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*Commercial's*

# DIRECT TAX

& INTERNATIONAL TAXATION

As  
amended by  
The Finance  
(No.2)  
Act, 2024



**ORIGINAL NOTES**

by CA Shirish Vyas

**CA SHIRISH VYAS**

**Commercial Law Publishers (India) Pvt. Ltd.**

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**WITH THE BLESSING OF MATA VAISHNO DEVI**

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## **PREFACE**

In my many years of teaching Direct Tax subject, I have always been passionate about helping students achieve their full potential. I remember standing in front of a classroom filled with eager young minds, and encouraging them to write colourful notes that would help them better remember the vast concepts of Direct Tax subject. Now, I am delighted to present the same in a printed form to support all CA students across the country.

This book aims to provide a comprehensive and simplified coverage of Direct Tax subject for all CA Final students. This book represents the culmination of my extensive experience in teaching Direct Tax, and has helped countless students in the last 25 years. This book can also be used by students of CMA Final appearing in June & Dec 25.

I have taken great care to ensure that this book covers all the important aspects of the Direct Tax and International taxation syllabus prescribed by the Institute of Chartered Accountants of India.

It is a matter of immense satisfaction to me that through this book, I am able to contribute to your dream of becoming a CA. As an educator, I assure you that this book is the best solution to all your Direct Tax requirements.

As you embark on this exciting journey, I leave you with a personal message of inspiration and motivation at the end of the book. Remember that you have the passion and the potential to succeed, and I wish you all the very best in your future endeavours.

I am thankful to all my well-wishers, supporters and my past students.

### **Key features of this Book:**

1. **One stop solution** for all CA Final students;
2. **Comprehensive** coverage of the syllabus of CA Course;
3. **Charts and graphical presentation** for quick recalling;
4. Use of **mnemonics** for memorizing complicated provisions;
5. Highlighted **catch words in red** for faster revision;
6. **Personal message** at the end to keep you motivated.

Happy learning and good luck!

Best regards,

**CA SHIRISH VYAS**

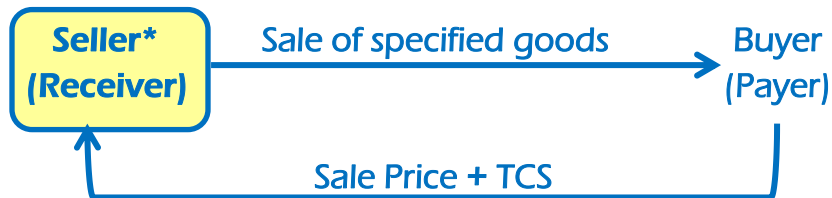
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## TAX COLLECTION AT SOURCE – Sec.206C

Tax <b>D</b> eduction at <b>S</b> ource	Tax <b>C</b> ollection at <b>S</b> ource
TDS is on <b>payments</b>	TCS is on <b>receipts</b>
Obligation of <b>payer</b>	Obligation of <b>receiver</b>
TDS is <b>deducted</b> by the payer on specified payments	TCS is <b>collected</b> by the receiver on specified receipts

TCS is mainly collected on specified sale/lease transactions



## RATES OF TCS

TCS is applicable in following Sale / Lease Transactions:

Section	Type of Transactions <sup>7</sup>	TCS %
206C(1)	<p><b>Sale</b> of following goods:</p> <ul style="list-style-type: none"> <li>- <b>T</b>endu leaves</li> <li>- <b>T</b>imber and other forest produce</li> <li>- <b>A</b>lcohol, <b>S</b>crap &amp; <b>M</b>inerals [Coal &amp; iron ore]</li> </ul> <p><b>Note:</b> If the buyer purchases above goods for <b>personal</b> consumption or for use in <b>Manufacturing / Power Generation</b> then TCS is <b>not applicable</b>.</p>	<p><b>5 %</b></p> <p><b>2.5%</b></p> <p><b>1%</b></p>
206C(1F)	<p><b>Sale</b> of <b>Motor Car</b>* valued at <b>&gt; 10 lakhs</b> *<b>And Other notified goods</b> w.e.f. 1/1/25</p>	<b>1%</b>
206C(1C)	<p><b>Lease</b> of <b>Parking</b> lot/<b>Toll</b> Plaza/<b>Mine</b> [for business purpose]</p>	<b>2%</b>
206C(1G)	<p><b>Sale</b> of <b>Foreign currency</b> by authorised dealer to any person for remittance abroad:</p> <ul style="list-style-type: none"> <li>→ Remittance for <b>Educational/Medical</b> purpose</li> <li>→ <b>Loan</b> money remitted for <b>Educational</b> Purpose (if loan is from Banks or Fin.Inst. or App. Ch.Inst.)</li> <li>→ <b>Other</b> Remittance</li> </ul> <p>No TCS if aggregate remittance <b>per remitter</b> is upto ₹7 lakhs. TCS is calculated on amt. <b>in excess of ₹ 7 L.</b></p>	<p><b>5%</b></p> <p><b>0.5%</b></p> <p><b>20%</b></p>
206C(1G)	<p><b>Sale</b> of <b>Overseas Tour Package</b> Upto ₹ 7 lakhs Balance</p>	<p><b>5%</b></p> <p><b>20%</b></p>

206C(1H)	<b>Sale</b> of <b>Other Goods**</b> [other than above goods] (aggregating > ₹ 50 lakhs in a FY to a particular person) if the turnover of seller in the preceding FY is > ₹10 crores (0.1% on the <u>excess</u> amt.)	<b>0.1%</b>
----------	---	-------------

**Note:**

If **seller's** turnover in preceeding year **exceeds** ₹10 Cr. then **TCS**.

If **buyer's** turnover in preceeding year **exceeds** ₹10 Crores then **TDS** u/s 194Q.

However, if turnover of **seller as well as buyer exceed** ₹10 Crores then **TDS** u/s 194Q and no TCS.

\*\* Sale of following goods is **not subject to TCS**:

- 1) **Export** of goods;
- 2) Sale of **fuel** to non-resident airlines at airports in India.

## GENERAL NOTES

### 1) BUYER – GOVERNMENT:

**No TCS** if the buyer is **Government** [Central/State/Local].

### 2) SMALL IND./HUF:

Under section **206C(1)** (Sale of T.T.ASM) & **206C(1F)** (Sale of Car), **small Ind/HUF** whose turnover in the preceding FY is up to ₹1 crore [Business]/ ₹50 lakhs [Profession] is **not liable** to collect TCS.

### 3) WHEN TO COLLECT / DEPOSIT TCS:

**Collected** at the time:

When Party's account is **debited** or **Actual Receipt**  
Whichever is **earlier**

**Deposited** by **7th of next month** (even for TCS of March month)

However, in case of sale of Motor Vehicle and sale of Other Goods, TCS is collected at the time of Actual Receipt of consideration.

