrightly or himself displays the film in some or all areas.

100% cost is allowed in same PY

a. Himself exhibit the film
b. Sells the right w.r.t some areas & other areas, himself displays the film

- If film is released for at least 90days in PY: 100% cost is allowed in same PY
- If film is released for less than 90 days: - 100% of cost - Amount realised whichever is lower, shall be allowed.
- If film is not released: No deduction shall be allowed in this PDF

In case of an abandoned film, the cost of film shall be treated as revenue and allowed (CBDT Circular)

SEC 43AA FOREIGN EXCHANGE FLUCTUATION

Sec 43AA(1) - Subject to the provisions of sec 43A, any gain or loss arising on account of any change in foreign exchange rates shall be treated as income or loss, as the case may be, and such gain or loss shall be computed in accordance with the income computation and disclosure standards notified u/s 145(2).

Sec 43AA(2) - For the purposes of sub-section (1), gain or loss arising on account of the effects of change in foreign exchange rates shall be in respect of all foreign currency transactions, including those relating to-
> monetary items and non-monetary items;
> translation of financial statements of foreign operations;
> forward exchange contracts;
> foreign currency translation reserves.

SEC 43C SPECIAL PROVISION FOR COMPUTATION OF COST OF ACQUISITION OF CERTAIN

Sec 43C(1) - Where an asset [not being an asset referred to in sec 45(2)] which becomes the property of an amalgamated company under a scheme of amalgamation, is sold after the 29th day of February, 1988, by the amalgamated company as stock-in-trade of the business carried on by it, the cost of acquisition of the said asset to the amalgamated company in computing the profits and gains from the sale of such asset shall be the cost of acquisition of the said asset to amalgamating company, as increased by the cost, if any, of any improvement made thereto, and the expenditure, if any, incurred, wholly and exclusively in connection with such transfer by the amalgamating company.

Sec 43C(2) - Where an asset [not being an asset referred to in sec 45(2)] which becomes the property of the assessee on the total/partial partition of a HUF/under a gift/will/an irrevocable trust, is sold after the 29th day of February, 1988, by the assessee as stock-in-trade of the business carried on by him, the cost of acquisition of the said asset to the assessee in computing the profits and gains from the sale of such asset shall be the cost of acquisition of the said asset to the transferor or the donor, as the case may be, as increased by the cost, if any, of any improvement made thereto, and the expenditure, if any, incurred, wholly and exclusively in connection with such transfer (by way of effecting the partition, acceptance of the gift, obtaining probate in respect of the will/the creation of the trust), including payment of gift-tax, if any, incurred by the transferor or the donor, as the case may be.

SEC 43D SPECIAL PROVISION IN CASE OF INCOME OF PUBLIC FINANCIAL INSTITUTIONS, PUBLIC CO ETC

Notwithstanding anything to the contrary contained in any other provision of this Act,-
a) in the case of a public financial institution or a scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural & rural development bank or a State financial corporation or a State industrial investment corporation or a deposit taking non-banking financial company or a systemically important non-deposit taking non-banking financial company, the income by way of interest in relation to such categories of bad or doubtful debts as may be prescribed having regard to the guidelines issued by the RBI in relation to such debts;
b) in the case of a public company, the income by way of interest in relation to such categories of bad or doubtful debts as may be prescribed having regard to the guidelines issued by National Housing Bank in relation to such debts,

shall be chargeable to tax in the PY in which it is credited by the public financial institution/the scheduled bank/a co-operative bank other than a primary agricultural credit society/primary co-operative agricultural and rural development bank/the State financial corporation/the State industrial investment corporation/a deposit taking non-banking financial company or a systemically important non-deposit taking non-banking financial company or the public company to its profit and loss account for that year or, as the case may be, in which it is actually received by that institution or bank or corporation or company, whichever is earlier.

For Personal Notes

PROFIT GAINS FROM BUSINESS OR PROFESSION

SEC 43(1) ACTUAL COST

Sr No	Particulars	Actual Cost	
	Purchased	Purchase Price (+) other costs incurred on assets put to use (-) Sale value Insurance Subsidy Assets acqd in cash exceeding ₹10,000	xxx xxx (xxx)
Expl 1 to Sec 43(1)	Acquired for Scientific research subsequently brought into business use	Actual Cost (-) Deduction availed u/s 35	
Expl 1A to Sec 43(1)	Stock in trade is converted into capital asset	Fair Market value on the date of transfer	
Expl 2 to Sec 43(1)	Acquired by way of gift or inheritance	WDV in the hands of previous owner at the of transfer	
Expl 3 to Sec 43(1)	Asset acquired at higher price from any other person using the asset for his business or profession with a view to claim depreciation on enhanced cost & reduce tax liability	Actual cost to be determined by AO with prior approval of Joint Commissioner.	
Expl 4 to Sec 43(1)	Asset once belonged to the assessee which was used by him for business & transferred & reacquired by him	The WDV at the time of original transfer or the price paid for reacquiring the asset, whichever is less.	
Expl 4A to Sec 43(1)	Asset acquired by an assessee from another person who had claimed depreciation on such asset & asset is leased back to such other person.	The WDV of the asset to the transferor at the time of transfer to the assessee.	
Expl 5 to Sec 43(1)	Building used for private purpose subsequently brought into business use.	The cost of purchase or construction of the building as reduced by the notional depreciation calculated up to the year of bringing the asset to business use at the depreciation rate applicable to that year.	
Expl 6 to Sec 43(1) Expl 2 to Sec 43(6)	Asset transferred by a holding Co. to its subsidiary Co. or by a Subsidiary Co., to holding Co. if the following two conditions are satisfied : i) Shares of the subsidiary Co. should be wholly owned by the	WDV to the transferor company will be adopted as the actual cost to the transferee company.	

Sr	Particulars	Actual
	the holding co. or its nominees. ii) The transferee co. should be an Indian company. Note: If transferor company was not claiming depreciation since it was not used for its business, then the actual cost to the transferee company shall be the actual cost to the transferor Company.	
Expl 7 to Sec 43(1)	Transfer of asset in a scheme of amalgamation by amalgamating co to amalgamated Indian company. Note: If amalgamating Co was not claiming depreciation since it was not used for its business, then actual cost to the amalgamated co shall be the actual cost to amalgamating company.	WDV to the amalgamating company will be adopted as the actual cost to the amalgamated company.
Expl 7A to	Asset transferred by a demerged co to the resulting Indian co	Actual cost shall be the WDV in the hands of the demerged company.
Expl 8 to	Asset acquired out of borrowed funds	Interest on loan borrowed relating to the period after the asset is first put to use shall never form part of actual cost.
Expl 9 to	Asset acquired subject to levy of excise duty or customs duty in respect of which CENVAT credit is availed.	So much of the duty in respect in respect of which a claim of credit has been made & allowed under Central Excise Rules,1944 shall not form part of the actual cost.
Expl 10 to	A portion of the cost of an asset acquired is met directly or indirectly by Government or any statutory authority or any other person in the form of a subsidy or grant or reimbursement.	So much. of the cost as is relatable to such subsidy or grant or reimbursement shall not form part of the actual cost. If subsidy is not directly relatable to the asset acquired, but subsidy is with reference to the assets then the subsidy shall be proportionately reduced from the actual cost of the assets with reference to which subsidy has been granted.
Expl 11 to	Asset brought into India by NR/ foreign co for use in his business or profession.	Actual cost as reduced by amount of depre calculated @ in force as if asset was used in India since the date of acquisition.
Expl 12 to Sec 43(1)	Any capital asset acquired under a scheme of corporatisation of a recognised stock exchange in India, approved by SEBI.	The amount, which would have been regarded as actual cost, had there been no such corporatisation shall be deemed to be the actual cost.
Expl 13 to Sec 43(1)	Actual cost of capital asset has been allowed as deduction u/s 35AD and capital asset is transferred by way of transactions referred to in section 47.	The actual cost of such asset to the transferee shall be NIL.

SEC 33AB TEA, COFFEE, RUBBER DEVELOPMENT

Business	Assessee must be engaged in the business of growing & manufacturing of tea or rubber or coffee in India.
Deposit	Assessee has, within 6 months from the end of the PY or before furnishing of ROI whichever is earlier, deposited any amount with - a) NABARD under any approved scheme, or b) Deposit Account opened by assessee in accordance with the above scheme.
Audit	The accounts of the assessee should be audited & report (Form 3AC) along with ROI.
Deduction	Lower of a) Amount Deposited b) 40% of profit of such Business before deduction u/s 33AB, & 72.
Withdrawal Of Deposit	

Closure of Business	Taxable
Dissolution of firm	Taxable
Death of Assessee	Not Taxable
Partition of HUF	Not Taxable
Liquidation of Company	Not Taxable
Amount realized not used	Taxable as PGBP

Aggregation of Income :

Rule	Nature of Business	Agri Income	Non Agri Income
7A	Sale of Latex (Rubber)	65%	35%
7B	Sale of grown,cured coffee roasted coffee	75% 60%	25% 40%
8	Grow & Manufacture Tea	60%	40%

FOR PERSONAL NOTES

ICDS

INCOME COMPUTATION & DISCLOSURE STANDARDS

Basics of ICDS

> ICDS are applicable to all taxpayers except individual/ HUF who are not liable to tax audit.
> ICDS is applicable only to those assessee who follow Mercantile basis of Accounting.
> ICDS are applicable for computation of Income under the head "PGBP" or "IFOS" & not for maintaining books of Accounts.
> Assessees need not maintain Separate Books of accounts for the purpose of ICDS.
> In case of Conflict Between Act and ICDS the Provision of Act shall prevail to that extent.
> ICDS is also applicable to Assessee showing Presumptive Income [Sec.44AD/44AE/44ADA/44B/44BB/44BBA].
> ICDS is applicable irrespective of fact that companies follows AS / IND-AS.
> ICDS is not applicable for computation of Book Profit for the purpose of MAT u/s 115JB. However AMT is computed on ATI and Hence ICDS is applicable for computation of AMT.
> ICDS is also Applicable for Computation of Income on Gross Basis (Eg: Interest/ Royalty Etc.)
> If there is a conflict between Income Tax Rules and ICDS provision of Rules shall prevail over ICDS.
> Net effect on the Income due to application of ICDS is to be disclosed in ROI & Tax Audit Report in form 3CD. However, if a person is not liable for Tax Audit no separate disclosure is required.

ICDS	Name	Eq. AS	Name
I	Accounting Policies	I	Disclosure of accounting Policy
II	Valuation of inventories	II	Valuation of inventories
III	Construction Contracts	III	Construction Contracts
IV	Revenue Recognition	IV	Revenue Recognition
V	Tangible Fixed Assets	V	Accounting for fixed assets
VI	Effects of changes in foreign exchange rates	VI	Effects of changes in foreign exchange rates
VII	Government Grants	VII	Government Grants
VIII	Securities	VIII	Accounting for investment
IX	Borrowing Cost	IX	Borrowing Cost
X	Provisions, Contingent liabilities and Contingent assets	X	Provisions, Contingent liabilities and Contingent assets

ICDS I – Accounting Policies

> Similar to Accounting Standard, it deals with Significant Accounting Policies.
> It does not recognize the concepts of "Materiality" and "Prudence" in selection of accounting policies.
> Accounting Policies are applicable in Computation of Income not Maintenance of Books.
> Accounting Policies can be changed if there is a reasonable cause but reasonable cause is not defined in ICDS.
> Expected Loss/mark to market losses shall not be recognized unless permitted by another ICDS. However ICDS is silent about mark to Market Gains.

PROFIT GAINS FROM BUSINESS OR PROFESSION

ICDS II – Valuation of Inventories

> Meaning: "Inventories" are assets:
a) held for sale in the ordinary course of business,
b) in the process of production for such sale,
c) in the form of materials / supplies to be consumed in production process or in the rendering of services.
> ICDS requires inventory to be valued at Cost / Net Realizable value, whichever is lower.
> Cost of inventories shall comprise of all costs of purchase, costs of services, costs of conversion and other costs incurred in bringing inventories to their present location and condition.
> As per ICDS in case of Dissolution of Firm/AOP/BOI stock would be valued on NRV, whether business continued or not. However as per SC Shakti Trading Co case it is valued at cost or NRV WIL. Hence if dissolution is before 1/4/16 follow shakti trading otherwise

Romancing Analysis:- Inventory Not only Include Stock it also Include Services.

ICDS III – Construction Contracts

> This ICDS is required to be applied in determination of income for a construction contract of a contractor.
> Contract revenue shall be recognised when there is reasonable certainty of its ultimate collection.
> It recognizes % of completion method for recognizing contract revenue and contract costs. But Contract started before 31.03.2016 but not completed before the said date can be recognised based on method regularly employed. Disclosure requirement of this ICDS includes, amount of contract revenue recognized, the methods used to determine the stage of completion of contracts in progress etc.
> Retention money is considered as part of contract revenue & hence shall be recognized under POCM under ICDS. [As per AS-7 there is not treatment of retention money.
> Penalties arising from delay in contract completion shall not be reduced from contract revenue.
> Whether Real estate developer/BOT projects and lease are also covered by this ICDS??
At present no ICDS is recognised, therefore the provision of Act & ICDS shall apply to these transaction.

ICDS IV – Revenue Recognition

This ICDS deals with the bases for recognition of revenue arising in the course of the ordinary activities of a person from:
a) The sale of goods,
b) The rendering of services,
c) The use by others of the person's resources Yielding Interest, royalties & dividends.

Cases	When to recognise
Revenue from Sale of goods	When there is reasonable certainty of its ultimate collection.
Revenue from service	Generally: % completion method.
Transaction- More than 90 days	However it can be recognized on Straight line basis over the period of time, when service are provided by an In terminate number of Acts over period.
Revenue from service contract with duration not more than 90 days	When service are rendered and complete or substantially complete.
Interest	On Time basis determined by amount outstanding and rate applicable
Interest on refund of Taxes, Duties, cess	Recognized on receipt basis
Dividend	Recognised as per Income Tax Act.

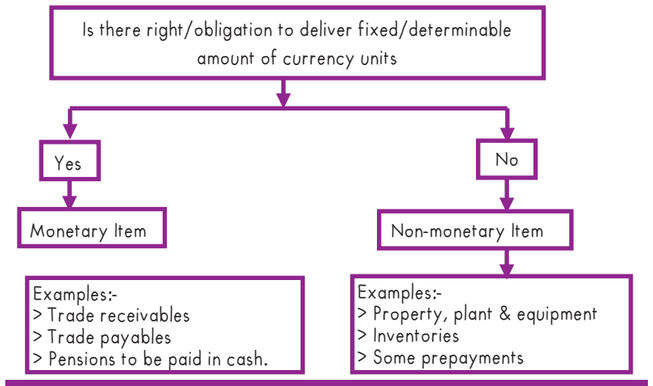
> It does not, however, deal with the aspects of revenue recognition which are dealt with by other ICDSs.
> Disclosure requirement of this ICDS includes, claim raised for escalation of price & Export incentives but not completion of service transactions in progress, etc.

ICDS V – Tangible Fixed Assets

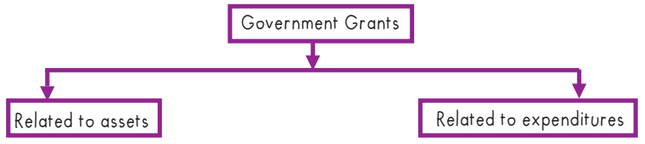
> This ICDS deals with the treatment of Tangible Fixed Assets.
> Tangible Fixed Assets is an assets is an assets being land, building, machine, P&M, Furniture held with intention of being used for purpose of producing or providing goods & services and is not held for sale in normal course of business.
> Revaluation of Assets is not permitted as per ICDS.
> In case of exchange of assets cost of assets shall be FMV of assets received in Return.
> Income arising from transfer of tangible assets shall be computed as per Income Tax Act.
> The expenditure incurred till the plant begun commercial production, that is, intended for sale or captive consumption shall be treated as capital expenditure.[for example exp on trial run, experimental production]
> Disclosure requirement of this ICDS includes, the description of Asset or Block of Assets, Rate of Depreciation, Actual Cost or WDV , etc.

ICDS VI – Effects of changes in foreign exchange rates

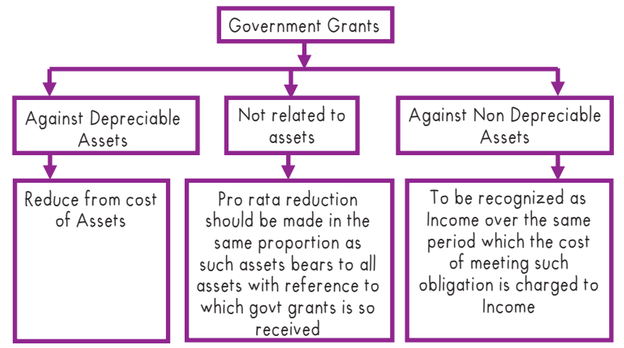
> This ICDS deals with:
a) Treatment of transactions in foreign currencies,
b) Translating the financial statements of foreign operations,
c) Treatment of foreign currency transactions in the nature of Forward Exchange Contracts
> Treatment of Exchange – Difference at the Last day of the PY:
For Monetary Items – Recognized as Income or as Expense.
For Non-Monetary items – Not recognized as income/as expenses.



ICDS VII – Government Grants



> This ICDS deals with the treatment of government grants. Govt grants are sometimes called by other names such as subsidies, cash incentives, duty drawbacks, etc.
Exclusions: This ICDS does not deal with:
a) Government assistance other than in the form of Government grants, and
b) Government participation in the ownership of the enterprise.
> As per ICDS, Government Grants relating to depreciable fixed assets should be deducted from the actual cost of the asset.
> Disclosure requirement of this ICDS includes, nature and extent of Government Grants recognized during the PY as income, nature and extent of Government Grants not recognized.



ICDS VIII – Securities

> This ICDS deals with securities held as stock in trade. ICDS excludes Derivatives from the definition of Securities. For computation of PGBP and IFOS not CG
> Meaning of Fair Value: "Fair value" is the amount for which an asset could be exchanged between knowledgeable, willing buyer & a knowledgeable, willing seller in an arm's length transaction.
> Securities are to be recognized at actual cost on acquisition, which shall comprise of its purchase price & include acquisition charges like brokerage, fees, tax duty or cess
> ICDS prescribe valuation category wise & not security wise as required by AS [category means equity & preference]sion of Act & ICDS shall apply to these transaction.

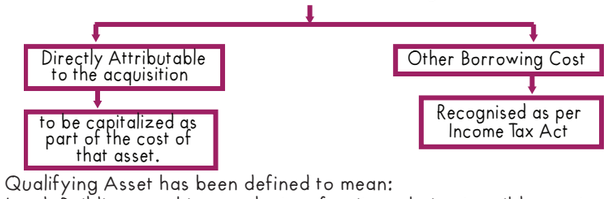
Shares	Cost	NRV	AS-13	ICDS
Vishal LTD	520	150	50	
Darshan Ispath Ltd	400	200	200	
Rohan Ltd	150	350	150	
Prakash Ltd	100	300	100	
Total	1200	1000	500	1000

Value as per AS (script wise) : 500
Value as per ICDS (Category wise) : 1000

> ICDS specifically provides for cost of security acquired in exchange for other securities i.e. Fair value of the Securities Issued or Fair Value of the Securities acquired whichever is lower.
> At the end of any PY, securities held as stock in trade have to be valued at actual cost initially recognized or net realizable value at the end of that PY, whichever is lower.

ICDS IX – Borrowing Costs

This ICDS deals with the treatment of Borrowings Costs.

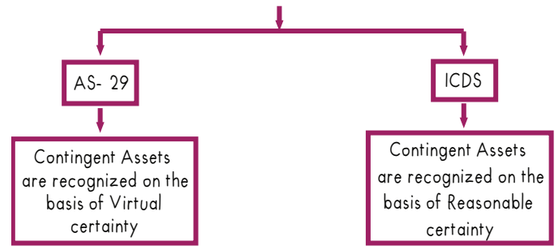


Qualifying Asset has been defined to mean:
Land, Building, machinery, plant or furniture, being tangible assets,
Know – how, patents, copyrights, trademarks, licenses, franchises, or any other business or commercial rights of similar nature, being intangible assets,
Inventories that require a period of 12 months or more to bring them to a saleable condition.

Disclosure requirement of this ICDS includes, Accounting policy adopted for Borrowing Costs & value borrowing costs capitalized during the year.

ICDS X – Provisions, Contingent Liabilities & Contingent Assets

Employee benefit shall be governed by Act not ICDS
However, it requires contingent assets to be assessed continually.
When it becomes reasonable certain that inflow of economic benefit will arise, the asset and related income have to be recognized in the previous year in which the change occurs.
A provision shall be used only for expenditures for which the provision was originally recognized.
Disclosure requirements of this ICDS includes, each class of provision made, asset and income recognized.



CAPITAL GAINS

There must be Capital Assets

Capital Assets Sec 2(14) means

1) Capital Asset means property of any kind held by an Assessee, whether or not connected with his business or profession & include & shall be deemed to have always included any right in or in relation to an Indian company, including rights of management or control or any others right whatsoever
2) Any security held by Foreign Institutional Investor (whether as CA or SIT)

Assets not to be treated as Capital Asset

- > Stock in trade
- > Consumable stores
- > Raw Material for b/p

Personal Effects (incl wearing apparels & furniture) but does not include :
- > Jewellery
- > Archaelogical collections
- > Drawings
- > Paintings
- > Sculptures
- > Any work of art

JADPAS

Rural Agriculture Land in India

- > 6 1/2% Gold Bonds,'77 or 7% Gold bonds,'80 or National Defence Gold Bonds,1980, Special Bearer Bonds 1991
- > Gold Deposit Bonds issued under Gold Deposit Scheme'99 / Gold Monetization Scheme 2015

Capital Assets must have been transferred

Gain may be positive or negative

There are 2 types of gain depending on capital asset

SHORT TERM CAPITAL ASSET [SEC 2(42A)
1. Financial Asset - 12M or less
2. Unlisted Shares & immovable property - 24 M or less
3. Other Assets - 36M or less

LONG TERM CAPITAL ASSET [SEC 2(29A)
1. Financial Asset - more than 12M
2. Unlisted Shares & immovable property - more than 24 M
3. Other Assets - more than 36M

Sec 48 How to Compute?

SHORT TERM CAPITAL GAIN

Full Value of Consideration	xxx
Less: Exp on Transfer	(xxx)
Net Consideration	xxx
Less: Cost of Acquisition	(xxx)
Less: Cost of Improvement	(xxx)
STCG	Xxx
Less: Exemption u/s 54B/ D/G/GA	(xxx)
STCG	Xxx

LONG TERM CAPITAL GAIN

Full Value of Consideration	xxx
Less: Exp on Transfer	(xxx)
Net Consideration	xxx
Less: Indexed Cost of Acquisition	(xxx)
Less: Indexed Cost of Improvement	(xxx)
LTCG	Xxx
Less: Exempt U/s 54 to 54GB	(xxx)
LTCG	Xxx

Special cases in Capital Gain

Insurance Sec 45 (1A) CG be taxable in year of receipt (money/other assets) from Insurance Co

Full Value of Consideration	xxx
Amount received from insurance company	
Less: Exp on Transfer	(xxx)
Net Consideration	xxx
Less: COA / ICOA (allowed upto year of destruction)	(xxx)
Less: COI / ICOI	(xxx)
Gross Capital Gain	Xxx
Less: Exemption	(xxx)
Taxable Capital Gain	Xxx

In case of depreciable assets Sale consideration - WDV

It is Taxable in the year of receipt of compensation and Indexation is allowed only upto the year of distruction. If compensation is not received then it is pure dead loss.

Sec 45(2) Personal assets converted into Stock in trade

Capital Gain

Full Value of Consideration	xxx
FMV on date of conversion	(xxx)
Less: Exp on Transfer	xxx
Net Consideration	(xxx)
Less: COA / ICOA (allowed upto year of conversion)	(xxx)
Less: COI / ICOI	
Gross Capital Gain	Xxx
Less: Exemption	(xxx)
Taxable Capital Gain	Xxx

Sale Value
Less:
FMV as on date of conversion

PGBP

Both Amount Is taxable in the year when converted stock is sold or partly Sold. Indexation is available upto the year of conversion. [If Stock is converted into CA then PGBP would arise]

Sec 45(2A) Securities in Demat Account

If securities are Transfered in Demat Account then for the Purpose of cost of Acquisition it shall be considered on FIFO Basis based on Entry in demat account.

Sec 45(3) Tansfer by Partner or Member to Firm or Aop/BOI

If the partner/ member transfer the CA to Firm or AOP/ BOI then for the purpose of Full value of consideration amount recorded in books of accounts shall be considered adn any FMV shall be ignored.

Sec 45(4) Transfer by firm of AOP/BOI to Partner or Member upon Dissolution or Otherwise

This Section is applicable for Dissolution as well as Retirment for the purpose of FVOC = FMV as on the date of Dissolution or resignation is considered

Sec 45(5) Compulsory Acquisition

Initial Compensation & enhanced compensation taxable in year of receipt & exp are allowed as dedn Interest on Enhanced compensation is taxable in IFOS & a of 50% is allowed there from u/s 57

Initial Compensation

FVOC	xxx
Amount given by appropriate authority	
Less: Exp on transfer	(xxx)
Net Consideration	xxx
Less: COA / ICOA (allowed upto year of Compulsory acq)	(xxx)
less : COI / ICOI	(xxx)
Gross Capital Gain	Xxx
Less: Exemptions	(xxx)
Taxable Capital Gain	Xxx

If compensation is reduced in future then capital gain shall be recomputed If compensation is received under Right to fair compensation & Transparency in Land Acquisition Rehabiliation and Resettlement Act 2013 then it is not taxable.

Enhance Compensation

FVOC	xxx
Amount given by appropriate authority	
Less: Exp on transfer	(xxx)
Net Consideration	xxx
Less: COA / ICOA (allowed upto year of Compulsory acq)	Nil
less : COI / ICOI	Nil
Gross Capital Gain	Xxx
Less: Exemptions	(xxx)
Taxable Capital Gain	Xxx

Sec 45(5A) Transfer under Registered Redevelopment Agreement

Applicable for Individual/HUF

FVOC	xxx
SDV of share on date of issue of certificate +consideration (cash)	
Less: Exp on transfer	(xxx)
Net Consideration	xxx
Less: COA / ICOA	(xxx)
less : COI / ICOI	(xxx)
Gross Capital Gain	Xxx
Less: Exemptions	(xxx)
Taxable Capital Gain	Xxx

If the rights are transfered before the certificate of completion then capital gain would arise in the year of transfer.

Sec 50B Slump Sale

Net Consideration	xxx
Less: Net Worth	(xxx)
Gross capital Gain	xxx
Less: Exemptions	(xxx)
Taxable Capital Gain	Xxx

1. Net Worth = Total Asset - Current Liability
2. Total Asset = Depreciable Asset @ WDV Other Asset @ Book value
3. Revaluation will not have any effect

Important Notes:
1) If net worth is negative - COA is NIL
2) If Deduction u/s 35AD is claimed then CoA = Nil
3) Assessee shall furnish the report from CA certifying Net worth
4) If Unit transfered is held for more than 3 years then gain would be LT
5) Revaluation shall be ignored for the purpose of the section.

Sec 51 Advance money received

Advance money forfeited where reduced from COA/WDV (CG)

Advance money received:

By the Assessee	Before 1/4/14 reduce from COA/WDV/FMV After 1/4/14 - IFOS
By the PO	Not Allowed

FULL VALUE OF CONSIDERATION

Full value of consideration is amount of consideration received or receivable by transferor without making any deduction there from.

If in Cash - Take Actual Amount
If in Kind - As per Sec 50D take FMV wherever Consideration is not ascertainable or cannot be determined.

SEC 50C FULL VALUE OF CONSIDERATION OF LAND & BUILDING

If Value adopted by Stamp Value Authority exceed 110%[FA'20] of consideration received or accruing ,then only Stamp Value is adopted as FVC otherwise consideration so received shall be FVC.

Transaction which are not registered with Stamp Duty Authority & executed through Agreement to sell or power of attorney are also included in Sec 50C.

Different Situation in reference to VO	Value by VO is higher than SVA	C= SVA
	Value by VO is lower than SVA but more than Assessee	C= VO Value
	Value by VO is lower than value by Assessee	C = Assessee Value

Generally, SDV as on the date of registration is considered but, if the date of agreement and registration are not the same, then, Assessee can take SDV as on the date of agreement if he has received consideration or part thereof upto the date of agreement by way of A/c payee cheque, DD, ECS or any other electronic mode.

Not 8/2020 - Other electronic mode includes Credit card, Debit card, net banking, IMPS, UPI, RTGS, NEFT & BHIM.
Aforesaid notification is also applicable for sec 13A,35AD, 40A,43,43CA,44AD,56,80JJAA,269SS,269ST,269T.

SEC 115(15) RECTIFICATION

Where in any assessment, Capital Gain on land & building is computed by taking FVC & subsequently the value is revised in any appeal or revision, AO shall amend the order u/s 154 & the period of 4 years shall be taken from the end of the PY in the order is so revised.

SEC 50CA UNLISTED SHARES

FMV shall be deemed to be the full value of consideration if consideration is less then FMV (Determine as per Rule 11UAA)
Sec applies to all Assessee including NR.
Sec applies only if the shares are held as Capital Asset not stock in trade.
Sec applies to all kinds of shares - equity / preference. However , it does not apply to Debentures.

Provided that the provisions of this section shall not apply to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed. [FA'20]

Prescribed class of persons : The provision of Sec 50CA shall not apply to transfer of unquoted shares of a company & its subsidiary & subsidiary of such subsidiary by an Assessee where

1) The Tribunal on application moved by CG u/s 241 of Companies Act'13, has suspended the board of directors of such company & has appointed new directors nominated by CG u/s 242 of the said Act; &
2) share of such company & its subsidiary & subsidiary of such subsidiary have been transferred pursuant to a resolution approved by Tribunal u/s 242 of Companies Act'13 after according OOBH to the jurisdictional PC / CIT.

EXPENSES OF TRANSFER

a) Expenses on transfer is allowed as deduction (not exp on acquisition because it is added to cost)
   Given in Cash : Take Actual Amount
   Given in % : Take % of Sale Consideration not of FVOC
b) Expenses on transfer include brokerage & other legal expenses for sale of Such assets
c) Expenses on transfer does not Include STT, Hence STT is not allowed as Deduction [7th Proviso to Sec 48]

SEC 55(2) COST OF ACQUISITION

Cost of acquisition is value which assessee has paid, or amount which he has incurred, for acquisition of asset. It includes amount for completing /acquiring title (Interest on Borrowed capital)

For Personal Notes

CAPITAL GAINS

COA & COI OF INTANGIBLES

1) Goodwill of business / profession
2) Right to manufacture, produce article or thing,
3) Right to carry on any business,
4) Trademark / brand name of business,
5) Tenancy rights,
6) Route permits,
7) Loom hours.

Self-Generated = Nil
Purchased = Purchase price

1) Benefit of FMV as on 01/04/2001 NOT available in case of these assets
2) No CG on Goodwill of Profession as per B.C Shrinivasa Shetty (SC)

SEC 49 COST OF ACQUISITION

Sec 49(1)	i) Distribution of assets on total / partial partition of HUF ii) Gift or will or inheritance iii) Succession, inheritance or devolution iv) Distribution of assets on liquidation of co. v) Transfer to revocable/irrevocable trust	Cost to the Previous Owner
Sec 49	Assets Acquired before 01.04.2001	Cost of acquisition / FMV as on 01.04.2001 whichever is higher
Shares	Original Shares	Amount paid for acquiring these shares.
	Right shares subscribed by the assessee	Amount paid by him for acquiring such asset.
	Right shares subscribed by the other person	Purchase price paid to person renouncing such right + amount paid to co. allotting such shares.
	Right renouncement: if rights are renounced in favor of other person	Nil
	Bonus shares allotted before 1.4.2001	FMV on 1.4.2001
	Bonus shares allotted on or after 1.4.2001	Nil
	Sweat Equity shares	FMV for calculation of Perquisite
If 112A applies	COA = FMV as on 31.03.2018	
Immov-able property	If SDV as on 01.04.2001 is available then FMV as on 01.04.2001 should not be more than SDV as on 01.04.2001. [FA'20]	
Property Received u/s56(x)	Cost of acquisition of the sum of money or property received without consideration or lower consideration u/s. 56(x) shall be value adopted u/s. 56(x)	
Assets trf under IDS	FMV of the assets taken into account for the purpose of Tax, surcharge and penalty. [As on 01.06.2016 shall be taken] In case of CA declared under IDS'16 : 1) Immovable Property - POH = Date of Acq. as per deed 2) Other Assets - POH = From 01.06.2016	
Conversion of business assets into CA	COA = FMV as on the date of conversion [FA.2018]	

SEC 55(I)(B) COST OF IMPROVEMENT

a) Cost of improvement means expenditure incurred to increase productive quality of asset. It includes all expenditure of capital nature incurred in making any additions or alteration to capital asset.
b) Only capital expenditure is considered as a cost of improvement Routine expenses on repairs and maintenance do not form part of cost of improvement.
c) Any improvement expenditure incurred before 01.04.2001 to be ignored while computing capital gain.
d) IT can be incurred either by Assessee or previous owner.
e) COI shall be NIL for the following : 1) Goodwil of Business
2) Right of Manufacture, Produce or Process any article/thing
3) Right to carry on a business or profession

FOR PERSONAL NOTES

2ND PROVISO TO SEC 48 INDEXED COST OF ACQUISITION & IMPROVEMENT

Provisions of indexation will apply in case of long term capital gain on transfer of a long-term capital asset, other than capital gain arising to a non-resident from the transfer of shares in, or debentures of, an Indian company referred to in first proviso.

1) Index cost of acquisition

a) Before 01/04/2001

$$\text{FMV on 1/4/2001 / COA to Assessee /Previous Owner, whichever is higher} \times \frac{\text{CII of the year of transfer}}{100}$$

b) After 01/04/2001

$$\text{COA to Assessee} \times \frac{\text{CII of the year of transfer}}{\text{CII of year of acquisition}}$$

c) Asset acquired prior to 01/04/2001 by previous owner & received by Assessee prior to 01/04/2001

$$\text{FMV on 1/4/2001 / COA to Assessee / Previous Owner, whichever is higher} \times \frac{\text{CII of the year of transfer}}{100}$$

d) Asset acquired prior to 01/04/2001 by previous owner & received by Assessee after 01/04/2001

$$\text{FMV on 1/4/2001 / COA to Previous Owner, whichever is higher} \times \frac{\text{CII of the year of transfer}}{\text{CII of year in which first held by Assessee}}$$

e) Asset acquired after to 01/04/2001 by previous owner & received by Assessee after 01/04/2001

$$\text{COA to Previous Owner} \times \frac{\text{CII of the year of transfer}}{\text{CII of year in which first held by Assessee}}$$

Manjula shah vs CIT : - if assessee acquire CA by way of gift & transferred such assets, then ICA would be with reference to year in which previous owner held the assets & not in which Assessee becomes the owner. Therefore CII should be based on the year in which previous owner acquired the assets & not in which assessee becomes the owner

2) Index cost of Improvement

$$\text{COI of the asset} \times \frac{\text{CII of the year of transfer}}{\text{CII of the year in which improvement made by assessee/previous owner}}$$

(any cost of improvement before 01.04.2001 whether by assessee or by previous owner is to be ignored)

Finance Act ,2016 has rearranged the Cost inflation Index:
NOTIFICATION NO. 63/2019

FY	CII	FY	CII	FY	CII
2001-2002	100	2008-2009	137	2015-2016	254
2002-2003	105	2009-2010	148	2016-2017	264
2003-2004	109	2010-2011	167	2017-2018	272
2004-2005	113	2011-2012	184	2018-2019	280
2005-2006	117	2012-2013	200	2019-2020	289
2006-2007	122	2013-2014	220	2020-2021	301
2007-2008	129	2014-2015	240		

BENEFIT OF INDEXATION NOT AVAILABLE TO

Nature of Long Term Capital Gain Transferred	Assessee not Eligible
Bond/debenture Except capital Indexed Bond issued by Govt	All Assessee
Shares/debenture of Indian company acquired by using convertible Forex	Non Resident
Depreciable Assets	All Assessee
Slum Sale	All Assessee
Gold Bond Scheme 2015	All Assessee

SEC 112A TAX ON LONG TERM CAPITAL GAIN [SEC 10(38) ABOLISHED]

LTCG on transfer of
> Equity Shares, or
> Equity Oriented Units, or
> Units of Business Trust,
in excess of ₹ 1L shall be taxable @ 10% (+ HEC @ 4%) if following conditions are satisfied:
i) STT paid on Acquisition & transfer of Equity Shares
ii) STT paid on transfer of Equity Oriented Units & Units of Business Trust

If the above conditions are not satisfied, Sec 112 is still applicable :

Particulars	Amount
FVC = Amount received	xxx
(-) Expenses on Transfer	(xxx)
Net Consideration	xxx
(-) COA : Higher of	(xxx)
a) COA	
b) Lower of :	
i) Sale Consideration	
ii) FMV as on 31.1.18	
Capital Gain	xxx

FMV :
Listed & Traded on 31.1.18 - Highest Price on that Day
Listed but not traded - Highest Price on any Previous Traded Day
Units - NAV as on 31.1.18
Unlisted Shares - Indexed Cost (17-18)

NOTIFICATION 60/2018 EXCEPTION TO STT PAYMENT

Shares acquired prior to 1st Oct'2004
Shares acquired after 1st Oct'2004 - eligible for benefit u/s112A where STT is not chargeable but following 3 cases benefit of 112A is not applicable.