4) **INTEREST ON LATE COLLECTION OF TCS**

= Amt. of TCS x **1% p.m.** x No. of months\* [from the date when TCS was **collectible** up to the dt. when it is **collected**.  
\*part of the month is treated as full month

**INTEREST ON LATE DEPOSIT OF TCS =**

= Amt. of TCS x **1.5% p.m.** x No. of months\* [from the date when TCS was **collected** up to the dt. when it is **deposited**.  
\*part of the month is treated as full month

5) **TCS RETURNS [Due Dates]:**

Quarter ended on	Due Date
June 30	<b>15<sup>th</sup> July</b>
September 30	<b>15<sup>th</sup> October</b>
December 31	<b>15<sup>th</sup> January</b>
March 31	<b>15<sup>th</sup> May</b>

6) **Sec. 206CC: HIGHER TCS IF PAN NOT FURNISHED:**

In all the transactions, which are subject to TCS, the buyer/lessee shall furnish his PAN to the seller/lessor. If he fails to furnish his PAN or if he furnishes a wrong PAN then TCS shall be collected at **double** the rate or **5%**, whichever is **high** [subject to max. of 20%].

However, in case of **sale of "other goods"**, rate of TCS will be **1%** if the buyer fails to furnish PAN.

7) **Sec. 206CCA: HIGHER TCS FOR NON-FILERS:**

As per this section, TCS will be collected at **double the rate** or **5%**, whichever is **high** [subject to max. of 20%] if the buyer/lessee has **not furnished return** of income for such immediately **preceding year** [for which **due date** of filing return has **expired**] and the aggregate amount of **TDS + TCS** in such year is **Rs. 50,000 or more**.

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# TAXATION OF NON-RESIDENTS

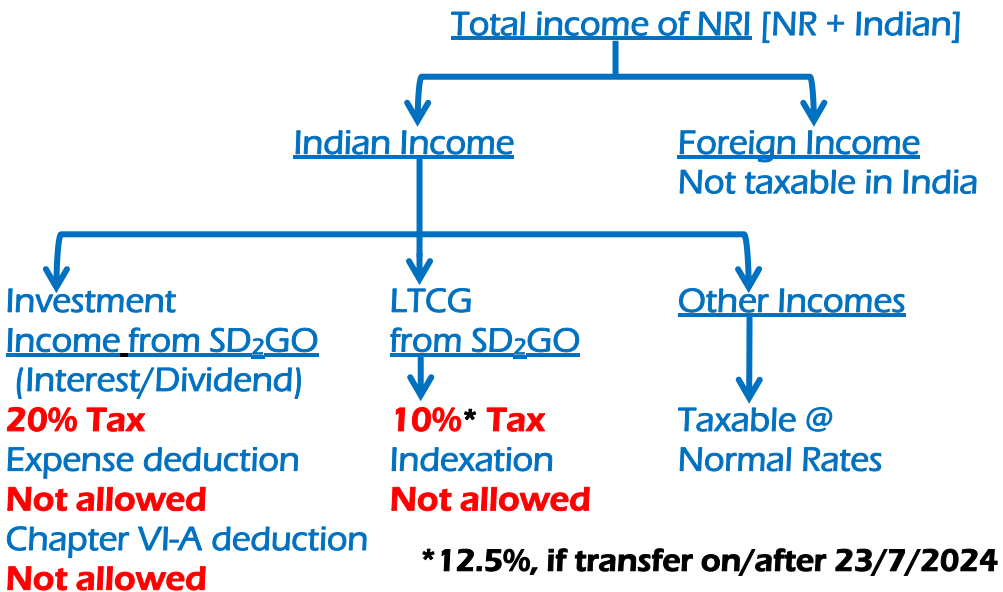
## → PART – I: SPECIAL RATES:

Chapter XII and XIIA of Income Tax Act, 1961 contains **special tax rates** for certain incomes of **non-residents**.

| Chapter XII  | Chapter XIIA |
|--------------|--------------|
| Sec. 115 A   | Sec. 115 C   |
| Sec. 115 AC  | Sec. 115 D   |
| Sec. 115 AD  | Sec. 115 E   |
| Sec. 115 BBA | Sec. 115 F   |
|              | Sec. 115 G   |
|              | Sec. 115 H   |
|              | Sec. 115 I   |
| Compulsory   | Optional     |

CHAPTER XIIA

OPTIONAL PROVISIONS



**Note 1: NON-RESIDENT INDIAN:**

NRI = Non-Resident + Indian (Indian citizen/Indian Origin)

**Note 2: FOREIGN EXCHANGE ASSETS [SD<sub>2</sub>GO]**

It means following assets acquired in Foreign Currency:

- S – Shares of Indian (Both Pvt. + Public) Company
- D<sub>1</sub> – Debentures of Indian PUBLIC company
- D<sub>2</sub> – Deposits with Indian PUBLIC company
- G – Government securities (Indian Govt.)
- O – Other Notified securities

**Note 3: EXEMPTION FOR LTCG from SD<sub>2</sub>GO:**

If the Net consideration on transfer of SD<sub>2</sub>GO is **reinvested in another SD<sub>2</sub>GO or notified savings certificates** u/s 10(4B) within **6 months** from date of transfer, then the LTCG on transfer of SD<sub>2</sub>GO is Exempt (Formula same as Sec. 54F). Lock in period–3 yrs.

**Note 4: FILING RETURN NOT REQUIRED:**

If the NRI has ONLY Investment income from SD<sub>2</sub>GO & LTCG from SD<sub>2</sub>GO, then he is not required to file the return (**provided tax** on such income is **deducted** at source u/s 195)

**Note 5: POSITION ON BECOMING “RESIDENT”**

On becoming resident, the assessee can **continue** special provisions in respect of **Investment Income** from **existing** SD<sub>2</sub>GO until the transfer of such SD<sub>2</sub>GO.

|      |          |                                | <u>Inv. Income</u> | <u>LTCG</u> |
|------|----------|--------------------------------|--------------------|-------------|
| Yr.1 | NR       | Invested in SD <sub>2</sub> GO | Sp. Prov. ✓        | –           |
| Yr.2 | NR       |                                | Sp. Prov. ✓        | –           |
| Yr.3 | <b>R</b> |                                | Sp. Prov. ✓        | –           |
| Yr.4 | <b>R</b> |                                | Sp. Prov. ✓        | –           |
| Yr.5 | <b>R</b> | Sold SD <sub>2</sub> GO        | Sp. Prov. ✓        | Sp. ⊗       |

|                | <b>D</b>    | <b>D</b>    | <b>T</b>    | <b>E</b>    | <b>R</b>    | <b>R</b>    | <b>O</b>    |
|----------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>Section</b> | <b>115C</b> | <b>115D</b> | <b>115E</b> | <b>115F</b> | <b>115G</b> | <b>115H</b> | <b>115I</b> |

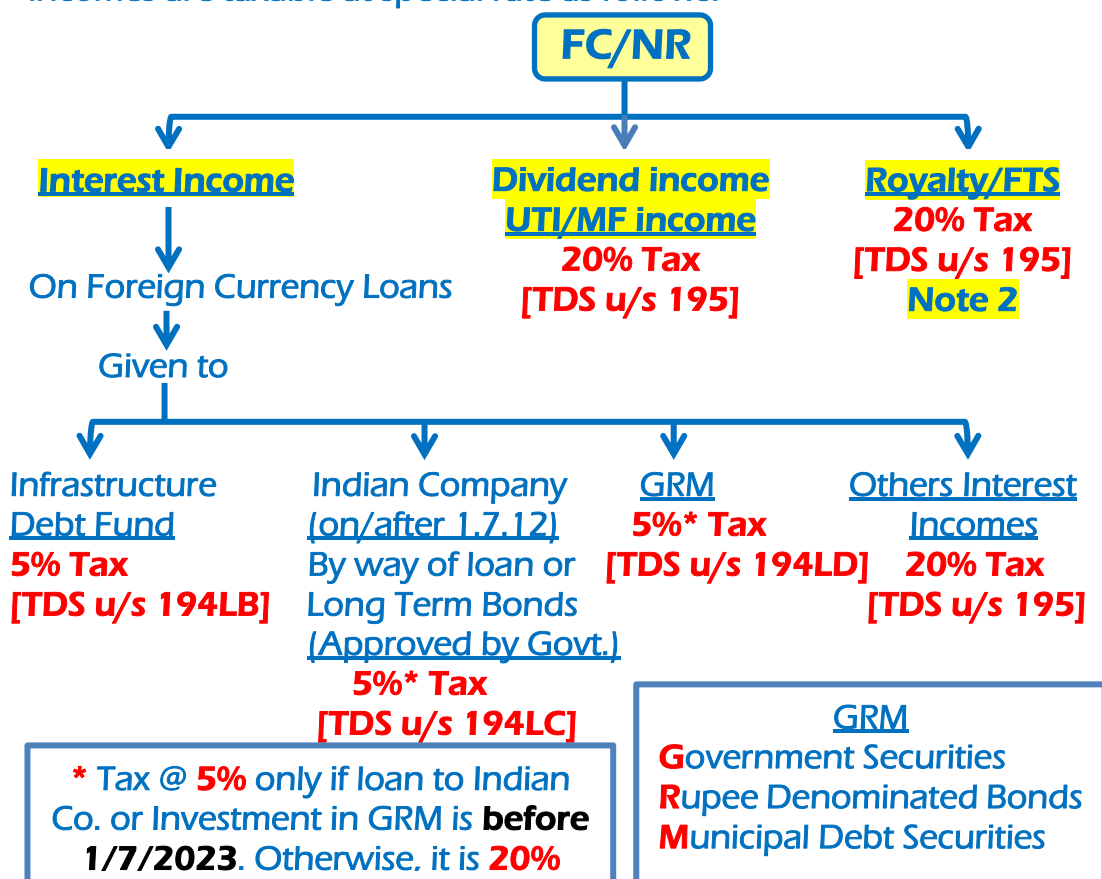
- Sec. 115 C : D – **D**efinition of NRI + SD<sub>2</sub>GO
- Sec. 115 D : D – **D**eduction, Indexation NOT ALLOWED
- Sec. 115 E : T – **T**ax Rates (20%, 10%)
- Sec. 115 F : E – **E**xemption for LTCG
- Sec. 115 G : R – **R**eturn filing not required
- Sec. 115 H : R – Position on becoming **R**esident
- Sec. 115 I : O – **O**ptional provisions

**CHAPTER XII**

**COMPULSORY PROVISIONS**

**SEC. 115 A: INTEREST/DIVIDEND/UNITS INCOME /ROYALTY/FTS**

This section is applicable to **Foreign Companies (FC)** and **Non-Residents (NR)** in respect of Interest income, Dividend income, income from units of UTI/Mutual Fund and Royalty or Fees for Technical Services (FTS) earned from India. As per this section, these incomes are taxable at special rate as follows:



**Note 1:**

|                           | Interest/Dividend/Units income | R/FTS                         |
|---------------------------|--------------------------------|-------------------------------|
| Expense dedn Chapter VI A | Not Allowed<br>Not Allowed     | Not Allowed<br><b>Allowed</b> |

**Note 2:**

Interest income of NR on loan to **IFSC unit** is **exempt u/s 10(15)**.

**Dividend** income of FC/NR from **IFSC unit** is taxable:

- **@10%** [instead of 20%]

Interest income of FC/NR on **RDB** [Rupee denominated bonds] of an Indian company **listed in IFSC** Stock Exchange is taxable:

- **@4%** [if invested upto 30<sup>th</sup> June, 2023] instead of 5%

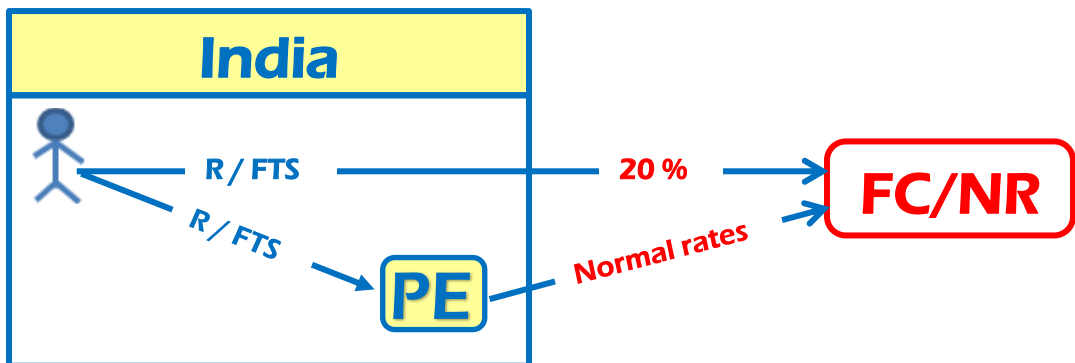
- **@9%** [if invested after 30<sup>th</sup> June, 2023] instead of 20%

**Note 3:**

**Section 44DA:**

As per this section, **Royalty / FTS** shall be taxable as per **normal rates** (subject to all deductions) if following **3 conditions** are satisfied (in such case, section 115A i.e. Special Rates shall NOT apply):

- a) Such FC/NR should have a **PE in India**.  
PE = Permanent establishment
- b) Royalty/FTS should be effectively **connected with such PE**.
- c) The agreement should be entered **after 31.3.03**.