(A) Acquisition of existing listed eq share whose share are not frequently traded in RSE is made through a Preferential issue, provided this clause is not applicable if-
1) acquisition of share approved by HC, SC, NCLT, SEBI & RBI
2) Shares acquired by NR under FDI guidelines
3)Acquistion of shares by Investment fund u/s 115UB or VCF u/s 10(23FB) or QIB
4) Shares acquired through Preferential issue as per SEBI

(B) Acq of existing listed eq share not entered through RSE provided this clause is not applicable if
1) acq of share approved by HC, SC, NCLT, SEBI & RBI
2) Shares acquired by NR under FDI guidelines
3) Acq under ESOP scheme
4) Acq as per SEBI
5) Acquistion from Govt
6) Acquistion of shares by Investment fund u/s 115UB or VCF u/s 10(23FB) or QIB
7) Acq by mode of trf u/s 47 or 50B if previous owner has not acquired in any mode referred in 1, 2 or 3

(C) Acquisition of eq. share of a co during period beginning from the date co is delisted & ending on the date it is relisted

SEGREGATED PORTFOLIO / SIDE POCKETING

Creation of a segregated portfolio ir side - pocketing was introduced by SEBI to enable debt scheme of MF to allow investor to exist a debt scheme in distress. It is implemented by debt fund if their holdings are downgradedor suffer a default.

Side pocketing is a facility which facilitates the seperation of units into distinct portfolio in which no further / fresh subscription are allowed. Investor can redeem these units once the money is recovered from bad debts, while they can redeem other units at any point of time.

Segregateion / side pocketing is actually to be seen as splitting the investment in two parts - one called as main portfolio while the other is called as segregated portfolio.

FA'20 provides the following -
Sec 49(42A)(hh) - POH of units in a segregated portfolio shall also include the period for which the original units in the main portfolio were held by the assessee.

Sec 49(2AG) - COA of a unit in the aggregated portfolio :
COA of units in Total Portfolio X NAV of assets trf in seregated portfolio / NAV of total portfolio before segregation

Sec 49(2AH) - COA of units in the main portfolio :
The COA of the original units in main portfolio (-) COA of segregated portfolio units.

Simplified Analysis -
1) "Segregated Portfolio" shall mean a portfolio, comprising of debt / money market instrument affected by a credit event,that has been segregated in a MF scheme; This is that part of the total portfolio which contains the bad,downgraded & illiquid debts

2) "Mini Portfolio" shall mean the scheme portfolio excluding the segregated portfolio.

3) "Total Portfolio" shall mean the scheme portfolio incl. the securities affected by credit event.
The Total portfolio is the portfolio which is the original one & then is splitted into 2 portfolios - main & segregated.
4) The main portfolio is the portfolio which is seperated from the "total portfolio" with good debts & can be redeemed by the investor at any point of time.

The above mentioned is applicable from AY 20-21.

SEC 111A TAX ON STCG IN CERTAIN CASES

Sec111A(1): Where the total income of an assessee includes any income chargeable under the head "Capital gains", arising from the transfer of a short-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust and—

Sec111A(1b): Tax Payable = a) on STCG @ 15% & on other Income Applicable Rate
(Section is applicable even if transaction is carried out at IFSC and STT is not paid)

Provided that in the case of an individual or a HUF, being a resident, where total income as reduced by such short-term capital gains is below the maximum amount which is not chargeable to income-tax, then, such short-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such short-term capital gains shall be computed at the rate of fifteen per cent :

Sec111A(2) :Where the gross total income of an assessee includes any short-term capital gains referred to in sub-section (1), the deduction under Chapter VI-A shall be allowed from the gross total income as reduced by such capital gains.

For Personal Notes

CAPITAL GAINS

SEC 112 TAX ON LONG TERM CAPITAL GAIN

Sec 112(1) : Where the total income of an assessee includes any income, arising from the transfer of a long-term capital asset,which is chargeable under the head "Capital gains", the tax payable by the assessee on the total income shall be the aggregate of,—

Sec112(1a): For Individual or a HUF, being resident,—
LTCG - 20% & other Income applicable rate
Provided that where the total income as reduced by such long-term capital gains is below the maximum amount which is not chargeable to income-tax, then, such long-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such long-term capital gains shall be computed at the rate of twenty per cent ;

Sec112(1b): A domestic company,—
LTCG - 20% & other Income applicable rate to companies

Sec112(1C): A NR/Foreign Co
LTCG - 20% & other Income applicable rate to companies & on unlisted shares of Private co @ 10% without giving effect to 1st & 2nd Provisio to Sec 48

Sec112(1b): Any other Person (Resident)
LTCG - 20% & other Income applicable rate to companies

Sec.112(2): NO Dedcution under Chapter VIA from LTCG

SEC 46 CAPITAL GAIN ON LIQUIDATION

Sec 46(1) - Where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of sec 45.

Sec 46(2) - Where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income-tax under the head "Capital gains", in respect of the money so received or the market value of the other assets on the date of distribution, as reduced by the amount assessed as dividend within the meaning of sec 2(22)(c) and the sum so arrived at shall be deemed to be the FVOC for the purposes of sec 48.

SEC 47 TRANSACTION NOT REGARDED AS TRF

Nothing contained in section 45 shall apply to following transfers-

Sec 47(i) - any distribution of capital assets on the total or partial partition of a HUF;

Sec 47(iii) - any transfer of a capital asset under a gift / will /irrevocable trust;
Provided that this clause shall not apply to transfer under a gift or an irrevocable trust of a capital asset being shares, debentures or warrants allotted by a company directly or indirectly to its employees under any Employees' Stock Option Plan or Scheme of the company offered to such employees in accordance with the guidelines issued by the CG in this behalf;

Sec 47(iv) - any transfer of a capital asset by a Co to its Subsidiary Co, if-
> the parent company or its nominees hold the whole of the share capital of the subsidiary company, and
> the subsidiary company is an Indian company;

Sec 47(v) - any transfer of a capital asset by a subsidiary company to the holding company, if-
> the whole of the share capital of the subsidiary company is held by the holding company, and
> the holding company is an Indian company
Provided that nothing contained in clause (iv) or clause (v) shall apply to the transfer of a capital asset made after the 29th day of February, 1988, as stock-in-trade;

Sec 47(vi) - any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company;

Sec 47(via) - any transfer, in a scheme of amalgamation, of a capital asset being a share or shares held in an Indian company, by the amalgamating foreign company to the amalgamated foreign company, if-
a) at least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company, and
b) such transfer does not attract tax on capital gains in the country, in which the amalgamating company is incorporated;

Sec 47(viaa) - any transfer, in a scheme of amalgamation of a banking co with a banking institution sanctioned and brought into force by the CG u/s 45(7) of the Banking Regulation Act, 1949, of a capital asset by the banking co to the banking institution.
Explanation - For the purposes of this clause,- "banking company" shall have the same meaning assigned to it in sec 5(c) of the Banking Regulation Act, 1949; "banking institution" shall have the same meaning assigned to it in sec 45(15) of the Banking Regulation Act, 1949

Sec 47(viab) - any transfer, in a scheme of amalgamation, of a capital asset, being a share of a foreign co, referred to in the Expl. 5 to sec 9(1)(i), which derives, directly/indirectly, its value substantially from the share or shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company, if-
a) at least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company; and
b) such transfer does not attract tax on capital gains in the country in which the amalgamating company is incorporated;

Sec 47(vib) - any transfer, in a demerger, of a capital asset by the demerged company to the resulting company, if the resulting co is an Indian company;

Sec 47(vic) - any transfer in a demerger, of a capital asset, being a share or shares held in an Indian company, by the demerged foreign company to the resulting foreign company, if-
a) the shareholders holding not less than 3/4ths in value of the shares of the demerged foreign company continue to remain shareholders of the resulting foreign company; and
b) such transfer does not attract tax on capital gains in the country, in which demerged foreign company is incorporated;
c) Provided that the provisions of sections 391 to 394 of the Companies Act, 1956 shall not apply in case of demergers referred to in this clause;

Sec 47(vica) - any transfer in a business reorganisation, of a capital asset by the predecessor co-operative bank to the successor co-operative bank;

Sec 47(vicb) - any transfer by a shareholder, in a business reorganisation, of a capital asset being a share or shares held by him in the predecessor co-operative bank if the transfer is made in consideration of the allotment to him of any share or shares in the successor co-operative bank.

Explanation - For the purposes of clauses (vica) & (vicb), the expressions "business reorganisation", "predecessor co-operative bank" and "successor co-operative bank" shall have the meanings respectively assigned to them in sec 44DB;

Sec 47(vicc) - any transfer in a demerger, of a capital asset, being a share of a foreign company, referred to in the Explanation 5 to sec 9(1)(i), which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company, if-
a) the shareholders, holding not less than 3/4ths in value of the shares of the demerged foreign company, continue to remain shareholders of the resulting foreign company; and
b) such transfer does not attract tax on capital gains in the country in which the demerged foreign co is incorporated.
Provided that the provisions of sec 391 to 394 of the Companies Act, 1956 shall not apply in case of demergers referred to in this clause;

Sec 47(vicd) - any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company if the transfer or issue is made in consideration of demerger of the undertaking;

Sec 47(vii) - any transfer by a shareholder, in a scheme of amalgamation, of a capital asset being a share(s) held by him in the amalgamating co, if-
a) the transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company except where the shareholder itself is the amalgamated company, and
b) the amalgamated company is an Indian company;

Sec 47(viia) - any transfer of a capital asset, being bonds or GDRs referred to in sec 115AC(1), made outside India by a NR to another NR;

Sec 47(viiaa) - any transfer, made outside India, of a capital asset being rupee denominated bond of an Indian company issued outside India, by a NR to another NR;

Sec47(viiab) - any transfer of a capital asset, being-
a) bond or GDR referred to in section 115AC(1); or
b) rupee denominated bond of an Indian company; or
c) derivative; or
d) such other securities as may be notified by the CG in this behalf, [FA'20]
made by a non-resident on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency.

Sec 47(viib) - any transfer of a capital asset, being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a NR to another NR.

Sec 47(viic) - any transfer of Sovereign Gold Bond issued by the RBI under the Sovereign Gold Bond Scheme, 2015, by way of redemption, by an assessee being an individual;

Sec 47(viii) - any transfer of agricultural land in India effected before the 1st day of March, 1970;

Sec 47(ix) - any transfer of a capital asset, being any work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print, to the Government or a University or the National Museum, National Art Gallery, National Archives or any such other public museum or institution as may be notified by the CG in the Official Gazette to be of national importance or to be of renown throughout any State or States.
Explanation - For the purposes of this clause, "University" means a University established or incorporated by or under a Central, State or Provincial Act and includes an institution declared u/s 3 of the University Grants Commission Act, 1956, to be a University for the purposes of that Act;

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

Sec 47(xa) - any transfer by way of conversion of bonds referred to in sec 115AC (1)(a) into shares or debentures ofany company;

Sec 47(xb) - any transfer by way of conversion of preference shares of a co into equity shares of that co;

Sec 47(xi) - any transfer made on or before the 31st day of December, 1998 by a person (not being a company) of a capital asset being membership of a recognised stock exchange to a company in exchange of shares allotted by that company to the transferor.
Explanation - For the purposes of this clause, the expression "membership of a recognised stock exchange" means the membership of a stock exchange in India which is recognised under the provisions of the Securities Contracts (Regulation) Act, 1956

Sec 47(xii) - any transfer of a capital asset, being land of a sick industrial company, made under a scheme prepared and sanctioned u/s 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 where such sick industrial company is being managed by its workers' co-operative.
Provided that such transfer is made during the period commencing from the PY in which said company has become sick industrial company u/s 17(1) of that Act & ending with the PY during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.

Sec 47(xiii) - any transfer of a capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company in the business carried on by the firm, or any transfer of a capital asset to a company in the course of demutualisation or corporatisation of a recognised stock exchange in India as a result of which an AOPs or BOIs is succeeded by such company.
Provided that-
a) all the assets and liabilities of the firm or of the AOPs / BOIs relating to the business immediately before the succession become the assets & liabilities of the company;
b) all the partners of the firm immediately before the succession become the shareholders of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of the succession;
c) the partners of the firm do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company; and
d) the aggregate of the shareholding in the company of the partners of the firm is not less than 50% of the total voting power in the company and their share-holding continues to be as such for a period of 5 years from the date of the succession;
e) the demutualisation or corporatisation of a recognised stock exchange in India is carried out in accordance with a scheme for demutualisation or corporatisation which is approved by the SEBI established u/s 3 of the SEBI Act, 1992

Sec 47(xiiia) - any transfer of a capital asset being a membership right held by a member of a 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 which is approved by the SEBI established u/s 3 of the Securities and Exchange Board of India Act, 1992

Sec 47(xiiib) - any transfer of a capital asset or intangible asset by a private company or unlisted public company (hereafter in this clause referred to as the company) to a LLP or any transfer of a share or shares held in the company by a shareholder as a result of conversion of the company into a LLP in accordance with provisions of section 56 / 57 of the LLP Act, 2008.
Provided that-
a) all the assets and liabilities of the company immediately before the conversion become the assets & liabilities of LLP;
b) all the shareholders of the company immediately before the conversion become the partners of the LLP and their capital contribution and profit sharing ratio in the LLP are in the same proportion as their shareholding in the company on the date of conversion;
c) the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the LLP;
d) the aggregate of the profit sharing ratio of the shareholders of the company in the LLP shall not be less than 50% at any time during the period of 5 years from the date of conversion;
e) the total sales, turnover or gross receipts in the business of the company in any of the 3 PYs preceding the PY in which the conversion takes place does not exceed ₹60lakh;
ea) the total value of the assets as appearing in the books of account of the company in any of the 3 PYs preceding the PY in which conversion takes place doesn't exceed ₹ 5 cr; &
f) no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of 3 years from the date of conversion.

Sec 47(xiv) - where a sole proprietary concern is succeeded by a company in the business carried on by it as a result of which the sole proprietary concern sells or otherwise transfers any capital asset or intangible asset to the company.
Provided that-
a) all the assets and liabilities of the sole proprietary concern relating to the business immediately before the succession become the assets and liabilities of the company;
b) the shareholding of the sole proprietor in the company is not less than 50% of the total voting power in the company and his shareholding continues to remain as such for a period of 5 yrs from the date of the succession; and
c) the sole proprietor does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the company;

Sec 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 the SEBI, established u/s 3 of the SEBI Act, 1992 or the RBI constituted u/s 3(1) of the Reserve Bank of India Act, 1934, in this regard;

Sec 47(xvi) - any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the CG;

Sec 47(xvii) - any transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferor.

Sec 47(xviii) - any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating scheme of a mutual fund, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund.

Provided that the consolidation is of two or more schemes of equity oriented fund or of two or more schemes of a fund other than equity oriented fund.
Explanation - For the purposes of this clause,-
"consolidated scheme" means the scheme with which the consolidating scheme merges or which is formed as a result of such merger;
"consolidating scheme" means the scheme of a mutual fund which merges under the process of consolidation of the schemes of mutual fund in accordance with the SEBI (MutualFunds) Regulations, 1996 made under the SEBI Act, 1992;
"equity oriented fund" shall have the meaning assigned to it in sec 10(38);
"mutual fund" means a mutual fund specified u/s 10(23D);

Sec 47(xix) - any transfer by a unit holder of a capital asset,being a unit or units, held by him in the consolidating plan of a mutual fund scheme, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated plan of that scheme of the mutual fund.
Explanation - For the purposes of this clause,-
"consolidating plan" means the plan within a scheme of a mutual fund which merges under the process of consolidation of the plans within a scheme of mutual fund in accordance with the SEBI (Mutual Funds) Regulations, 1996 made under the SEBI Act, 1992;
"consolidated plan" means the plan with which the consolidating plan merges or which is formed as a result of such merger;
"mutual fund" means a mutual fund specified u/s 10(23D).

CAPITAL GAINS

Particulars	Sec 54	Sec 54B	Sec 54D	Sec 54EC
Assets Transferred	Residential house property (i.e. building/land appurtenant thereto) whose income is taxable under "HP"	Urban Agriculture Land [Because Rural Agri Land is not a CA]	Land/building of industrial undertaking which is transferred in compulsory acquisition.	Land & Building
Who can claim exemption	Individual/HUF	Individual/HUF	Any Assessee	Any Assessee
Period of use /possession of asset	The asset so transferred should be a Long Term Capital Asset.	The agri land should be used by him/parents, for agri purpose for at least 2 years before transfer.	Such L&B should be used by assessee for industrial undertaking for at least 2 yrs before such transfer. It is not necessary that such L&B should be owned by the Assessee for stipulated period of 2 yrs	Any long term capital asset
Nature of CG, eligible for exemption	Long term	Long term/ short term	Long term/ short term	Long term
Eligible New Asset	RHP (whether acquired/ constructed) in India [If CG does not exceed ₹2cr then he can purchase 2 RHP] FA.2019 (Option available once in lifetime)	Agri land (whether in rural area or in urban area).	Land/building for industrial purpose	Bonds of NHAI/ REC/Power Fin. Corp,/ Indian railway fin. Corp, /Any bond Notified By CG(redeemable after 5 yrs, Max ₹50L during any FY)
Max period allowed for investment	If purchased- 1 year before/2 yrs after date of such transfer. If constructed - 3 yrs after date of such transfer.	Within 2 yrs from the date of such transfer	Within 3 yrs from date of receipts of amount of compensation in respect of such transfer.	Within 6 m from date of such transfer
Exemption	Amount Invested/CG Whichever is Lower.			
Treatment of unutilized amount	Upto the date of furnishing of income tax return, the unutilised amount of such CG should be deposited into "Capital gain deposit account scheme".			
New asset is transferred- tax treatment	Where such asset is transferred within a period of 3 year from the date of its acquisition/construction, the COA of such asset will be reduced by the amount of exemption so withdrawn.			Amount of CG exempted earlier will now be taxable as LTCG in year of transfer. Note: transfer includes conversion into money.

Particulars	Sec 54F	Sec 54EE	Sec 54G	Sec 54GA
Assets Transferred	Any LTCA other than residential house	Any LTCA	P&M or L&B for shifting industrial undertaking from urban to rural area	P&M or L&B for shifting industrial undertaking from urban to SEZ
Assessee	Individual/HUF	Any Assessee	Any Assessee	Any Assessee
Nature of CG,eligible for exemp.	Long term	Long term	STCA/LTCA	STCA/LTCA
Eligible New Asset	One RHP(whether acquired/ constructed) Note: But on date of transfer, should not own more than one RHP (other than this new house)	Investment of whole or any Part of CG in "LT specified assets" as stipulated in the sec.	a) purchase/construction of new P&M, L&B in such rural area; b) shifting original assets to that area; c) incurring notified expenses	a) purchase/construction of new P&M, L&B in such SEZ; b) shifting original assets to that area; c) incurring notified expenses d) P&M maybe second hand
Max period allowed for investment	If purchased- 1 year before/2 yrs after date of such transfer. If constructed - 3 yrs after date of such transfer.	Investment should be made within 6 M from date of transfer	1 year before/3 yrs after date of such transfer.	1 year before/3 yrs after date of such transfer.
Exemption	Proportionate capital gain i.e.- Total X Amount CG invested in new asset / NC	Amount Invested or CG whichever is lower Subject to Max.50L	Amount Invested or CG whichever is lower	Amount Invested or CG whichever is lower
Treatment of unutilized amount	Upto the date of furnishing of IT return,the unutilised amount of such CG should be deposited into "CG deposit account scheme".	-	Amount unutilzed at the end of 3 yrs shall be chargeable to CG	Amount unutilzed at the end of 3 yrs shall be chargeable to CG
New asset is transferred- tax treatment	> Where new house is transferred within 3 yrs: i) CG on such transfer will be STCG. ii) CG exempted under this sec will be taxable as LTCG. > With 2 houses in hand, assessee purchases/ constructs another house within 2/3 yrs as the case may - CG exempted under this sec will be taxable as LTCG.	If New Asset is transferred before 3 yrs from date of purchase/ construction, the CG exempted earlier will be chargeable to tax in year of transfer of new asset	If New Asset is transferred before 3 yrs from date of purchase/ construction, then COA of new asset reduced by exempted CG	If New Asset is transferred before 3 yrs from date of purchase/ construction, then COA of new asset reduced by exempted CG

Particulars	Sec 54GB
Assets Transferred	Residential House before 31.03.2021 [FA'20]
Assessee	Individual/HUF(R/NR)
Nature of CG,eligible for exemp.	Long term
Eligible New Asset	Subscription in equity shares of Eligible Co & Co within 1 yr from date of subscription utilised amount for purchase of new asset (P&M)
Max period allowed for investment	Shares should be subscribed upto due date of return filing
Exemption	Cost of new PM X CG / NC
Treatment of unutilized amount	Amount unutilzed at the end of 5 yrs shall be chargeable to CG
New asset is transferred- tax treatment	If equity share or new P&M transferred within 5yrs/in case of new asset being - computer / computer software then it will be 3 years [FA'20] from date of subscription/ acq then exempt CG taxable in the PY of transfer of equity share or new P&M in hands of Assessee (Ind/HUF)

Special Points :

Sec 54GB :

> Elgible Company means -
- # Co incorporated In India during 1st april of PY relevant to AY in which CG arises to due date of furnishing the ROI u/s 139(1) by Assessee
- # Engaged in Eligible business
- # Co in which Assessee has more than 25% share capital/voting rights after subscription of shares
- # Co qualifies to be an Eligible Start Up

> Eligible business means - Eligible start up engaged in innovation, development or improvement of products or process or service or a scalable business model with a high potential of employment generation or wealth creation

> Eligible Start Up means a Co that satisfies the following conditions:
1) Incorporated between 01/04/17 to 01/04/21
2) Total turnover of business does not exceed 100cr in any PY in which deduction u/s 80IAC claimed
3) Holds certificate of Eligible Business from IMBC as notified by CG

> New asset means new P&M but does not include
- P&M which before its installation by assessee was used within or outside India by any other person
- P&M installed in any office premise or any Residential accommodation including guest house
- Any office appliance including computer/software
- Any vehicle or
- P&M the whole of the actual cost of which allowed as 100% deduction under PGBP

Sec 54F :

Additional conditions for availing exemption is Assessee should not purchase any Residential Hpuse within prescribed limit, other than the New Asset.

Sec 54H : Extension of time limit for acquiring new asset

Where trf of CA is by compulsory acquisition under any law, then, Time limits for acquiring new asset & for depositing in CGAS shall be computed from date of receipt of compensation & not compulsory acquisition

INCOME FROM OTHER SOURCES

SEC 56

SEC 56(1):
Income of every kind which is exempt & not chargeable to tax under any of the other head, shall be chargeable under Income from Other Sources.

1. Casual income.
2. Interest on compensation & enhance compensation.
3. Income from subletting of HP.
4. Rent from a vacant plot.
5. Composite Rent Non-seperable.
6. Advance money forfeited.
7. Director sitting fees.
8. Agriculture Income from foreign.
9. Dividend
10. Gift
11. Sum recived under keyman Insurance policy including sum by way of Bonus.
12. family Pension
13. Interest on Loan/ securities.
14. Income of MP,MLA.
15. Interest on income tax refund
    Income tax refund is not an Income
16. Royalty
17. Any compensation or other payment received by any person in connection with the termination of his employment or the modification of the terms and conditions relating thereto.
18. Income from Undisclosed Sources.
19. Income from Letting of P&M & Furniture
20. Issue of share @ premium.

ADVANCE MONEY FOREFEITED

Forfeited on or after 01.04.2014 is taxable under IFOS

INTEREST ON COMPENSATION & ENHANCE COMPENSATION

Such interest is taxable in IFOS in the year of receipt & 50% of such interest is allowed as deduction (Sec 57), irrespective of the year to which it pertains.

SEC 56(2)(x) TAXATION OF GIFTS

FMV = Rule 11UA

- **money**
  - Cash,Bank,ECS received from person/persons in excess of Rs.50,000 " The Whole Amount is Taxable".
- **Immovebale property**
  - Without Consideration: If SDV exceed 50,000 " The Whole SDV is Taxable".
  - Inadequate Consideration: If SDV exceed consideration if amount of such excess is more than the higher of- 1) 50,000 2) amount equal to 10% of consideration
- **movebale property**
  - Without Consideration: If FMV exceed 50,000 " The Whole FMV is Taxable".
  - Inadequate Consideration: If FMV - Consideration exceed 50,000 " The Whole difference is Taxable".

* Gift by Resident to NR made oustide India shall deemed to accrue or arise in India
* Board shall prescribe transactions undertaken by class of Person to which Sec 56(2)(10) & 50CA shall not be applicable w.r.rt determination of FMV on unlisted shares

Sec 56(2)(x) applicable only if property is a Capital Asset of recipient, if it is Stock in trade then this sec is not applicable (CBDT Circular)

GIFT RECEIVED FROM FOLLOWING IS EXEMPT:
a) Gift from any relative
b) On the occasion of the marriage of the individual
c) Under a will or by way of inheritance or in contemplation of Death
d) From any local authority,University, Educational Institute u/s 10[23]
e) From any trust or institution registered under section 12AA
f) By way of transactions not regarded as transfer under clause (i) or (iv) / (v) / (vi) / (via) / (viaa) / (vib) / (vic) / (vica) / (vicb) /(vid) / (vii) of sec 47
g) Given by Individual to trust for benefit of Relative.
h) Such class of person & subject to such condition as may be prescribed.

PROPERTY MEANING

i) Immovable property being land or building or both;
ii) Shares and securities
iii) Jewellery & Bulllion
iv) Archaeological collections
v) Drawing
vi) Paintings
vii) Any work of art
viii) Sculptures

RELATIVE MEANING

> Spouse of the Individual
> Brother/Sister of the Individual/Spouse of the Individual
> Brother/Sister of either of the Parents of the Individual
> any lineal ascendant/descendant of the Individual
> any lineal ascendant/descendant of the Spouse of the Individual
> Spouse of the person referred to in clause (ii) to (vi)
> In case of HUF - any member

NOTIFICATION 96/2019

Sec 56(2)(x) is not applicable if immovable property is received by a resident of unauthorised colony in national capital territory of Delhi, when CG by notification regularise such transaction which are based on latest power of attorney, agreement to sell, will / possession letter & other document evidencing payment for the right of ownership or transfer or mortegage in regards to such property.

Stamp Duty Value as on the date of agreement can be considered if full / part consideration is received by account payee cheque / draft / ECS / other mode as may be prescribed (Refer CG)

CASUAL INCOME

Income by way of
- Lottery
- Horse races
- Betting
- Card Game
- Crossword puzzel
- Games of any sort

Notes:
1. Sec.58(4),no deduction is allowed from such Income
2. U/s 115BB it is taxable @ 30%
3. Deduction u/s 80C-80U is not available
4. Generally casual Income is Received after TDS [Net of TDS] Hence we need to Gross up.
   grossing up = Amount received / 100 -TDS Rate
   > If Problem gives Net amount gross it
   > If nothing is given assume it is Gross up
5. Lottery held as stock in trade taxable in PGBP.

TAXATION OF DIVIDEND & DEEMED DIVIDEND

From the year 2003 Dividend paid by Company and Mutual Fund was subject to DDT and hence it was exempt in the hands of Shareholder. This was made because it was easier to collect the tax at the single point however with the advent of technology & tracking system the justification of current system of Taxation has outlived itself.
Company used to pay DDT u/s 115O [Discussed here] & mutual Fund were liable to Deduct u/s 115R
The FA 2020 has abolished the DDT and has moved to the Traditional System of Taxability of Dividend.

COMPANY'S LIABILITY

Sec	Provisions before 1.4.2020	Provisions after 1.4.2020
115-0	Company is Liable to DDT on dividend declared & Paid.	Company is not liable to DDT
194	Company is not liable to Deduct TDS on dividend paid u/s115-O	Company would be liable to deduct TDS
80M	Was not in existence.	Interoperate Dividend allowed as Deduction.[Refer section]

SHAREHOLDER'S LIABILITY

Sec	Provisions before 1.4.2020	Provisions after 1.4.2020
-	Shareholder was not liabl to Tax till ₹10L	Now shareholder is liable to tax on dividend from single Rupee.
-	The Tax rate beyond ₹10L was 10%	Now dividend is treated as normal income and liable to Tax as per slab rate.
57	No deduction is allowed from dividend income	Deduction is allowed from dividend Income maximum upto 20% of Dividend Income.
10[34]	Dividend income is exempt upto ₹10L	Now this exemption is not available.

SEC 8 DIVIDEND INCOME

1) Interim Dividend shall deemed to be income of PY in which such dividend is made available by company to member
2) Dividend includes deemed dividend u/s 2(22)(a) to (e).

TAXABILITY OF DIVIDEND IN THE HANDS OF SHAREHOLDER

1) From 01.04.20, dividend income is taxable in the hands of shareholder

2) The PY in which dividend is taxable :

Type of Dividend	PY in which it is taxable
Interim Dividend	Taxable in the year in which it is received
Final Dividend	Taxable in the year in which it is decalred at AGM
Deemed Dividend Sec 2(22)(a) - (e)	Taxable in the year in which it is distributed or paid

3) Surcharge on Dividend

For Individual & HUF - The surcharge on dividends & capital gains u/s 111A / 112A shall not exceed 15%
a) Upto 50lakhs — No surcharge
b) Exceeds 50L upto 1cr. — 10%
c) Exceeds 1cr upto 2cr — 15%
d) Beyond 2cr. — 15% only

4) Allowability of Expenses from Dividend Income

1) Sec 57 provides that while computing the dividend income, interest expense is allowed lower of
   a) Actual interest
   b) 20% of dividend income before such deduction
2) No expenses except above shall be allowed as deduction

5) When Dividend is received by NR & Foreign Company

1) Dividend income is taxable (as per Sec 115A the tax rates will be 20%)
2) The Payer Company shall deduct the TDS u/s 195 @ 20%

6) When Dividend is received by Company

Company also invest in the shares of another company & it also receives dividend which is taxable to the Company
Company at the same time also pays the dividend & therefore, FA'20 has inserted a new section 80M for deduction in respect of inter-corporate dividends

Sec 80M Deduction in respect of certain inter-corporate dividend

Sec 80M(1) - Where the gross total income of a domestic company in any PY includes any income by way of dividends from any other domestic company or a foreign company or a business trust, there shall, in accordance with and subject to the provisions of this section, be allowed in computing the total income of such domestic company,a deduction of an amount equal to so much of the amount of income by way of dividends received from such other domestic company or foreign company or business trust as does not exceed the amount of dividend distributed by it on or before the due date.

Sec 80M(2) - Where any deduction, in respect of amount of dividend distributed by domestic company, has been allowed under sub-sec (1) in any PY, no deduction shall be allowed in respect of such amount in any other PY.

Explanation - For the purposes of this sec, the expression "due date" means the date one month prior to the date for furnishing the return of income u/s 139(1).

DEEMED DIVIDEND

Sec	Particulars	Relevant point
2(22)(a)	Any distribution by a company, to the extent of accumulated profits (capitalised or not), resulting release of its assets to its shareholders #Issue of bonus shares is not deemed dividend. # When assets are distributed, FMV of asset as on date of distribution has to be taken.	Amount of dividend = FMV of assets as on the date of distribution has to be taken for calculation of dividend
2(22)(b)	Any distribution to its shareholders by a Co > of debentures/debenture-stock/deposit certificates, > of bonus to its preference shareholders, > to the extent of accumulated profits (capitalised or not).	If bonus shares are issued to equity shareholders, it does not amount to distribution of dividend.
2(22)(c)	Any distribution to the shareholders of a Co on its liquidation, to the extent of its accumulated profits (capitalised or not).	In such case, there will be no CG in the hands of the CO u/s 46(1), however, the shareholder will be subject to CG.
2(22)(d)	Any distribution to its shareholders by a Co. on the reduction of its capital, to the extent of accumulated profits (capitalised or not).	
2(22)(e)	Loans & Advances by Closely Held Company: 1.Loan & Advances by Private Co[closely held co] is treated as Deemed Dividend to the extent of accumlated profit & company is required to pay DDT @ 30%. 2. Accumalated profit means profit as per companies Act 3. Substiantial Interest in case of companies shall be 10% of voting rate in case of other concern it shall be 20% of profit or voting right 4.Tarulata Shyam v. CIT (SC): Section is applicable at the time when loan is given hence even if loan is repaid during the year then also sec applies. 5.It is not applicable in case of trade advances.[Cir 19/2017] 6.Accumulated profits means all profit which is available for distribution or payment of dividend & u/s 2[22][c] all profits up to date of liquidation. 7.In case of an amalgamated company. Accumulated profits, whether capitalized /not/loss as the case may be shall be increased by accumulated profits whether capitalized/not of amalgamating company on date of amalgamation. Dividend Does not Include: a) Loan, Advances given in the ordinary course of Business. b) buy back of shares c) Any Dividend which is setoff by company against loan which has been deemed as dividend u/s 2[22][e] d) share alloted to shareholder of demerged company by resulting Co.[under the scheme of demerger] e) Any distribution made u/s 2[22][c]/2[22][d] in respect of prefrence share	

LIABILITY OF COMPANY

The Payer Company now not liable to deduct Tax u/s 115-O
The Payer Company is liable to deduct TDS u/s 194 in case of Resident whereas Sec 195 in case of Non Resident

FOR PERSONAL NOTES

INCOME FROM OTHER SOURCES

SEC 194 TAXATION OF DIVIDEND IN CASE OF RESIDENT

Payer [Deductor]	Principal officer of any Indian Co / a company which has made prescribed arrangements for the declaration and payment of dividends (including dividends on preference shares) within India
Payee[Deductee]	Shareholder being Resident
Limit	The dividend is paid by the company by any mode other than cash [FA'20] & the amount of such dividend or, as the case may be, the aggregate of the amounts of such dividend distributed or paid or likely to be distributed or paid during FY by company to shareholder, does not exceed ₹5,000 [FA'20]
Rate	10% [FA'20]
Time of Deduction	before making any payment by any mode [FA'20] in respect of any dividend or before making any distribution or payment
Special points	This section shall not apply to such income credited or paid to- a) the LIC of India established under the LIC Act, 1956, in respect of any shares owned by it or in which it has full beneficial interest; b) the GIC of India (hereafter in this proviso referred to as the Corporation) or to any of the 4 companies (hereafter in this proviso referred to as such company),formed by virtue of the schemes framed u/s 16(1) of the General Insurance Business (Nationalisation) Act,1972, in respect of any shares owned by the Corp or such company or in which the Corporation or such company has full beneficial interest; c) any other insurer in respect of any shares owned by it or in which it has full beneficial interest.

SEC 195 TAXATION IN CASE OF NR

TDS shall be deducted @ 20%

SEC 115BBD DIVIDEND RECEIVED BY INDIAN COMPANY FROM FOREIGN COMPANY

Dividend received by Indian Company from Foreign Company where Indian Company holds 26% or more equity share capital of a Foreign Company & such foreign company pays dividend, then such dividend is taxable in the hands of Indian Company (+ Surcharge if total income > 1cr. of Indian Company + HEC @ 4%)

Note : No other expense shall be allowed against dividend, means Gross Dividend is taxable in the hands of Indian Company @ 15%.

SHARE ISSUED AT PREMIUM

If a closely held company [Private Co.] issued to share to a resident shareholder on premium then consideration (-) FMV = IFOS

Exception : 1) Premium received by Venture Capital Undertaking &
2) Person specified by Central Govt (as of now Cat I AIF is specified)
Issue of Share at Premium by Category II AIF shall be exempt [FA'19]

Notification By CG - notification w.e.f 19.02.2019:
Startup shall be elegible for Exemption u/s 56(2)(viib)(ii) if following conditions mentioned are satisfied.

Meaning of Startup:
A company would be considered as startup if following conditions are satisfied:
Period - Considered Start up upto a period of 10 yrs from date of incorporation/registration, if it is incorporated as private ltd co in India
Turnover limit - Turnover for any of the FY(s) since incorporation/ registration has not exceeded 100 cr.
Object & Purpose - Co is working towards innovation, development/ improvement of products or processes or services or if it is scalable business model with a high potential of employment generation or wealth creation.
However, Pvt Ltd Co shall not be considered as startup, if it formed by splitting up or reconstruction of an existing business.
Conditions to be satisfied :
a) Recognized by Dept for Promotion of Industry & Internal Trade as start up as per this or earlier notification on the subject.
b) Aggregate amount of paid up capital & share premium of startup after issue/proposed issue of shares, if any, does not exceed, 25Cr.

However, in computing aggregate amount of Paid up ,share capital amount of paid up share capital, amount of paid up share capital & share premium of 25cr w.r.t shares issued to following not be included:
1) Non-resident 2) Venture Capital Co/Fund
3) Specified Co : means a Co whose shares are frequently traded within the meaning of SEBI(Substantial Acq of Shares & Takeovers) Regulations,2011 & whose net worth on last date of FY preceeding the year in which shares are issued exceeds 100 cr or turnover for FY preceeding year in which shares are issued exceeds 250cr.
It has not invested in any of following assets :
i) Building or land appurtenant thereto, being a residential house, other than that used by Startup for rent or held as Stock in ordinary course of business.
ii) Land or building or both, not being reisdential, other than that occupied by Startup for its business or used by it for purpose of renting or held by it as Stock in the ordinary course of business
iii) Loans & advances, other than those extended in ordinary course of business by Startup where the lending of money is substantial part of business
iv) capital contributions made to any other entities
v) shares & securities
vi) Motor vehicle, aircraft, yacht or any other modeof transport, the actual cost of which exceeds 10L other than that held by Startup for purpose of plying,hiring, leasing, or as Stock in trade in the ordinary course of business
vii) Jeweller other than that held as stock in ordinary course of business
viii) any other asset, whether in nature of capital asset/archaelogical collections, drawing, painting, sculptures, any work of art or bullion.
However, it should not invest in any of the assets mentioned above for more than 7yrs from end of latest FY in which shares issued at premium.

Proviso issued by FA'19: If Co fails to comply with conditions mentioned, then any consideration received as premium shall deemed to be the income chargeable to tax for PY in which failure has taken place & shall also be deemed that Co has under- reported said income as referred to in Sec 270A for said PY.