**Note 4:**

As per sec. **10(6D)**, Royalty income/FTS earned by a Foreign Company/Non-Resident from NTRO [**National Technical Research Organization**] is fully exempt. As per sec. **10(6C)**, Royalty/FTS earned by a Foreign company from **Indian Govt.** [for projects concerning **security of India**] is fully exempt.

|                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Sec.115AC</b><br/>NON-RESIDENTS</p>                                                                                                                                                                                                                         | <p><b>Sec.115AD</b><br/>FOREIGN INSTITUTIONAL INVESTORS</p>                                                                                                                                                                                                                                                                                                                                                       | <p><b>115BBA</b><br/>NRFC</p>                                                                                                                                                                                                                                 |
| <p><b>NR</b></p> <p>Invest in Foreign Currency</p> <p>↓</p> <p><b>“Bonds and GDR”</b></p> <p>Interest <b>10%</b> Tax<br/>Dividend <b>10%</b> Tax<br/>LICG <b>10%/12.5%</b> No Index</p> <p>↓</p> <p><b>TDS u/s 196C</b></p> <p>GDR=GLOBAL DEPOSITORY RECEIPTS</p> | <p><b>FII</b></p> <p>Invest in Any Currency</p> <p>↓</p> <p><b>“Securities”</b></p> <p>Interest <b>20%*</b> Tax<br/>Dividend <b>20%</b> Tax<br/>LICG <b>10%/12.5%</b> No Index<br/>SICG <b>30%</b> Tax</p> <p>↓</p> <p><b>TDS u/s 196D</b></p> <p>LTCG – Ex.. up to 1 L/1.25 L, if STT paid<br/>STCG – 15%/20% Tax, if STT paid<br/><b>*5% Tax</b>, if investment before 1/7/23 in GRM [<b>TDS u/s 194LD</b>]</p> | <p><b>Sportsperson<br/>Entertainer</b></p> <p>↓</p> <p><b>GAA<br/>Perform</b></p> <p>↓</p> <p>Income <b>20%</b> Tax</p> <p><b>TDS u/s 194E</b></p> <p>G-Participation in <b>Games</b><br/>A-Performing in <b>Advt.</b><br/>A-Contributing <b>Articles</b></p> |

|                               | Chapter XII                                             | Chapter XIIA   |
|-------------------------------|---------------------------------------------------------|----------------|
| 1) <b>S</b> ections           | 115A/AC/AD/BBA                                          | 115C to I      |
| 2) <b>N</b> ature             | Compulsory                                              | Optional       |
| 3) <b>A</b> ssessee           | All                                                     | Individuals    |
| 4) <b>D</b> edn. for Expenses | Not allowed                                             | Not allowed    |
| Dedn. u/c VIA                 | Not allowed<br>( <b>Except R/FTS</b> )                  | Not allowed    |
| Indexation                    | Not allowed                                             | Not allowed    |
| Conversion benefit            | Not allowed                                             | <b>Allowed</b> |
| 5) <b>R</b> eturn Filing      | Not required<br>( <b>Except FII</b> )                   | Not required   |
|                               | (If such income is the only income and TDS is deducted) |                |

**IMPORTANT NOTE**

Incomes of NR which are **not covered in above sections** shall be taxable at **normal rates**.  
 [Normal Rate means ST u/s 111A @15%/20%, LT u/s 112A @10%/12.5%, Other LTCG @20%/12.5%,  
 Winnings @30% and Balance depending upon the assessee i.e. if Ind./HUF – Slab Rates,  
 Foreign Co.– 35% & PFirm/LLP 30%]. However,

Benefit of **special slab** rates for **senior citizen** is **not allowed** to **NR**

**Rebate** u/s 87A is **not allowed** to **NR**

Benefit of **unexhausted basic exemption** for ST u/s 111A, LT u/s 112A & Other LT is **not allowed** to **NR**

## → **PART – II: PRESUMPTIVE TAXATION:**

### **PRESUMPTIVE INCOME FOR NON-RESIDENTS**

| Section      | Assessee | Type of Business                                                                                                                                               | Taxable IFB       |
|--------------|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| <b>44B</b>   | NR       | Operating <b>Ships</b>                                                                                                                                         | <b>7.5% of GR</b> |
| <b>44BBA</b> | NR       | Operating <b>Aircrafts</b>                                                                                                                                     | <b>5% of GR</b>   |
| <b>44BB</b>  | NR       | Supplying P & M on hire or providing services or facilities to <b>Mining business</b> (for prospecting or extraction /production of mineral oils incl. P & NG) | <b>10% of GR</b>  |
| <b>44BBB</b> | NR       | Civil construction or erection or testing or commissioning of P & M (in connection with approved <b>Power</b> project)                                         | <b>10% of GR</b>  |
| <b>44BBC</b> | NR       | Operating <b>Cruise Ships</b>                                                                                                                                  | <b>20% of GR</b>  |

GR = Gross Receipts = Amounts **received in India** or Amounts **accrued in India** [Ignore amounts which are accrued as well as received outside India because for Non-Residents, foreign income is not taxable in India]

## → **PART – III: CONVERSION BENEFIT:**

### **First Proviso to section 48**

In case of

- **Non-Residents,**
- **Shares/Deb. of Indian Co.** purchased in
- **Foreign Currency**
- **Not falling u/s 111A/112A**

capital gain is calculated as follows:

- 1) **First** calculate the capital gains in **foreign currency**
  - Convert FVOC/Trf. Exps given in rupees in to foreign currency at **Avg. rate** of exchange on **transfer date** [Avg of buying rate & selling rate]
  - Convert Cost of Acquisition given in rupees in to foreign currency at **Avg. rate** of exchange on **purchase date** [Avg of buying rt. & selling rt.] – **Indexation is not allowed**
- 2) **Then** convert final capital gains answer in to **rupees** at **Buying rate on transfer date.**

Note: Conversion benefit is allowed in Chapter XIIA but not in Chapter XII.

Example: Mr. X (Non – Resident) sent foreign currency to India Purchased shares of Indian co. on 24/8/2006 (Cost Rs. 1,20,000) Sold on 29/12/2024 (Sale Price Rs. 4,80,000) – Not through RSE.

|            | Buying Rate  | Selling Rate |
|------------|--------------|--------------|
| 24/8/2006  | 1\$ = Rs. 19 | 1\$ = Rs.21  |
| 29/12/2024 | 1\$ = Rs. 59 | 1\$ = Rs. 61 |

**Solution:**

#### COMPUTATION OF CAPITAL GAINS

|                                                    | \$      |
|----------------------------------------------------|---------|
| FVOC [Sale Price] [Rs. 4,80,000/60]                | 8,000   |
| <u>Less:</u> Cost of Acquisition [Rs. 1,20,000/20] | - 6,000 |
| LTCG [in foreign currency]                         | 2,000   |

$$\text{LTCG [in Rupees]} = \$ 2,000 \times \text{Rs. } 59 = \text{Rs. } 1,18,000$$