FAMILY PENSION

Normal		Deceased was receipent of gallantry award	Deceased was working in armed forces
Actual rcvd	xx		
[-] Lower of 1/3rd of pension 15000p.a.	(xx)	Exempt u/s 10[18]	Exempt u/s 10[19]
Taxable	xx		

Pension received to family member of Deceased.

DEDUCTION ALLOWED U/S 57

1. Expenditure for realising dividend or interest from UTI/MF only Interest exp allowed & that too 20% of such dividednd / income from UTI / MF
2. Employees' contribution towards relevant fund(s) before the due date as per that Act [Sec. 57(ia)]
3. Repair, depreciation, insurance of plant, machinery, furniture, building
4. Standard deduction in case of family pension lower of 1/3rd of Pension
5. Other deductions incured for business is allowed as deduction.Sec57(iii)
6. 50% of the amount of interest on compensation or enhanced compensation

Following proviso shall be inserted in sec 57 by FA'20, w.e.f. 1-4-21 :
Provided that no deduction shall be allowed from dividend income, or income in respect of units of a MF specified u/s 10(23D) or income in respect of units from a specified company defined in the Expl. to sec 10(35), other than deduction on account of interest exp., & in any PY such deduction shall not exceed 20% of dividend income, or income in respect of such units, included in the total income for that year, without deduction under this section.

DEDUCTION NOT ALLOWED U/S 58

a) Any personal expenses of the assessee.
b) Any interest or salary payable outside India on which tax has not been
c) Any sum paid on account of Wealth-Tax
d) The provisions of section 40A shall apply mutatis-mutandis
e) Expenditure related to casual Income

SEC 94[7] DIVIDEND STRIPPING TRANSACTIONS

If any person buys/acquires any security/units at any time within 3M prior to record date & Sell/transfer within 3 M after such record date Or units within 9 Ms of record date & Dividend/income from such securities are exempt from tax [u/s 10[34]/[35] Then Loss arising from transfer of such securities or units shall be ignore to the extent income claimed to be exempt. Lets Asssume the security is transferred then calculation shall be

Particulars	₹
FVC	xxx
[-] COA [ST]	[xxx]
Loss	[xxx]
Less: Dividend u/s 94[7]	xxx
Balance Loss can be C/f	xxx

SEC 94[8] BONUS STRIPPING TRANSACTIONS

If any person buys or acquires any units(not security) at any time within period of 3 months prior to record date & he is being allotted bonus unit & Sell or transfer all original units within a period of 9 months of record date while continue to own bonus shares Then Loss arising from transfer of such units shall be ignored. Loss so ignored shall deemed to be cost of acq of those bonus units

SEC 94[1] BOND WASHING TRANSACTION

Where owner of any security sell or transfer those security before due date of interest and buy back or reacquire the security after the due date then if result of transaction is that any interest become payable in respect of those securities is receivable by transferee,interest deemed to be income of transferor of securities.
Exception to above section: 1) If there has been no avoidance of Tax.
2) If the avoidance was exceptional and nit systematic and there was no avoidance of income tax by the Assessee during the 3 PY.

FOR PERSONAL NOTES

TAXABILITY OF FIRM

TAXABILITY OF FIRM

a) Firm residential Status is covered u/s 6(4)
b) Tax Rate :- 30% + Surcharge 12% (If Applicable) + HEC[4%]
[Special rate Like LTCG-20%, STCG-15%, LTCG u/s 112A @ 10% (beyond 1L).
c) Share of Firm/LLP is Exempt u/s 10[2A]
d) Interest , Remuneration & commission is Taxable under PGBP & subject to Limit u/s 40[b]
e) Losses of Firm shall be c/f by firm & shall not be allocated to Partner
f) Income calculation: as per normal provision out of various head (Sec.15-59)
g) Deduction u/s 80C-80U available
h) Sec.44AD is not applicable to LLP
i) Sec.139 applicable, hence, ROI is mandatory

SEC 188A JOINT & SEVERAL LIABILITY OF PARTNERS FOR TAX PAYABLE BY FIRM

In case of Firm/ LLP, all partner are jointly & severally liable for tax liability of Firm, for the Year in which such person were part at any time during PY.

TAXABILITY OF PARTNER

a) Partner generate following Income from the firm & these income are taxable in the head PGBP to Partner.

S.No	Income	Taxability
1	Share of firm/LLP	Exempt u/s 10(2A)
2	Remuneration/salary	Subject to limit of Sec.40(b)
3	Interest on capital/Advance	
4	Commission	

b) Any other income of partner apart from firm shall be taxable in his individual capacity in respective head for eg: interest on saving bank account taxable in IFOS

c) Partner can take deduction of such expense which is incurred for earning the income

SEC 40(b) MAXIMUM LIMIT ON INTEREST/ REMUNERATION

REMUNERATION
Condition for remuneration:-
- Remuneration should be paid only to a working partner
- Remuneration must be authorised by the partnership deed
- Remuneration should not pertain to period prior to partnership deed
- Remuneration should not exceed the permissible limit

Maximum Permissible Limits
In case of any partnership firm

Book Profit	Limit
On the First ₹ 3,00,000 of the Book Profit or in case of a loss.	₹ 1,50,000 or at the rate of 90 % of Book Profits,
On the balance of book profits.	whichever is higher. At the rate of 60 % of book profits.

TAXABILITY OF FIRM

Note : While making adjustment in Step 2 above, following to be noted:
a) Book Profit =

Income from PGBP as per Normal Provision after making all adjustment u/s 28-44[(-) Current year (+) b/f depreciation]	XXX
Add: Interest /remuneration paid or payable to partners [if debited]	xxx
Less: Interest allowable u/s 40(b)	[xxx]
Books profit	

b) Income chargeable under 'HP', 'CG' & 'IFOS' will not form part of 'Book Profits'.
c) Remuneration include commission for the purpose of Sec.40[b]
d) B/f business loss will not be deducted from profits.
e) Permissible deductions from gross total income shall be ignored.
f) As per ACIT vs great city manufacturing co it was held that once sec.40(b) is allied sec.40(A)(2) cannot be applied.
g) Any payment made beyond limit be disallowed while computing PGBP of firm

Expl 1 to 40(b) - If Individual is a partner in a firm, on representative capacity & receiving interest on individual capacity, then Sec 40(b) is not applicable. (which means interest beyond 12% is also allowed)

Expl 2 to 40(b) - If Individual is a partner in a firm, on individual capacity & receiving interest on representative capacity, then Sec 40(b)is not applicable. (which means interest beyond 12% is also allowed)

The above explanations are only for interest & not remuneration, Remuneration shall be limited to the limits of Sec 40(b)

INTEREST
Condition for claiming interest:-
- Payment of interest should be authorised by Partnership deed
- Payment of Interest should pertain to the period after the Partnership deed
- Rate of interest should not exceed 12% pa simple interest

Interest paid to working as well as sleeping are both allowed

Act does not make difference between capital/loan. Interest on both is 12%. (Capital covers both fixed & circulating)

If firm pays interest to partner & partner pays interest to firm on drawing, it shall not be net off.

Deduction is lower of:
a) 12% of capital
b) Actual Interest
c) Amount given in deed

SEC 78 CARRY FORWARD OF LOSS

The Losses & unabsorbed depreciation of firm can be carried out by firm only.
If there is retirement of partner or death of partner then firm shall not c/f share of retired/ deceased partner in the losses of Firm. However sec.78 does not apply to unabsorbed depreciation so it can be c/f by firm even if partners dies or retire.

SEC 184 ASSESSMENT OF FIRM

A firm shall be assessed as a firm if
a. There is a partnership Deed
b. PSR should be specified in deed.
c. Deed should be furnished with first ROI / Change in constitution / profit sharing Ratio- certified copy of Deed must be sent to AO./ Dissolution of Firm:- Certified copy of Dissolution deed must be submitted

Consequences of Non compliance u/s 184 - 184(5)
There should not be any failure on the part of the firm otherwise it will lead to Best judgement Assessment u/s 144.

Sec.185: If for any AY firm do not comply with the provisions of Sec.184 then any payment of interest, salary, bonus, commission or remuneration, shall notbe allowed as deduction while computing business income u/s 28 (PGBP of Firm) & not Taxable to partner

SEC 187 CHANGE IN CONSTITUTION

Where at the time of making an assessment u/s.143/144/147/153A it is found that any change has occurred in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making assessment.[In short there will be single assessment as if there is no change]

Change in the constitution of the firm—
A) Retirement :- When one or more partner cease to exist in the firm
B) Admission
C) Change in profit sharing Ratio
D) Death:
1. Firm continue:- change in constitution
2. Firm do not continue:- Dissolution of Firm and if new partner/ remaining partner opens up new firm then there will be 2 Assessment

SEC 188 SUCCESSION OF FIRM BY ANOTHER FIRM

Separate assessments shall be made on the predecessor firm & the successor firm
Change in Constitution:- Only 1 ROI is filled
Succession :- 2 ROI for PY [Predecessor & successor]

SEC 189 FIRM DISSOLVED OR BUSINESS DISCONTINUED

In such a case AO shall make an assessment of Total income of the firm as if there is no discontinuance or dissolution had taken place

All the person who were partners immediately before dissolution / discontinue shall be jointly and severally liable for tax, penalty or other sum payable for relevant PY [Sec188A]

Similar provision exist for LLP u/s 167C

Sec.167C Liability of partner of LLP is not limited for the purpose of IT Act.

CASE LAWS

Case	Situation	Conclusion
CIT Vs Anil Hardware [2010]	Where the deed does not specify the remun--eration payable to each individual working partner but lays down the manner of fixing remuneration would the assessee firm be entitle to deduction in respect of remuneration paid to partners?	If manner is specified deduction can be claimed

TAXATION OF AOP/BOI

COMPUTATION OF TOTAL INCOME OF AOP/BOI

> Computation of total income in the case of an AOP/BOI will be done in the same manner as in the case of any other assessee.
> In computing total income, salary, bonus, commission,remuneration or interest paid to partners/members will not be allowed as deduction.[Sec.40ba]

Payment of Interest
Explanation 1:
AOP/BOI
"Pays Interest or receive Interest from Member only NET INTEREST SHALL BE DISALLOWED"

Explanation 2:
AOP/BOI

"Interest paid in representative capacity is allowed. But this is subject to 40[A][2]"
If an individual is member of an AOP/BOI in a representative capacity, on behalf of or for the benefit of another person, then interest paid by AOP/BOI to such individual in his personal capacity will not be taken into account for the purpose of disallowance.

SEC 167B TAXATION OF AOP/BOI

Rate of Taxation of AOP/BOI 167B
- Shares are Known
- Shares not known

Shares are not known

Where any member is company	Company Rate [FC: 40% + Cess]
Where no member is company	MMR [42.744%]

Shares are known :- Refer Chart

Shares are determinate & known
- If member is a company
  - On companies share: Companies Rate
  - On AOP share: MMR
- If no member is a company

Income of any member (Excluding share of AOP) exceed BEL	MMR
Income of any member (Excluding share of AOP) does not exceed BEL	Normal Tax Rate applicable to Individual.

My Notes:
MMR:- MMR = 30% + Surcharge @ 37% [Mandatory] + Cess @ 4% =42.744%

Loss of AOP/BOI shall be C/f by AOP/BOI only and shall not be allocated to members.

LTCG shall be taxed as per Sec.112 (20% or 10% as the case may be) & not rate specified in 167B. Further STCG 15% & LTCG u/s112A applicable if exceeds limit prescribed.

SEC 67A METHOD OF COMPUTING MEMBER'S SHARE

PARTICULARS	TREATMENTS
If AOP or BOI is taxed at MMR or higher rate	Share income of member is exempt in his hands
If AOP or BOI is taxed at rates applicable to individual	Share income u/s 67A is included in total income of the member but rebate u/s 86 read with Sec.110 at the avg. rate of tax is allowed
If AOP or BOI is not taxed at all	Share of income will be included and taxed in hands of member.

COMPUTATION FOR AOP/BOI

Particulars	₹
Net Taxable Income AOP/BOI	XXX
Less: Interest & Remuneration paid to Members	(xxx)
Net Taxable Income of AOP/BOI	XXX
This is allocated to member in their PSR	

My Note: IF ATI > 20L then AMT is applicable to AOP/BOI

COMPUTATION OF MEMBER INCOME

Particulars	₹
Other Income Member	XXX
Add: Apportionable share of Income as computed above	xxx
Add: Interest & Remuneration received from AOP	xxx
Total Income	XXX
Less: Interest paid for Loan taken for Investment in AOP/BOI	[xxx]
Less: Any other eligible deduction VIA	[xxx]
Total Income	XXX
Tax Liability (Incl. surcharge & cess)	XXX
Less: Rebate u/s 86	[xxx]
Tax Liability	XXX

Rebate u/s 86 read with Sec.110:
Tax Liability / Total Income x Share from AOP/BOI
> Rebate not available if Tax Payable by AOP/BOI is Nil
> Rebate shall be reduced after adding surcharge & cess
Steps to Solve:
a. Calculate total Income of AOP/BOI
b. Deduct Interest/ remuneration payable to member[Sec.40ba]
c. Apportion balance income among the Member in profit sharing Ratio & such apportion shall be done Head wise
d. Add/Adjust remuneration /Interest to the apportioned Income/Loss
e. The resultant figure is the members share in total Income of Firm
Romancing Analysis
Provision of setoff of member's share in losses shall apply as it was a loss derived by member himself in other words member shall be entitled to setoff his other loss with AOP's share of Income/Loss.
[AOP's loss shall be treated as Members Loss]

CASE LAWS

Sudhir Nagpal	Property was received under Inheritance. Mr Sudhir Nagpal Constructed property and gave it on rent 1st issue- Rental Income is PGBP or HP 2nd Issue- will it constitute separate AOP or taxable in the hands of member Held That: 1. Income will be HP 2. Since there is not Commonity of interest as no business is carried out hence it's a case of co ownership and not AOP.
Govind mamaiya [SC]	Inherited Land is given under compulsory acquisition CG arising shall be taxable As AOP or Co Ownership?? Held That: Since there is no Commonity Interest & no business is carried out it shall be co ownership.

SET OFF AND CARRY FORWARD

SEC 70 INTRA HEAD ADJUSTMENT

Particulars	Provisions	
Salary	There cannot be any loss in Head Salary.	
House Property	Loss from House property can be setoff against income from house property	
PGBP	Normal Business	Normal Business loss can be setoff against any Business Income
	Speculative Business	Speculative loss can be setoff only against Speculative Income
	Specified Business	Specified Business loss can be setoff only against specified business Income
Capital Gains	LTCL	LTCL can be setoff only against LTCG
	STCL	STCL can be setoff against any capital gains
Other Sources	Normal Loss	IFOS loss can be setoff against IFOS Income
	Loss from O & M Horse race	Horse race loss can be setoff only against Horse Race Income
	Loss from an Exempt Source	Loss from an expemt source cant be setoff CIT Vs. Tyagrajan

SEC 71 INTER HEAD ADJUSTMENT

Particulars	Provisions	
Salary	Loss from any head can be setoff against salary except PGBP & Unabsorbed Depreciation	
House Property	HP loss can be setoff with other head maximum upto Rs.2L [Within same Head unlimited].	
PGBP	Normal Business	Normal Business loss can be setoff against any Income except salary.
	Speculative Business	Speculative loss can be setoff only against Speculative Income
	Specified Business	Specified Business loss can be S/O only against specified business Income Sec.35AD
Capital Gains	General Rule	Loss from other head can be setoff against CG but loss from CG cant be setoff against other Head I.E.
	LTCL	LTCL can be setoff only against LTCG
	STCL	STCL can be setoff against any capital gains
Other Sources	Normal Loss	IFOS loss can be setoff against IFOS Income
	Loss from O & M Horse race	Horse race loss can be setoff only against Horse Race Income
	Loss from an Exempt Source	Loss from an expemt source cant be setoff CIT Vs. Tyagrajan

Following points should be noted in respect of section 70 and 71: No order of priority is given in the Act:Act does not prescribed any order of priority for s/o of losses, therefore, one should try to set off of those losses which cannot be set off in future /having shorter period
Once loss is C/f it can be setoff against same head of Income only.

SUMMARY CHART

Particulars	Set off: Intra head	Set off: Inter head	S 71B to 74A Rules to carry forward &set off past year losses.
House Property Loss	Yes	Yes	Sec 71B: • Brought forward HP loss can be set off only with HP. • It can be carried forward for 8 AY's. • Section 80 is not applicable. It means even if return of loss is not filed or filed late loss can be carried forward & set off. Maximum Setoff upto 2L
Business Loss	Yes	Yes, except Salary	Section 72 • Set off with both business income & speculation income. • Carry forward for 8AY. • Section 80 applicable. It means if return of loss is not filed or filed late business loss cannot be carried forward. • Assessee who has incurred the loss can only set off that loss [6 exception] • Even if business is discontinued business loss can be set off.
Speculation Loss (Same day sale & purchase i.e without taking delivery) Sec 43(5)	Yes	No	Section 73 • Past year speculation loss can be set off only with speculation income. • Carry forward for 4 AY. • Section 80 applicable. It means if return of loss is not filed or filed late speculation loss cannot be carried forward. • Assessee who has incurred the loss can only set off that loss [exception not applicable] • Even if business is discontinued business loss can be set off.
Loss under capital gain head	Yes; LT against LT only. ST against ST & LT	No	Section 74 • LT can be set off only with LT. ST can be set off with both LT & ST. • Carry forward for 8 AY. • Section 80 applicable. It means if return of loss is not filed or filed late Capital gain (loss) cannot be carried forward.
Loss from activity of owning & maintaining race horses	Yes	No	Section 74A • Past year horse loss can be set off only with horse income. • Carry forward for 4 AY. • Section 80 applicable. It means if return of loss is not filed or filed late business loss cannot be carried forward. • Assessee who has incurred the loss can only set off that loss [exception not applicable] • Even if business is discontinued business loss can be set off.
Loss from Lotteries	No	No	No
Other lossess	Yes	Yes	Yes

Notes :
Loss from lotteries :
No other loss can be set off against this income. Deduction u/s 57 not available. Deduction u/s 80C to 80U not available. Basic exemption not available. Flat rate 30%.

Other Losses :
In case of choice this loss should be set off first since it cannot be carried forward.

EXCEPTIONS TO THE RULE THAT ASSESSEE WHO HAS INCURRED THELOSS CAN ONLY BE SET OFF THAT LOSS [APPLICABLE TO S 72 & 32(2)]

72A. Accumulated business loss of amalgamating company can be carried forward and set off by amalgamated company.

72A. Accumulated business loss of demerged company can be carried forward and set off by resulting company.

72A. Conversion of sole proprietorship concern into a company.

72A. Conversion of firm into a company.

72A. Conversion of Pvt. limited Company to LLP or Unlisted Company to LLP. (Limited LiabilityPartnership).

78(2). Losses of business acquired on inheritance. Father dies and son inherits the business then son can set off the business loss.

SEC 79 SET OFF OF LOSSES IN CASE OF CLOSELY HELD COMPANY

Not Eligible for Startup

CONDITIONS FOR C/F OF LOSS
1) on the last day of the PY, the shares of Co. carrying not less than 51% of the voting power were beneficially held by persons
b) who beneficially held shares of the company carrying not less than 51% of the voting power on the last day of the year(s) in which the loss was incurred.

Eligible for Startup

CONDITIONS FOR C/F OF LOSS
1) on the last day of the PY, the shares of Co carrying not less than 51% of the voting power were beneficially held by persons who beneficially held shares of Co carrying not less than 51% of the voting power on the last day of the year(s) in which loss was incurred; or
2) all the shareholders of such company who held shares carrying voting power on the last day of the PY(s) in which the loss was incurred continue to hold those shares on the last day of such PY in which the loss is to be set-off and such loss has been incurred during the period of 7 yrs beginning from the year of incorporation of such company

Following changes in shareholding will not be considered as change in shareholding for the purpose of Sec 79 :
a) Change upon the death of share-holder
b) Change take place by way of gift to any relative
c) Change in shareholding of an Indian Co as a result of amalgam-ation / demerger of the foreign Co subject to the condition that 51% of the shareholders of the amalgamating / demerged foreign company continue in the amalgamated / resulting foreign company
d) Change as a result of resolution plan approved under the Insolvency & Bankruptcy Code 2016, after affording a reasonable OOBH to PCIT / CIT.
e) to a company, and its subsidiary & subsidiary of such subsidiary, where-
i) the Tribunal, on an application moved by the CG u/s 241 of the Companies Act, 2013, has suspended the Board of Directors of such company and has appointed new directors nominated by the CG, u/s 242 of the said Act; &
ii) a change in shareholding of a company, and its subsidiary & subsidiary of such subsidiary, has taken place in a PY pursuant to a resolution plan approved by the Tribunal u/s 242N of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional PCIT or CIT.

SEC 72A C/F & SET OFF IN CASE OF AMALGAMATION / SUCCESSION

Case	Accumulated Business Loss	can be c/f	Time Limit
Amalgamation [Sec 2(1B)]	Amalgamating Company	Amalgamated Co	Fresh Period of 8yrs
Demerger [Sec 2(19AA)]	Demerged Company	Resulting Co	Remaining period of 8yrs
Conversion of Firm/ proprietary into Co [Sec 47(xiii)/(xiv)]	Firm/Prop concern	Successor Co	Fresh Period of 8yrs
Unlisted Co into LLP [Sec 47(xiiib)]	Unlisted Co	LLP	Fresh period of 8yrs

RESIDENTIAL STATUS

BASICS OF RESIDENTIAL STATUS

1. Total Income of an Assessee cannot be computed unless we know residential status of the assessee during PY
2. RS is determined for each category of person seperately
3. RS always determined for PY because we have to determine the total income of the PY only
4. It is calculated for every year because it may change year to year
5. A person can be resident of more than one country for any PY
6. Citizenship of a country & RS of that country are different concept.
7. Onus of Proof

Individual/company	Burden lies on the Department
HUF,Firm,LLP	Assumed that they are Resident, Onus that they are not resident is on them.
Other Assessee	Is a question of Fact, it is the duty of assessee to provide all relevant fact.

RESIDENTIAL STATUS OF INDIVIDUAL

Determining Residential Status of individual (Sec 6(1))

Other Assessee not covered in the 3 categories

They would be treated as Resident if satisfy any of following condition-
a) If they stay in India for 182 days or more in PY OR
b) Stays in India for 60 days in PY AND 365 days in 4 Previous preceding years.

For 3 category of cases

1. Indian Citizen who leaves India in PY as a ship crew member of an Indian ship or for the purpose of employment outside India
   - They would be treated as Resident if they stay in India for 182 days or more in PY
2. Indian Citizen/Person of Indian Origin who being outside India comes on a visit to India in PY & total income (other than foreign income) is 15lakh or less
   - They would be treated as Resident if they stay in India for 182 days or more in PY
3. Indian Citizen/Person of Indian Origin who being outside India comes on a visit to India in PY & total income (other than foreign income) is exceeding 15lakh
   - They would be treated as Resident if satisfy any of following condition-
     a) If they stay in India for 182 days or more in PY OR
     b) If the period of stay is 120 days or more during the PY AND 365 days or more during the 4yrs immediately preceding PY

Deemed Resident

Sec. 6[1A] Notwithstanding anything contained in Sec 6(1), an individual, being citizen of India, having total income, other than the income from foreign sources, exceeding 15,00,000 during the PY shall be deemed to be resident in India in that PY, if he is not liable to tax in any other country / territory by reason of his domicile / residence / any other criteria of similar nature [FA'20]

As per Sec 6(6), If a person is deemed Resident as per Sec 6(1A) he shall deem to be RNOR.

Other Points :
If a person is resident as per Sec 6(1), then Sec 6(1A) shall not apply. Sec 6(1A) does not apply to an individual who is not a citizen of India but a person of Indian Origin

Rule 126 Computation of period of stay in India in certain cases -
An Individual, being a citizen of India and a member of the crew of a ship, the period of stay in India in respect of an eligible voyage shall not include the period beginning from the date of joining till the date of signing off as mentioned in the Continuous Discharge Certificate under the Merchant Shipping Act, 1958.
"eligible voyage" shall mean a voyage undertaken by a ship engaged in the carriage of passengers or freight in international

RESIDENTIAL STATUS FOR OTHER ASSESSEE

- Resident Sec.6[4] — If Control & Management Wholly or partly situated in India
- Non-Resident — If Control & Management Wholly Situated Outside India

RESIDENTIAL STATUS OF HUF

- Resident Sec.6[2] — If Control & Management Wholly or partly situated in India
  - If Karta Satisfies Section 6[6] → Whole HUF ROR
  - If Karta do Not Satisfies Section 6[6] → Whole HUF RNOR
- Non-Resident — If Control & Management Wholly Situated Outside India

Only Individual & HUF can be ROR/RNOR,other person can be Resident/NR

SEC 6(3) STATUS OF COMPANIES

- Indian Company → Always Resident
- Foreign Company
  - POEM in India → Then Resident
  - POEM outside India → Then NR

Sec 6(3) - A company is said to be a resident in India in any P. Y. if— it is an Indian company; or its place of effective management, in that year, is in India.

Explanation - "place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance made.

CONCEPT OF POEM : CIRCULAR 6/2017

POEM: Means place of effective management means a place where key management and commercial decisions that are necessary for conduct of business of an entity as a whole are in substance made.
Circular 8/2017 : POEM guideline shall not apply to a company (Foreign Co) having a turnover/gross receipts of 50Cr or less in FY.

Situation 1

If both the condition is Satisfied then POEM is not situated in India

1. Active Business Outside India [ABOI]
2. Majority BOD meeting held outside India

ABOI means if all condition is satisfied.

1. Less than 50% of the assets are situated in India.
2. Less than 50% of total Number of Employee are situated in India or are resident of India.
3. Payroll expenses incurred on such employee is less than 50% of total payroll expenditure.
4. If passive income is not more than 50% of its TI

Passive Income Means:

1. Income from transaction where both purchase and sales of goods is from /to its associate enterprises
2. Income by way of Royalty, Dividends, Capital gains, Interest [except banking co or PFI] or Rental Income.

Other points:
Deemed POEM in India: In case BOD is not exercising power of management & such powers are being exercised by either holding any other person resident in India, POEM shall be in India.

Situation 2

Determination of POEM would be two stage process

1. Identification or ascertaining the person who actually make the key & commercial decision for conduct as whole.
2. Place where decision are taken is more important than place where such decision are implemented i.e substance is important rather than form.

1.	Where BOD takes commercial Decision in substance	Place where key decision are taken.
2.	Power are delegated by board to committee	Location where executive committee & make decision
3.	Power are delegated by BOD to senior Manager or Person	Place where such person makes the decision
4.	Decision are made by shareholder which are reserved for shareholder	Location where decision are taken not relevant for determination of POEM
5.	Company operating in multiple location [Decentralized co]	Location where senior manager are primarily based
6.	In case of circular resolution & round robin voting	Location of the person who has the authority to take decision.
7.	Senior management may operate from different location and participate in various meeting via telephone or other medium	The location where heights level of management and their direct support staff are located.

SEC 5 SCOPE OF TOTAL INCOME & TAX INCIDENCE

INCIDENCE OF TAX FOR INDIVIDUAL & HUF

Income	ROR	RNOR	NR
Indian	Taxable in India	Taxable in India	Taxable in India
Foreign	Taxable in India	Only two type of Foreign income is taxable in India. [Refer Notes]	Not Taxable in India

Note : Income from business/profession which is set up in India

INCIDENCE OF TAX FOR OTHERS

Income	RESIDENT	NR
Indian	Taxable in India	Taxable in India
Foreign	Taxable in India	Not Taxable in India

Remittance of Income
Approved mode — Exempt in India
Unapproved Mode — Taxable In India

Past Foreign Untaxed Income brought to India - Not taxable in India
In order to understand relationship between residential status & Incidence it is necessary to understand meaning if Indian & Foreign income.

Indian Income:
1. Received In India
2. Deemed to be Received in India [Sec 7 & 8]
3. Accrued in India
4. Deemed to be accrued or arise in India

Foreign Income
Income is not received or not deemed to be received in India.
Income which does not accrue or arise in India.

DEEMED TO RECEIVE OR ACCRUE

Deemed to be received in India [Sec.7]

A) Contribution made by the employer to RPF beyond 12% of the salary [Upto 12% Exempt](Refer Salary)
B) Interest credited to Employee beyond 9.5% p.a. (Ref Salary)
C) Transfer from URPF to RPF
D) Contribution to pension fund u/s 80CCD (Refer Salary)

Business Connection
1. Business Connection
2. Deemed Business Connection
3. Not a Business Connection

Accrued In India [Sec.9]

1) Income out of Business Connection
2) Salary earned in India
3) Salary from government to an Indian citizen for services Rendered outside India
4) Dividend from Indian Co
5) Income from Interest payable by specified person
6) Income from Royalty
7) Income from Technical services
8) Income from Property/Assets situated In India
9) Income from transfer of Capital Assets situated In India
10) Gift by R to NR [FA'19]

FOR PERSONAL NOTES

RESIDENTIAL STATUS

What is Business Connection
"Business connection" shall include any business activity carried out through a person who, acting on behalf of the NR,-

a) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident or habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by that non-resident & the contracts are—
(i) in the name of the non-resident; or
(ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that NR or that NR has the right to use; or
(iii) for provision of services by NR; or

b) has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or

c) habitually secures orders in India, mainly or wholly for the NR or for that NR and other NRs controlling, controlled by, or subject to the same common control, as that non-resident.
Provided that such business connection shall not include any business activity carried out through a broker, general commission agent/an independent status

Not a business connection
a) Sale of goods for the purpoe of Exports.
b) NR Engaged in business of News Agency
c) Business other than the business having business connection in India on acco of significant economic presence of which all operations are not carried out in India.
d) NR Engaged in the shooting of cine film in India
e) Foreign companies enagged in display of uncut & unassorted diamond in India.

Deemed Business Connection
Explanation 2A - Deemed Business Connection - Significant Economic Presence -
significant economic presence of a non-resident in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean— transaction in respect of any goods, services or property carried out by NR with any person in India including provision of download of data or software in India, ifaggregate of payments arising from such transaction(s) during PY exceeds such amount as may be prescribed; or systematic and continuous soliciting of business activities/engaging in interaction with such number of users in India, as may be prescribed:

Provided that the transactions or activities shall constitute significant economic presence in India, whether or not—
(i) the agreement for such transactions/activities is entered in India; or
(ii) the non-resident has a residence or place of business in India; or
(iii) the non-resident renders services in India:

Provided further that only so much of income as is attributable to the transactions or activities referred to in clause (a) or clause (b) shall be deemed to accrue or arise in India. [FA'20]

Explanation 3 - Where a business is carried on in India through a person referred to in clause (a) / (b) / (c) of Expl. 2, only so much of income as is attributable to the operations carried out in India shall be deemed to accrue or arise in India.

Explanation 3A - For the removal of doubts, it is hereby declared that the income attributable to the operations carried out in India, as referred to in Explanation 1, shall include income from—
such advertisement which targets a customer who resides in India or a customer who accesses the advertisement through internet protocol address located in India;
sale of data collected from a person who resides in India or from a person who uses internet protocol address located in India; and sale of goods/services using data collected from a person who resides in India or from a person who uses internet protocol address located in India.
Provided that provisions contained in this Expl. shall also apply to the income attributable to the transactions/activities referred to in Expl. 2A. [FA'20]

Meaning of Royalty for the purpose of Various Section
"Royalty" means
consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains") for—
a) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property ;
b) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trademark or similar property
c) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property ;
d) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill ;
the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;
the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, including consideration for the sale, distribution or exhibition of cinematographic films; or [FA'20]
the rendering of any services in connection with the activities referred to in sub-clauses (i) to (iv), (iva) and (v).

SEC 9A PRESENCE OF ELIGIBLE FUND MANAGER IN INDIA NOT TO CONSTITUTE BUSINESS CONNECTION IN INDIA OF SUCH ELIGIBLE INVESTMENT FUND ON BEHALF OF WHICH HE UNDERTAKES FUND MANAGEMENT ACTIVITY

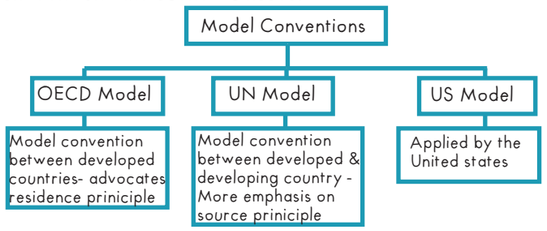
In case of an eligible investment fund, fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund, subject to fulfillment of certain conditions.Further he shall not be said to be resident in India merely because eligible fund manager undertaking fund management activities on its behalf, is in India.

FOR PERSONAL NOTES

OVERVIEW OF MODEL TAX CONVENTIONS

MEANING

In order to enable various countries, to enter into treaties, which are standardized to some extent, OECD & the United Nations (UN) have developed certain Model Tax Treaties, which various countries can take as starting point for negotiations between themselves & other countries
It is not legally binding & countries can make appropriate alternation as per environment and economic needs.



DIFFERENCE BETWEEN MODEL TAX CONVENTION

Particulars	OECD-MC	UNMC	USMC
Contains	VII chapters comprise of 32 articles	UN Model also contains VII chap but comprise of 31 articles	US Model comprises of 30 article
Applicable when DTAA between	Developed Countries Eg: UK & US	Developed & developing Eg: UK and India	When USA makes DTAA
Advocate	Residence Based Taxation	Mainly source Based Taxation	

TIE BREAKER RULE [REMEMBER DTAA BILATERAL RELIEF]

Where an individual is resident of both Contracting States. A series of tie -breaker rules are provided to determine single state of residence for an individual.
1st Test :- The 1st test is based on where the individual has permanent home, mean dwelling place available to him at all times continuously & not occasionally & includes place taken on rent for prolonged period of time.
where individual has a permanent home available to him in neither Contracting State. then preference is given to Contracting State where the individual has an habitual abode.
If the individual has habitual abode in both Contracting States or in neither of them, he shall be treated as a resident of the Contracting State of which he is a national.
If the individual is a national of both or neither of the Contracting States, the matter is left to be considered by the competent authorities of the respective Contracting States.
2nd Test :- If he has permanent home available in both Contracting States, he will be considered a resident of the Contracting State where his personal & economic relations are closer,
Thus, preference is given to family and social relations, occupation, place of business, place of administration of his properties, political, cultural & other activities of the individual.

In case of companies
Dual residence arises where one CS attaches importance to POI and the other CS to the POEM. tie-breaker test involves a case by case approach considering the no. of tax avoidance cases involving dual resident Cos. Request has to be made by the tax payer through Article 25 (MAP). Competent Authorities will rely on range of factors to resolve the question of dual residency

ARTICLE 1 PERSON COVERED

The OECD and UN Model Convention would apply to persons who are residents of one or both of the Contracting States.

OECD-MC	UNMC
Convention would apply to person resident in one/both CS	Identical to OECD
This conventions shall not affect the Taxation by Contracting State of its resident except with reference to benefit granted under different article	Identical to OECD

TITLE & PREAMBLE

OECD-MC	UNMC
"Convention between State A and State B for the elimination of double taxation with respect to taxes on income and on capital & prevention of tax evasion & avoidance"	The Title and Preamble to the UN MC is almost identical to that of OECD MC. The only minor difference is the reference to "tax avoidance and evasion" in the place of "tax evasion and avoidance" in the Title and Preamble.
Preamble: "(State A) and (State B), Desiring to further develop their economic relationship and to enhance their cooperation in tax matters	Identical to OECD
Interpretation: > OECD and UN MCs do not intend to create opportunities for non-taxation or reduced taxation through tax avoidance or evasion including through treaty shopping. > This language of the Preamble would help ensuring that the provisions of the Conventions are interpreted and applied to prevent abusive treaty shopping arrangements. > Eg: Vodafone tried treaty shopping in India	

ARTICLE 2 TAXES COVERED

The OECD and UN Conventions would apply to taxes on income & on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

The existing taxes to which Conventions would apply in case of each Contracting State are specifically to be mentioned.

Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of significant changes made to their tax law.

ARTICLE 3 DEFINITIONS

Person [Para 1A]- identical in OECD and UNMC
"person" includes an individual, company & any other body of persons

Business [Para 1D]- Difference

OECD	UNMC
term "business" includes the performance of professional services and of other activities of an independent character. Simply: Business + Profession + Vocation	Not defined

Para 2:Difference of meaning term used but not defined in treaty

- OECD	UNMC
any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a different meaning pursuant to the provisions of Article 25, have the meaning that it has at that time under law of that State Step 1: Find in DTAA Step 2: Use article 25[MAP] where both the competent authority decide meaning. Step3: use meaning given by respective act	any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State Step 1: Find in DTAA Step 2: use the meaning given by respective act

WHETHER PROJECT OFFICE CONSTITUE AS PE

National Petroleum company Vs. DIT 2016[DHC]

- a project office only used as a communication channel and not for execution of contracts by an assessee engaged in fabrication and installation of petroleum platforms, would qualify as an auxiliary activity not constituting a PE.
- a project office used as a communication channel and for execution, constituting a PE.

The determination , thus, depends on the overall facts of each case.

ARTICLE 4 RESIDENCY

A taxpayer has to demonstrate that he is a resident of one or both Contracting States to be able to gain access to a tax treaty & avail benefits thereunder.
Language in treaty
UN Model: "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature.
OECD: Similar Words however term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.
How to determine Resident: Tie Breaker Rule

As per paragraph 3 of this Article, where by reason of the provisions of para 1, a person other than an individual is a resident of both Contracting States, the competent authorities of Contracting States shall endeavour to determine by mutual agreement, Contracting State of which such person shall be deemed to be a resident for the purposes of Convention. They shall do so having regard to its place of effective management, the place where it is incorporated / otherwise constituted and any other relevant factors. In absence of such mutual agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent & in such manner as may be agreed upon by the competent authorities of Contracting States

ARTICLE 7 BUSINESS PROFIT

Business profits of an enterprise can only be taxed by the Residence State. Right of Source State to tax business profits of an enterprise only exists if a PE exists in its jurisdiction.

- OECD	UNMC
Once a PE is establish the source state can tax only such profit attributable to PE Eg: Chinese company working in USA now Chinese company shall be liable to tax in USA with respect of BP.	The attribution principal is amplified by limited force of attraction rule [FOA] The FOA rule implies that when a Foreign enterprise sets up a PE in the Source State, it brings itself within the fiscal jurisdiction of that State (State of Source) to such a degree that all profits that the enterprise derives from Source State, whether through the PE or not, can be taxed by it (Source State).

Article 7(2) of OECD and UN Models advocate a distinct & separate entity approach for attribution of profits to a PE with difference in language. It is machinery provision, which provides the methodology for computation of profits of the PE. In addition, Art. 7(2) of OECD Model makes a reference to FAR Analysis [Functions, Assets & Risks] in attributing profits, which is absent in Article 7(2) of the UN Model.

Article 7[3] - Article 7(3) of the OECD Model is absent in UN MC
a. All expenses incurred for the purposes of business of the PE shall be allowed as a deduction, in determining profits of a PE.
b. Such expenses include executive and general administrative expenses.
c. Such expenses could be incurred within or outside the State in which the PE is situated (Source State).
d. In case of banking enterprise, such expenses would include interest on moneys lent by the head office or other offices to PE.
As per Art. 7 of the UNMC, if the enterprise carries on business in other Contracting State through a PE, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to:
(a) that PE;
(b) sales in that other State of goods or merchandise of the same / similar kind as those sold through that PE; or
(c) other business activities carried on in that other State of same / similar kind as those effected through that PE.

ARTICLE 5 PERMANENT ESTABLISHMENT

OECD	UNMC
a PE exists if the following conditions are satisfied cumulatively: > There is an "enterprise". > Such enterprise is carrying on a "business"; > There is a "place of business"; > Such place of business is at the disposal of the enterprise (may be owned / rented but must be one which the enterprise has the effective power to use); > The place of business is "fixed", that is, it must be established at distinct place with a certain degree of permanence. • A PE does not exist unless all the aforesaid conditions are satisfied	Identical
The term "permanent establishment" incl especially: a) a place of management; b) a branch; c) an office; d) a factory; e) a workshop, and f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources	Identical
A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.	The term "PE" also encompasses: (a) A building site, construction, assembly or installation project/supervisory activities in connection therewith, but only if such site, project or activities last more than six months; (b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than 183 days in any 12-month period commencing or ending in the fiscal year concerned.

What is not PE

- OECD	UNMC
The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;	The use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise

UN Model makes a specific reference to the Service PE which is absent in the OECD MC.
UNMC specifically mention "assembly projects" and "supervisory activities UNMC does not cover Delivery.

Agency PE The recent update expands the definition of dependent agent PE to include instances when an agent habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts routinely concluded without material modification by the enterprise.

The UNMC has an additional Article 5(6) relating to insurance which is absent in OECD Model. As per this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a PE in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person. In absence of similar Article in the OECD Model, a PE of an insurance Enterprise has to be determined in accordance with provisions of Article 5(1) or 5(2) of the OECD model.

WHETHER LIAISON OFFICE CONSTITUE AS PE

RBI notification 31/3/2016: Liaison Office' means a place of business to act as a channel of communication between principal place of business or Head Office or by whatever name called and entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly

- UAE Exchange Centre LLC [2004] + Vishakhapatnam Port Trust (1983) + Metal One Corpn (2012): Indian liaison office of a foreign enterprise engaged in remittance services [cheque deposit etc], performs an essential activity and thus, falls outside Article 5(4)
- Jebon Corporation India v CIT (2012) + Brown And Sharpe Inc v CIT (2014) Identifying new customers, marketing activities, price negotiation, discussion of commercial issues, securing and processing orders have led to the liaison office forming a PE
- GE Energy Parts Inc The liaison office of one of the group entity was a fixed place PE

The fact whether a liaison office constitutes a PE will, thus, have to be examined based on facts and circumstances of each case

ARTICLE 11 INTEREST

It may be noted that the definition of interest in both the models viz. OECD and UN Model is similar which include: means income from debt claims of every kind, whether or not secured by mortgage & whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.
> Article provides the right to Residence State to tax interest.
> However,it also confers right to the Source State to tax interest.

Generally, the interest is taxed in the Source State at a given rate on gross basis. However, if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged cannot exceed a specified percentage of the gross amount of the interest. The OECD Model specifies the percentage as 10%, but the UN Model leaves this percentage to be established through bilateral negotiations.

ARTICLE 11 INTEREST

This Article provides the right of Contracting States to tax income from royalty. Key differences between the two Models are as follows

As per the OECD Model, royalties arising in Source State and beneficially owned by resident of Residence State are taxable only in Residence State.

However, UN Model provides that royalties may be taxed in the Residence State. Hence, UN Model departs from the principle of exclusive right to tax provided to Residence State in the OECD Model.

Thus, under UN Model, the Source State may also tax royalties. However, if beneficial owner is a resident of the Residence State, the tax charged by the Source State cannot exceed specified percentage of the gross amount of royalties. This specified % is to be established through bilateral negotiations.

The definition of 'royalties' under the OECD Model does not include the following: (a) rentals for films or tapes used for radio or television broadcasting and (b) equipment rentals like rentals for industrial, commercial or scientific equipment

ARTICLE 12A FEES FOR TECHNICAL SERVICES

The UN Model has inserted specific article pertaining to Fees for Technical Services (FTS). There is no specific reference to FTS in the OECD Model.

OECD	UNMC
No Specific Clause	Paragraph 1 of Article 12A provides that the FTS may be taxed in the Residence State but does not provide that FTS is exclusively taxable in the Residence State. Para 2 establishes the right of the country in which FTS arises to tax in accordance with its domestic law, subject to the limitation on the maximum rate of tax, if the beneficial owner is a resident of the other Contracting State. The maximum rate of tax is to be established through bilateral negotiations.

Meaning of FTS: FTS is defined as payments for managerial, technical or consultancy services but excludes payment to an employee, payment for teaching in an educational institution or for teaching by an educational institution, payments by an individual for services for personal use. Management involves application of knowledge, skill or expertise in the control or administration of the conduct of a commercial enterprise or organization. Technical involves the application of specialized knowledge, skill or expertise with respect to a particular art, science, profession or occupation. Fees received for services provided by regulated professions such as law, accounting, architecture, medicine, engineering would constitute FTS. The ordinary meaning of "consultancy" involves the provision of advice or services of a specialized nature.

ARTICLE 23A & 23B : ELIMINATION OF DOUBLE TAXATION

The OECD and UN Model Conventions specify two approaches- Exemption method (Article 23A) & Credit method (Article 23B).
Under exemption method, tax exemption may be available in Residence State.
Under the credit method, tax credit may be available in the Residence State for taxes deducted in the Source State. These methods are not mutually exclusive and there may be cases where a treaty may adopt exemption method for certain types of income & credit method for other incomes.

ARTICLE 13 CAPITAL GAINS

This is the most commonly used Article and it provides for the taxation of income arising from transfer of a capital asset, including transfer of shares. The right to tax income from capital gains may be exclusively with the Residence State, or shared between the Residence & Source States. The Article does not specify what is a capital gain and how is to be computed, this being left to the applicable domestic law. The Article contains rules for taxation of gains made from alienation of different assets such as immovable property, immovable property forming part of a PE, ships and aircrafts, etc. In respect of shares, both Models have been updated & are identical. Rights are conferred to the Source State if more than 50 percent of the value of shares during the preceding 365 days is derived from immovable property in such Source State.

ARTICLE 14 INDEPENDENT & PERSONAL SERVICES

Article 14 is only present now in the UN Model. [NOT IN OECD]
The Effect of deletion of Article 14 is that income derived from Professional Services etc., is now dealt with as 'Business Profits' (Article 7) under OECD MC. This Article deals with the taxation of income derived by a person for professional or specified services which are offered in the Source State through some presence.

	UNMC
dealt with as 'Business Profits' (Article 7) under the OECD MC.] OECD	Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State: (a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or (b) If his stay in the other Contracting State is for a period (s) amounting to/exceeding in aggregate 183 days in any 12-m period commencing/ending in fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

Meaning of "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

It excludes:
1. Industrial & commercial activities that are covered under the Article on Business Profits.
2. Income of Artists Athletes and Sportsmen, etc.
3. Income from Fees from Technical Services is also not covered
Thus, the Article covers independent activities involving professional skills rendered by individuals on a principal to principal basis.

ARTICLE 21 OTHER INCOME

This Article deals with taxation of items of income which are not specifically taxable under any other specific Article. Key differences are as under:
OECD approach envisages that the exclusive right to tax is with the Residence State. UN Model contains an additional paragraph, Article 21(3), which provides that Source State may also tax other income.

Article 21(2) of both OECD and UN Model provides that for income effectively connected with a PE maintained in a Contracting State by a resident of the other Contracting State, taxation is governed by the provisions of Article 7 (Business Profits).Additionally, UN Model provides that if the aforesaid income is effectively connected with fixed base situated in a Contracting State by a resident of the other Contracting State, taxation would be governed by the provisions of Article 14 (Independent personal services).

ARTICLE 24 MUTUAL AGREEMENT PROCEDURE

There may be a situation wherein a tax payer may believe that the treatment accorded by either or both Contracting States is not in accordance with the provisions of tax treaty. In such a case, there is a need for dispute resolution which is addressed by this Article. This Article requires competent authorities of both countries to endeavor to resolve the conflict by engaging in bilateral negotiations.

The UN Model Convention
It provides two alternatives - Alternative A & Alternative B, for article on Mutual Agreement Procedure
Alternative A: It contemplates taxpayer going to Residence State / country of his nationality.
Alternative B: It contenplete a refrence to arbitration process as a part of mutual agreement process & decision shall be binding unless the person directly affected does not accept it.
Under OECD Model taxpayer may make a request to either Contracting State Alt B

Key Difference between both:
Article 25B(5) of the UN Model provides that an arbitration may be initiated if the competent authorities are unable to reach an agreement on a case within 3 years from the presentation of that case. However, Article 25(5) of the OECD Model provides a time limit of 2 years from the date when all the information required by competent authorities in order to address case need to be provided to both competent authorities.

Article 25B(5) of the UN Model provides that arbitration must be requested by the competent authority of one of the Contracting States. Once such a request is made, the taxpayer will be notified. However, as per Article 25(5) of OECD Model, arbitration must be requested in writing by the person who initiated the case

Article 25B(5) of the UN Model allows the competent authorities to depart from the arbitration decision if they agree to do so within six months after the decision has been communicated to them.

ARTICLE 26 EXCHANGE OF INFORMATION

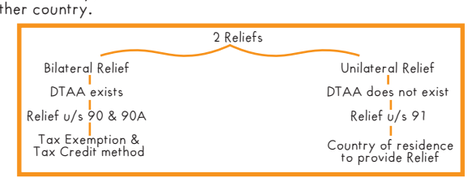
In order to complete tax cases, a country may require certain info which may be available with the treaty partner. Article 26 provides for the information which may be exchanged and the manner in which such a request has to be made. Purpose of Article 26 is to facilitate effective exchange of information between Contracting States. From perspective of many developing countries, Article 26 is particularly important not only for curtailing cross-border tax evasion & avoidance, but also to curtail the capital flight that is often accomplished through such evasion and avoidance.

The OECD and UN Model Conventions are similar with respect to this Article. Contracting State cannot be expected to provide confidential financial information to another Contracting State unless it has confidence that the information will not be disclosed to unauthorized persons. A Contracting State can avoid the exchange of information obligations by showing that the information pertains to communication between an attorney and his client which is protected from disclosure under domestic law. However, lack of interest or use in such information cannot form the basis for a contracting state to not coperate with exchange of Information obligation.

DTAA BASICS

If a Taxpayer is Resident in one country but has source of income situated in another country, his income can be subjected to taxation based on 2 rule:
Source Rule: Income is to be taxed in the country in which it originates irrespective of whether the income accrues to a R/NR.
Residence Rule: The power to tax should rest with the country in which the taxpayer resides.
If both rules apply simultaneously to a business entity and it were to suffer tax at both ends, It is from this point of view that Double Taxation Avoidance Agreements (DTAA) become very significant.

Double Taxation means taxation of same income of a person in more than 1 country, i.e. both Income Tax Act 1961 & Income Tax Law of other country.

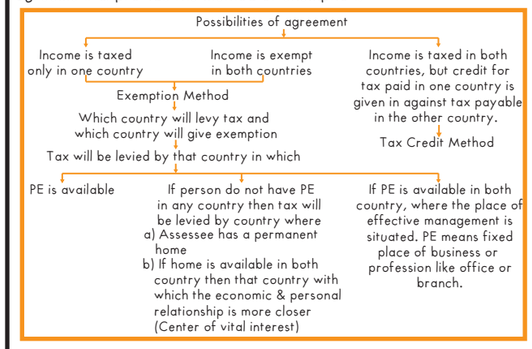


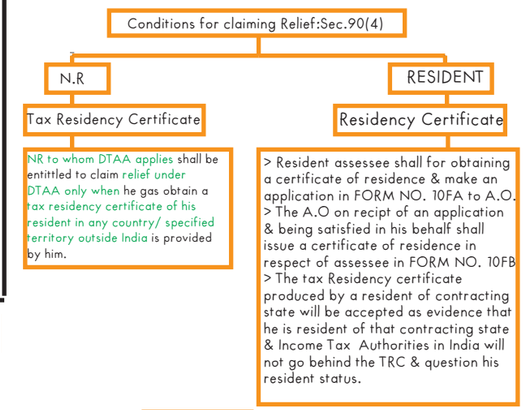
SEC 90 AGREEMENT WITH FOREIGN COUNTRIES OR SPECFIED TERRITORIES

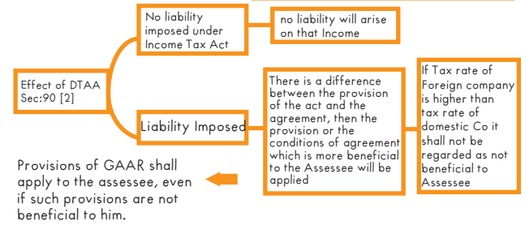
The CG may enter into an agreement with the Govt of any country outside India or specified territory outside India,—
a) for the granting of relief in respect of—
(i) income on which have been paid both income-tax under this Act & income-tax in that country or specified territory, as the case may be, or
(ii) income-tax chargeable under this Act and under the corresponding law in force in that country or specified territory, as the case may be, to promote mutual economic relations, trade and investment, or
b) for the avoidance of double taxation of income under this Act & under the corresponding law in force in that country or specified territory, as the case may be, without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the said agreement for the indirect benefit to residents of any other country or territory), or [FA'20]
c) for exchange of information for prevention of evasion/avoidance of income-tax chargeable under this Act or under the corresponding law in force in that country or specified territory, as the case may be, or investigation of cases of such evasion or avoidance, or
d) for recovery of income-tax under this Act and under the corresponding law in force in that country or specified territory, as the case may be, and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

DTAA

DTAA with Foreign Country/Specified Territory: CG May enter into agreement & provide the method of exemption.







SEC 90A ADOPTION BY CG OF AN AGREEMENT BETWEEN SPECIFIED ASSOCIATION FOR DOUBLE TAXATION RELIEF

Specified Association of India can enter into an agreement with Specified Association of foreign country. CG may adopt or implement such agreement. In such a case, provisions as is in Sec 90 shall applicable.

SEC 90(1) POWER OF CG FOR DTAA

CG can enter into agreement with any foreign Country/Specified Territory for Granting of Relief:-In respect of –
- Income on which Income tax has been paid both under this act and in the foreign country/specified territory or,
- Income Tax chargeable under this Act and under the corresponding law in force in the foreign country/specified territory to promote mutual economic relations, trade and investment or

Avoidance of Double Taxation of Income under this Act & under the corresponding law in force in the foreign country/ specified territory.
Exchange of Information for prevention of evasion/avoidance of tax. Recovery of Income Tax under this Act and under the corresponding law in force in the foreign country/specified territory.

CIRCULAR 333 DT 02/04/1982

CBDT provides that a specific provision of the DTAA will prevail over the general provisions of the Income-tax Act, 1961. Therefore, where a DTAA provides for a particular mode of computation of income, this mode will take precedence over the Income-tax Act, 1961. However, where there is no specific provision in the treaty, then the Income-tax Act will apply.

TAXATION OF BPO

The provisions containing taxation of IT-enabled business process outsourcing units are not contained in the Income-tax Act, 1961 but are given in Circular No. 5/2004 dated 28.9.2004 issued by CBDT.

There is no Business connection between R & NR Such R is not PE to NR	Nr is not Liable to tax In India
NR has Business Connection	Resident entity shall be treated as Permanent Establishment. IN this case such BPO is liable to tax In India.

SEC 91 COUNTRIES WITH WHICH NO AGREEMENT EXISTS

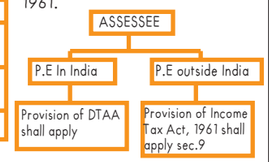
Conditions:- 1. The Assessee must have been Resident in India PY.
2. The Income must have accrued or arisen outside India.
3. The tax should have been deducted / paid foreign country
4. There is no DTAA

Computation of Relief:

Step 1	Compute the Total Income [Indian Income + Foreign Income]
Step 2	Calculate the Tax Payable (Including+ Surcharge (If any) + Cess)
Step 3	Calculate Average rate of Indian Income Tax [Step 3/Step 1]
Step 5	Compute the Average rate of foreign tax on the foreign Income.
Step 6	Compare Step 4 and Step 5 and select the Lower Average Rate of Tax.
Step 7	Relief = Lower Rate of Tax as per Step 6 X Foreign Income taxable in India.
Step 8	Net Tax Payable = Step 3 - Step 7

Relief u/s 91 is to be calculated on income country-wise and not on basis of aggregation/amalgamation of income of all foreign countries.

In determining the profits of a Permanent Establishment there shall be allowed as deduction, expenses which are incurred for the purposes of the Permanent Establishment including executive and general admin expenses so incurred whether in the State in which the Permanent Establishment is situated or elsewhere. The expenses that are deductible would have to be determined in accordance with accepted principles of accountancy and the provisions of Income-tax Act, 1961.



INTERPRETATION OF TAX TREATY

INTERNATIONAL TAX ORIGIN

International tax law originates from the following –
a. Multilateral international agreements (example – Vienna Convention on Law of Treaties- VCLT)
b. Double Tax Avoidance Agreement (DTAA) which may be comprehensive or otherwise.
c. Customary international law and general principles of law. Eg. principles of law recognised by civilized nations in their national legal systems, customary law & judicial decisions and the practices of international organizations.

GUIDELINE BY INTERNATIONAL COURT OF JUSTICE BEFORE DECIDING ON PARTICULAR MATTTER

one needs to understand the philosophy of law. This gives rise to the principles of public international law
Article 38(1) of the International Court of Justice1 provides that the court shall apply the following in deciding on a particular matter –
a) International convention(s)
b) International custom;
c) principles recognised by civilized nations and;
d) Judicial decisions

Jurisdictio--nal double taxation	How It Arise Tax is imposed by two or more countries as per their domestic laws in respect of the same transaction, income arises or is deemed to arise in their respective jurisdictions.This is known as"jurisdictional double taxation. What Company Do to avoid double Tax In order to avoid such double taxation, a company can invoke provisions of Double Taxation Avoidance Agreements (DTAAs) (also known as Tax Treaty or Double Taxation Convention– DTC) with the host/source country, or in the absence of such an agreement, an Indian company can invoke provisions of section 91, providing unilateral relief in the event of double taxation. Example :- Company ICO is a resident of India. It has set up a branch in UK. Here, India would be the country of residence for ICO, whereas UK would be the country of source. UK would tax the profits earned by the branch of ICO located in UK, whereas ICO would be taxed on worldwide basis in India, including profits of its UK branch. However, ICO can claim relief in respect of taxes paid in UK while filing its tax return in India under the Indo-UK Double Taxation Avoidance Agreement. If, instead of UK, ICO has a branch in Hong Kong, then it can claim unilateral relief under section 91 of the Act, 1961 in respect of taxes paid by its Hong Kong branch as India does not have a tax treaty with Hong Kong as the tax treaty with China does not apply to Hong Kong.
Economic double taxation	How It Arise 'Economic double taxation' happens when the same transaction, item of income or capital is taxed in two or more states but in hands of differe--nt person (because of lack of subject identity)

DIRECTIVE ISSUED TO INDIAN STATE W.R.T INTERNATIONAL AGREEMENT

In the Indian context, Article 51 of the Indian Constitution has inter-alia set out some directive principles which must be followed by the State in the context of International agreements and relationships.
It has been provided that -"The State shall endeavor to" -
a) Promote international peace and security;
b) Maintain just and honourable relations amongst nations;
c) Foster respect for international law and treaty obligations in the dealings of organised people with one another; and
d) Encourage settlement of international disputes by arbitration.

Q1. OTHER CONSIDERATION WHILE ENTERING INTO TAX TREATY Q2. EXPLAIN THE CONCEPT OF NEUTRALITY IN DTAA

There are various other important considerations as mentioned below:
1) Ensuring non-discrimination between residents and non-residents
2) Resolution of disputes arising on account of different interpretation of tax treaty by the treaty partner.
3) Providing assistance in the collection of the fair and legitimate share of tax.

Further, in addition to above, there are some other principles which must be considered by countries in their tax system –
A. Equity and fairness: Same income earned by different taxpayers must be taxed at the same rate regardless of the source of income.
B. Neutrality and efficiency: Neutrality factor provides that economic processes should not be affected by external factors such as taxation.
Neutrality is two - a) Capital export neutrality & b) Capital import neutrality (CIN).

VIENNA CONVENTION ON LAW OF TREATIES'69

The Vienna Convention on Law of Treaties provides the basic rules of interpretation of any international agreement (including a tax treaty).

» "Treaty" means an international agreement
» concluded between States
» in written form and
» governed by international law,
» whether embodied in a single instrument or in two or more related instruments and
» whatever its particular designation.

CLAUSES OF VIENNA CONVENTION

Article	Particulars	Provisions
26	Pacta Sunt Servanda (in good faith)	Every treaty in force is binding upon the parties & must be followed by them in good faith
27	Internal law & observation of treaties.	A party may not invoke the provision of its internal law as justification for its failure to perform a treaty . This rule is without pre justice to article 46.
28	Non-retroactivity of treaties	Unless a different intention appears, treaties cannot have retrospective application.
29	Territorial Scope of Treaties	Unless a different intention appears, a treaty is binding upon each party in respect of its entire territory.
31	General Rule of Interpretation	• A treaty shall be interpreted in good faith • The context for the purpose of interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexure • A special meaning shall be given to a term if it is established that the parties so intended. • The following shall be taken into account, together with the context in that: (a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) Any relevant rules of international law applicable to relation between the parties.
32	Supplementary means of interpretation	Recourse may be had to supplementary means of interpretation, > Leaves the meaning ambiguous or obscure; or > Leads to a result which is manifestly absurd or unreasonable
33	Interpretation of Treaties Authentic--ated in two or more languages	> When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail. > The terms of the treaty are presumed to have the same meaning in each authentic text.
34	General Rule regarding third states	A treaty does not create either obligations or rights for a third State without its consent .
42	Validity & Continuance in force of treaties	The termination of a treaty, or the withdrawal of a party, may take place only upon the application of the provisions of the treaty or of the Convention. The same rule applies to suspension of the operation of a treaty Suo Moto Withdrawal of treaty not allowed take permission of Commission.
60	Termination/ Suspension of the operation of a treaty as a consequence of a breach	• A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part. • A material breach of a multilateral treaty by one of the parties entitles: (a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either: (i) in the relations amongst themselves and the defaulting State, or (ii) as between all the parties; (b) a party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State; (c) any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every other party with respect to further performance of its obligations under the treaty. • A material breach of a treaty, for the purposes of this Article, consists in: (a) repudiation of treaty not sanctioned by Convention; or (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty. • The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.
61	Supervening impossibility of performance	• A party may invoke the impossibility of performing provision of a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. • If the impossibility is temporary, it may be invoked only as a ground for suspending its operation.
62	Fundamental change of circumstances	• A fundamental change which was not foreseen by the parties, cannot be a ground for terminating or withdrawing from the treaty unless – a) The existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and b) The effect of the change is radically to transform the extent of obligations still to be performed under treaty. • A fundamental change of circumstances may not be invoked as ground for terminating/withdrawing treaty – a) If the treaty established a boundary, or b) If the fundamental change is the result of a breach by the party invoking it either of an obligation owed to any other party to the treaty • If a party invokes fundamental change of circumstance as a ground for terminating/with drawing from a treaty it may also invoke the change as a ground for suspending its operation
64	Emergence of new norm of general international law	If a new norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and stands terminated

INTERPRETATION OF TAX TREATIES

1. Monist vs. Dualist Views

MONIST VIEW	Monist accept that the internal and international legal system form a unity .The Income-tax Act, 1961 provides that where the Indian Govt has entered into DTAAs which are applicable to taxpayers, then, the provisions of the Act shall apply to the extent they are more beneficial to the taxpayer. Internationally, this situation is known as "Monist View"
DUALIST VIEW	The other prevalent view is known as "Dualistic View" wherein International Law and National Law are separate systems & DTAA becomes part of the national legal system by specific incorporation/legislation. Some of the countries that follow Dualistic View are Australia, Austria, Norway, Germany, Sri Lanka, and the UK.

DISTRIBUTIVE RULE

> Tax treaties only distribute or assign taxing jurisdiction. It does not impose tax.
> Having assigned the jurisdiction of tax between State of Residence & State of Source, the domestic tax laws of the respective State determine taxing rules.
> English lawyers called it "Classification and Assignment Rule", whereas German jurists called it the "Distributive Rule".
> According to this principle, "to the extent that an exemption is agreed to, its effect is in principle independent of both whether Contracting States imposes a tax, in the situation to which the exemption applies, and irrespective of whether State actually levies the tax".
> The point here is that having agreed to part the right of tax with the other state, that state may or may not levy tax.

FEATURES OF TAX TREATY

Tax residency:
Benefits of tax treaty would be available only if the person is resident of one or both of the Contracting States. Further is a person is resident in more than one CS then tie breaker rule shall be applicable.

Allocation of taxing rights:
Generally, articles 6 – 22 characterises a particular income for the purpose of allocation in the country of source and in the country of residence. One such exception to the general rule is contained in Article 7 i.e., 'business profits', which provides that business profits of a resident of a Contracting State shall be taxable only in the country of residence unless a person has a permanent establishment in the other Contracting State (i.e. source country).

Non Aggravation principal:
If an income is not taxable under the domestic tax law; such income cannot be taxed even if it is so taxable in accordance with tax treaty provisions. Thus, it is safe to conclude that no new charge can be created under the treaty.

Tax credit mechanism
DTAA can provide benefit either in credit method or exemption method.

Exchange of Information
As per Article 26, Competent authorities of the CS shall exchange such information as is relevant for carrying out the provisions of this agreement

Limitation on benefits /entitlements to benefits:
Limitation on benefits is yet another powerful anti-avoidance provision in a tax treaty. India has taken an aggressive stand on anti-avoidance and has included limitation on benefits Article in its treaties with the USA, Singapore, U.A.E, Mauritius, etc. Treaty shopping, although legal, is generally discouraged by various countries, including India.

AMBULATORY VS STATIC APPROACH

Whenever a reference is made in a treaty to the provisions of domestic tax laws for assigning meaning to a particular term, a question often arises what meaning to be assigned to the said term the one which prevailed on the date of signing a tax treaty or the one prevailing on the date of application of a tax treaty. There are two views on the subject, namely, Static & Ambulatory.

Static	Static approach looks at the meaning at the time when the treaty was signed.
Ambulatory	> Ambulatory approach provides that one looks to the meaning of term on application of treaty provisions. > All Model Commentaries 21 including Technical Explanation on US Model Tax Convention favors ambulatory approach. > however with 1 caution i.e ambulatory approach cannot be applied when there is a radical amendment in domestic law.

OTHER AIDS TO INTERPRETATION

Commentaries on OECD/UN Models	The Commentary on the OECD Model Convention states that: "the Commentaries have been cited in the published decisions of the courts of the great majority of Member countries."
Foreign Courts' Decisions	> Court cases are useful aid to treaty interpretation, > particularly if case is recognized as having international fiscal significance. > Therefore, the judgments rendered by courts in other countries or rulings given by other tax authorities would be relevant."

2. Basic Principles of Interpretation of a Treaty

If words are clear or unambiguous, then there is no need to resort to different rules for interpretation.
Prior to the Vienna Convention, treaties were interpreted according to the customary international law. Some of the important principles of Customary International law in interpretation of tax treaties are as follows:

a. Golden Rule Objective Interpretation	Ideally any term or word should be interpreted keeping its objective or ordinary or literal meaning in mind i.e. according to their plain & natural meaning. However, if the grammatical interpretation would result in an absurdity, it should not be adopted
b. Subjective Interpretation	Under this approach, the terms of a treaty are to be interpreted according to the common intention of the contracting parties at the time the treaty was concluded. The intention must be ascertained from the words used in the treaty and the context thereof.
c.Teleological or Purposive Interpretation	In this approach the treaty is to be interpreted so as to facilitate the attainment of the aims and objectives of the treaty. This approach is also known as the 'objects and purpose' method.
d. The Principle of Effectiveness	According to this principle, a treaty should be interpreted in a manner `to have effect rather than make it void.
e. Principle of Contemporanea Expositio	A treaty's terms are normally to be interpreted on the basis of their meaning at the time the treaty was concluded. However, this is not a universal principle."
f. Liberal Construction	It is a general principle of construction with respect to treaties that they shall be liberally construed so as to carry out the apparent intention of the parties.
g. Treaty as a whole - integrated approach	A treaty should be construed as a whole & effect should be given to each word which would be construed in the same manner wherever it occurs
h. Reasonableness & consistency	Treaties should be given an interpretation in which the reasonable meaning of words & phrases is preferred, & in which consistent meaning is given to different portions of the instrument In accordance with the principles of consistency, treaties should be interpreted in the light of existing international law

EXTRINSIC AIDS TO INTERPRETATION

A wide range of extrinsic material is permitted to be used in interpretation of tax treaties.
According to Article 32 of the Vienna Convention the supplementary means of interpretation include the preparatory work of the treaty & the circumstances of its conclusion.
According to Prof.Starke one may resort to following extrinsic aids to interpret tax treaty provided that clear words are not thereby contradicted:
Interpretative Protocols, Resolutions & Committee Reports, setting out agreed interpretations;
The following secondary aids can be taken for interpretation of tax treaties -
Provisions in Parallel Tax Treaties-

International Articles/ Essays/Reports	International Article/Essays/Reports are referred as extrinsic aid for interpretation of tax treaties.
Cahiers published by International Fiscal Association (IFA), Netherlands	"Cahiers de Droit Fiscal International" is the main publication of the IFA, which is published annually & deals with two major topics each year.
Protocol	Protocol is like a supplement to the treaty In many treaties, in order to put certain matters beyond doubt, there is a protocol annexed at the end of the treaty, which clarifies borderline issues. A protocol is an integral part of the tax treaty & has the same binding force as the main clauses therein. Protocol to India France treaty contains the most Favored Nation Clause. Thus, one must refer to protocol before arriving at any final conclusion in respect of any tax treaty provision.
Preamble	Preamble to a tax treaty could guide in interpretation of a tax treaty.
Mutual Agreement Procedure [MAP]	MAP is more authentic than other aids as officials of both countries are in possession of materials/documents exchanged at the time of signing the tax treaty which would clearly indicate the object or purpose of a particular provision.

DIFFERENCE OF OBJECT - OECD & UN

OECD and UN Model Conventions have different objectives to achieve.

Objective of OECD Model Conventions for Drafting DTAA	1. promote, by eliminating international double taxation, 2. exchange of goods and services and the movement of capital and persons. 3. It is also a purpose of tax conventions to prevent tax avoidance and evasion
Objective of UN Model Conventi--ons for Drafting DTAA	The principal objectives of the UN Model Convention are as follows: # To protect tax payers against double taxation (whether direct or indirect) # Encourage free flow of international trade & investment # Encourage transfer of technology > To prevent discrimination between tax payers > To provide a reasonable element of legal & fiscal certainty to investors and traders > To arrive at an acceptable basis to share tax revenues between two States > To improve the co-operation between taxing authorities in carrying out their duties
CONCLUSION	Tax Treaties are result of prolonged negotiations between two Contracting States. Ideally, therefore the same should be interpreted keeping in mind the objectives with which they are entered into. Minutes of negotiations, exchange of notes, letters etc. are important material in determining the object of a particular treaty provision.

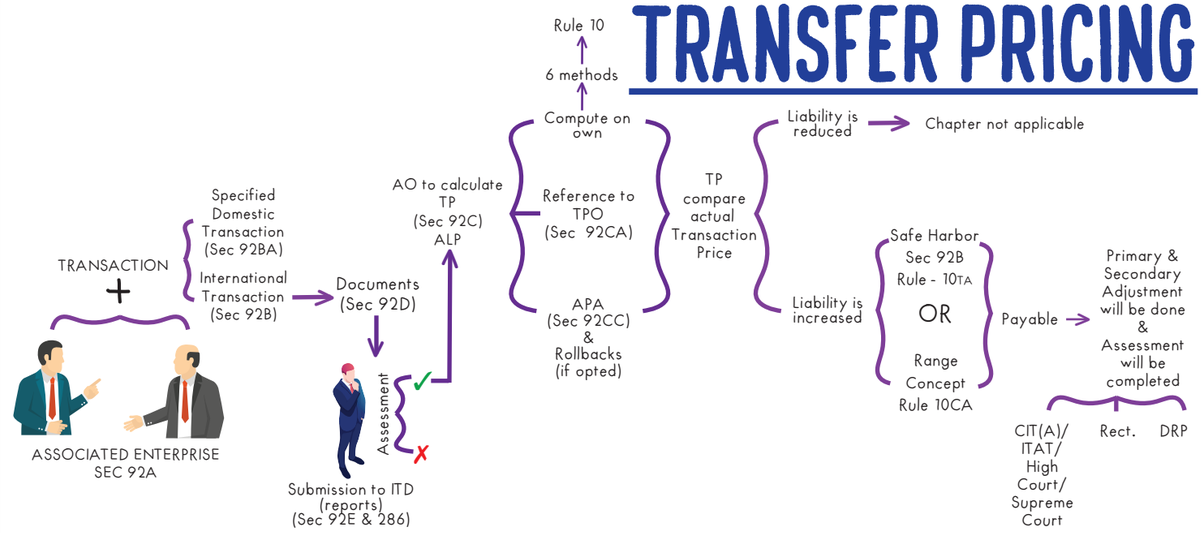
SEC 92 COMPUTATION OF INCOME FROM INTERNATIONAL TRANSACTION HAVING REGARD TO ARM'S LENGTH PRICE

Conditions:
1. Any Income, Expenditure, Interest, Allocation of cost, Provision of Services in relation
2. to any an International transaction or specified Domestic Transaction provided to
3. Associated enterprises shall be computed having regard to the ALP

The provisions of this section shall not apply in 2 case
a) If it reduce the income chargeable to tax or
b) Increasing the loss.
computed on the basis of entries made in the books of account.

My Notes:
1. If Both AE's are NR, then TP shall apply only if income of one of the NR is taxable under IT Act, 1961.
2. Transaction between Enterprises & unrelated party shall deemed to be International Transaction if
a) There exist a prior agreement between AE & unrelated party
b) Terms of transaction are determined by AE.

TRANSFER PRICING



DEFINITIONS

SEC 92B - INTERNATIONAL TRANSACTION

> "International transaction" means a transaction between two or more associated enterprises,
> either or both of whom are non-residents,
> Any Income, Expenditure, Interest, Allocation of cost, Provision of Services in relation to transaction with AE

SEC 92B(2) - DEEMED INTERNATIONAL TRANSACTION

The transaction between enterprises & unrelated party shall deem to be international transaction if :
1) There exist a prior agreement between AE & unrelated person or
2) The terms of transaction are determined by AE

SEC 92BA - SPECIFIED DOMESTIC TRANSACTION

> Any transaction not being an international transactionand
> where the aggregate of such transactions entered into by the assessee in the PY exceeds a sum of 20 crore rupees.
> These Transaction shall include:
A. Any expense w.r.t which payment made to person referred in 40(A)(2).
B. Any Transaction referred in Sec,80IA(8) or 80IA(10).
C. Any transaction refereed in Sec.80A
D. Any transaction refereed in any other section under chapVIA or sec10AA.
E. Any other transaction as may be prescribe.

SEC 92F - ARM'S LENGTH PRICE

"Arm's length price" means a price which is applied or proposed to be applied in a transaction between persons other than AE, in uncontrolled conditions;

SEC 92A ASSOCIATED ENTERPRISES

A) Holding of shares -
At least 26% of Voting Right in other enterprises or each of such other enterprises
B) Loan and Advance -
constitutes not less than 51% of book value of the total assets of the other enterprise
C) Guarantee -
Atleast 10% of the total borrowings of the other enterprise
D) Board of Director -
More than Half of BOD or 1or more executive director are appointed by Other company
E) Manufacturing or processing of Goods -
carried out by one enterprise is wholly dependent on use of Intangible or tangible raw material of other company.
F) Raw material -
90% or more of Raw Material and consumable are supplied by other enterprises ,or by persons specified by the other enterprise & prices are influenced by such other enterprises.
G) Sale -
the goods manufactured or processed by one are sold to the other enterprise or to persons specified by the other enterprise, and price are influenced by other enterprises
H) Control -
Where both the enterprises are controlled by same Individual or his relative or jointly by both.
I) Interest in Concern -
one enterprise is a firm, AOP or BOI, the other enterprise holds atleast 10% interest in such firm, AOP or BOI
J) Other Relation -
there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

SEC 92D MAINTENANCE OF INFORMATION & DOCUMENTS

Every person who enters into International / specified domestic transaction OR
every person being a constituent entity of an international group, shall
1. Maintain Books/ documents as specified by CBDT. (Rule 10D)
2. furnish information as prescribe in Sec.286 (Country by Country Reporting) (Constituent Entity)
3. be required to be maintained only if Value of International transaction Exceed 1Crore.
4. be required to be kept for 8 years from the end of AY

Sec 92D(3) - AO/CIT(A) may during the proceeding require the person entering into international transaction or specified domestic transaction to furnish information / document within 30 days or such further extended time not exceeding 30 days.