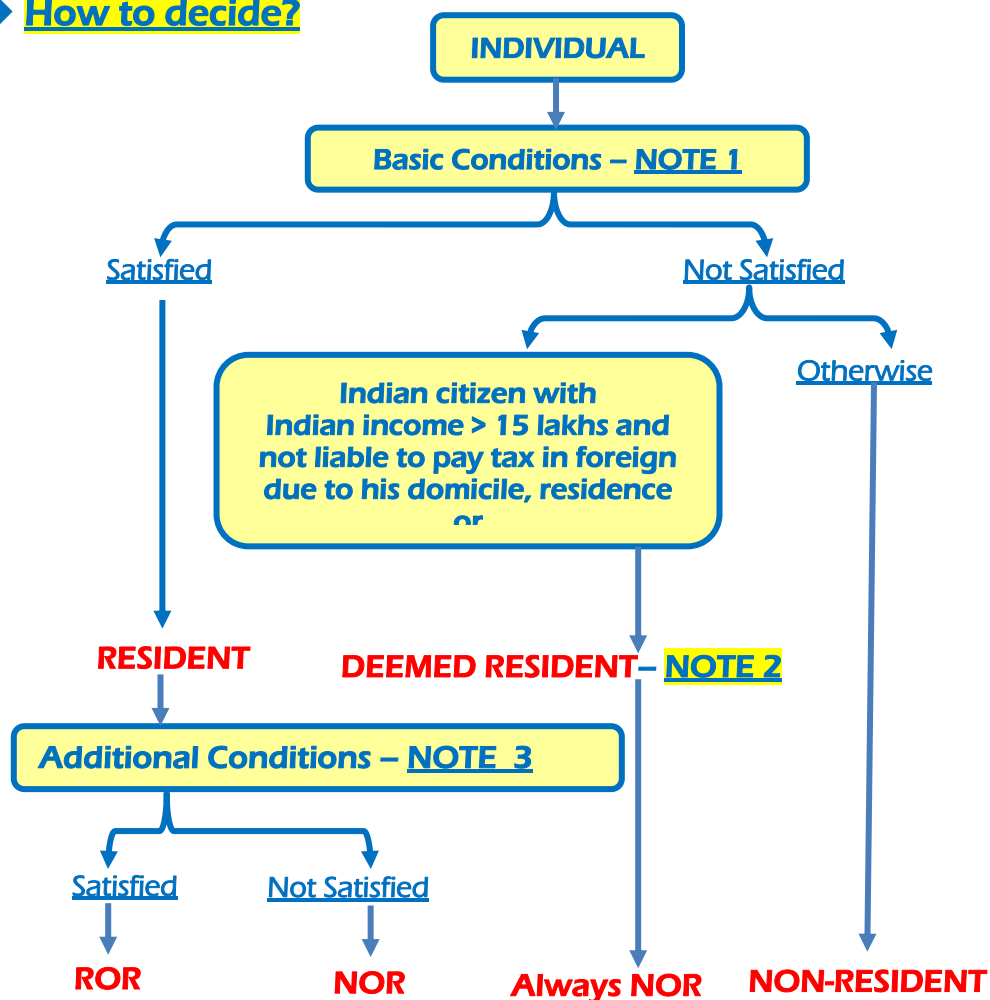
## → **PART – IV: RESIDENTIAL STATUS/SCOPE:**

### → **Why to decide?**

It is necessary to decide because:

- If a person is a **ROR** [Resident and Ordinarily Resident] then he has to pay tax on **World income**.
- If a person is **NOR** [Not Ordinarily Resident] then he has to pay tax on all **Indian incomes + Only One foreign income** i.e. foreign *business income controlled from India*.
- If a person is **NR** [Non-Resident] then he has to pay tax only on **Indian incomes**.

### → **How to decide?**



**NOTE 1:**

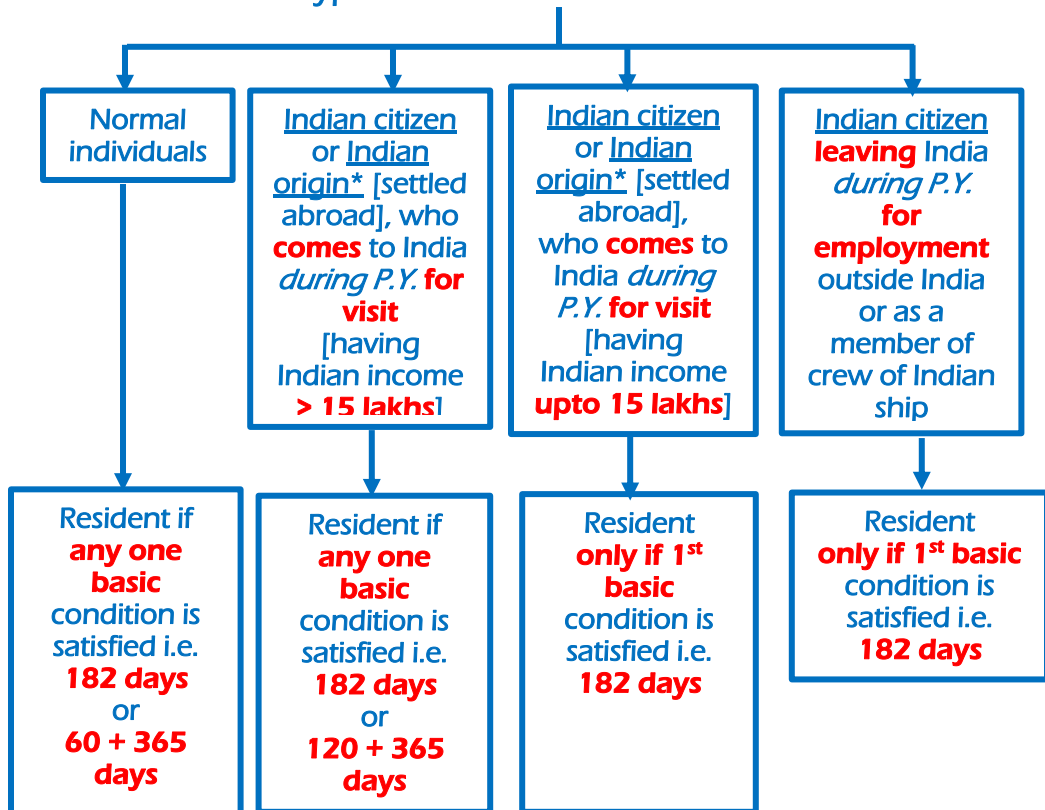
**BASIC CONDITIONS:**

Stay in India for **182 days** or more in current P.Y.

**or**

Stay in India for **60/120 days** or more in current P.Y. **and**  
Stay in India for **365 days** or more in preceding 4 PYs.

Use of above basic conditions depends upon the type of individual as follows:



\*An individual is said to be a person of Indian origin if he himself or his parents or his grandparents were born in undivided India.

**NOTE 2: DEEMED RESIDENT:**

Normally, residential status is decided based on number of days an individual stays in India [as discussed in basic conditions]. However, if following conditions are satisfied then an individual is deemed as resident of India [**irrespective of his stay in India**]:

- i) Such Individual is an **Indian Citizen**;
- ii) His Indian\* income is **more than 15 lakhs** and
- iii) He is **not liable** to tax **in any foreign country** by reason of his domicile, residence or any other similar criterion.

\* Indian income = Income from sources in India + Income from foreign business controlled from India.