Rule 10D - Information & documents to be kept

Below information is required if aggregate value of international transaction exceed 1cr.
Every person who enters into International / specified domestic transaction shall keep & maintain following information :
1) Entity related - ownership structure / profile of group / description of business / nature & terms of transaction with AE
2) Price related - A description of FAR by assessee & AE / record of economic & market analysis / record of uncontrolled transaction / record of analysis performed to evaluate uncontrolled transactions / method of discovering ALP
3) Transaction Related - Assumption , Policy & price negotiations / adjustments made to TP / any other information relevant for determining ALP

Rule 10D(2A) - read with Rule 10THA & 10THB -FA'20

Rule 10THA - The 'eligible assessee' means a person who has exercised a valid option for application of safe harbour rules in accordance with the provisions of rule 10THC & -
A) is a Government company engaged in the business of generation, [supply,] transmission or distribution of electricity; or
B) is a co-operative society engaged in the business of procuring and marketing milk and milk products.

Rule 10THB - The "Eligible specified domestic transaction" means a specified domestic transaction undertaken by an eligible assessee and which comprises of -
(i) supply of electricity or
(ii) transmission of electricity; or
(iii) wheeling of electricity; or
(iv) purchase of milk or milk products by a co-operative society from its members.

Rule 10D(2A) - Eligible Assessee for eligible transaction shall maintain

A
1) ownership structure / profile of group / description of business / nature & terms of transaction with AE
2) Assumption , Policy & price negotiations / adjustments made to TP / any other information relevant for determining ALP

B
1) ownership structure of assessee co-operative society / profile of group / description of business / nature & terms of transaction with AE
2) Assumption , Policy & price negotiations / adjustments made to TP / any other information relevant for determining ALP

Rule 10DA - Master File (Information by Certain persons)

Every person being constituent entity of an international group shall
1) If consolidated group revenue of international group of which it is a constituent entity as reflected in CFS exceed 500cr.
2) The aggregate value of international transaction
   a) Value of international transaction exceed 50cr
   b) In respect of purchase, sale, transfer, lease pr use of intangible property exceeds 10cr.

shall provide the information to JCIT in form 3CEAA.
Part A of Form 3CEAA shall be furnished by every person whether or not the above conditions are satisfied.
Part B of Form 3CEAA must be furnished only if the conditions are satisified.

The rate of exchange for calculation of value in Rs. for consolidated group revenue shall be TTBR as on the last day of accounting year.
In case of more than one constituent entity, this form may be furnished by any one CE if -
a) international group has designated such entity for this purpose; &
b) the information has been conveyed in Form No. 3CEAB to the Joint Commissioner referred to in sub-rule (1) of 10DB, in this behalf 30 days before the due date of furnishing the Form No. 3CEAA.

Information shall be kept for 8 years from the AY.

SEC 92E TP REPORT

Every person who has entered into an international transaction or specified domestic transaction during a PY shall obtain a report from an CA and furnish such report one month prior to the due date of filing ROI (i.e 31st Oct) . As per Rule 10E: report shall be in form 3CEB.

PENALTIES RELATED TO DOC & REPORT

Penalty for failure to comply with TP provisions		
Sec	Nature of Default	Penalty
270A(9)	Failure to report any International transaction or deemed International transaction to which the provision of Chapter X applies would constitute 'misreporting of income'	200% of tax payable on under-reported income
271BA	Failure to furnish a report from an accountant as required u/s 92E	₹1 lakh
271G	Failure to furnish info or doc as required by AO/ CIT(A) u/s 92D(3) within 30 days from date of receipt of notice or extended period not exceeding 30 days, as the case may be.	2% of value of International transaction for each failure
271AA	(1) Failure to keep & maintain any such document & information as required by sec 92D(1)/(2); (2) Failure to report such International transaction which is required to be reported; or (3) Maintaining / furnishing any incorrect information or document	2% of value of each such International transaction

Notes:
- The penalty u/s 271AA shall be in addition and not in substitution of penalty u/s 271BA.
- If the assessee proves that there was reasonable cause for the failure, no penalty would be leviable under section 271BA, 271G and 271AA.

SEC 92CA REFERENCE TO TPO

Where AO considers it necessary or expedient so to do, he may, may refer to TPO with the previous approval of the PCIT/CIT

TPO shall serve a notice on the assessee requiring him to produce or cause to be produced on Specified date therein any evidence for computation.

During the course of proceeding TPO can also consider any other international transaction which comes to his knowledge.

Where the assessee fails to furnish report u/s 92E and such transaction come to the notice of TPO Chapter shall apply as if such other international transaction is an international transaction referred to him .(Sue moto power).

After taking all the facts into consideration the TPO shall, by order in writing, determine the ALP in relation to transaction and send a copy of his order to the Assessing Officer and to the assessee. TPO shall pass order before 60 days prior to the last date for completion of Assessment allowed u/s 153 & 153B.[Remember: If reference to TPO is made time limit for completion of Assessment will increase by 12 month]

If Assessment is stayed by any Court or reference is made under 90 or 90A & time available to AO is less than 60 days then period shall be extended to 60 days.

TPO may also amend its own order u/s 154

Order of TPO is Binding on AO.

W.e.f 01.11.2020 - CG may make a scheme for determination of ALP to impart greater efficiency, transparency & accountability by
a) Eliminating the interface between TPO & Assessee
b) optimum utilisation of resources through economies of scale
c) Introducing a team based determination of ALP with dynamic jurisdiction.

SEC 92C CALCULATION OF ALP

Provides the following method to calculate ALP
1) Comparable uncontrolled price method(CUP)
2) Resale Price Method(RSP)
3) Cost Plus Method(CPM)
4) Profit Spilt Method(PSM)
5) Transactional Net margin Method (TNMM)
6) Other Method as prescribe by Board

SEC 92C[2] MOST APPROPRIATE METHOD

> The most appropriate method shall be applied, for determination of ALP, in the manner as may be prescribe
> where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices.[Rule 10CA]

Rule 10C - Determination of the most appropriate method

The method which is best suited to the facts and circumstances & which provides most reliable measure of an arm's length price :-
a) The nature and class of the international transaction;
b) The availability, coverage and reliability of data
c) The extent to which reliable and accurate adjustments can be made to account for difference.
d) The class, or classes of associated enterprises entering into transaction & the functions performed by them taking into account assets employed or to be employed and risks assumed by suchenterprises;
e) The degree of comparability existing between international transaction & the uncontrolled transaction and between the enterprises entering into such transactions;
f) Nature, extent and reliability of assumptions required to be made in application of a method.
g) If more than one ALP is determined using a method then Arithmatic mean of such prices shall be ALP

If the variation between ALP and price at which the transaction has actually been undertaken does not exceed 3% [1% in case of wholesale Trading] in all other cases. Then Actual price shall be deemed to be the arm's length price. (Safe Harbour Rule).[Also Refer Range Concept]

Explanation:
For the purposes of this notification, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely:-
(i) Purchase cost of finished goods is eighty percent or more of the total cost pertaining to such trading activities; and
(ii) Average monthly closing inventory of such goods is 10% or less of sales pertaining to such trading activities.

Assessee shall opt for safe harbour Rule in form 3CEFA/3CEFB

RULE 10B COMPARABLE UNCONTROLLED PRICE METHOD

Particulars	₹
Price charged by Independent Party for comparable transaction	xxx
(+/-) Adjustment on account of Difference	Xxx
Adjusted Price (ALP)	Xxx

RULE 10B RESALE PRICE METHOD

"RPM is applicable when goods are purchased from AE & sold to unrelated party."

Particulars	
Resale Price by Associated Enterprises	Xxx
Less: Normal gross profit margin	(xxx)
Resale Price	Xxx
Less: Purchase Related Expenses	(xxx)
Resale Price	Xxx
(+/-) adjustment for difference including difference in accounting Practise	Xxx
ALP	XXX

RULE 10B COST PLUS METHOD

" Normally CPM is applicable when goods are manufactured by 1 AE sold to Other AE".

Particulars
Direct + indirect costs of production are determined
(+) normal gross profit mark-up to such costs is determined
(+/-)Adjustment on account of Functional differences
Price
(+)Increased by the adjusted profit mark-up
ALP

RULE 10B PROFIT SPLIT METHOD

Particulars	₹
combined net profit of the AE	XXX
Relative Contribution by each enterprises assuming FAR (Function perform, Assets & Risk would be evaluated)	XXX
Combined Profit	XXX
Profit of Enterprises A on the basis of FAR	Profit on Enterprises B on the basis of FAR
Make Adjustment for Functional Differences	
ALP	

RULE 10B TRANSACTIONAL NET MARGIN METHOD

Particulars	₹
Step : 1 Net profit margin realised by the enterprise from an Transaction with AE	XXX
Step : 2 Net profit margin realised by the enterprise in un related Transaction	XXX
Step 3: Adjustment on account of differences	XXX
Net profit Margin: Step 2(+/-) Step 3	XXX
the net profit margin realised by the enterprise and referred to in Step1 is established to be the same as the net profit margin referred to in Step 3	XXX
ALP	

SEC 92CC ADVANCE PRICING AGREEMENT

> The Board, with the approval of the CG, may enter into an APA with any person,
i) either determining the ALP or specifying the manner in which arm's length price is to be determined.
ii) Income referred to in Sec 9(1)(i)[Business connection] / specifying the manner in which such income may be determined as it is reasonably attributable to the operations carried out in India by or behalf of NR

> The manner of determination of ALP in (i) or (ii) may include any manner of computation include any method given in Sec.92C.

> The agreement shall be valid for internation transaction & shall be valid for such period not exceeding 5 consecutive previous years.

> The advance pricing agreement entered into shall be binding on
a. Person Who has entered into agreement for APA and
b. Income tax Authority till the position of CIT.

> The agreement shall not be binding if there is a change in law or facts having bearing on the agreement so entered.

> The Board declare an agreement to be void abinitio, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts. Upon declaring the agreement void ab initio,all the provisions of the Act shall apply.

> The application for APA shall be made in form 3CED.

> APA may apply for any period preceeding the PY in which APA is entered maximum for 4 years. (In total 9 years)

RULE 10F TO 10T PROCEDURE OF APA [SHADI KA PROCESS]

Rule 10G	Who can Apply for APA	Any person who 1. has undertaken an international transaction; or 2. is contemplating to undertake an international transaction, shall be eligible to enter into an agreement under these rules
Rule 10H	Pre Filling consultation	1- Any person proposing to enter into APA may make an application in writing, make a request for a pre-filing consultation. 2-Request for pre-filing consultation shall be made in Form No. 3CEC to DGIT (International Taxation). 3-On receipt of request in Form No. 3CEC, the team shall hold pre-filing consultation with the person . 4- The pre-filing consultation shall, among other things, a- determine the scope of the agreement; b- identify transfer pricing issues; c- determine the suitability of international transaction for the agreement; d-discuss broad terms of the agreement. 5- The pre-filing consultation shall a. not bind the Board or the person to enter into an agreement or initiate the agreement process; b.not be deemed to mean that the person has applied for entering into an agreement.
Rule 10M	Terms of Agreement	An agreement may among other things, include a.International transactions covered by agreement; b.The agreed transfer pricing methodology, if any; c.Determination of arm's length price, if any; d.Definition of any relevant term e.Critical assumptions; f.Rollback provision referred to in [rule 10MA] g.The conditions if any other than provided in the Act or these rules. -The agreement shall not be binding on the Board or the assessee if there is a change in any of critical assumptions or failure to meet conditions subject to which the agreement has been entered into. -The binding effect of agreement shall cease only if any party has given due notice of the concerned other party or parties. -In case there is a change in any of critical assumptions or failure to meet the conditions subject to which the agreement has been entered into, the agreement can be revised or cancelled, as the case may be. -The assessee which has entered into an agreement shall give a notice in writing of such change in any of the critical assumptions or failure to meet conditions to the DGIT (International Taxation) as soon as it is practicable to do so. -The revision or the cancellation of the agreement shall be in accordance with rules 10Q and 10R respectively
Rule 10I	Application for APA	1- Any person, [referred to in rule 10G] may, if desires to enter into an agreement furnish an application in Form No. 3CED along with the requisite fee. 2- Application shall be furnished to: DGIT [IT] — in case of unilateral agreement Competent Authority — In case of bilateral or multilateral agreement. 3- Application shall be made a. before the first day of the previous year relevant to the first assessment year for which the application is made, in respect of transactions which are of continuing nature from dealings that are already occurring; or b. before undertaking the transaction in respect of remaining transactions. 4- Every application in Form No. 3CED shall be accompanied by the proof of payment of fees. 5- Rule 10N Authority may allow the amendment to the application, if such an amendment does not have effect of altering the nature of the application as originally filed. Provided fees is paid. 6 - Application once made can be withdrawn at any time before finalisation of APA [Rule 10J], application for withdrawal can be made in form 3CEE, however fees paid shall not be refunded. 7 - Fees Value of Transaction — Fees Amount not exceeding Rs. 100 crores — 10 lacs Amount not exceeding Rs. 200 crores — 15 lacs Amount exceeding Rs. 200 crores — 20 lacs

Rule 10K Processing of Application

1- Every application filed in Form No. 3CED shall be complete in all respects and accompanied by requisite documents.
2- If any defect is noticed in the application or if any relevant document is not attached thereto or the application is not in accordance with understanding reached in [any] pre-filing consultation referred to in rule 10H, the DGIT[IT] (for unilateral agreement) and competent authority in India (for bilateral or multilateral agreement) shall serve a deficiency letter on the applicant before the expiry of 1 month from the date of receipt of the application
3-The applicant shall remove the deficiency or modify the application within a period of 15 days from the date of service of the deficiency letter or within such further period which, on an application made in this behalf, may be extended, so however, that the total period of removal of deficiency or modification does not exceed 30 days.
4- No order shall be passed without providing an OOBH to the applicant and if an application is not allowed to be proceeded with, the fee paid by the applicant shall be refunded.

Rule 10K	Processing of Application	1- Every application filed in Form No. 3CED shall be complete in all respects and accompanied by requisite documents. 2- If any defect is noticed in the application or if any relevant document is not attached thereto or the application is not in accordance with understanding reached in [any] pre-filing consultation referred to in rule 10H, the DGIT[IT] (for unilateral agreement) and competent authority in India (for bilateral or multilateral agreement) shall serve a deficiency letter on the applicant before the expiry of 1 month from the date of receipt of the application 3-The applicant shall remove the deficiency or modify the application within a period of 15 days from the date of service of the deficiency letter or within such further period which, on an application made in this behalf, may be extended, so however, that the total period of removal of deficiency or modification does not exceed 30 days. 4- No order shall be passed without providing an OOBH to the applicant and if an application is not allowed to be proceeded with, the fee paid by the applicant shall be refunded.
Rule 10L	Procedure	> Upon receipt of application Team [committee] shall a. hold meetings with the applicant on such time & date as it deem fit; b. Call for additional document/information or material from the applicant; c. Visit the applicant's business premises; or d. Make such inquiries as it deems fit in circumstances of the case. > a draft agreement shall be prepared > The agreement shall be entered into by the Board with the applicant after its approval by the C.G. > once agreement is entered the copy thereof shall be sent to CIT having jurisdiction.
Rule 10O	Annual Compliance Report	>The assessee shall furnish an annual compliance report to DGIT[IT] for each year covered in the agreement. >The annual compliance report shall be in Form 3CEF. >The annual compliance report shall be furnished in quadruplicate, for each of years covered in agreement, within 30 days of due date of filing ROI for that year, or within 90 days of entering into an agreement, whichever is later.
Rule 10P	Compliance Audit	The TPO having the jurisdiction over the assessee shall carry out the compliance audit of the agreement for each of the year covered in the agreement. For the purposes of sub-rule (1), the TPO may require a. the assessee to substantiate compliance with the terms of the agreement, including satisfaction of the critical assumptions, correctness of the supporting data or information and consistency of the application of the transfer pricing method; b. the assessee to submit any information, or document, to establish that terms of agreement has been complied with. The TPO shall submit the compliance audit report, for each year covered in the agreement, to the DGIT[IT] in case of unilateral agreement and to the competent authority in India, in case of bilateral or multilateral agreement, mentioning therein his findings as regards compliance by the assessee with terms of the agreement. The DGIT shall forward the report to the Board in a case where there is finding of failure on part of assessee to comply with terms of agreement and cancellation of the agreement is required. The compliance audit report shall be furnished by the Transfer Pricing Officer within 6 months from the end of the month in which the Annual Compliance Report referred to in rule 10-O is received by the Transfer Pricing Officer. The regular audit of the covered transactions shall not be undertaken by the TPO if an agreement has been entered into under rule 10L except where the agreement has been cancelled under rule 10R.

Rule 10Q: Revision of APA

Agreement can be revised in following situations.

(a) There is a change in critical assumptions or failure to meet a condition subject to which the agreement has been entered into;
(b) There is a change in law that modifies any matter covered by the agreement but is not of the nature which renders the agreement to be non-binding ; or
(c) There is a request from competent authority in the other country requesting revision of agreement, in case of bilateral or multilateral agreement.

An agreement may be revised by the Board either suo motu or on request of the assessee or the competent authority in India or DGIT[IT]

The agreement shall not be revised unless an opportunity of being heard has been provided to the assessee and the assessee is in agreement with the proposed revision.

The revised agreement shall include the date till which the original agreement is to apply and the date from which the revised agreement is to apply

Rule 10R: Cancellation of APA

Agreement can be cancelled for following reasons:
> The compliance audit has resulted in the finding of failure on the part of the assessee to comply with the terms of the agreement;
> The assessee has failed to file the annual compliance report in time;
> The annual compliance report furnished by assessee contains material errors; or
> the agreement is to be cancelled.

The Board shall give an OOBH to the assessee, before proceeding to cancel an application.

The order of cancellation of the agreement shall be in writing and shall provide reasons for cancellation and for non-acceptance of assessee's submission, if any.
The order of cancellation shall also specify the effective date of cancellation of the agreement, where applicable.
The order of cancellation shall be intimated to the AO and the TPO, having jurisdiction over the assessee.

ROLL BACK PROVISION : RULE 10RA + CBDT CIRCULAR 10/2015

Meaning of Roll back	APA can be entered into for 5 consecutive years. Further, CBDT allows the taxpayer to avail the roll back provision for preceding 4 years. Meaning that for the years that have already passed the transactions the transactions can be priced as per the agreement. understand it as retrospective impact of the agreement. If taxpayers case is pending before an assessing/ appellate authority for the preceding 4 years, order will be passed giving effect to the APA.
Application & Time limit	Applicant can file application for rollback in form 3CEDA with proof of payment of an additional fees Rs.5L [Rule 10MA]
Condition for roll back transaction	The agreement shall contain rollback provision in respect of an international transaction subject to the following, namely:— 1) the international transaction is same as the international transaction to which the agreement (other than the rollback provision) applies; 2) the return of income for the relevant rollback year has been or is furnished by the applicant before the due date specified in Explanation 2 to sub-section (1) of section 139; 3) the report in respect of the international transaction had been furnished in accordance with section 92E; 4) applicability of rollback provision, in respect of an international transaction, has been requested by the applicant for all the rollback years in which the said international transaction has been undertaken by the applicant; and 5) the applicant has made an application seeking rollback in Form 3CEDA in accordance with sub-rule (5);
Rule 10RA Procedure for giving the effect to rollback provision of an agreement	The applicant shall furnish modified return in respect of a rollback year along with the proof of payment of any additional tax arising as a consequence of rollback provision. The modified return shall be furnished along with the modified return to be furnished in respect of first of the previous years for which the agreement has been requested for in the application. If any appeal filed by the applicant is pending before the CIT(A), ITAT or the High Court for a rollback year, on the issue which is the subject matter of the rollback provision for that year, said appeal to the extent of the subject covered under the agreement shall be withdrawn by the applicant before furnishing the modified return for the said year. If any appeal filed by the AO or the PCIT/CIT is pending before the ITAT or the High Court for a rollback year, on the issue which is subject matter of the rollback provision for that year, the said appeal to the extent of the subject covered under agreement
	shall be withdrawn by the AO or the PCIT/CIT, as the case may be, within 3 months of filing of modified return by the applicant. The applicant, the AO or the PCIT/CIT, shall inform the DRP or the CIT (Appeals) or the ITAT or the High Court, as the case may be, the fact of an agreement containing rollback provision having been entered into along with a copy of the same as soon as it is practicable to do so. In case effect cannot be given to the rollback provision of an agreement in accordance with this rule, for any rollback year to which it applies, on account of failure on the part of applicant, the agreement shall be cancelled.

SEC 92CD EFFECT TO ADVANCE PRICING AGREEMENT

1. Where prior to the date of entering into the agreement, any ROI has been furnished such person shall furnish modified ROI, within a period of 3M from the end of the month in which APA was entered. All other provisions of this Act shall apply accordingly as if the modified return is a return furnished under section 139.

2. Where assessment is already completed before filling modified return then also AO can assessee or reassess the income on the basis of modified Return.

Where assessment is pending and modified return is filled assessment shall completed on the basis of modified return. AO shall get 1 year more to complete the Assessment.

RULE 10CA RANGE CONCEPT

> Sec.92C [2] is applicable only if number of values in data set is less than 6. If it is more than 6 than range concept is applicable.
> Range concept is applicable in case of CUP/RPM/CPM/TNMM.
> If data of multiple years is given then we have to take weighted average of multiple years (CY + Last 2 years

Step 1: Arrange the data set in ascending order
Step 2: Arrive at the range starting from 35 percentile & ending at 65 percentile of the data sheet

Decision
If the actual Transaction Price falls within range the actual price shall be ALP.
If the not falling within range the median of data set shall deemed to be ALP.
If it is not Whole number take higher number [for 35/65/50 percentile]
If it is Whole number then Add next number & then take average

Example: Actual Transaction price - 151

Sr no	1	2	3	4	5	6	7
Data set	162	158	140	145	180	152	154

Step 1 : Arrange the data set in ascending order

Sr No	1	2	3	4	5	6	7
	140	145	152	154	158	162	180

Step 2 : Calculate Percentile

35 percentile	7 x 35/100 = 2.45 [Since not whole value take higher 3]
65 Percentile	7 x 65/100 = 4.55 [Since not whole value take higher 5]

Step 3: The ALP range shall begin from 3rd number in Row i.e. 152 & End on 5th number in Row that is 158

Reaching ALP: if Actual TP is between 152-158 then actual transaction price shall be ALP. Now since our actual transaction price is 151 is not falling within range so ALP shall be arithmetical median
i.e. 7 x 50/100 = 3.5 [Since not whole value take higher 4],
hence in that case ALP shall be 154.

LIMITATION OF ALP

>True comparison difficult in certain cases
>Availability of data and reliability of available data
>Absence of market price
>Absence of comparable market price for "intangible" transactions
>Administrative burden
>Time lag

OECD member countries are of the view that the ALP does provides sound basis to appreciate the transfer pricing between associated enterprises.

SEC 92CB SAFE HARBOUR RULES

> The determination of income u/s 9(1)(i) [FA'20] or determination of ALP u/s 92C / 92CA
> "In order to reduce the number of transfer pricing audits and prolonged disputes. CBDT on 18th Sep'13 issued Safe harbour Rule.

New Safe Harbour Rules for AY 21-22 are yet to be notified by Govt.

> "safe harbour" means circumstances in which the income-tax authorities shall accept the transfer price / income u/s 9(1)(i) declared by the assessee.
> The determination of arm's length price under section 92C or section 92CA shall be subject to safe harbour rules.
> The Rule provides minimum operating profit margin in relation to operating expenses a taxpayer is expected to earn for certain categories of international transactions , that will acceptable to the income tax authorities as arm's length price (ALP) .
> The safe harbour rule are not arm's length prices, but in the nature of presumptive taxation, which generally motivate taxpayers to opt for the same, as a compromise for not having to be involved in protracted litigation.
> Safe harbor typically include a premium payable by taxpayers for avoiding disputes and protracted litigations.
> New rules 10TA to 10TG contains the procedure for adopting safe harbour
> If Assessee opts for safe harbour then tolerance level of 3% is not available.
> Safe harbour rule is not applicable if Assessee enter into transaction with AE located in NJA u/s 94A
> Assessee would not be able to invoke MAP undet DTAA if Assessee's application has been accepted under safe harbour rule.

IN ACCORDANCE WITH POWER OF CBDT U/S 92CB READ WITH SEC 295, CBDT HAS NOTIFIED SAFE HARBOUR RULES

SEC 92CE SECONDARY ADJUSTMENT IN CERTAIN CASES

Sec 92CE(1) - Where a primary adjustment to transfer price,—
a) has been made suo motu by the assessee in his return of income;
b) made by the AO has been accepted by the assessee;
c) is determined by an advance pricing agreement entered into by the assessee u/s 92CC, on or after the 1st day of April, 2017;
d) is made as per the safe harbour rules framed u/s 92CB; or
e) is arising as result of resolution of an assessment by way of mutual agreement procedure under an agreement entered into u/s 90 / 90A for avoidance of double taxation, the assessee shall make a secondary adjustment.

Provided that nothing contained in this section shall apply, if,—
a) the amount of primary adjustment made in any PY does not exceed ₹1cr; or
b) the primary adjustment is made in respect of an AY commencing on/ before the 1st day of April, 2016:
Provided further that no refund of taxes paid, if any, before their amendment by the FA, 2019 shall be claimed and allowed.

Sec 92CE(2) - Where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money/ part thereof, as the case may be, which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed in such manner as may be prescribed.

Explanation.—For the removal of doubts, it is hereby clarified that the excess money or part thereof may be repatriated from any of the associated enterprises of the assessee which is not a resident in India.

Sec 92CE(2A) - Without prejudice to the provisions of sub-sec (2), where the excess money or part thereof has not been repatriated within the prescribed time, the assessee may, at his option, pay additional income-tax @ 18% on such excess money / part thereof, as case may be.(effective rate - 20.9664% i.e. 18 + 12 surcharge + 4cess). Where tax so paid he will not be required to make secondary adjustment & compute interest & treated as final payment of tax.

Sec 92CE(2B) - The tax on the excess money or part thereof so paid by the assessee under sub-section (2A) shall be treated as the final payment of tax in respect of the excess money or part thereof not repatriated & no further credit therefor shall be claimed by the assessee or by any other person in respect of the amount of tax so paid.

Sec 92CE(2C) - No deduction under any other provision of this Act shall be allowed to the assessee in respect of the amount on which tax has been paid in accordance with the provisions of sub-section (2A).

Sec 92CE(2D) - Where the additional income-tax referred to in sub-section (2A) is paid by the assessee, he shall not be required to make secondary adjustment under sub-section (1) and compute interest under sub-section (2) from the date of payment of such tax.

Sec 92CE(3) - For the purposes of this section,—
"associated enterprise" shall have meaning assigned to it in sub-section (1) and sub-section (2) of section 92A;
"arm's length price" shall have the meaning assigned to it in clause (ii) of section 92F;
"excess money" means the difference between the arm's length price determined in primary adjustment and the price at which the international transaction has actually been undertaken;
"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" means an adjustment in the books of account of the assessee & 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 imbalance between cash account & actual profit of the assessee.

SEC 94A NON JURISDICTIONAL AREA

Sec 94A(1) - The CG may, having regard to the lack of effective exchange of information with any country or territory outside India, specify by notification in the Official Gazette such country or territory as a notified jurisdictional area in relation to transactions entered into by any assessee.

Sec 94A(2) - Notwithstanding anything to contrary contained in this Act, if an assessee enters into transaction where one of the parties to the transaction is a person located in notified jurisdictional area, then—
a) all the parties to the transaction shall be deemed to be associated enterprises within the meaning of section 92A;
b) any transaction in the nature of purchase, sale or lease of tangible/ intangible property or provision of service or lending or borrowing money or any other transaction having a bearing on the profits, income, losses or assets of the assessee including mutual agreement or arrangement for allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided by/to the assessee shall be deemed to be an international transaction within the meaning of section 92B, & the provisions of sections 92, 92A, 92B, 92C [except the second proviso to sub-sec (2)], 92CA, 92CB, 92D, 92E & 92F shall apply accordingly.

Sec 94A(3) - Notwithstanding anything to the contrary contained in this Act, no deduction,—

a) in respect of any payment made to any financial institution located in a notified jurisdictional area shall be allowed under this Act, unless the assessee furnishes an authorisation in the prescribed form authorising the Board or any other income-tax authority acting on its behalf to seek relevant information from the said financial institution on behalf of such assessee; and

b) in respect of any other expenditure or allowance (including depreciation) arising from the transaction with a person located in a notified jurisdictional area shall be allowed under any other provision of this Act, unless the assessee maintains such other documents and furnishes such information as may be prescribed, in this behalf.

Sec 94A(4) - Notwithstanding anything to contrary contained in this Act, where, in any PY, assessee has received or credited any sum from any person located in notified jurisdictional area and the assessee does not offer any explanation about the source of said sum in the hands of such person / in the hands of the beneficial owner (if such person is not the beneficial owner of the said sum) or the explanation offered by the assessee, in the opinion of the AO, is not satisfactory, then, such sum shall be deemed to be the income of the assessee for that PY.

Sec 94A(5) - Notwithstanding anything contained in any other provisions of this Act, where any person located in a notified jurisdictional area is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVII-B, the tax shall be deducted at the highest of the following rates, namely:—
a) at the rate or rates in force;
b) at the rate specified in the relevant provisions of this Act;
c) at the rate of 30%

Sec 94A(6) - In this section,—
"person located in a notified jurisdictional area" shall include,—
(a) a person who is resident of the notified jurisdictional area;
(b) a person, not being an individual, which is established in the notified jurisdictional area; or
(c) a permanent establishment of a person not falling in sub-clause (a)/ sub-clause (b), in the notified jurisdictional area;
(d) "permanent establishment" shall have the same meaning as defined in clause (iiia) of section 92F;
(e) "transaction" shall have the same meaning as defined in sec 92F(v)

SEC 94B LIMITATION ON INTEREST DEDUCTION IN CERTAIN CASES

Section 94B(1) - Notwithstanding anything contained in this Act, where an Indian company, or a permanent establishment of foreign company in India, being borrower, incurs any expenditure by way of interest or of similar nature exceeding one crore rupees which is deductible in computing income chargeable under the head "Profits and gains of business or profession" in respect of any debt issued by a non-resident, being an associated enterprise of such borrower, interest shall not be deductible in computation of income under the said head to the extent that it arises from excess interest, as specified in sub-section (2) :
Provided that where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.

Section 94B(1A) - Nothing contained in sub-section (1) shall apply to interest paid in respect of a debt issued by a lender which is a permanent establishment in India of a non-resident, being a person engaged in business of banking. [FA'20]

Section 94B(2) - For the purposes of sub-sec (1), the excess interest shall mean an amount of total interest paid/payable in excess of 30% of earnings before interest, taxes, depreciation & amortisation of the borrower in the PY or interest paid or payable to associated enterprises for that PY, whichever is less.

Section 94B(3) - Nothing contained in sub-section (1) shall apply to an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance.

Section 94B(4) - Where for any assessment year, the interest expenditure is not wholly deducted against income under the head "PGBP", so much of the interest expenditure as has not been so deducted, shall be carried forward to the following AY/(s), and it shall be allowed as a deduction against the profits & gains, if any, of any business or profession carried on by it and assessable for that AY to extent of max allowable interest expense in accordance with sub-sec (2):
Provided that no interest expenditure shall be carried forward under this sub-sec for more than 8 AYs immediately succeeding the AY for which the excess interest expenditure was first computed.

Section 94B(5) - For the purposes of this section, the expressions—
"associated enterprise" shall have the meaning assigned to it in sub-section (1) and sub-section (2) of section 92A;
"debt" means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts/ other finance charges that are deductible in the computation of income chargeable under the head "Profits and gains of business or profession";
"PE" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

GRIEVANCE REDRESSAL AGAINST TP

Section 144C(1) - The AO shall, notwithstanding anything to contrary contained in this Act, in the first instance, forward a draft of proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on/after the 1st day of October, 2009, any variation in income/loss returned which is prejudicial to the interest of such assessee.

Section 144C(2) - On receipt of the draft order, eligible assessee shall, within thirty days of the receipt by him of the draft order,—
a) file his acceptance of the variations to the AO; or
b) file his objections, if any, to such variation with,—
(i) the Dispute Resolution Panel; & (ii) the Assessing Officer.

Section 144C(3) - The AO shall complete the assessment on the basis of the draft order, if—
the assessee intimates to the AO the acceptance of the variation; or
no objections are received within the period specified in sub-section (2).

Section 144C(4) - The AO shall, notwithstanding anything contained in section 153 or section 153B, pass the assessment order under sub-sec (3) within 1 month from the end of the month in which,—
the acceptance is received; or
the period of filing of objections under sub-section (2) expires.

Section 144C(5) - Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the AO to enable him to complete the assessment.

Section 144C(6) - The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:—
a) draft order;
b) objections filed by the assessee;
c) evidence furnished by the assessee;
d) report, if any, of the AO, VO or TPO or any other authority;
e) records relating to the draft order;
f) evidence collected by, or caused to be collected by, it; and
g) result of any enquiry made by, or caused to be made by, it.

Section 144C(7) - The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),—
a) make such further enquiry, as it thinks fit; or
b) cause any further enquiry to be made by any income-tax authority &report the result of the same to it.

Section 144C(8) - The Dispute Resolution Panel may confirm, reduce/ enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation/issue any direction under sub-section (5) for further enquiry and passing of assessment order.

Explanation.—For the removal of doubts, it is hereby declared that power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee.

Section 144C(9) - If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

Section 144C(10) - Every direction issued by the Dispute Resolution Panel shall be binding on the AO.

Section 144C(11) - No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the AO on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.

Section 144C(12) - No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

Section 144C(13) - Upon receipt of the directions issued under sub-sec (5), the AO shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153 / 153B, the assessment without providing any further opportunity of being heard to the assessee, within 1 month from the end of the month in which such direction is received.

Section 144C(14) - The Board may make rules for the purposes of the efficient functioning of Dispute Resolution Panel & expeditious disposal of the objections filed under sub-section (2) by the eligible assessee.

Section 144C(14A) - The provisions of this section shall not apply to any assessment or reassessment order passed by the AO with the prior approval of the Principal Commissioner or Commissioner as provided in sec 144BA(12).

Section 144C(15) - For the purposes of this section,—
"Dispute Resolution Panel" means a collegium comprising of 3 PCIT / CIT constituted by the Board for this purpose;

"Eligible assessee" means,—
(i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of TPO passed u/s 92CA(3);&
(ii) any foreign company.

SEC 93 TRANSFER OF INCOME TO NR

Section 93 hits at transactions which are effected with view to avoiding liability to taxation. For the purpose, the word "NR" also includes a person who is not-ordinarily resident. In order to attract provisions of this section, all the following conditions must be satisfied:
(a) There is a transfer of assets - whether movable or immovable and whether tangible or intangible.
(b) The transfer is made by any person in India/outside irrespective of his residential status or citizenship.
(c) The transfer is made either alone or in connection with associated operations.
(d) The assets transferred directly yield income chargeable to tax under this Act.
(e) The transfer of assets is effected in such a manner that the income becomes payable to a person outside India who is either non-resident or a not ordinarily resident in India.
(f) The transferor acquires any right by virtue of which he gets power to enjoy the income whether immediately or in future.
(g) The Assessing Officer is satisfied that avoidance of liability to tax in India is the purpose of the transfers.
In particular, this section deems any income of a non-resident person which, if it were the income of a resident person, would be chargeable to tax in India (in the absence of this Section), as the income of the resident person in India for all purposes of the Act provided that all the conditions stated above are satisfied. This section also covers a variety of transactions constituting a transfer including cases where assets are transferred to a non-resident person and the transferor indirectly derives income under the guise of obtaining loans or repayment of loans. If the aforesaid conditions are fulfilled, the income from the assets transferred should be treated as the income of the transferor and would accordingly be taxable in his hands. Therefore, where assets are transferred to a body corporate outside India, in consideration of shares allotted by it to the transferor, he (the transferor), will become assessable under this section in respect of the income of the company derived by it from those assets. This section will not, however, apply to cases where it is shown to satisfaction of the Assessing Officer that (i) neither the transfer nor any associated operation had for its purpose or for one of its purposes the avoidance of liability to taxation or (ii) it is provided to the satisfaction of the AO that the transfer was effected for bonafide commercial purpose and with no intent to avoid tax.
The income which is deemed to be that of the transferor under this sec may also arise as a result of the transfer in connection with associated operations. However, in this case also, the treatment of income would be the same.

EQUALISATION LEVY

BASICS/ISSUES IN E-COMMERCE

The typical taxation issues relating to e-commerce are:
(i) the difficulty in characterising the nature of payment & establishing a nexus or link between taxable transaction, activity and a taxing jurisdiction,
(ii) the difficulty of locating the transaction, activity and identifying the taxpayer for income tax purposes.

Chapter VIII of the Finance Act, 2016 addresses these challenges by introducing "Equalisation Levy" on such transactions.

PERMANENT ESTABLISHMENT DETERMINED IN E-COMMERCE

Situation:1 Existence of website in host country Soil
Existence of website by itself, would not constitute PE

Situation 2:Server on host country soil
Server is a system which carries out activity initiated by an end user's computer, in case the enterprise that operate server is different from the enterprise that carries on business through the website, the sever location cannot be considered to be place of business.

On the other Hand if the enterprise itself own/lease and operate the sever & the computer equipment is fixed and the business is carried on through the server , it could be constructed as PE.
If server act as only Information provider it cannot be treated as PE.
If server provide Information + contribute the productivity(Profit/ Sales} it shall be treated as PE.

Situation 3: Server functioning as agent
It is possible that server on host country soil could be constructed to be dependent agent of foreign enterprises. Such a situation will apply to Smart Servers. Smart servers are programmed to not only provide Information but also to take and process order from person who make a hit in the website. Such a server has a power to contract on behalf of foreign enterprises. It is possible to argue that since such a server is a dependent agent of Foreign Enterprises It may be considered to be PE. However a contrary and ore logical view would be that the website together with the server that host it can only constitute the medium through which order are placed. The Time acceptance of the order is not done by the machine itself but by the person or corporation which inserted into machine a programme capable of performing this task.

EQUALISATION LEVY - BASICS

> This chapter extends to whole of India except the state of J&K.

Sec 165 - Charge of Equalisation Levy :
The equalisation levy shall not be charged, where -
(a) the NR providing the specified service has a PE in India and the specified service is effectively connected with such PE;
(b) the aggregate amount of consideration for specified service received or receivable in a previous year by the NR from a person resident in India and carrying on business or profession, or from a NR having a PE in India, does not exceed 1Lakh; or
(c) where the payment for the specified service by the person resident in India, or the PE in India is not for the purposes of carrying out business or profession.

Meaning of Specified Services :
i) Online advertisement;
ii) Any provision for digital advertising space or any other facility / service for the purpose of online advertisement;
iii) Any other service as may be notified by CG.

SEC 165A - CHARGE OF EQUALISATION LEVY ON E-COMMERCE SUPPLY OF SERVICES

On and from the 1st day of April, 2020, there shall be charged an equalisation levy @ 2% of the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated by it -

(i) to a person resident in India; or
(ii) to a NR in the specified circumstances as ref. to in sub-sec (3); or
(iii) to a person who buys such goods or services or both using internet protocol address located in India.

The equalisation levy mentioned above shall not be charged -
(i) where the e-commerce operator making or providing / facilitating e-commerce supply or services has a permanent establishment in India & such e-commerce supply / services is effectively connected with such permanent establishment;
(ii) where the equalisation levy is leviable u/s 165; or
(iii) sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated as referred to in sub-section (1) is less than two crore rupees during the previous year.

SEC 166 COLLECTION & RECOVERY OF EQUALISATION LEVY

Every resident person carrying on Business or profession or a NR having PE in India shall deduct the Equalisation levy ref in Sec 165 from the amount paid / payable to NR @ 6%. If aggregate amount of consideration for specified service is more than 1,00,000 in PY.

Note :
1. Equalisation levy deducted shall be deposited upto the 7th of the next month.
2. If any person fails to deduct equalisation levy then also he's liable to pay levy to Govt

E- COMMERCE OPERATOR

Means 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

THRESHOLD LIMIT/ RELIEF TO SMALL PLAYERS

1. No such levy shall be made if aggregate amount of consideration for specified services received/receivable by a NR from person resident in India or from a NR having a permanent establishment in India does not exceed ₹1 lakh in any PY.
2. EL shall not be charged where payment for specified service by person resident in India or the permanent establishment in India, is not for the purposes of carrying out business or profession.
[Payment to International Matrimonial website exceeding ₹.1L will not be Subject to EL because it for Personal Purpose]

CONSEQUENCES OF NON DEDUCTION OF EQUALISATION LEVY

Any assessee who fails to deduct equalisation levy shall, notwithstanding such failure, be liable to pay the levy to the credit of the CG by the 7th of month immediately following said calendar month. Thus, if the assessee responsible for deducting equalisation levy, fails to so deduct,he has, in any case, to pay such levy to credit of C.G by the 7th of the month immediately following the said calendar month.

SEC 170 INTEREST ON DELAYED PAYMENT OF EQUALISATION LEVY

Every [assessee or e-commerce operator], who fails to credit the equalisation levy or any part thereof as required under [sec 166 / 166A] to the account of the CG within the period specified in that section,shall pay simple interest @ of 1% of such levy for every month or part of a month by which such crediting of the tax or any part thereof is delayed.

SEC 167 FURNISHING OF STATEMENT

1. Every assessee or e-commerce operator has to file return in Form No. 1 on / before 30th June of immediately following FY.
2. Belated / Revised Return : If or e-commerce operator assessee has not furnished the return within time limit or furnished return within time, noticed any mistake, may furnish revised return. Such belated return / revised return has to be furnished within 2 years from the end of FY in which specified service was provided or E-commerce supply or service was made or provided or facilitated.
3. If assessee / e-commerce operator fails to furnish the statement within the prescribed time, the AO may serve a notice upon such asssessee has to file return within 30 days from the date of serving of such notice.

SEC 168 PROCESSING OF RETURN

Where a statement has been made u/s 167 by the assessee such statement shall be processed u/s 168. In processing if there is an arithmetical error then it has to be rectified. After processing AO will issue intimation specifying sum payable or refunded to assessee. Intimation has to be sent within 1 years from the end of the FY in which the return was filed.
If any interest, levy, penalty is payable then notice of demand in Form No 2 has to be served upon assessee. If any demand arises due to processing of return then intimation itself is treated as deemed to be demand notice.

SEC 169 RECTIFICATION OF MISTAKE

On any mistake apparent on record the AO may amend such intimation on Suo Moto or mistake brought to notice by assessee. Intimation can be amended within 1 year from the end of FY in which intmation sought to be amended was issued.

SEC 171 PENALTY FOR FAILURE TO DEDUCT / PAY EQUALISATION LEVY

Any [assessee or e-commerce operator] who-
a) fails to deduct whole / any part of equalisation levy as required u/s 166; or
b) fails to pay whole / any part of equalisation levy as required u/s 66A; or
having deducted the [equalisation levy referred to in sec 165(1)], fails to pay such levy to the credit of the CG in accordance with the provisions of sub-section (2) of that section, shall be liable to pay,-
i) in the case referred to in clause (a), in addition to paying the levy in accordance with provisions of sub-sec (3) of that sect, or interest, if any, in accordance with provisions of sec 170, a penalty equal to the amount of equalisation levy that he failed to deduct;
ia) in the case referred to in clause (aa), in addition to the levy in accordance with provisions of that sec, or interest, if any, in accordance with the provisions of sec 170, a penalty equal to the amount of equalisation levy that he failed to pay; &
ii) in the case referred to in clause (b), in addition to paying the levy in accordance with the provisions of sub-sec (2) of that sec & interest in accordance with provisions of sec 170, a penalty of ₹1,000 for every day during which the failure continues, so, however, that the penalty under this clause shall not exceed the amount of equalisation levy that he failed to pay.

SEC 172 PENALTY ON FAILURE TO FURNISH STATEMENT

Where an [assessee or e-commerce operator] fails to furnish statement within the time prescribed u/s 167(1) / (3), he shall be liable to pay a penalty of ₹100 for each day during which the failure continues.

SEC 173 PENALTY NOT TO BE IMPOSED IN CERTAIN CASES.

Sec 173(1) - Notwithstanding anything contained in sec 171 / 172, no penalty shall be imposable for any failure referred to in the said sec, if the [assessee or e-commerce operator] proves to the satisfaction of AO that there was reasonable cause for the said failure.

Sec 173(2) - No order imposing a penalty under this Chap shall be made unless [assessee/e-commerce operator] has been given a reasonable opportunity of being heard.

SEC 176 PUNISHMENT FOR FALSE STATEMENT

Sec 176(1) - If a person makes a false statement in any verification under this Chapter or any rule made thereunder, / delivers an account or statement, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to 3 years and with fine.

Sec 176(2) - Notwithstanding anything contained in Code of Criminal Procedure, 1973, an offence punishable under sub-sec (1) shall be deemed to be non-cognizable within the meaning of that Code.

SEC177 INSTITUTION OF PROSECUTION

No prosecution shall be instituted against any person for any offence u/s 176 except with previous sanction of CCIT.

SEC174 APPEAL TO CIT(APPEALS)

An assessee or e-commerce operator aggrieved by an order imposing penalty, may appeal to the CIT(Appeals) in Form No 3 with fees of 1,000 within a period of 30 days from the date of receipt of the order of the Assessing Officer.
Where an appeal has been filed, the provisions of sections 249 to 251 of the Income Tax Act 1961 would, as far as may be, apply to such appeal.

SEC 175 APPEAL TO APPELLATE TRIBUNAL

An assessee or e-commerce operator aggrieved by an order made by CIT(A) u/s 174 may appeal to ITAT in the prescribed form (Form 04) with fees of 1,000 against such order.

The CIT may, if he objects to any order passed by the CIT(A) u/s 174, direct the AO to appeal to the ITAT against such order.

An appeal shall be filed within 60 days from the date on which the order sought to be appealed against is received by the Assessee or CIT as the case maybe.

SEC 166A COLLECTION & RECOVERY

The equalisation levy referred to in sub-section (1) of sec 165A, shall be paid by every e-commerce operator to the credit of the CG for the quarter of the FY ending with the date specified in column (2) of Table below by the due date specified in the corresponding entry in column (3) of the said Table:

Date of ending of the quarter of financial year	Due date of Financial year
30th June	7th July
30th September	7th October
31st December	7th January
31st March	31st March

E-COMMERCE SUPPLY OR SERVICE

i) online sale of goods owned by the E-commerce operator
ii) online provisions 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 above.

NON RESIDENT TAXATION

SEC 2(30) NON RESIDENT

'Non-Resident' means a person who is not a "resident".
This will be the case where none of the two basic conditions of Sec. 6 is satisfied are satisfied.

Individual - If he do not satisfy Sec.6(1)
HUF/other person - If Control & management wholly situated o/s India
Company - Foreign co and POEM situated outside India

SEC 115C DEFINITIONS

Sec 115C(a) - Convertible Foreign Exchange
"Convertible foreign exchange" means foreign exchange which is for the time being treated by the RBI as convertible foreign exchange for the purposes of the FEMA Act, 1999, & any rules made thereunder.

Sec 115C(b) - Foreign Exchange Asset
"Foreign Exchange Asset" means any specified asset which the assessee has acquired / purchased with, / subscribed to in, convertible foreign exchange.

Sec 115C(c) - Investment Income
"Investment Income" means any income derived ~~other than dividends referred to in section 115-O~~ [FA'20] from a foreign exchange asset.
Note - Interest income referred to in Sec 115A(2)/(3)/(4) i.e. sec 194LB, 194LC & 194LD is not covered here and shall be taxable @ 5% u/s 115A.

Sec 115C(d) - Long-term Capital Gains
"LTCG" means income chargeable under the head "Capital gains" relating to a capital asset, being a foreign exchange asset which is not a STCA;

Sec 115C(e) - Non-resident Indian
"Non-resident Indian" means an individual, being a citizen of India or a person of Indian origin who is not a "resident".
Explanation.—A person shall be deemed to be of Indian origin if he, / either of his parents / any of his grand-parents, was born in undivided India;

Sec 115C(f) - Specified Asset
"specified asset" means any of the following assets, namely :—
i) shares in an Indian company;
ii) debentures issued by an Indian Co which is not a Private Co defined in the Companies Act, 1956;
iii) deposits with an Indian company which is not a private company as defined in the Companies Act, 1956;
iv) any security of CG defined in sec 2(2) of the Public Debt Act, 1944;
v) such other assets as the CG may specify in this behalf by notification in the Official Gazette.

If Special Sec 115AB, 115AC, 115AD are not applicable, then apply the general provisions i.e Sec 112 & Sec 115A -
In case of NRI's there is an option to choose between General provisions (Sec 112 & 115A) and Specific provisions (Sec 115C - 115E)
The only difference between the General & Specific provisions are -
a) Under specific provisions benefit u/s 115F is available;
b) Under specific provisions , First proviso to Sec 48 is available for LTCG on unlisted securities whereas in general provisions, the proviso is not applicable.

EXEMPT INCOME TO NR

Section	Particulars	Exemption & Condition
10[4][ii]	Interest on money standing to the credit of NRE Account in India	Person resident outside India [under FEMA Act] or person who has been permitted to maintain said a/c by RBI
10[6][ii]	Remuneration received by foreign diplomats / consulate & there staff.	Condition: 1. Remuneration is received by our corresponding government officials resident in such foreign countries should be exempt. 2. The above mentioned officer should be subject of respective countries and should not be engaged in any other business.
10[6][vi]	Remuneration received as employee of a foreign enterprise for services rendered by him during his stay in India.	Condition: 1. Foreign enterprise is not engaged in any trade or business in India. 2. His stay in India Does not exceed aggregate period of 90 days in PY. 3. Such remuneration is not liable to be deducted from income of employer changeable under the Act.
10[6][viii]	Salary received by or due for services rendered in connection with his employment on a foreign ship if his total stay in India doesn't exceed 90 days in PY.	Individual (NR) salaried employee.
10[6][xi]	Remuneration received as an employee of Govt of foreign state during his stay in India in connection with his training in any govt office/corp. register with Govt	Individual (NR) salaried employee.
10(6A)	Tax paid by Government or Indian concern (under terms of agreement entered into after 31-3-1976 but before 1-6-2002 by the Govt or Indian concern with the foreign company) on income derived by way of royalty or fees for technical services by the foreign company from Government or Indian concern.	Foreign Company
10[6B]	Tax paid by Government or Indian concern under terms of agreement entered into before 1-6-2002 by CG with Govt of foreign State or international organization on income derived by a non-corporate NR or foreign company from the Govt or Indian concern, other than income by way of salary, royalty or fees for technical services	Non-corporate non-resident or foreign company
10[6BB]	Tax paid by Indian company, engaged in the business of operation of aircraft, which has acquired an aircraft or an aircraft engine on lease, under an approved (by CG) agreement entered into between 1-4-1997 and 31-3-1999, or after 31-3-2007, on lease rental/ income derived (other than payment for providing spares or services in connection with the operation of leased aircraft) by the Govt of a Foreign State or foreign enterprise.	Government of foreign state or foreign enterprises [NR person]
10[6C]	Income derived from Royalty/FTS under a agreement with the CG for providing services in or outside India in projects connected with security of India.	Foreign company notified by CG.
10[6D]	Income arising by way of royalty from or FTS rendered in or outside India to NTRO [National technical research organisation]	Non Corporate NR / Foreign Company
10[8]	Foreign income; and Remuneration received by an individual from the Government of a foreign State, in connection with any co-operative technical assistance programme & project under agreement between CG & the Govt of a foreign State.	Individual who is assigned to duties in India
10[8A]	Foreign income; and Any remuneration or fee received by such person (agreement relating to his engagement must be approved) out of funds made available to an international organization (agency like World Bank or any other multi-lateral agency) under a technical assistance grant agreement between that agency and the Govt of a foreign State (such technical assistant should be in accordance with an agreement between the CG and the agency).	Consultant, being (i) An individual: a) not being an Indian citizen; or b) being an Indian citizen who is not ordinarily resident in India,/ (ii) any other person, being a NR engaged by the agency for rendering technical services in India in connection with any technical assistance programme or project in accordance with the approved agreement.
10[9]	Foreign income	Any family member of individual as referred to in sec 10(8)/(8A)/(8B), accompanying him to India.

Foreign income referred in section 10(8)/(8A)/(8B)/(9) above refers to the other income accruing or arising outside India. Such income would be exempt provided:
(i) it is not deemed to accrue or arise in India; and
(ii) the individual is required to pay any income tax or social security tax of such income to the Government of that Foreign State or Country of origin of such member.

10[15](iiia)	Interest on deposits made by a foreign bank with scheduled bank with approval of RBI.	Bank incorporated outside India and authorised to perform Central Banking functions in that country.
10(15)(iv)(fa)	Interest payable by scheduled bank on deposits in foreign currency where acceptance of such deposits is duly approved by RBI.[Scheduled bank does not include co-operative bank]	a) Non-resident b) Individual or HUF being a resident but not ordinary resident.
10(15)(viii)	Interest on deposit on or after 01.04.2005 in an Offshore Banking Unit	
10[15](ix)	Interest payable by a unit located in an IFSC in respect of monies borrowed by it on or after 1.9.2019	NR
10[15A]	Lease rental paid by Indian co, engaged in business of operation of aircraft, to acquire an aircraft or an aircraft engine on lease (other than payment for providing spares or services in connection with the operation of leased aircraft) under an approved (by CG) agreement not entered into between 1-4-1997 and 31-3-1999, or after 31-3-2007.	Government of foreign State or foreign enterprise (i.e., a person who is a NR)
10(23BBB)	Income of European Economic Community derived in India from interest, dividends or capital gains from investment out of its funds under notified scheme of CG	European Economic Community
10(23BBC)	Income of SAARC Fund for Regional Projects set up by Colombo Declaration.	SAARC Fund for Regional Projects.

NON RESIDENT TAXATION

Section	Particulars	Exemption & Condition
10[48]	Income received in India in ₹ on account of sale of crude oil or any other goods or rendering of services as may be notified by the CG in this behalf. Foreign co & agreement should be notified by CG in national Interest.	FC on account of sale of crude oil any other goods or rendering of services it should not be engaged in other activity in India.
10[48A]	Income accruing or arising in account of storage of crude oil in a facility in India and sale of crude oil therefrom to a person resident in India. Foreign company and agreement should be notified by the CG in national interest.	Foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom.
10[48B]	Income from sale of leftover stock of crude oil from facility in India after the expiry of agreement or arrangement referred to in section 10(48A) or on termination of the said agreement or arrangement, in accordance with the terms mentioned therein, as the case may be, subject to such conditions, as may be notified by the CG.	Foreign company from sale of leftover stock of crude oil from the facility in India.
10[48C] [FA'20]	Income arrangement for replenishment of crude oil stored in its storage facility in pursuance of directions of the CG in this behalf	Indian Strategic Petroleum Reserves Ltd, being wholly owned subsidiary of the Oil Industry Development Board
10[50]	any income arising from any specified service provided on or after the date on which the provisions of Chapter VIII of the Finance Act, 2016 comes into force or arising from any e-commerce supply or services made or provided or facilitated on or after the 1st day of April, 2021. [FA'20]	chargeable to equalisation levy under that Chapter.
10(4C)	Interest payable by Indian Company or business trust	Payable in respect of monies borrowed from a source outside India by way of issue of rupee denominated bond, as ref to in Sec 194LC, during the period beginning from 17.09.18 to 31.03.19
10(4D)	Certain income to specified fund (Specified fund means a fund est / incorporated in India in the form of a trust / co / LLP / body corporate satisfying certain conditions)	CG on trf ref u/s 47(viiab) on a RSE located in IFSC & consideration paid or payable in foreign currency. CG on trf of security (other than shares of company resident in India) Any income from security issued by NR (not being PE of NR in India) Income from securitisation trust chargeable under PGBP.
10 (23FBC)	Income by Unit holders	income from specified fund or on transfer of units of specified fund
10 (23FBC)	Income by Unit holders	income from specified fund or on transfer of units of specified fund

Sec 10(23FE) : Exemption of Dividend, Interest or LTCG of specified person from Investment in India [FA'20]

Any income of a specified person in the nature of dividend, interest or long-term capital gains arising from an investment made by it in India, whether in the form of debt or share capital or unit, if the investment -
(i) is made on or after the 1st day of April, 2020 but on or before the 31st day of March, 2024;
(ii) is held for at least three years; and
(iii) is in -
(a) a business trust referred to in sec 2(13A)(i); or
(b) a company or enterprise or an entity carrying on the business of developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility as defined in the Explanation to clause (i) of sub-section (4) of section 80-IA or such other business as the CG may, by notification in the Official Gazette, specify in this behalf; or
(c) a Category-I or Category-II Alternative Investment Fund regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992, having 100% investment in one or more of the company or enterprise or entity referred to in item (b)

Provided that if any difficulty arises regarding interpretation or implementation of the provisions of this clause, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty:
Provided further that every guideline issued under the first proviso, shall be laid before each House of Parliament and shall be binding on the income-tax authority and the specified person:
Provided also that where any income has not been included in the total income of the specified person due to the provisions of this clause, and subsequently during any previous year the specified person fails to satisfy any of the conditions of this clause
so that the said income would not have been eligible for such non-inclusion, such income shall be chargeable to income-tax as the income of the specified person of that previous year.

Explanation.—For purposes of this clause, "specified person" means—
(a) a wholly owned subsidiary of the Abu Dhabi Investment Authority which—
(i) is a resident of the United Arab Emirates; and
(ii) makes investment, directly or indirectly, out of the fund owned by the Government of the United Arab Emirates;

(b) a sovereign wealth fund which satisfies the following conditions, namely:—
(i) it is wholly owned and controlled, directly or indirectly, by the Government of a foreign country;
(ii) it is set up and regulated under the law of such foreign country;
(iii) the earnings of the said fund are credited either to the account of the Government of that foreign country or to any other account designated by that Government so that no portion of the earnings inures any benefit to any private person;
(iv) the asset of the said fund vests in the Government of such foreign country upon dissolution;
(v) it does not undertake any commercial activity whether within or outside India; and
(vi) it is specified by the Central Government, by notification in the Official Gazette, for this purpose 31b[and fulfils conditions specified in such notification];

(c) a pension fund, which—
(i) is created or established under the law of a foreign country including the laws made by any of its political constituents being a province, State or local body, by whatever name called;
(ii) is not liable to tax in such foreign country;
(iii) satisfies such other conditions as may be prescribed; and
(iv) is specified by the Central Government, by notification in the Official Gazette, for this purpose;

PGBP INCOME OF NR

- Normal PGBP Computation Sec.28-44
- Presumptive Income for NR Sec.44B-D

SEC 9(1)(ii)&(iii) INCOME FROM SALARY

- which is earned India & includes
  - 1- Service rendered in India &
  - 2-Leave salary which form part of contract
- OR
- which is payable by the government of India to citizen of India for service rendered outside India

HOUSE PROPERTY INCOME OF NR

- House Property is Situated India - It is always taxable in India irrespective of place of receipt
- House Property is situated outside India then ROR-Always Taxable RNOR/NR-Taxable if receipt in India

CAPITAL GAIN OF NR

- Capital Assets Situated in India
  - Always Taxable In India
- Capital Asset Situated outside India
  - ROR – Taxable In India
  - RNOR – Taxable if gain is received in India

IFOS OF NR

- Earned /accrued in India
  - Taxable In India
- Earned /accrued outside India
  - ROR – Taxable In India
  - RNOR – Taxable if received in India

FOR PERSONAL NOTES

PRESUMPTIVE INCOME OF NR

Sec	Nature of Business	PGBP	Exemption & Condition
44B	Shipping business	1. 7.5% of Turnover or 2. Profit declared whichever is higher.	Turnover incl income on account of carriage of - 1. Passenger 2. Goods 3. Mail 4. Livestock 5. Demurrage charges 6. Handling charges 7. Payment of similar nature. # Shipped from / to India. # Profit of such business is liable to Tax in PY itself if condition of Sec.172 is satisfied. # V.M Salgaocer & Bros Co [Kar] defined the difference between 44B - Assessee in regular business 172 - Assessee operating through a casual visit
44BB	Business of Providing Services or Facilities in connection with supply of Plant/ Machinery on hire or for extraction of Mineral oil	1. 10% of Turnover or 2. Profit declared whichever is higher.	# Assessee can claim lower profit provided a) Maintain accounts b) Do Tax Audit.
44BBA	Operation of Aircraft	5% of Turnover or Profit declared whichever is higher	# Turnover include income on account of carriage of 1. Passenger 2. Goods 3. Mail 4. Livestock 5. Demurrage charges 6. Handling charges 7. Payment of similar nature. # shipped from / to India.
44BBB	Foreign Co engaged in civil construction Business in connection with power projects approved by CG	1. 10% of Turnover or 2. Profit declared whichever higher	# Assessee can claim lower profit provided a) Maintain accounts b) Do Tax Audit.
44D	Royalty or Technical fees derived by a Foreign Co from Government or Indian Concern	Rate of tax 20%	
44DA	Income from Royalties in case of NR	Royalty against FTS arising out of an agreement after 31.3.2003 where 1. NR carries business in India through PE 2. Right, property or contract in respect of which royalty or FTS paid is effectively connected with PE.	Following expenses are not allowed as deduction: • Expenses or allowance incurred which is not wholly & exclusively for such PE. • Amount paid [other than reimbursement by PE to head office or to any other offices, • Maintain books and Audit mandatory.

NON RESIDENT TAXATION

Sec	Nature of Business	PGBP	Exemption & Condition
44C	Taxation of Branch of Foreign company [Head office exp]	Income of branch of foreign co is computed as per 28 to 44D and following expenses are allowed as deduction Lower of a. 5% of ATI b. Actual Exp	# ATI means Total income before giving the effect to a. B/f depreciation. b. b//f losses c. deduction under chapter VIA # IF ATI is a loss then last 3 years Average ATI shall be considered. # HO Expenses include : • General administrative expenses • Rent rates taxes insurance of any • premises outside India • Travelling expenses by an employee or other person managing the affairs of company • Such other expenses as may be prescribe

SEC 115D SPECIAL PROVISION FOR COMPUTATION OF TOTAL INCOME OF NRIs

Investment Income

No deduction in respect of any expenditure or allowance shall be allowed under any provision of the Income Tax Act in computing the investment income.

Where the GTI includes only Investment Income and/or LTCG

Second proviso to section 48 shall not apply for computation of LTCG. First Proviso to section 48 shall be applicable. No deduction shall be allowed u/c VI-A.

Where GTI includes Investment Income and/or LTCG & other incomes

Second proviso to section 48 shall not apply for computation of LTCG. First Proviso to section 48 shall be applicable.

Chap VI-A deduction shall be allowed w.r.t the following income:

Gross Total Income

Less: Investment Income and LTCG

Balance Income on which Chapter VI-A available

SEC 115E TAX ON INVESTMENT INCOME & LONGTERM CAPITAL GAINS

LTCG	INVESTMENT INCOME	OTHER INCOME
10%	20%	Normal rate

SEC 115F CAPITAL GAIN ON TRANSFER OF FOREIGN EXCHANGE ASSETS NOT TO CHARGED IN CERTAIN CASES

Exemption shall be available only if net consideration is utilized for acquiring other FOREX assets / Saving certificate u/s 10(4B) with 6 months from the date of transfer.

Exemption - $\frac{\text{Capital Gains X Cost of acquisition of new asset}}{\text{Net consideration}}$

New asset should not be transferred or converted into money within 3 years from the Date of Acq, if it is transferred then exempted LTCG earlier shall now be taxable as LTCG in the year in which the new asset transferred or converted into money.

SEC 115G EXEMPTION OF ROI IN CERTAIN CASES

ROI exemption available in if :

a) Total income consists of only investment income & LTCG

b) TDS has been deducted from such income

SEC 115H BENEFIT UNDER CHAP TO BE AVAILABLE IN CERTAIN CASES EVEN AFTER ASSESSEE BECOMES RESIDENT

NRI who becomes Resident, may file a declaration in writing requesting A.O. for continuing benefits until transfer or conversion into money of such asset.

Sec 115-I - The above provisions are optional means Assessee can pay normal tax on LTCG & Investment Income.

SEC 115A TAX ON ROYALTY & TECHNICAL SERVICES FEE IN CASE OF NON RESIDENTS & FOREIGN CO

Where the total income of a foreign company or a non-resident includes any income by way of royalty or fees for technical services other than the income referred to in section 44DA.	
(A) Received from the Government in pursuance of an agreement made by the non-resident/foreign company with the Government, or (B) Received from the Indian concern in pursuance of an agreement made by the non-resident/ foreign company with the Indian concern and the agreement is approved by the CG.	10% of such royalty or fee for technical services. However, if DTAA provides for a rate lower than 10%, then provisions of DTAA / sec 115A, whichever are more beneficial to the assessee shall apply i.e., lower rate of DTAA shall apply instead of 10%.

SEC 44DA COMPUTING INCOME BY ROYALTIES ETC IN CASE OF NON RESIDENT

Royalty / FTS received by NR / Foreign Co shall be taxable at normal rate, if following conditions are satisfied :

a) NR / Foreign Co have PE in India

b) Such royalty / FTS should be connected with such PE.

Sec 44DA(2) - Every non-resident (not being a company) or a foreign company shall keep & maintain books of account & other documents in accordance with provisions contained in sec 44AA & get his accounts audited by an accountant as defined in the Explanation below section 288(2) & before the specified date referred to in sec 44AB & furnish by that date, the report of such audit in the prescribed form duly signed and verified by such accountant.

SEC 115A TAX ON INTEREST IN CASE OF NON RESIDENTS & FOREIGN COMPANY

S.No.	Total income of a foreign company or a non-resident includes any income by way of -	Applicable Rate of Tax
i)	dividends other than dividends referred to in sec 115-O] ; (Refer Analysis below)	20% of such dividend
ii)	Interest received from Government or an Indian concern on moneys borrowed by the Government/ Indian concern in foreign currency, other than referred to in (iia) / (iiaa).	20% of such interest
iia)	Interest referred to in section 194LB received from an infrastructure debt fund referred to in section 10(47) on money borrowed by infrastructure debt fund in foreign currency	5% of such interest
iiaa)	Interest referred to in section 194LC received from an Indian company or a business trust,— (i) in respect of monies borrowed by it at any time on or after the 1st day of July, 2012 but before the 1st day of July, 2023 [FA'20] in foreign currency, from a source outside India,— (a) under a loan agreement; or (b) issue of long-term infrastructure bonds; or (c) by way of issue of long-term bonds / long term infrastructure bond at any time on/after 1.10.14 but before 1.7.23, as approved by the CG in this behalf; and (ia) in respect of monies borrowed by it from a source outside India by way of issue of RDB before 1.7.23 (ib) in respect of monies borrowed by it from a source o/s India by way of issue of any long-term bond o rupee denominated bond listed on RSE located in IFSC on/after 1.4.20 but before 1.7.23 (ii) to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the CG in this behalf, having regard to terms of the loan / bond & its repayment.	5% of such interest 4% of such interest 5% of such interest
iiab)	Int ref to in sec 194LD received by FII /Qualified Foreign Investor from an Indian co or Indian Govt where such interest is payable on or after 1-6-13 but before 1-7-23 on investment made by FII/Qualified Foreign Investor in foreign currency in: (a) RDB of an Indian Co; or (b) Government security. Interest Payable on or after the 1st day of April, 2020 but before the 1st day of July, 2023 in respect of the investment made by payee in municipal debt securities Provided that rate of interest in respect of bond referred to in (a) shall not exceed the rate notified by the CG.	5% of such interest
iiac)	distributed income being interest referred to in sub-sec (2) of section 194LBA - a) Interest receivable from SPV b) Dividend ref to in sec 115-O(7)	5% 10%
iii)	income received in respect of units, purchased in foreign currency, of a Mutual Fund specified under clause (23D) of section 10 or of the Unit Trust of India	20% of such interest

SEC 194LBB INCOME OF INVESTMENT FUND UNITS

Where any income, other than that proportion of income which is of the same nature as income ref. to in sec 10(23FBB), is payable to unit holder in respect of units of an investment fund specified in clause (a) of the Expl. 1 to sec 115UB, the person responsible for making the payment shall, at the time of credit of such income to the account of payee / payment thereof in cash or by issue of a cheque / draft / by any other mode,whichever is earlier, deduct income-tax thereon,

(i) at the rate of ten per cent, where the payee is a resident;

(ii) at rates in force, where payee is a NR (not being a co) / foreign co

Provided that where the payee is NR (not being a co) / foreign co, no deduction shall be made in respect of any income that is not chargeable to tax under the provisions of the Act.

SEC 194LB - INCOME BY WAY OF INTEREST FROM INFRASTRUCTURE DEBT FUND

Where any income by way of interest is payable to a NR, not being a co, or to a foreign co, by an infrastructure debt fund referred to in sec 10(47), the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash / issue of a cheque / draft / by any other mode, whichever is earlier, deduct TDS @ 5%.(between 14.5.20 to 31.3.21- 5%)

SEC 194LC - INCOME BY WAY OF INTEREST FROM INDIAN COMPANY

Sec 194LC(1) - Where any income by way of interest referred to in sub-section (2) is payable to a non-resident, not being a company or to a foreign company by a specified company or a business trust, the person responsible for making the payment, shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct the income-tax thereon @ 5%. (between 14.5.20 to 31.3.21- 5%)

Provided that in case of income by way of interest referred to clause (ib) of sub-sec (2), the income-tax shall be deducted @ 4%; [FA'20]

Sec 194LC(2) - The interest referred to in sub-section (1) shall be the income by way of interest payable by the specified company or the business trust,—

in respect of monies borrowed by it in foreign currency from a source outside India,—

(a) under a loan agreement at any time on or after the 1st day of July, 2012 but before the 1st day of July, 2020 2023 [FA'20]; or

(b) by way of issue of long-term infrastructure bonds at any time on or after the 1st day of July, 2012 but before the 1st day of October, 2014; or

(c) by way of issue of any long-term bond including long-term infrastructure bond at any time on or after the 1st day of October, 2014 but before the 1st day of July, 2023 [FA'20], as approved by CG in this behalf; or

(ia) in respect of monies borrowed by it from a source outside India by way of issue of rupee denominated bond before the 1st day of July, 2020, and 2023, or [FA'20]

(ib) in respect of monies borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond on or after the 1st day of April, 2020 but before the 1st day of July, 2023, which is listed only on a recognised stock exchange located in any IFSC, and"; [FA'20]

to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the CG in this behalf, having regard to the terms of the loan or the bond and its repayment.

SEC 194LD - INCOME BY WAY OF INTEREST ON CERTAIN BONDS & GOVERNMENT SECURITIES

Sec 194LD(1) - Any person who is responsible for paying to a person being a Foreign Institutional Investor or a Qualified Foreign Investor, any income by way of interest referred to in sub-section (2), shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of 5%.(between 14.5.20 to 31.3.21- 5%)

Sec 194LD(2) -

The income by way of interest referred to in sub-section (1) shall be the interest payable,—

on or after the 1st day of June, 2013 but before the 1st day of July, 2023 in respect of the investment made by the payee in —

(i) a rupee denominated bond of an Indian company; or

(ii) a Government security;

on or after the 1st day of April, 2020 but before the 1st day of July, 2023 in respect of the investment made by the payee in municipal debt securities:

Provided that the rate of interest in respect of bond referred to in sub-clause (i) of clause (a) shall not exceed the rate as the CG may, by notification in the Official Gazette, specify.";

NON RESIDENT TAXATION

SEC 115AB TAX ON INCOME FROM UNITS PURCHASEDIN FOREIGN CURRENCY OR CG FROM THEIR TRANSFER

Income & LTCG to "Overseas Financial Org" on units of Mutual Fund or UTI acquired in foreign currency shall be taxed @ 10%.

Notes:-

"Overseas Financial Organisation" means any fund, institution, association or body, whether incorporated or not, established under the laws of a country outside India and which has entered into an arrangement for investment in India with any public sector bank or public financial institution or mutual fund. Such arrangement should be approved by the SEBI

No deduction shall be allowed under Chapter VI-A in relation to Long Term Capital Gains referred above.

The first proviso and the second proviso to section 48 shall not apply for the computation of Long Term Capital Gains referred above.

Where the Gross total income of the Overseas financial Organisation consist of other incomes also, then the deduction under Chapter VI-A will be available in respect of other incomes. The normal provisions of Income-tax Act will apply to the other incomes.

"Units" means unit of a mutual fund or of the Unit Trust of India.

The provisions of Chapter VI i.e., set-off, carry-forward and set-off of losses are applicable. Therefore, the current year as well as brought forward losses can be setoff against the incomes referred to in sec 115AB subject to the provisions of chap VI.

It may be noted that long term capital gains on units of equity-oriented fund are taxable @ 10% u/s 112A in excess of ₹ 1 lakh provided STT has been paid on the sale of such units. However, such LTCG also covered in sec 115AB shall not be taxed u/s 112A since section 115AB is specific section for Overseas Financial Organisation.

It may be noted that STCG on units of equity oriented fund are taxable @ 15% u/s 111A provided securities transaction tax has been paid on the sale of such units.

This section covers units of Equity Oriented Mutual Funds as well as Debt Oriented Mutual Fund.

SEC 196B - INCOME FROM UNITS

Where any income in respect of units referred to in sec 115AB / by way of LTCG arising from the transfer of such units is payable to an Offshore Fund, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct tax @ 10%. (between 14.5.20 to 31.3.21- 10%)

SEC 115AC TAX ON INCOME FROM BONDS OR GDR PURCHASED IN FOREIGN CURRENCY OR CG ON TRANSFER

Income received by NR on Bonds of Indian Company or GDR acquired in Foreign currency shall be taxed @ 10%.

Notes :

"Global Depository Receipts" means any instrument in the form of a depository receipt or certificate (by whatever name called) created by the Overseas Depository Bank outside India and issued to investors against the issue of, ordinary shares of issuing company, being a company listed on a recognized stock exchange in India. Therefore, benefit of section 115AC is available only if the GDRs are represented by equity shares of an Indian company which is listed on Stock Exchange in India. If GDRs are represented by equity shares of a company which is not listed on Stock Exchange in India, then benefit of sec 115AC is not available.

Special rate of tax is applicable on the above-mentioned incomes only. Balance income of the assessee will be chargeable to tax at normal rates applicable to assessee.

No deduction shall be allowed u/s 28 to 44C / sec 57 / Chap VI- A in relation to the above-mentioned incomes.

The first proviso and second proviso to section 48 shall not apply for the computation of long term capital gains referred to in clause (b) above.

Where the Gross Total Income of the non-resident consists of other incomes also, then the deduction u/c VI-A shall be allowed in respect of other incomes. The normal provisions of the Income-tax Act will apply to other income.

It shall not be necessary for the non-resident to furnish the return of income if

a) his total income consists of only the interest referred to in this section &
b) tax has been deducted on such income.