**NOTE 3: ADDITIONAL CONDITIONS:**

**Resident** in India for **2 yrs.** or more out of **preceding 10 PYs**

**and**

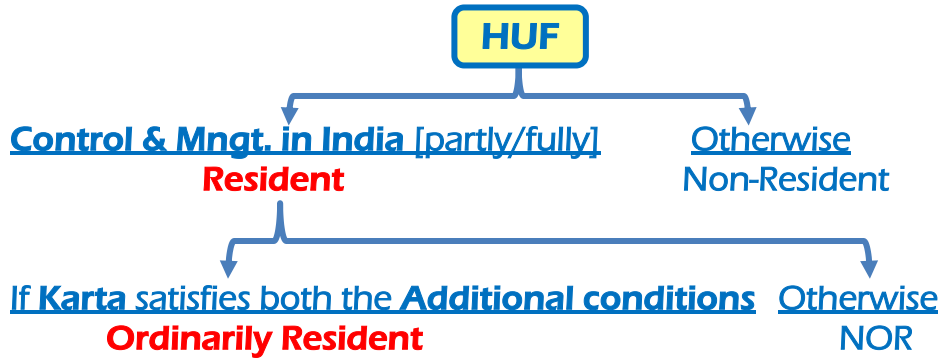
Stay in India for **730 days** or more in **preceding 7 PYs**

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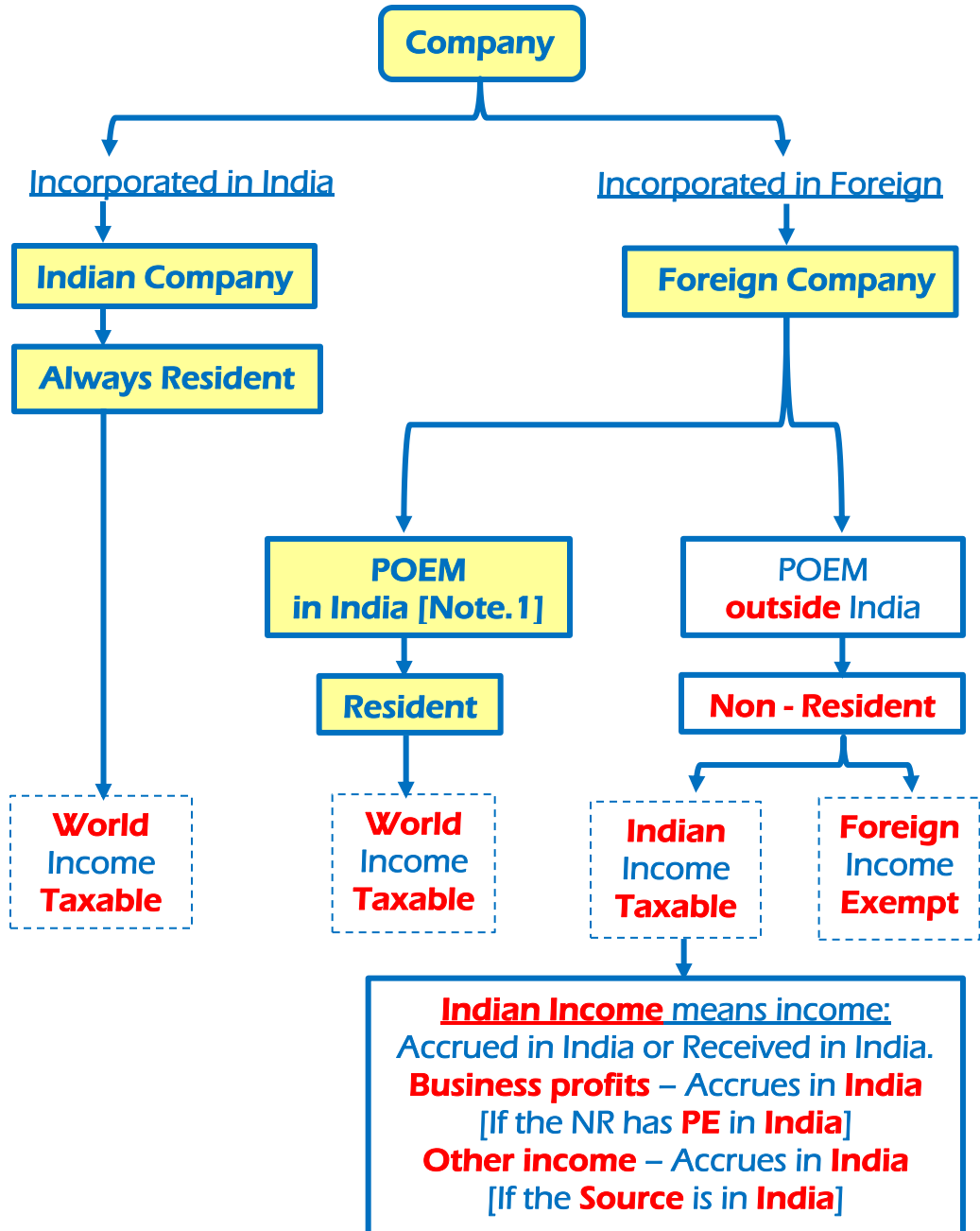
If an individual satisfies **both** the above additional conditions then he is **ordinarily resident** in India.

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However, in case of an **Indian citizen** or **Indian origin** [settled abroad], who comes to India during P.Y. for **visit** [having **Indian income > 15 lakhs**], he will be treated as **NOR** even if he satisfies both the above additional conditions provided his **stay/visit in India** during the current PY is **120 days or more but less than 182 days**.