Where the assessee acquired GDRs or bonds in an amalgamated or resulting company by virtue of his holding GDRs or bonds in the amalgamating or demerged company, as the case may be, acquired in accordance with the provisions of section 115AC, then the provisions of section 115AC shall also apply to such GDRs or bonds.

To give a further incentive, sec 47 has been amended. Now, if these GDRs if represented by equity shares of Company listed in India are transferred by a non-resident to another non-resident outside India, then as per sec 47, the capital gains will not attract income-tax. In other words, such transfer is exempt from capital gains tax. Exemption u/s 47 is also available on transfer of bonds referred to in section 115AC made by a non-resident to another non-resident outside India. However, if GDRs are represented by Equity shares of an Indian company which is not listed in India, then, exemption u/s 47 shall not be available even if these GDRs are transferred by NR to NR outside India.

The provisions of Chapter VI i.e., set-off, c/f and set-off of losses are applicable. Therefore, the current year as well as brought forward losses can be setoff against the incomes referred to in sec 115AC subject to the provisions of Chapter VI.

SEC 196C - INCOME FROM FOREIGN CURRENCY BONDS OR SHARES OF INDIAN COMPANY

Where any income by way of interest or dividends in respect of bonds or GDRs referred to in sec 115AC or by way of LTCG arising from the transfer of such bonds/GDRs is payable to NR, the person responsible for making the payment shall, at the time of credit of such income to account of the payee or at the time of payment thereof in cash or by issue of a cheque / draft / by any other mode, whichever is earlier, deduct income tax thereon at the rate of 10% (between 14.5.20 to 31.3.21- 10%)

~~Provided that no such deduction shall be made in respect of any dividends referred to in section 115-O.~~

SEC 115AD INCOME OF FTII FROM SECURITY OR CAPITAL GAINS FROM THE TRANSFER

Type of income	Rate of tax
Income in respect of securities (other than units u/s 115 AB) received by a Specified Fund / FII as special by GOVT a) Income in respect of security (other than units u/s 115AB	FII - 20% SF - 10%
b) STCG	30%
c) STCG u/s 111A	15%
d) LTCG / LTCG u/s 112A (exceeding 1lakh)	10%
e) Other Income of Specified Fund / FII (Other than specified above)	Normal rate

Sec 115AD(1A) - In case of specified fund, this sec shall apply only to the extent of income that is attributable to units held by NR (not being PE of a NR in India) calculated in the prescribed manner. [FA'20]

Notes:

Special rate of tax is applicable on above mentioned incomes only. Balance income of the assessee will be chargeable to tax at normal rates applicable to assessee.

No deduction shall be allowed u/s 28 to 44C / sec 57 / Chap VI- A in relation to the income referred to in (a) and (b) above.

The first proviso and second proviso to section 48 shall not apply for computation of capital gains referred to in (b) above i.e. Long Term as well as short term capital gains.

Where the Gross Total Income of foreign institutional investor consist of other incomes also, then the deduction under Chapter VI-A shall be allowed in respect of other incomes. The normal provisions of the Income tax Act will apply to the other incomes.

"Foreign Institutional Investor" means such investor as the CG may notify in the Official Gazette.

"Securities" means as defined in the securities Contracts (Regulation) Act.

The provisions of Chapter VI i.e., set-off, carry-forward & set-off of losses are applicable. Therefore, the current year as well as brought forward losses can be setoff against the incomes referred to in sec 115AD subject to the provisions of Chapter VI.

Unabsorbed depreciation of current year as well as brought forward, cannot be setoff against the income referred to in section 115AD since the set-off and carry forward of depreciation is governed by sec 32.

SEC 196 INTEREST OR DIVIDEND OR OTHER SUMS PAYABLE TO GOVERNMENT, RESERVE BANK OR CERTAIN CORPORATIONS

Notwithstanding anything contained in the foregoing provisions of this Chapter, no deduction of tax shall be made by any person from any sums payable to—

the Government, or the Reserve Bank of India, or
a corporation est. by or under a Central Act which is, under any law for the time being in force, exempt from income-tax on its income, or
a Mutual Fund specified u/s 10(23D),
where such sum is payable to it by way of interest or dividend in respect of any securities/shares owned by it/ in which it has full beneficial interest, or any other income accruing or arising to it.

SEC 196D - INCOME OF FTII FROM SECURITIES

Sec 196D(1) - Where any income in respect of securities referred to in section 115AD(1)(a), not being income by way of interest referred to in sec 194LD, is payable to a FII, person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at time of payment thereof by any mode [FA'20], whichever is earlier, deduct income-tax thereon at the rate of 20%.

Sec 196D(1A) - Where any income in respect of securities referred to in sec 115AD(1)(a) not being income by way of int. referred to in sec 194LD, is payable to specified fund [ref. to in clause (c) of the Expl. to sec 10(4D)], the person responsible for making payment shall, at the time of credit of such income to the account of the payee, or at the time of payment thereof by any mode, whichever is earlier, deduct the income-tax thereon @ 10%.[w.e.f 1.11.2020]
Provided that no deduction shall be made in respect of an income exempt u/s 10(4D).

SEC 115ACA TAX ON INCOME FROM GDRs PURCHASED IN FOREIGN CURRENCY OR CG ARISING FROM TRANSFER

Sec 115ACA(1) - Where total income of an assessee, being an individual, who is a resident & an employee of an Indian comengaged in specified knowledge based industry or service, or an employee of its subsidiary engaged in specified knowledge based industry/service (hereafter in this section referred to as resident employee), includes—

a) income by way of dividends, other than dividends referred to in section 115-O dividends [FA'20], on GDRs of an Indian company engaged in specified knowledge based industry or service, issued in accordance with such ESOP as the CG may, by notification in the Official Gazette, specify in this behalf and purchased by him in foreign currency

b) income by way of long-term capital gains arising from the transfer of GDRs referred to in clause (a),
the income-tax payable shall be the aggregate of -
i) the amount of income-tax calculated on the income by way of dividends, other than dividends referred to in section 115-O dividends [FA'20], in respect of GDRs referred to in clause (a), if any, included in the total income, at the rate of 10%;
ii) the amount of income-tax calculated on the income by way of long-term capital gains referred to in clause (b), if any, at rate of 10%; and
iii) the amount of income-tax with which the resident employee would have been chargeable had his total income been reduced by the amount of income referred to in clauses (a) and (b).

Sec 115ACA(2) - Where the gross total income of resident employee—

a) consists only of income by way of dividends, other than dividends referred to in section 115-O dividends [FA'20], in respect of GDRs referred to in clause (a) of sub-section (1), no deduction shall be allowed to him under any other provision of this Act;
b) includes any income referred to in clause (a) / (b) of sub-section (1), the gross total income shall be reduced by the amount of such income and the deduction under any provision of this Act shall be allowed as if the gross total income as so reduced were the gross total income of the assessee.

Sec 115ACA(3) - Nothing contained in the first and second provisos to section 48 shall apply for the computation of long-term capital gains arising out of the transfer of long-term capital asset, being GDRs referred to in clause (b) of sub-section (1).

NON RESIDENT TAXATION

SEC 115BB TAX ON WINNINGS FROM LOTTERIES, CROSSWORD PUZZLES, RACES INCL. HORSE RACES, CARD GAMES & OTHER GAMES OF ANY SORT OR GAMBLING OR BETTING OF ANY FORM OR NATURE WHATSOVER

Where the total income of an assessee includes any income by way of winnings from any lottery or crossword puzzle or race including horse race (not being income from owning and maintaining race horses) or card game or other game of any sort or from gambling or betting of any form or nature whatsoever, the income tax payable shall be the aggregate of -

a) the amount of income-tax calculated on income by way of such winnings, at the rate of 30%.
b) the amount of income-tax which the assessee would have been chargeable had his total income been reduced by the amount of incomes referred to in (a).

Key Notes:-

No deduction of any expenditure or allowance shall be allowed in computing the above incomes. (Section 58)

Where certain percentage of the lottery income is payable to the Govt or the agency conducting the lotteries, such percentage is deductible while computing the lotteiy income. (CBDT Circular)

For the purposes of deduction of TDS, the lottery prize shall be reduced by, where certain percentage of the lottery income is payable to the Govt or the Agency conducting the lotteries, such percentage of lottery income.

Losses whether current year or brought forward, cannot be set-off against the incomes referred to in section 115BB.

Can winnings of prize money on unsold lottery tickets held by the distributors lottery tickets be assessed as business income and be subject to normal rates of tax instead of the rates prescribed u/s 115BB?

CIT v. Manjoo and Co. (Kerala)

On the above issue, the Kerala High Court observed that winnings from lottery is included in the definition of income by virtue of sec 2(24)(ix).

Further, in practice, all prizes from unsold tickets of the lotteries shall be the property of the organizing agent and shall be refunded to the organizing agent.

The High Court contended that the receipt of winnings from lottery by the distributor was not on account of any physical or intellectual effort made by him and therefore cannot be said to be "income earned" by him in business.

The said view was taken on the basis that the unsold lottery tickets cease to be stock-in-trade of the distributor because, after the draw, those tickets are unsaleable & have no value except waste paper value and the distributor will get nothing on sale of the same. Hence, the receipt of the prize money is not in his capacity as a lottery distributor but as holder of the lottery tickets which won the prizes.

SEC 194B WINNINGS FROM LOTTERY OR CROSSWORD PUZZLE

The person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle/card game & other game of any sort in an amount exceeding ten thousand rupees shall, at the time of payment thereof, deduct income-tax thereon at the rates in force :

Provided that in a case where the winnings are wholly in kind/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 the winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.

SEC 115BBA TAX ON NON RESIDENT SPORTSMEN OR SPORTS ASSOCIATIONS

Where the total income of an assessee -	Applicable rate of tax
(a) being a sportsman (including Athelete) who is not a citizen of India and is a non-resident, includes any income received/ receivable by way of - > participation in India in any game (other than the games referred to in section 115BB) or sport; or > advertisement, or > contribution of articles relating to any game or sport in India in newspapers, magazines or journals; or	20% of such income
(b) being a non-resident sports association or institution, includes any amount guaranteed to be paid or payable to such association or institutions in relation to any game (other than the games referred to in sec 115BB) or sport played in India;	20% of such income
(c) being an entertainer, who is not a citizen of India and is a non-resident, includes any income received or receivable from his performance in India.	20% of such income

SEC 194E PAYMENT TO NR SPORTSMEN OR SPORTS ASSOCIATIONS

Where any income referred to in section 115BBA is payable to a non-resident sportsman (including an athlete) or an entertainer who is not a citizen of India or a non-resident sports association or institution, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income tax - thereon @ 20%.

SEC 195 OTHER SUMS

Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest (not being interest referred to in sec 194LB / 194LC) or section 194LD or any other sum chargeable under the provisions of this Act (not being income chargeable under the head "Salaries") shall, at the time of credit of such income to the account of payee/at time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force

Provided that in the case of interest payable by the Government or a public sector bank within the meaning of clause (23D) of section 10 or a public financial institution within the meaning of that clause, deduction of tax shall be made only at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode.

Where the person responsible for paying any such sum chargeable under this Act (other than salary) to a non-resident considers that the whole of such sum would not be income chargeable in the case of the recipient, he may make an application in such form and manner to the Assessing Officer, to determine in such manner, as may be prescribed, the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted under sub-section (1) only on that proportion of the sum which is so chargeable.

Subject to rules made under sub-section (5), any person entitled to receive any interest or other sum on which income-tax has to be deducted under sub-section (1) may make an application in the prescribed form to the Assessing Officer for the grant of a certificate authorising him to receive such interest or other sum without deduction of tax under that sub-section, and where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon under sub-section (1).

A certificate granted under sub-section (3) shall remain in force till the expiry of the period specified therein or, if it is cancelled by the Assessing Officer before the expiry of such period, till such cancellation.

The Board may, having regard to the convenience of assessees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (3) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.

The person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall furnish the information relating to payment of such sum, in such form & manner, as may be prescribed.

Notwithstanding anything contained in sub-section (1) & (2), the Board may, by notification in the Official Gazette, specify a class of persons or cases, where the person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application 72[in such form and manner to the Assessing Officer, to determine in such manner, as may be prescribed], the appropriate proportion of sum chargeable, and upon such determination, tax shall be deducted under sub-section (1) on that proportion of the sum which is so chargeable.

FOR PERSONAL NOTES

BEPS

MEANING

Base Erosion and Profit Shifting (BEPS) refers to tax planning strategies that exploit gaps and mismatches in tax rules to make profits 'disappear' for tax purposes or to shift profits to locations where there is little or no real activity but the taxes are low, resulting in little or no overall corporate tax being paid. 15 Action plans were suggested.

ADVERSE EFFECTS OF BEPS

BEPS undermines the integrity of the tax system, as reporting of low corporate taxes is considered to be unfair. In developing countries,the lack of tax revenue leads to significant under funding of public investment that could help foster economic growth. Further, when tax laws permit businesses to reduce their tax burden by shifting their income away from jurisdictions where income producing activities are conducted, other taxpayers, especially individual taxpayers in that jurisdiction bear a greater share of the burden.
This gives rise to tax fairness issues on a/c of individuals having to bear a higher tax burden.

ACTION PLAN FUNDAMENTALS

The Action Plans were structured around 3 fundamental pillars viz.:
(1) Reinforcing of 'substance' requirements in existing international standards;
(2) Alignment of taxation with location of value creation & economic activity; and
(3) Improving transparency and tax certainty.

Coherence	Substance	Transparency	Horizontal
Action 2 Neutralise the effects of hybrid mismatch arrangements	Action 5 - 1st component Preferential tax regimes	Action 5 - 2nd component Exchange of information on tax rulings	Action 1 Digital economy
Action 3 Strengthen CFC rules	Action 6 Prevent treaty abuse	Action 11 Data analysis	Action 15 Multilateral instrument
Action 4 Limit interest deductibility	Action 7 Prevent the artificial avoidance of PE status	Action 12 Mandatory disclosure rules	
	Action 8-10 Aligning transfer pricing outcomes with value creation: Intangibles; Risk and capital; and Other high-risk transactions	Action 13 Re-examine transfer pricing documentation	
		Action 14 Dispute resolution	

ACTION PLAN 1 DIGITAL ECONOMY

Recommendation of OECD on Above Issue:
1) Modifying the existing Permanent Establishment (PE)
2) A virtual fixed place of business PE in the concept of PE i.e., creation of a PE when the enterprise maintains a website on a server
3) Imposition of TDS on certain payments or
4) equalization levy upon consideration of digital transaction

Provision incorporated in Indian Tax Laws
1. FA.2018 provided the significant economic presence of NR shall constitute the business connection from Ay 19-20.
2. FA.2016 provided for equalization levy @ 6% on digital transaction.
3. There are TDS provision on many NR payments

ACTION PLAN 2 NEUTRALIZED THE EFFECT OF HYBRID MISMATCH ARRANGEMENT

Meaning of Hybrid Mismatch	1. It is an Arrangement that 2. Exploit a difference in tax treatment 3. Of an entity or an Instrument 4. Under the Law of two or more tax jurisdiction 5. To achieve double non Taxation
Types of Hybrid Mismatch arrangement	1. Creation of two deductions for a single borrowal 2. Participation exemption regimes 3. Generation of deductions without corresponding income inclusions 4. Misuse of foreign tax credit

Recommendation of OECD -
1. A rule denying transparency to entities where the non-resident investors' resident country treats the entity as opaque.
Example - Let us say, A Co., a parent company in country A indirectly holds B Co., an operating company in country B. Between A Co. and B Co. is a hybrid entity that is treated as transparent or disregarded for country A tax purposes and as non-transparent for country B tax purposes. A Co. holds all or almost all equity interest in the hybrid entity which in turn holds all or almost all equity interests in B Co. The hybrid entity borrows money from a third party and the loan is used to invest equity into B Co (or to buy the shares in B Co from either another company of the same group or from an unrelated third party). The hybrid entity pays interest on the loan. Except for the interest, the hybrid entity does not claim any other significant deduction and does not have any significant income.
With respect to Country B, for tax purposes, Hybrid Entity is subject to corporate income tax. Its interest expenses can be used to offset other country B group companies' income under the country B group tax relief regime. On the other hand, country A treats the hybrid entity as transparent or disregarded, with the result that its interest expenses are allocated to A Co, which deducts the interest expense to offset unrelated income. The net effect is that there are two deductions for the same contractual obligation in 2 different countries. Therefore, by virtue of rule denying transparency to an entity which is treated as opaque in the subsidiary company's country, the double deduction can be avoided.

2. A rule denying an exemption or credit for foreign underlying tax for dividends that are deductible by the payer.
Example -
N Co, a company resident in country N is funded by M Co., a company resident in country M with an instrument that qualifies as equity in country M but as debt in country N. A payment made under the instrument would be deductible as interest expense for N Co under country N tax law. Corresponding receipts are treated as exempt dividends under tax laws of country M. Consequently, deduction is available under the tax laws of country N without a corresponding income inclusion in country M. Therefore, by virtue of rule denying an exemption or credit for foreign underlying tax for dividends that are deductible by the payer, exemption of such income in country M would not be possible.

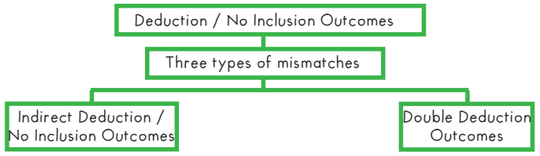
4. A rule denying a foreign tax credit for withholding tax where that tax is also credited to some other entity; and

5. Amendments to CFC and similar regimes attributing local shareholders the income of foreign entities that are treated as transparent under their local law.

Treatment of Branch mismatches : 2017 Report

Branch mismatches arise where the ordinary rules for allocating income and expenditure between the branch & head office result in a portion of the net income of the taxpayer escaping the charge to taxation in both the branch and residence jurisdiction. These branch mismatches occur where two jurisdictions take a different view as to the existence of, or the allocation of income or expenditure between, the branch in head office of the same taxpayer.

Unlike hybrid mismatches, which result from conflicts in the legal treatment of entities or instruments, branch mismatches are the result of differences in the way the branch and head office account for a payment made by or to the branch. The 2017 report identifies five basic types of branch mismatch arrangements that give rise to one of three types of mismatches.



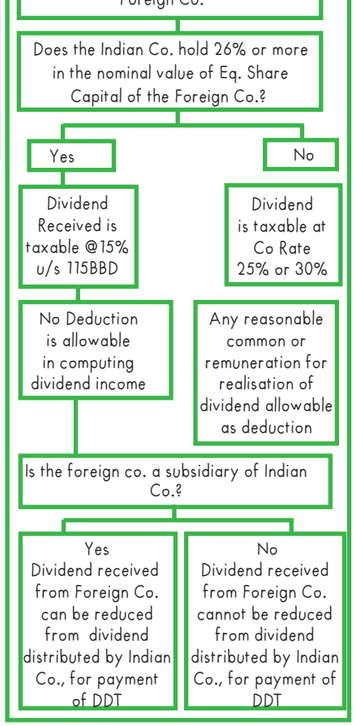
The 2017 report includes specific recommendations for improvements to domestic law intended to reduce the frequency of branch mismatches as well as targeted branch mismatch rules which adjust the tax consequences in either the residence or branch jurisdiction in order to neutralise the hybrid mismatch without disturbing any of the other tax, commercial or regulatory outcomes.

ACTION PLAN 3 CFC RULES

Action Plan 3

Recommendation of OECD on Above Issue:
1. CFCs are foreign subsidiaries in tax havens in which the taxpayer has controlling interest.
2. Since tax is generally levied on distributed dividend, tax in parent country could be avoided until the tax haven country actually paid dividend to the shareholders.
3. OECD regards CFC Rules as important in tackling BEPS and has made a series of best practice recommendations in relation to the building blocks of an e□ective CFC regime.

Provision incorporated in Indian Tax Laws. There are no CFC Rules in the IT Act,1961. However, Sec 115BBD has been inserted in IT Act, 1961 to encourage repatriation of profits by Indian Companies which have significant voting power in Co



Six Building Blocks

1. Definition of a CFC & control
> Which entities get covered & when is the entity controlled by residents?
2. CFC exemptions & Threshold requirement
> Whether an entity is in low tax jurisdiction?
3. Definition of CFC Income
> Whether to attribute whole or part of the income?
4. Rules for computing CFC Income
> Whether to apply tax rules of an entity/owner jurisdiction or devise seperate rules?
5. Rules for attributing CFC Income
> How to attribute & whom to attribute?
6. Rules to prevent or eliminate double taxation?
> Exemption or credit method to eliminate double taxation

ACTION PLAN 4 INTEREST DEDUCTIONS & OTHER FINANCIAL PAYMENTS

The OECD is concerned that multinational groups are able to erode their tax base (i.e., reduce their taxable profits) with interest expense, for example by:
Locating third party debt in high tax countries;
Using intra-group loans to achieve interest deductions in excess of the group's actual third party interest expense;
Using related party or third party debt to finance production of exempt or deferred income.
BEPS Action Plan 4 calls for development of recommendations for the design of domestic rules to prevent tax base erosion through the use of interest expense and other financial payments that are economically equivalent to interest.

Common Approach: Linking an entity's net interest deduction to its level of economic activity

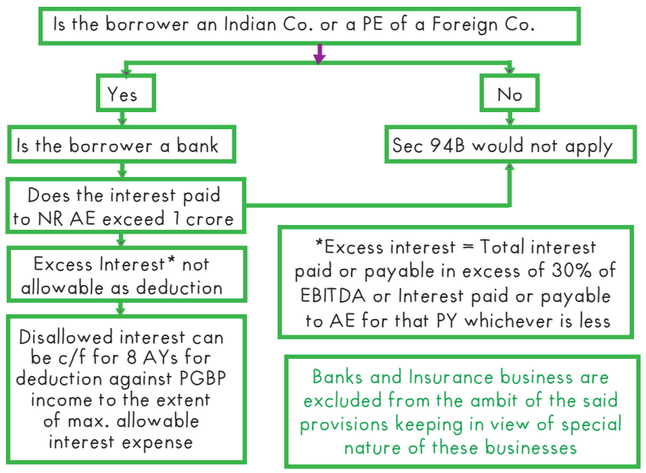
FOR PERSONAL NOTES

BASE EROSION AND PROFIT SHARING

A fixed ratio rule
Based on a benchmark net interest/ EBITDA ratio

A Group Ratio Rule
This rule allows an entitiy to deduct more interest expense based on position of its worldwide group.

Targeted Rules
These Rules address specific risks



ACTION PLAN 5 COUNTER HARMFUL TAX PRACTICES

REPORT

1. It identifies factors for determining a potential harmful tax practice results in low/no effective tax rate, lack of transparency negotiable tax rate/base rate etc.
2. For instance, in case of R&D activities, the nexus approach recommended by the OECD under BEPS Action 5 requires attribution and taxation of income arising from exploitation of Intellectual property in the jurisdiction where substantial R&D activities are undertaken instead of the jurisdiction of legal ownership.

INDIAN CONTEXT

Sec 115BBF of income tax act, 1961 : Tax on income on Patent.Where the total income of eligible asseessee includes any income by way of royalty in respect of patent developed in India then such royalty is taxable @10% (plus applicable surcharge and cess @4%)

Applicable concessional rate @10% us 15BBF

- Assessee should be a person resident in India, who is a patentee
- Income must be from a patent developed & registered in India.
- Option for taxation of income u/s 115BBF to be exercised by assessee on or before due date u/s 139(1) for filling ROI.

Meaning of Developed

- Invention should be one for which patent is granted under the Patent Act,
- Atleast 75% of the expenditure for such invention must be incurred in India

ACTION PLAN 6 PREVENTING TREATY ABUSE

Minimum standard

Given the risk to revenues posed by treaty shopping, countries have committed to ensure minimum level of protection against treaty shopping including in their treaties:

1. Combined approach of Limitation of Benefits(LOB) & Principal Purpose Test (PPT) rule;
2. The PPT rule alone, or
3. The LOB rule supplemented by a mechanism that would deal with conduit financing arrangements no ready dealth with in tax treaties.

LOB clause incorporated in Indian Tax Treaty

LOB clause in India-Mauritius Tax Treaty

> On 10.5.2016, the India-Mauritius tax treaty was amended for the first time, it has been provided that gains from alie nation shares acquired on or after 1.4.2017 in a company which are resident of India may be taxed in India.
> Tax rate on such capital gain arising from 1.4.2017-31.3.2019 should, however not exceed 50% of the applicable tax rate on capital gains in India.
> LOB clause provides that a resident of a CS shall not been titled to benefits of 50% of the tax rate applicable in transition period if its affairs are arranged with primary purpose of taking advantage of concessional rate of tax.
> A shell/conduit company claiming to be resident of CS shall not been titled to to this benefit

LOB clause in India-Singapore Tax Treaty

India-Singapore tax treaty has been amended to provide that capital gain on alienation of shares would be taxable in a similar manner as laid out in India-Mauritius tax treaty, subject to LOB clause.

ACTION PLAN 7 PREVENT ARTIFICIAL ANTI AVOIDANCE OF PE STATUS

OECD recommendations :

Reworking exceptions to PE definition - To define PE all activities carried on by enterprises alongwith activity by closelt related shall be examined.

Analyzing arrangements entered through contractual agreements - Business through Commissionaire also included in the definition of PE except it is performed as independent business activity.

Additional Guidance on attribution of profits to PEs under BEPS Action Plan 7 - The March'18 report contains additional guidance on the attribution of profits to PE resulting from the changes in the Report on BEPS Action Plan 7 to Article 5 of the OECD MTC. This additional guidance sets out high-level general principles for the attribution of profits to PE arising under Article 5(5), in accordance with the applicable treaty provisions & include example of Commissionnaire structure for the sale of goods, online advertisement, or procurement structure. It also includes additional guidance related to PE created as a result of change in Article 5 & provide an example on the attributation of profit.

FOR PERSONAL NOTES

ACTION PLAN 8-10 TRANSFER PRICING OUTCOME IN LINE WITH VALUE CREATION INTANGIBLE, RISK & CAPITAL & OTHER HIGH RISK TRANSACTION

Action Plan	Details
8	Addresses transfer pricing issues relating to controlled transactions involving intangibles, since intangibles are by definition mobile and they are generally difficult-to-value. Misallocation of the profits generated by valuable intangibles is a significant cause of BEPS.
9	Contractual allocations of risk are respected only when they are supported by actual decision-making and thus exercising control over these risks. Moreover, Action 9 addresses the level of returns to funding provided by a capital-rich MNE group member, where those returns do not correspond to the level of activity undertaken by the funding company.
10	This action focuses on other high -risk areas, which include: the scope for addressing profit allocations resulting from controlled transactions which are not commercially rational, the scope for targeting the use of transfer pricing methods in a way which results in diverting profits from the most economically important activities of the MNE group, and the use of certain type of payments between members of the MNE group (such as management fees and head office expenses) to erode the tax base in the absence of alignment with the value-creation.

ACTION PLAN 11 INDICATORS OF BEPS

Six indicators of BEPS activity highlight BEPS behavior

1. The profit rates of MNE affiliates located in lower-tax countries are higher than their group's average worldwide profit rate
2. The effective tax rates paid by large MNE entities are estimated to be lower than similar enterprises with only domestic operations
3. Foreign direct investment (FDI) is increasingly concentrated
4. The separation of taxable profits from the location of the value creating activity is particularly clear w.r.t intangible assets, & phenomenon has grown rapidly
5. Royalties received by entities located in these low-tax countries accounted for 3% of total royalties
6. Debt from both related and third-parties is more concentrated in MNE affiliates in higher statutory tax-rate countries.

ACTION PLAN 12 DISCLOSURE OF AGGRESSIVE TAX PLANNING ARRANGEMENTS

- It specify the more disclosure requirement to curb tax planning which is abusive
- It does not prescribe the minimum standard hence it depends upon tax environment of country.
- It recommends to set out the practice for disclosure requirement

Key design features for an effective mandatory disclosure regime:

1. Who reports?
2. What information is to be reported?
3. When the information has to be reported?
4. The consequences of non- reporting

ACTION PLAN 13 RE EXAMINE TRANSFER PRICING DOCUMENTATION

OECD Recommendation

Standardized approach to TP documentation

- **Master File** — Standardized info relevant for all MNE group member regular Global business operation & TP policies
- **Local File** — Transactional info specific to each country in details covering related party transaction
- **CBC Report** — Information relating to global allocation of MNE income & Taxes paid and indicator of the location of the economic activity within the MNE group

INDIAN CONTEXT

Sec 92D - Maintenance of documentation

Sec 286 - CBC Reporting

ACTION PLAN 14 MAKING THE DRP MORE EFFECTIVE OBJECTIVE

Objective of DRP

- Minimize the risk of uncertainty
- Minimize unintended double taxation
- Consistent and proper implementation of tax treaty
- Effective and timely resolution of dispute regarding their interpretation or application through MAP

Ensure

1. Treaty obligation agreed through MAP are fully implemented.
2. Taxpayer can access to MAP
3. Improve process to promote prevention and timely resolution.

ACTION PLAN 15 DEVELOPING A MULTILATERAL INSTRUMENT

BEPS Report

MLI helps fight against BEPS by implementing tax treaty-related measures developed thro the BEPS Project in existing bilateral treaties in a synchronized and efficient manner to –

1. prevent treaty abuse,
2. improve dispute resolution
3. prevent the artificial avoidance of PE status
4. neutralize the effects of hybrid mismatch arrangements.

MLI is flexible instrument which modifies tax treaties that are "Covered Tax Agreements". A Covered Tax Agreement is an agreement for the avoidance of double taxation that is in force between Parties to the MLI and for which both Parties have made a notification that they wish to modify the agreement using the MLI.

Provisions incorporated in the Income-tax Act, 1961

In order to prevent BEPS, the recommendations under BEPS Action Plan 7 have been included in Article 12 of Multilateral Convention to implement Tax Treaty Related Measures (MLI), to which India is also a signatory.

Consequently, these provisions will automatically modify India's bilateral tax treaties covered by MLI, where treaty partner has also opted for Article 12. As a result, the DAPE provisions in Article 5(5) of India's tax treaties, as modified by MLI, became wider in scope than the erstwhile provisions in Explanation 2 to section 9(1)(i).

Similarly, the anti-fragmentation rule in Article 5 of the OECD MTC, 2017 has narrowed the scope of the exception under Article 5(4), thereby expanding the scope of PE in DTAA vis-a-vis domestic provisions contained in Explanation 2 to section 9(1)(i).

In effect, the relevant provisions in the DTAAs became wider in scope than the domestic law.

In view of the above, section 9(1)(i) has been amended to align the same with the provisions in the DTAA as modified by MLI so as to make the provisions in the treaty effective.

BLACK MONEY

Basics of Act

> This new law has been formulated to act as a strong deterrent and curb menace of black money stashed away abroad by Indians
> Law formulated under under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and the related rules].
> Passed on 26.5.2015, provides for stringent taxation of any undisclosed income in relation to foreign income and assets. This law would is effective from A.Y.2016-17.
> It extend to whole of India

Basics of Charge Sec 3 to Sec 5

> Every assessee would be liable to tax @30% in respect of his undisclosed foreign income and asset of the previous year.
> an undisclosed asset located outside India shall be charged to tax on its value in PY in which such asset comes to the notice of Assessing Officer.
> Undisclosed asset located outside India to be charged to tax on its value in the previous year in which the asset comes to the notice of the Assessing Officer. Proviso to section 3(1)

Sec 2(2) Assessee

means a person,
> being a resident in India within the meaning of section 6 of the Income-tax Act, 1961 in the PY; or
> being a NR or RNOR in India within the meaning of sec 6(6) of the Income-tax Act, 1961 in the previous year, who was resident in India either in the PY to which the income referred to in section 4 relates; or in the PY in which the undisclosed asset located outside India was acquired.

Sec 2(12) Undisclosed Foreign income & asset

The total amount of undisclosed income of an assessee from a source located outside India and the value of an undisclosed asset located outside India, referred to in sec 4, & computed in the manner laid down in section 5

Sec 2(11) Undisclosed asset oustide India

An asset (including financial interest in an entity) located outside India,
- held by the assessee in his name or
- in respect of which he is a beneficial owner, and
- he has no explanation about the source of investment in such asset or explanation given by him is in opinion of AO unsatisfactory.

Sec 2(9) Previous Year

Circumstance	Period	
	Beginning with	Ending with
In case of a newly set up business	The date of setting up of a business	The date of closure of biz. or 31st March following the date of setting up of business, whichever is earlier.
Where a new source of income comes into existence	The date on which the new source comes into existence	The date of closure of biz. or 31st March following the date on which such new source comes into existence, which-ever is earlier.
In case of discontinuance of biz/ dissolution/liquidation	1st day of the FY	The date of discontinuance of biz (other than business ref to above) or dissolution of an unincoporated body or liquidation of a company, as the case maybe.
In any other case	1st April of the relevant year	31st March following (i.e a period of 12months commenc-ing from 1st April & ending on 31st March)

Sec 3(2) - Value of Undisclosed Asset

The fair market value of an asset (including financial interest in any entity) determined in the prescribed manner as laid down in Rule 3 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015.

Bullion jewellery or precious stone	Higher of 1. cost of acquisition 2. FMV/NRV on valuation date # The assessee may obtain a report from a valuer recognised by Govt
Archaeological collections, drawings,paint, sculptures/any work of art (artistic work)	Higher of 1. cost of acquisition 2. FMV/NRV on valuation date # The assessee may obtain a report from a valuer recognised by Govt
Quoted Shares & securities	Higher of 1. cost of acquisition 2. Avg of lowest & highest price on valuation date in established security market # where on the valuation date there is no trading in such shares & securities on any established securities market, average of the lowest and highest price of such shares and securities on any established securities market on a date immediately preceding the valuation date.
Unquoted shares & securities	Higher of 1.cost of acquisition 2.The value, on the valuation date, of such equity shares as determined in the following manner, namely: The FMV of unquoted equity shares = $\frac{(A+B-L) \times PV}{PE}$ A = book value of all the assets (other than bullion, jewellery, precious stone, artistic work, shares, securities & immovable property) minus 1) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any, and 2) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;
Bullion jewellery or precious stone	B = FMV of bullion, jewellery, precious stone, artistic work, shares, securities and immovable property as determined in the manner provided in this rule C = book value of liabilities, but not including following amounts,namely 1. the PUC in respect of equity shares; 2. the amount set apart for payment of dividends on preference shares & equity shares [Reserve] 3. reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation 4. any amount representing provision for taxation, other than amount of income tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to book profits in accordance with the law applicable thereto; 5. any amount representing provisions made for meeting liabilities, other than ascertained liabilities; 6. any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares; PE = Total amount of PUC share capital as shown in the balance sheet PV = The paid up value of such equity shares
Unquoted share and security other than equity share in a co	Higher of 1. cost of acquisition 2. FMV/NRV on valuation date
Immovable property	Higher of 1. cost of acquisition 2. FMV/NRV on valuation date
Bank Account	1. The sum of all the deposits made in the account with the bank since the date of opening of the account; or 2. where a declaration of such account has been made u/c VI & value of the account as computed under sub-clause (I) has been charged to tax & penalty under that Chapter, the sum of all the deposits made in the account with the bank since the date of such declaration. 3. However, where any deposit is made from the proceeds of any withdrawal from the account, such deposit shall not be take into consideration while computing the value of the account
Value of an interest of a person in a partnership firm or in an AOP or a LLP of which he is a member	Step 1: The net asset of firm, AOP or LLP on the valuation date. Step 2: Thereafter, the portion of the net wealth of the firm, AOP or LLP as is equal to the amount of its capital shall be allocated among its partners or members in the proportion in which capital has been contributed by them. Step 3: The residue of the net asset shall be allocated among the partners or members in the following manner 1) In the event of dissolution of the firm or AOP - In accordance with the agreement of partnership or association for distribution of assets 2) In the absence of such agreement for distribution of assets on dissolution - in the proportion in which the partners or members are entitled to share profits Step 4: The sum total of the amount so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the partnership or association. Step 5: Net asset of the firm, AOP or LLP shall be (A + B - L),determined in the manner specified above
Any other asset	Higher of 1. cost of acquisition 2. FMV/NRV on valuation date

FMV of an asset (other than bank a/c) transferred before valuation date [Rule 3(2)]:

Where an asset (other than a bank account) was transferred before valuation date, the FMV of such asset shall be higher
1) cost of acquisition and
2) Sale price. This is notwithstanding valuation rules given in Rule 3(1),
However, where such asset was transferred without consideration or for inadequate consideration before valuation date, FMV of the asset shall be higher of its cost of acquisition and the FMV on the date of transfer.

FMV, in case where new asset is acquired out of consideration received from transfer of old asset/withdrawal from bank account [Rule 3(3)]:

In such a case, the FMV of the old asset or the bank account, as the case may be, determined in accordance with sub-rule (1) & (2) shall be reduced by the amount of the consideration invested in the new asset.

Rate of conversion of currency used to determine FMV of an asset [Rule 3(4)&(5)]

> Use RBI reference rate as on the date of valuation.
> Where RBI reference rate is not available FMV of such Assets shall convert in US$ from foreign currency & thereafter Indian currency by RBI reference.
> However, where Central Bank of the country/jurisdiction in which asset is located does not specify rate of conversion from its local currency to US Dollar, then, such rate shall be one as specified by any other bank regulated under the laws of that country or jurisdiction.

Relevant Date for determination of market value & conversion of currency
[Expl 2 to Rule 3]
> IF Assets declared u/s 59: - 1st July 2015
> In other case: - 1st april of PY

Sec 4 Scope of total undisclosed foreign income & asset

Sec 4(1) - Total Undisclosed foreign income & asset of any PY would be -
1) the income from source located outside India which has not been disclosed in ROI filed before due date / 139(4) / 139(5)
2) the income from source located outside India which return is required to be filed u/s 139(1) but no return/belated or revised return has been filed.
3) the value of any undisclosed asset located outside India

Sec 4(2) - Notwithstanding anything contained in sub-sec (1), any variation made in the income from a source outside India in the assessment or reassessment of the total income of any PY, of the assessee under the Income-tax Act in accordance with provisions of section 29 to sec 43C / sec 57 to 59 / sec 92C of the said Act, shall not be included in the total undisclosed foreign income.