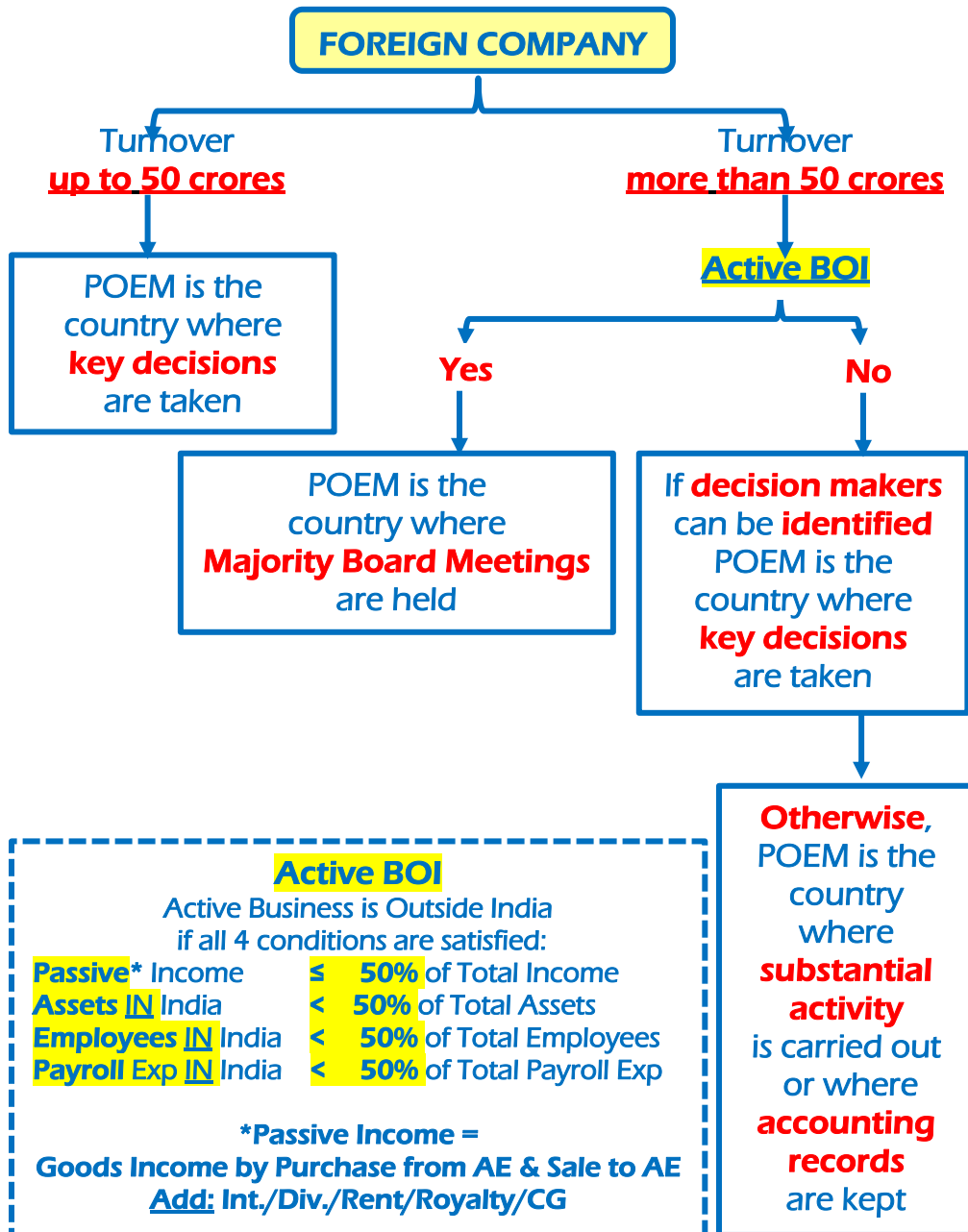


**RESIDENTIAL STATUS OF A COMPANY:**



**Note 1:**

**PLACE OF EFFECTIVE MANAGEMENT**



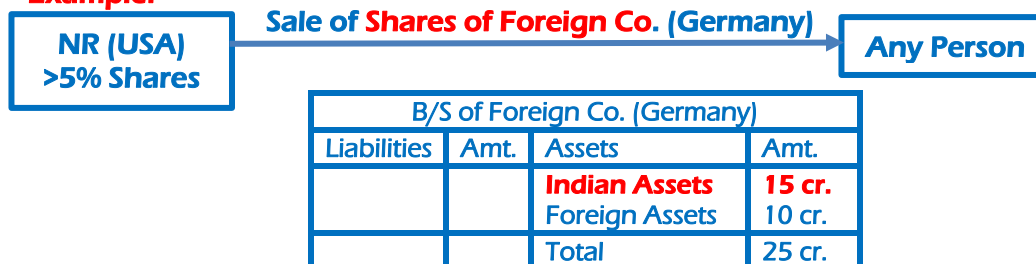
➔ **PART – V: SECTION 9:**

**SECTION 9: INCOME DEEMED TO ACCRUE/ARISE IN INDIA**

Income of **non-residents** is taxable in India either if the income has **accrued in India** or it is **received in India** or **both**.

| Income of NR (Head-wise)                                                                                                             | When accrues is in India ?                                                                                                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Income from Salaries</b>                                                                                                          | If services <b>rendered in India</b> or                                                                                                                                                                                                                                 |
| ★                                                                                                                                    | If services <b>rendered outside India</b> , then it should be received by <b>Indian citizen</b> from <b>Indian Govt.</b>                                                                                                                                                |
| <b>Income from HP</b>                                                                                                                | If <b>House Property</b> located <b>in India</b>                                                                                                                                                                                                                        |
| <b>Income from Business</b> ★                                                                                                        | If <b>PE (Business Connection)</b> <b>in India</b> <b>(Note 1)</b>                                                                                                                                                                                                      |
| <b>Capital Gains:</b>                                                                                                                |                                                                                                                                                                                                                                                                         |
| ➔ Shares of Foreign Co. [Shares giving <b>mngt.</b> or <b>control rights</b> in foreign co. or <b>&gt; 5%</b> shares in foreign co.] | ★ If such shares <b>derive its value</b> substantially from <b>assets located in India</b> [Example*below] [Balance Sheet of Foreign Co. should include <b>Indian Assets</b> having <b>FMV &gt; 10 cr.</b> & such FMV <b>&gt;/= 50% of Total Assets</b> of Foreign Co.] |
| ➔ Other Capital Assets                                                                                                               | If <b>Capital Asset</b> located <b>in India</b>                                                                                                                                                                                                                         |
| <b>IFOS:</b>                                                                                                                         |                                                                                                                                                                                                                                                                         |
| ➔ Interest/Royalty/FTS                                                                                                               | ★ If money borrowed, invention etc or technical service is <b>used in India</b> [either for carrying business in India or creating source in India]                                                                                                                     |
| ➔ Gift > 50,000                                                                                                                      | If received from <b>person resident</b> in India                                                                                                                                                                                                                        |
| ➔ Other Incomes                                                                                                                      | If the <b>source</b> is <b>in India</b>                                                                                                                                                                                                                                 |

\* **Example:**



**Note 1: BUSINESS CONNECTION/PE IN INDIA**

PE means having a **fixed place of business in India** [excluding a fixed place of SDPPIO] or an **agent in India** or **significant economic presence** in India.

→ **FIXED PLACE** of business in India **excludes** fixed place **solely** for SDPPIO activities:

- **Storage** of goods in India
- **Display** of goods in India
- **Processing** of goods in India
- **Purchase** of goods in India
- Collecting **Information** in India
- **Other** Preparatory activity in India

**Important Note:**

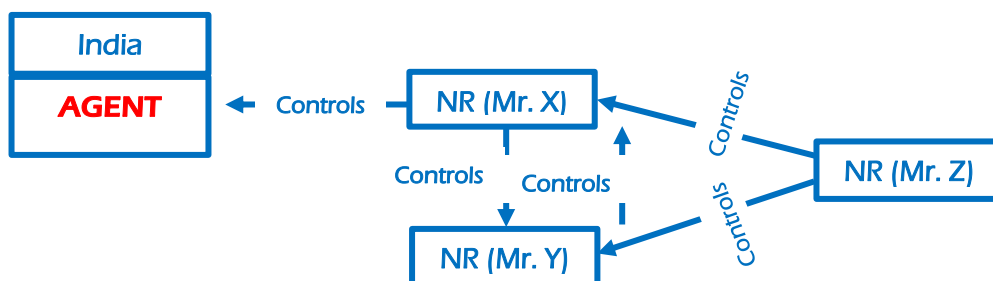
The above list of exclusions [SDPPIO] is as per India’s DTAA with foreign countries. However, as per section 9, only following places of business are excluded from “business connection in India” – Fixed place solely for:

- **Display of rough diamonds** in Notified Zones in India
- **Purchase** of goods in India **for the purpose of export**
- **Collecting News/Views in India** for transmission abroad
- **Shooting of Films in India**

→ **AGENT** in India is treated as Business connection or PE in India if following conditions are satisfied:

1. Agent should be **Dependent** on NR i.e. he should be controlled by such NR i.e. he should secure orders in India mainly or wholly for such NR.

**Example:**



In the above example, although the agent mainly secures orders for Mr. X, it is deemed that all the above 3 NRs (X, Y and Z) have PE [Business Connection] in India if the agent secures some orders for Y and Z also [provided conditions below should also be satisfied].