Sec 4(3) - The income included in the total undisclosed foreign income and asset under this Act shall not form part of the total income under the Income-tax Act.

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Sec 5 Computation of total undisclosed foreign income & asset

1) No deduction of any expense/allowance/set off of any loss would be allowed in computing total income of undisclosed foreign income & asset of any PY
2) From the value of undisclosed asset located outside India any income which has been so far assessed to tax for any AY prior to AY to which Act applies & income which is assessable or has been assessed to tax for any AY will be reduced. However, Assessee has to furnish proof that the asset has been acquired from income which has been presented to tax previously.
3) If above deduction relates to an immovable property then deduction would be amount of which bears the value of asset as on first day of FY in which it comes to notice of AO, the same proportion as assessable/assessed foreign income bears to the total cost of the asset

TAX MANAGEMENT [CHAP III – SEC 6 TO 40]

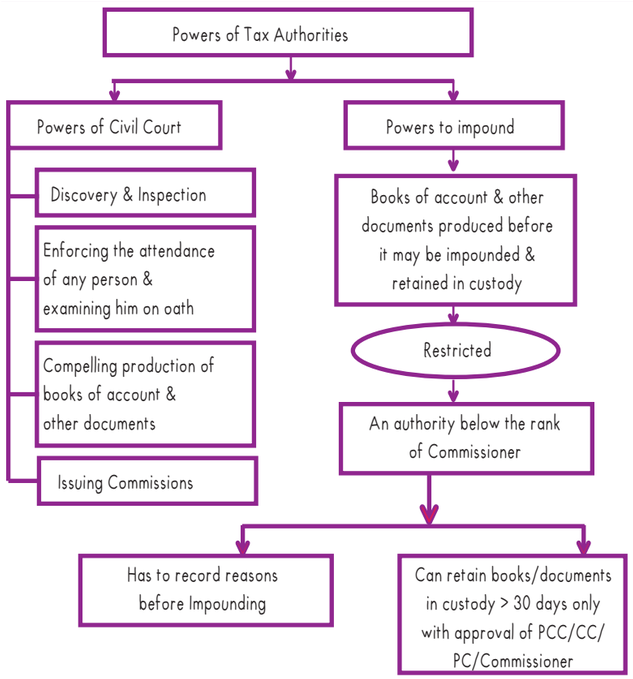
Sec 6 Tax Authorities

1) Income-tax authorities specified u/s 116 of the Income-tax Act, 1961 would be the tax authorities for the purpose of this Act.
2) Jurisdiction of a tax authority under this Act to be the same as he has under the Income-tax Act, 1961 by virtue of the orders or directions issued u/s 120 of that Act/any other provision of that Act.
3) Jurisdiction of a tax authority in case of an assessee having no income assessable under Income-tax Act, 1961 – The tax authority having jurisdiction in his case under this Act to be the tax authority having jurisdiction in respect of the area in which the assessee resides or carries on its business or has its principal place of business.

Sec 7 Change in incumbent

(a) The tax authority who succeeds another authority as a result of change in jurisdiction or for any other reason, has to continue the proceedings from the stage at which it was left by his predecessor.
(b) If the assessee makes a written requirement, he may be given an opportunity of being heard, before passing any order in his case.

Sec 8 Power of Authorities



Sec 9 Proceedings before tax authorities to be Judicial Proceedings

Purposes for which a proceeding under this Act would be deemed to be a judicial proceeding - Any proceeding under this Act before a tax authority to be deemed as a judicial proceeding within the meaning of sec 193 (Punishment for false evidence) & 228 (Intentional insult or interruption to public servant sitting in judicial proceeding) & for the purposes of sec 196
(Using evidence known to be false) of the Indian Penal Code.

Purposes for which a tax authority shall be deemed to be a civil court - A tax authority shall be deemed to be a civil court for the purposes of section 195 of the Code of Criminal Procedure, 1973, which provides for prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. However, he would not be so deemed for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, containing the provisions as to offences affecting the administration of justice.

Sec 10 Assessment

1. Service of Notice - Where AO receives information from an income-tax authority or any other authority under any other law or any information comes to his notice, he may, for the purpose making an assessment or reassessment under this Act, serve a notice on any person requiring him to produce/cause to be produced, on date to be specified, such accounts / documents / evidence which he may require for purposes of this Act.

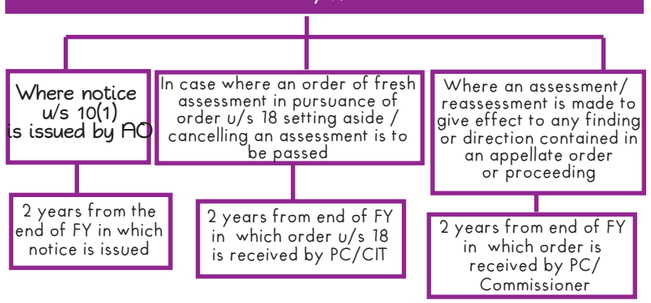
2. Service of further notices - He may also serve further notices from time to time requiring production of such other accounts/documents/ evidence as he may require.

3. Making inquiry - The AO may, for the purpose of obtaining full information v respect of undisclosed foreign income and asset of any person for the relevant FY(s), make such inquiry as he considers necessary.

4. Passing an Assessment Order - After considering the accounts, documents or evidence produced by the assessee, and any relevant material which he has gathered, AO has to pass an order in writing assessing or reassessing the undisclosed foreign income and asset and determining the sum payable by the assessee.

5. Best Judgement Assessment - Where any person fails to comply with all the terms of notice issued, AO shall, after giving the assessee an OOBH & after taking into consideration all the relevant material, make the assessment or reassessment of undisclosed foreign income and asset to the best of his judgment & determine sum payable by the assessee.

Sec 11 Time Limit for Completion of Assessment /Reassessment



Exclusion of specified time period - The time taken in reopening the whole or any part of the proceeding, the period during which the assessment proceeding is stayed by an order or injunction of any court or the period commencing from the date on which a reference or the first of the references for exchange of information is made by the competent authority (w.r.t sec 90/90A of the Income-tax Act, 1961 or u/s 73 of this Act) and ending with the date on which the information requested is last received or a period of one year, whichever is less, shall be excluded in computing the period of limitation. If, after exclusion of such time period, the period of limitation available to AO for making an assessment order is less than 60 days, the period of limitation shall be deemed to be extended to 60 days.

Sec 12 Rectification of mistake

1. Rectification of a mistake apparent from the record – Any order passed by the tax authority can be amended by it to rectify any mistake apparent from the record.
2. Time period for rectification – A four year time period has been prescribed and the same has to be reckoned from the end of the FY in which the order sought to be amended was passed.
3. Opportunity of being heard – Any amendment which has the effect of enhancing the undisclosed foreign income and asset or reducing a refund or otherwise increasing the liability of the assessee cannot be made without giving the assessee an OOBH.
4. Time limit for deciding an application – Where a tax authority receives an application from the assessee or the AO for amendment of an order, the time limit within which such application has to be decided is six months from the end of the month in which the application is received by it. The tax authority may also make an amendment on its own motion.
5. Rectification of an order which is a subject matter of appeal or revision – In such a case, the power of the tax authority to amend the order would be restricted to matters other than those decided in appeal or revision.

Sec 13 Notice of Demand

(a) Service of notice of demand upon the assessee in prescribed form & manner would be mandatory for a tax authority to demand any sum payable in consequence of an order made under this Act.
(b) Rule 5 provides that where any tax, interest or penalty is payable in consequence of any order passed under the provisions of the Act, AO shall serve upon the assessee a notice of demand in Form 1 specifying the sum so payable

Sec 14 No bar on Direct Assessment or Recovery

The following are not barred by any provision in Chapter III of this Act:
1. Direct assessment of the person on whose behalf or for whose benefit the undisclosed income from a source located outside India is receivable or undisclosed asset located outside India is held.
2. Recovery of the tax or any other sum of money payable in respect of such income and asset from such person.

Sec 15 Appeal to Commissioner (Appeals)

Who can file an appeal? -
The Act provides for appeal to CIT(Appeals) in the prescribed form [Form 2] and manner by any person who -
(1) objects to the amount of tax on undisclosed foreign income & asset for which he is assessed by the Assessing Officer; or
(2) denies his liability to be assessed under this Act; or
(3) objects to any penalty imposed by the Assessing Officer; or
(4) objects to a rectification order enhancing the assessment or reducing the refund; or
(5) objects to an order refusing to allow the rectification claim made by the assessee

Manner of filing appeal - Form 2, the grounds of appeal and the form of verification appended thereto relating to an assessee has to be signed and verified by the person who is authorised to sign the return of income u/s 140 of the Income-tax Act, 1961, as applicable to the assessee.

Fees - Every appeal filed u/s 15 shall be accompanied by a fee of ₹10,000.

Payment of tax, interest and penalty: Pre-condition for filing appeal - No appeal u/s 15(1) shall be admitted unless, at the time of filing of the appeal, the assessee has paid the tax along with penalty and interest thereon on the amount of liability which has not been objected to by the assessee.

Time limit for filing appeal to Commissioner (Appeals) – 30 days from

Circumstance	Date
Where notice of demand relating to assessment/penalty is served	the date of service of the notice of demand
In any other case	date on which the intimation of the order sought to be appealed against is served.

Extension of time period for filing appeal – The CIT(Appeals) may admit an appeal after the expiry of the 30 day period:
(1) if he is satisfied that the appellant had sufficient cause for not presenting it within that period; and
(2) the delay in preferring the appeal does not exceed one year.

Passing an order - The CIT(Appeals) has to hear and determine the appeal. He may pass such orders as he thinks fit and such orders may include an order enhancing the assessment or penalty. However, an order enhancing the assessment or penalty cannot be made unless the assessee has been given a reasonable opportunity of being heard.

Sec 17 Powers of CIT(A)

Order appealed against	Powers of CIT (Appeals)	Restriction on Power of CIT(A)
Order of assessment	Power to confirm, reduce, enhance or annul the assessment;	Power to enhance an assessment or a penalty can be exercised only after giving the appellant OOBH.
Order imposing penalty	Power to confirm or cancel or vary such order either to enhance or reduce the penalty;	
Order, other than above	Power to determine issues arising in appeal & pass, as he thinks fit	

Sec 18 Appeal to Appellate Tribunal

Who can file an appeal? -
The following persons can make an appeal to the Appellate Tribunal -
(1) Any assessee who is aggrieved by an order passed by the CIT(Appeals);
(2) Any assessee who is aggrieved by an order passed by the PCIT / CIT under any provision of the Act;
(3) The AO, on a direction received from the PCIT or CIT objecting to any order passed by the CIT(Appeals).

Time limit for filing an appeal - The appeal has to be filed within 60 days from the date on which the order sought to be appealed against is communicated to the assessee or the PCIT or the CIT, as the case may be

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Memorandum of Cross Objections The AO or the assessee can file a memorandum of cross objections within 30 days of receipt of notice that an appeal against the order of CIT(A) has been preferred by other party. The memorandum can be filed against any part of the order of the CIT(Appeals). Such memorandum has to be disposed of by the ITAT as if it were an appeal presented within the 60 day time period.

Extension of time period for filing an appeal or Memorandum of Cross Objections – The ITAT may admit an appeal or permit the filing of memorandum of cross objections after the expiry of the prescribed period mentioned in (b) and (c) above if –
(1) it is satisfied that there was sufficient cause for not presenting it within that period; and
(2) the delay in filing the appeal does not exceed a period of one year.

Form for appea [Rule 7(1)]: Appeal to ITAT has to be made in form 3 where the appeal is made by the assessee, the form of appeal, the grounds of appeal and the form of verification appended thereto shall be signed by the person who is authorised to sign the return of income u/s 140 of the Income-tax Act, 1961, as applicable to the assessee

Form of Memorandum of Cross Objections[Rule 7(2)] The memorandum of cross- objections to ITAT has to be made in form 4. Where memorandum of cross objection is made by the assessee, the form of memorandum of cross-objections, the grounds of cross- objections and the form of verification appended thereto shall be signed by the person who is authorised to sign the return of income u/s 140 of the Income -tax Act, 1961,as applicable to the assessee.

Fees [Rule 7(3)] - Every appeal filed by the assessee to the ITAT has to be accompanied by a fee of ₹25,000.

Sec 19 Appeal to High Court

Substantial question of law - An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

Time limit for filing appeal - The time limit for filing an appeal is 120 days from the date on which the order appealed against is received by the PCCIT/CCIT/PCIT/CIT/ assessee. The appeal shall be in the form of a memorandum of appeal precisely stating therein the substantial question of law involved

Extension of time for filing appeal - The High Court may admit an appeal after the expiry of the 120 day period, if it is satisfied that there was sufficient cause for not filing an appeal within that period

Applicability of the Code of Civil Procedure, 1908 - The provisions of Code of Civil Procedure, 1908, relating to appeals to the High Court shall, so far as may be, apply in the case of appeals under this section.

Sec 21 Appeal to Supreme Court

> An appeal shall lie to the Supreme Court from any judgment of the High Court delivered u/s 19 which the High Court certifies to be fit case for appeal to the Supreme Court.
> The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in case of appeal to the Supreme Court under this Act as they apply in the case of appeals from decrees of a High Court.

	Appellate Authority		
	Commissioner(Appeals)	Appellate Tribunal	High Court
Form of Appeal	Form 2	Form 3	Memorandum of appeal stating the substantial question of law
Fees	₹10,000	₹25,000 (where appeal is filed by the assessee)	As per HC Rules of the respective State/Court Fees Act, 1870.
Time period for filing appeal	30 days of service of notice of demand relating to an assessment/penalty or in any other case, 30 days from date on which the intimation of the order sought to beappealed against is served.	60 days from the date on which the order sought to be appealed against is communicated to assessee/PCIT /CIT	120 days from the date on which the order appealed against is received by PCCIT/ CCIT/ PCIT/CIT/ assessee
Extension of time period for filing appeal	Permitted		
Permissible Reasons for extension	The CIT(Appeals) should be satisfied that appellant had sufficient cause for not presenting it within that period; and the delay in preferring the appeal does not exceed one year	The ITAT should be satisfied that there was sufficient cause for not presenting it within that period; & delay in filing appeal does not exceed one year.	The High Court should be satisfied that there was sufficient cause for not filing an appeal within thatperiod.

Sec 23 Revision of orders prejudicial to revenue

Examination of "record" - The PCIT/CIT may call for and examine all available records for the purpose of revising any order passed in any proceeding under this Act by a tax authority subordinate to him. For this purpose, "record" shall include all records relating to any proceeding under this Act available at the time of examination by the PCIT or the CIT.

Opportunity of being heard to be given to the assessee before passing a revision order - If he is satisfied that the order sought to be revised is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard, pass a revision order.

Making inquiry before passing revision order - The PCIT / CIT may make, or cause to be made, such inquiry as he considers necessary for the purposes of passing the order.

Revision order cannot cancel assessment or direct fresh assessment - The revision order passed by the PCIT / CIT may have the effect of enhancing or modifying the assessment but shall not be an order cancelling the assessment and directing a fresh assessment.

Revision of matter not considered and decided in appeal- The power of the PCIT / CIT for revising an order shall extend to such matters as have not been considered and decided in any appeal.

Time Limit - A revision order cannot be made after the expiry of a period of two years from the end of the FY in which the order sought to be revised was passed. An order in revision under this section may, however, be passed at any time in respect of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.

Period to be excluded in determining the time limit - In computing the above period of limitation, the following shall not be included, namely-
(1) time taken in giving an opportunity to assessee to be reheard u/s 7 ; or
(2) any period during which any proceeding under this section is stayed by an order or injunction of any court

Circumstances when an order shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue - Without prejudice to the generality of the foregoing provisions, an order passed by a tax authority shall be deemed to be erroneous in so far as it is prejudicial to interests of the revenue, if in the opinion of PCIT / CIT -
(1) the order is passed without making inquiries or verification which should have been made; or
(2) the order has not been made in accordance with any order, direction or instruction issued by the Board; or
(3) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or the Supreme Court in the case of the assessee or any other person under this Act or the Income- tax Act

Sec 24 Revision of other orders

Revision of other orders suo motu by the PCIT/ CIT or on an application made by the assessee - The PCIT/CIT may, either on his own motion or on an application made by the assessee, for the purposes of revising any order passed by an authority subordinate to him, other than an order prejudicial to revenue to which section 23 applies, call for and examine all available records relating thereto.

Revision Order not to be prejudicial to assessee - The PCIT / CIT may pass an order, as he considers necessary, which is not prejudicial to the assessee. An order by the PCIT / CIT declining to interfere shall, however, be deemed not to be an order prejudicial to the assessee for the purposes of this section.

Orders which cannot be revised - Such power of the PCIT / CIT to revise an order would NOT extend to such order-
(1) against which an appeal has not been filed but the time for filing an appeal before the CIT(Appeals) has not expired;
(2) against which an appeal is pending before the CIT (Appeals); or
(3) which has been considered and decided in any appeal

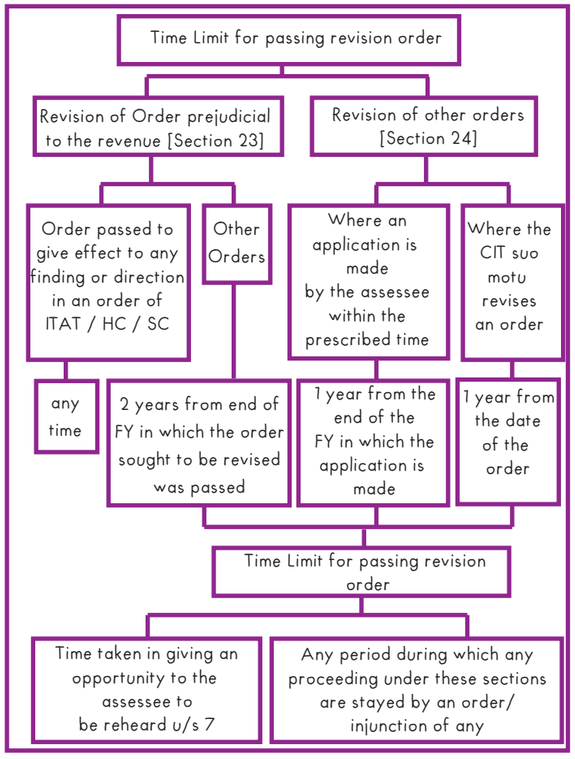
Time limit for application for revision by assessee - The assessee has to make the application for revision of any order, within a period of 1 year from the date on which the order sought to be revised was communicated to him, or the date on which he otherwise came to know of it, whichever is earlier.

Extension of time limit for making an application - If the PCIT / CIT is satisfied that the assessee was prevented by sufficient cause from making an application within the period of one year, he may admit the application made after the expiry of one year but before expiry of 2 year from the date on which the order sought to be revised was communicated to the assessee, or the date on which the assessee otherwise came to know of it, whichever is earlier.

Fees - Every application by an assessee for revision under this section shall be accompanied by such fees as may be prescribed.

Time limit for passing Revision Order - No Revision order under this section shall be made after the expiry of-
1) a period of one year from the end of the FY in which an application is made by the assessee or
2) a period of one year from the date of order sought to be revised, if the order is revised suo motu by the CIT.

Period to be excluded in computing the time limit - The following period shall not be included, namely -
(1) the time taken in giving an opportunity to the assessee to be reheard u/s 7; or
(2) any period during which any proceeding under this section is stayed by an order or injunction of any court.



Sec 30 to 40 Recovery of taxes due

Recovery of tax dues by Assessing Officer [Section 30] – The time period of payment of dues specified in the notice of demand to the credit of the CG is 30 days from the service of notice of demand. The period may be reduced by the AO, with the previous approval of JCIT, if he has reason to believe that allowing 30 day period is detrimental to the interests of revenue. An application for extension of time period or allowing payment by installments may be entertained by AO before the expiry of the 30 day period or the period reduced, subject to such conditions as he may think fit to impose. An assessee shall be deemed as an assessee-in-default for failure to pay tax arrears within such specified period.

Recovery of tax dues by Tax Recovery Officer [Section 31] - The Tax Recovery Officer may draw up under his signature a statement of tax arrears of the assessee in the prescribed form [Form 5]. He has the power to rectify any mistake apparent from the record and the power to extend the time for payment or allow payment by installments, subject to such conditions as he may think fit to impose.

Modes of recovery of tax dues [Section 32] – The modes of recovery of tax arrears, such as deduction by employer from payment to the assessee, recovery from the debtor of the assessee have been provided.

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TRO by whom recovery of tax dues is to be effected [Section 33] – The TRO, within whose jurisdiction the assessee carries on business or the principal place of business of the assessee is situated or the assessee resides or any movable or immovable property of the assessee is situated would be the TRO competent to recover tax dues of the assessee.

Recovery of tax dues in case of a company in liquidation [Section 34] – Theliquidator has to inform the AO, who has jurisdiction to assess the undisclosed foreign income and asset of the company, of his appointment within a period of thirty days of his becoming the liquidator. Within a period of three months from the date of receipt of such information, the AO has to intimate to the liquidator the amount which, in his opinion, would be sufficient to provide for any tax arrears or any amount which is likely to become payable thereafter, by the company under this Act.

Liability of manager of a company [Section 35] – Every person being a manager at any time during the FY would be jointly and severally liable for the payment of any amount due under this Act in respect of the company for the FY, if the amount cannot be recovered from the company. However, if the manager proves that non- recovery cannot be attributed to any neglect, misfeasance or breach of duty on his part in relation to the affairs of the company, he would not be so liable.

Joint and several liability of participants [Section 36] – Every person, being participant in an unincorporated body at any time during the FY, or the representative assessee of the deceased participant, shall be jointly and severally liable, along with the unincorporated body, for payment of any amount payable by the unincorporated body under this Act. In case of a LLP, if the partner proves that non-recovery cannot be attributed to any neglect, misfeasance or breach of duty on his part in relation to the affairs of the partnership, he would not be so liable.

Recovery through State Government [Section 37] – If the recovery of tax in any area has been entrusted to a State Government under clause (1) of article 258 of the Constitution, the State Government may direct, w.r.t that area or any part thereof, that tax has to be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the manner as the municipal tax or local rate is recovered.

Recovery of tax dues in pursuance of agreements with foreign countries or specified territory [Section 38]
The TRO may, in a case where an assessee has property in a country or a specified territory outside India, forward a certificate to the CBDT for recovery of the tax arrears from the assessee, where the CG or any specified association in India has entered into an agreement with that country or territory u/s 90 / 90A of the Income-tax Act or u/s 73(1) /(2)/(4) of this Act, as the case may be, for the purposes of recovery of tax. The CBDT may, on receipt of the certificate from the TRO, take such action thereon as it may deem appropriate having regard to the terms of the agreement with such country or a specified territory.

Recovery by suit or under other law not affected [Section 39] – The modes of recovery in this Chapter would not affect in any manner any other law for the time being in force relating to the recovery of debts due to the Government or the right of the Government to institute a suit for the recovery of the tax arrears from the assessee. The AO or the Government shall have recourse to any such law or suit, notwithstanding that tax arrears are being recovered from assessee by any mode specified in this Chapter.

Interest for default in furnishing return & payment/deferment of advance tax [Section 40] - Interest u/s 234A of the Income-tax Act, 1961 would be attracted for failure to disclose income from a source outside India in the return filed u/s 139(1) or failure to furnish return of income u/s 139(1) of the Income-tax Act, 1961.

Interest u/s 234B & 234C of the Income-tax Act, 1961 would be attracted for failure to pay advance tax on undisclosed income from a source outside India in accordance with Part C of Chap XVII of the Act.

PENALTIES [CHAPTER IV – SEC 40 TO 47]

Penalty in relation to undisclosed foreign income and asset [Section 41] - In case, where tax has been computed in respect of undisclosed foreign income and asset, the AO may direct the assessee to pay by way of penalty, in addition to tax, if any, payable by him, a sum equal to 3 times the tax so computed.

Penalty for failure to furnish return in relation to foreign income and asset[Section 42]- Failure to furnish return of income as required u/s 139(1) before the end of the relevant AY by a person, being a ROR in India, holding any asset (including financial interest in any entity) located outside India as a beneficial owner or otherwise or being a beneficiary of any asset (including financial interest in any entity) located outside India or having any income from a source located outside India, would attract penalty of ₹10 lakh

Penalty for failure to furnish information in the return of income or for furnishing inaccurate particulars about an asset located outside India [Section 43] - If such failure is in relation to an asset (including financial interest in any entity) held by a person, being a ROR in India, as a beneficial owner or otherwise, or in respect of which such person was a beneficiary, or if such failure is in relation to any income from a source located outside India, at any time during such PY, the AO may direct such person to pay, by way of penalty, a sum of ₹10 lakh..

Non-applicability of penalty under sections 42 & 43 in certain cases [Proviso to sections 42 & 43] - Such penalty u/s 42 and 43 would, however,not apply in respect of an asset, being one or more bank accounts having an aggregate balance which does not exceed a value equivalent to ₹5 lakh at any time during the previous year

Determination of the value equivalent in rupees of the balance in an account maintained in foreign currency [Explanation to sections 42 & 43] -For determining the value equivalent in rupees of the balance in an account maintained in foreign currency, the rate of exchange for calculation of the value in rupees shall be the telegraphic transfer buying rate of such currency as on the date for which the value is to be determined as adopted by the State Bank of India constituted under the SBI Act, 1955.

Penalty for default in payment of tax arrear [Section 44] - Penalty equal to the amount of tax arrears is leviable in case of an assessee in default or an assessee deemed to be in default in making payment of tax and in case of continuing default by such assessee. An assessee shall not cease to be liable to any penalty merely by reason of the fact that before levy of such penalty, tax has been paid by him.

Penalty for other defaults [Section 45] - Penalty of a sum not less than ₹50,000 but extending upto ₹2 lakh would be attracted in case a person liable to penalty has, without reasonable cause, failed to -

(a) answer any question put to him by a tax authority in exercise of his powers under the Act
(b) sign any statement made by him in the course of any proceedings under the Act which a tax authority may legally require him to sign
(c) attend or produce books of account or documents at the place or time, if he is required to attend or to give evidence or produce books of account or other documents at certain place and time in response to summons issued under section 8.

Procedure [Section 46] -
Issue of show cause notice - For the purposes of imposing any penalty u/c IV, the tax authority has to issue a notice to an assessee requiring him to show cause why the penalty should not be imposed on him.

Time limit for issue of show cause notice [Section 46(2)] - The show cause notice (SCN) has to be issued -
(1) during the pendency of any proceedings under this Act for the relevant PY, in respect of penalty referred to in section 41
(2) within a period of three years from the end of the FY in which the default is committed, in respect of penalties referred to in section 45.

Opportunity of being heard to be given to the assessee - An order imposing a penalty under this Chapter can be made only after giving the assessee an opportunity of being heard.

Prior approval of JCIT or JDIT - An order imposing a penalty under this Chapter shall be made with the approval of the JCIT or JDIT, if -
(1) the penalty exceeds ₹1 lakh and the tax authority levying the penalty is in the rank of Income-tax Officer; or
(2) the penalty exceeds ₹5 lakhs and the tax authority levying the penalty is in the rank of ACIT / DCIT / ADIT / DDIT.

Bar on Limitation for imposing penalty [Section 47] -
Time limit for passing penalty order – An order imposing a penalty under this Chapter cannot be passed after the expiry of a period of one year from the end of the FY in which notice for imposition of penalty is issued u/s 46.

Revision or revival of penalty order - An order imposing, or dropping the proceedings for imposition of, penalty u/c IV may be revised, or revived, as the case may be, on the basis of assessment of the undisclosed foreign income and asset as revised after giving effect to the order of the CIT(A),the ITAT, the HC / the SC or order of revision u/s 23 / 24.

Time limit for revision or revival of penalty order - An order revising or reviving the penalty cannot be passed after the expiry of a period of 6months from the end of the month in which order of CIT(Appeals), the ITAT, the HC or the SC is received by the PCCIT/CCIT/PCIT/CIT or the order of revision u/s 23 / 24 is passed.

Period to be excluded while computing the period of limitation - In computing the period of limitation for the purposes of this section, the following time or period shall not be included-
(1) the time taken in giving an opportunity to the assessee to be reheard u/s 7; and
(2) any period during which a proceeding u/c IV for the levy of penalty is stayed by an order, or injunction, of any court

Summary of Penal provisions in Chap IV

41	Penalty in relation to undisclosed foreign income & asset	In addition to tax,sum equal to 3 times tax computed
42	Penalty for failure to furnish return in relation to foreign income and asset [Section 42]	₹10 lakh
43	Penalty for failure to furnish information in the return of income or for furnishing inaccurate particulars about an asset located outside India [Section 43]	₹10 lakh
44	Penalty for default in payment of tax arrear [Section 44]	Amount = tax payable
45	Penalty for other defaults [Section 45]	₹50000 to 2L

FOR PERSONAL NOTES

OFFENCES AND PROSECUTION [CHAP V]

49	Willful failure to furnish return required to be furnished u/s 139(1) of the Income-tax Act, 1961 in due time, by a person, being a ROR in India	Rigorous imprisonment for term which would not be less than 6 months but which may extend to 7 years + fine. However, prosecution would not be attracted if he furnishes such return before the expiry of AY.
50	Failure in relation to an asset (including financial interest in any entity) held by person, being a resident other than not ordinarily resident in India	Rigorous imprisonment for term which would not be less than 6 months but which may extend to 7 years + fine
51	Willful attempt to evade any tax, penalty/ interest under Act by person, being resident other than not ordinarily resident in India	Rigorous imprisonment for term not less than 3 years but extending to 10 years + fine.
51 [2]	Willful attempt to evade payment of any tax, penalty or interest under the Act	Rigorous imprisonment for term not less than 3 months but extending upto 3 years + a fine,in the discretion of the Court.
52	Punishment for false statement in verification	term not less than 6 months but extending to 7 years + with fine
53	for abatement to make & deliver an a/c or statement or declaration relating to tax payable under this Act which is false or to commit an offence under section 51(1).	Rigorous imprisonment for term not less than 6 months but extending to 7 years + fine
58	Second and subsequent offence	Rigorous Imprisonment: 3 to 10 years (+) Fine: ₹5 lakh to ₹1 crore

Provisions of Chapter V not in derogation of any other law or any other provision of the Act [Section 48] – The provisions relating to offences and prosecution contained in Chapter V are in addition to, & not in derogation of, the provisions of any other law providing for prosecution for offences thereunder. Further, the provisions of Chapter V to be independent of any order under this Act that may be made, or has not been made, on any person. Also, it shall not be a defence that the order has not been made on account of time limitation or for any other reason.

Presumption as to culpable mental state [Section 54] – In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state. However, it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. "Culpable mental state" includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact. For this purpose, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability

Prosecution to be at instance of PCCIT / PDGIT/ CCIT / DGIT / PCIT / CIT [Section 55] – A person shall not be proceeded against for an offence u/s 49 to sec 53 except with the sanction of the PCIT / CIT / CIT(A), as the case may be. The PCCIT / CCIT / PDGIT / DGIT may issue such instructions, or directions, to the tax authorities as he may think fit for the institution of proceedings under this section.

BLACK MONEY

Offences by companies [Section 56] –
Persons incharge at the time when offence was committed deemed guilty of offence - Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company would be deemed to be guilty of the offence and would be liable to be proceeded against and punished accordingly. If, however, such person proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence, he would not be deemed guilty of the offence
Director/manager/secretary/officer of company deemed guilty of offence committed with their consent or connivance - Where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly

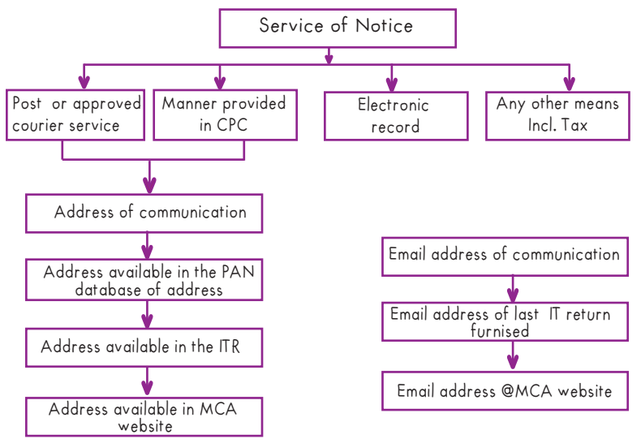
Fine and imprisonment - Where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, such company shall be punished with fine. Further, every person, referred to in (a), or the director, manager, secretary or other officer of the company referred to in (b), would be proceeded against and punished in accordance with the provisions of this Act.

Proof of entries in records or documents [Section 57] -
The entries in the records, or other documents, in the custody of a tax authority are admissible in evidence in any proceeding for the prosecution of any person for an offence under Chapter V of this Act. These entries may be proved by the production of -
(a) the records or other documents (containing such entries) in the custody of the tax authority; or
(b) a copy of the entries certified by that authority under its signature, as true copy of the original entries contained in the records or other documents in its custody.

General provisions [Chapter VII]

Sec.73 Agreement with foreign country or specified territory
Like sec.90 & 90A CG specified association may enter into DTAA with foreign country or specified territory.

Sec.74 service of notice



Authentication of notices and other documents [Section 75]
Every notice or other document required to be issued, served or given for the purposes of this Act by any tax authority shall be authenticated by that tax authority and the same shall be deemed to be authenticated, if the name and office of a designated tax authority is printed, stamped and otherwise written thereon

Notice deemed to be valid in certain circumstances [Section 76]
The notice shall be deemed to be duly served upon a person, if the person has appeared in any proceeding or co- operated in any enquiry relating to assessment. Such person cannot take any objection in any proceeding or inquiry under the Act that the notice was not served upon him or was not served upon him in time or was served upon him in an improper manner.Notice shall, however, not be deemed to have been served if the person has raised the objection before the completion of an assessment.

Appearance by approved valuer in certain matters/authorized representative [Sections 77 & 78]
Any assessee who is entitled or required to attend before any tax authority or Appellate Tribunal in connection with any proceeding under this Act may do so through an authorised representative. In the case of any matter relating to valuation of any asset, he may attend through valuer as approved by PCIT or Commissioner in accordance with the prescribed Rules. However, the said provision would not apply in a case, where assessee is required to attend personally for examination on oath or affirmation u/s 8.
Meaning of Authorised Representative:
(a) a person related to assessee in any manner/person regularly employed by assessee;
(b) any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings;
(c) any legal practitioner who is entitled to practice in any civil court in India;
(d) an accountant;
(e) person who has passed any accountancy examination recognised in this behalf by CBDT;
(f) any person who has acquired a degree in Commerce or Law conferred by any Indian University incorporated by any law time being in force/prescribed foreign universities.

Rounding off of income, value of asset and tax [Section 79]
The amount of undisclosed foreign income and assets shall be rounded off to the nearest multiple of one hundred rupees. The amount payable or receivable by the assessee under this Act shall be rounded off to the nearest multiple of ten rupees. For this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored

Cognizance of offences [Section 80]
A court inferior to that of a metropolitan magistrate or a magistrate of First Class cannot try any offence under this Act.

Assessment not to be invalid on certain grounds [Section 81]
An assessment, notice, summons or other proceeding under this Act shall not be invalid or deemed to be invalid merely by reason of any mistake, defect or omission in such assessment, notice, summons or other proceedings if such assessment, notice, summons or other proceeding is in substance and effect, in conformity with the intent and purpose of this Act.

Bar of suits in civil courts [Section 82]
No suit shall be brought in any civil court to set aside or modify any proceeding or order under this Act. Further, no prosecution, suit or other proceeding shall lie against the Government or any officer of Government,for anything done or intended to be done in good faith under this Act.

Income-tax papers to be available for the purposes of this Act [Section 83] All information contained in any statement or return furnished under Income-tax Act or obtained or collected for the purposes of that Act may be used for the purpose of this Act.

Certain provisions of the Income-tax Act to apply to this Act [Section 84] The same will apply with necessary modifications as if the said provisions refer to undisclosed foreign income and asset instead of to income-tax.

119	Instructions to subordinate authorities
133	Power to call for information
134	Power to inspect registers of companies
135	Power of PDGIT or DGIT or PDIT or DIT, PCCIT/CCIT /PCIT/CIT/JCIT to make an enquiry
138	Disclosure of information respecting assessees
237	Refunds
240	Refund on appeal, etc.
245	Set off of refunds against tax remaining payable
280	Disclosure of particulars by public servants
280A	Special Courts
280B	Offences triable by Special Court
280D	Application of Code of Criminal Procedure, 1973 to proceedingsbefore Special Court
281	Certain transfers to be void
281B	Provisional attachment to protect revenue in certain cases
284	Service of notice in the case of discontinued business
Chap XV	Liability in special cases – Firms, AOPs and BOIs.

Power to make Rules [Section 86]
The CBDT may, with the approval of the Central Government, notify Rules to carry out the provisions of this Act. The power to make rules conferred by this section includes the power to give retrospective effect to the rules or any of them from a date not earlier than the date of commencement of this Act. However, a retrospective effect should not be given to any rule so as to prejudicially affect the interest of assessees Every rule made under this Act has to be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of 30 days which may be comprised in one session or in two or more successive sessions

Power to remove difficulties [Section 86]
The Central Government may, by order not inconsistent with the provisions of the Act, remove any difficulty arising in giving effect to the provisions of this Act. However, no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Act came into force. Every such order shall be laid before each House of the Parliament

Amendment of PMLA [Section 88]
The Prevention of Money Laundering Act (PMLA), 2002 has been amended to include offence of willful attempt to evade any tax, penalty or interest referred to in section 51 under this legislation as a scheduled offence under PMLA

FOR PERSONAL NOTES