2. Such Agent habitually **Concludes** the contract or plays the principal role leading to conclusion of contracts;  
Or  
Such Agent habitually maintains stock of goods in India from which he regularly **Delivers** goods on behalf of NR.
3. Such contracts are either in the **Name of NR** or for transfer of goods/services owned by such NR.

→ **SIGNIFICANT ECONOMIC PRESENCE** in India means:

- (a) transaction in respect of any goods, services or property carried out by a non-resident with any person in India (including provision of download of data or software), if the aggregate of payments arising from such **transactions** during the previous year **exceeds ₹2 crores** or
- (b) systematic and continuous soliciting of business activities or engaging in **interaction with minimum 3,00,000 users** in India.

**Important Note:**

The above concept of significant economic presence in India is there in section 9. However, as per India's DTAA with foreign countries, having significant presence in India is not treated as PE in India.

A Non-resident can choose:  
Provisions of section 9 or  
Provision of DTAA  
[whichever is beneficial]

## ➔ **PART – VI: EXEMPTIONS FOR NR:**

### **EXEMPTIONS FOR NON - RESIDENTS**

#### ➔ **SECTION 10(4)(ii):**

Interest earned by NR from Non-Resident (External) Account i.e. **NRE A/c** is fully exempt.

#### ➔ **SECTION 10(4D):**

Discussed in the topic of IFSC [International Financial Services Centre]

#### ➔ **SECTION 10(4F):**

Any income of NR by **Leasing Aircrafts/ Ships to IFSC Unit** (any unit located in IFSC) shall be fully exempt.

#### ➔ **SECTION 10(6)(ii):**

Remuneration received by a **Foreign Citizen** for services rendered to **Foreign Embassy in India** is fully exempt if following conditions are satisfied:

- The **Foreign country should also exempt** such income to Indian citizen in Indian Embassy abroad.
- Such Foreign citizen **should not have any business/profession or employment in India.**

#### ➔ **SECTION 10(6)(vi):**

Remuneration received by a **Foreign Citizen** for services rendered to **Foreign Enterprise in India** (Services rendered in India) is fully exempt provided such services in India is for **Max. 90 days.**

#### ➔ **SECTION 10(6)(viii):**

Remuneration received by a **Foreign Citizen** for services rendered in **Foreign Ship in India** is fully exempt provided such services in India is for **Maximum 90 days.**

→ **SECTION 10(6)(xi):**

Remuneration received by a **Foreign Citizen** from **Foreign Govt.** for services in India in connection with his **training** (in **Indian Govt.** office or office of an **Indian Co.** owned by Indian Govt. or any Corporation established under Central/State/Provincial Act) is fully exempt.

→ **SECTION 10(6C):**

Royalty/FTS received by **Foreign Company** for services given to **Indian Govt.** for Projects concerning **security of India** is fully exempt.

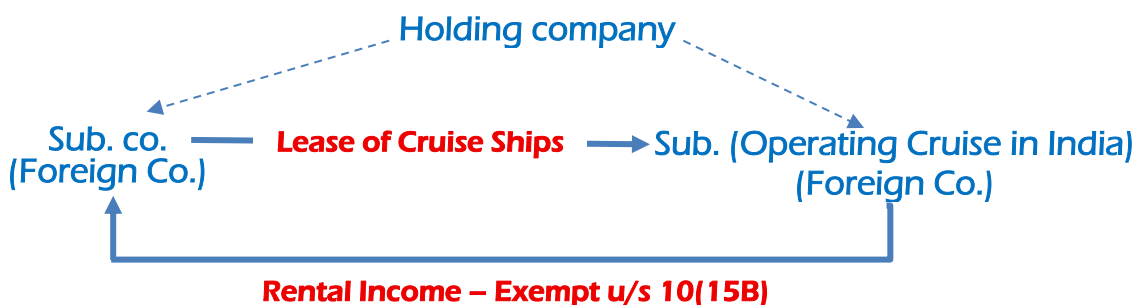
→ **SECTION 10(6D):**

Royalty/FTS received by **Foreign Co./NR** for services given to **NTRO** (National Technical Research Organisation) is fully exempt.

→ **SECTION 10(48):**

Income from sale of **Crude oil** or other **notified goods** and services earned by a **Foreign Company** in India is fully exempt.

→ **SECTION 10(15B):**



## → **PART – VII: DEDN FOR H.O. EXP [Sec.44C]:**

In case of NR having a branch in India, the NR has to pay tax on profits attributable to such Indian branch. While computing profits of Indian branch, deduction for Head Office Expenditure will be allowed subject to following limit:

- ↓ 1) **5% of Adjusted Total Income**
- ↓ 2) **Actual HO Expenditure**

### → **Adjusted Total Income:**

|                                                                                          | ₹   |
|------------------------------------------------------------------------------------------|-----|
| Taxable Business Income /PGBP (Before HO Exp)                                            | xxx |
| <u>Add Back:</u> Dedn of 1/5 <sup>th</sup> Cap. Exp on <b>F</b> amily Planning           | xxx |
| <u>Add:</u> Income under other heads                                                     | xxx |
| <b>Adjusted Total Income</b><br>[without giving effect to B/f losses & Chapter VIA dedn] | xxx |

If the above figure is negative then we take average of preceding 3 years adjusted total income.

## → **PART – VIII: Section 172:**

### **SECTION 172: RECOVERY FROM SHIPPING BUSINESS OF NR**

In case of NR carrying on shipping business in India – **Before** the **Ship departs** from the Indian Port, the **master of the ship** is required to:

- i) **File a voyage return** [declaring the gross receipts on account of **carriage from Indian Port** since the last arrival] and
- ii) **Pay tax** at the **rate applicable to foreign companies** i.e. 35% of the [income calculated @7.5% of above gross receipts] + SC + HEC.

If it is **not possible** for the master of the ship to furnish the return and pay the tax before the departure of the ship from the Indian Port and if **he makes satisfactory arrangements** for filing of return and payment of tax by the authorised agent in India then he may be permitted to filing the return and pay the tax **within 30 days of departure** of the ship.

After such return is filed, the A.O. shall complete the **assessment within 9 months** from the end of the financial year in which such return is filed.

#### **Note:**

The above provision is **kind of advance tax** paid by the NR. When the NR files his **regular return** of income, he will declare his PGBP as per **sec. 44B\*** and pay the **tax** on total income **depending upon whether he is individual, P.Firm etc.**

**Tax paid u/s 172** shall be **adjusted** against tax computed in the regular return.

\* @7.5% of Gross Receipts on account of:

Carriage **from Indian Port** [received wherever] plus  
Carriage **from foreign port** [if received in India].

# TAXATION OF BUSINESS TRUST

## WHAT IS BUSINESS TRUST?

Business Trust means a trust created for investment in **Real Estate** or **Infrastructure**. It is registered with **SEBI** as:

→ **REIT** [Real Estate Investment Trust] or

→ **InvIT** [Infrastructure Investment Trust]

Units of REIT/InvIT may or may not be listed on a recognised stock exchange.

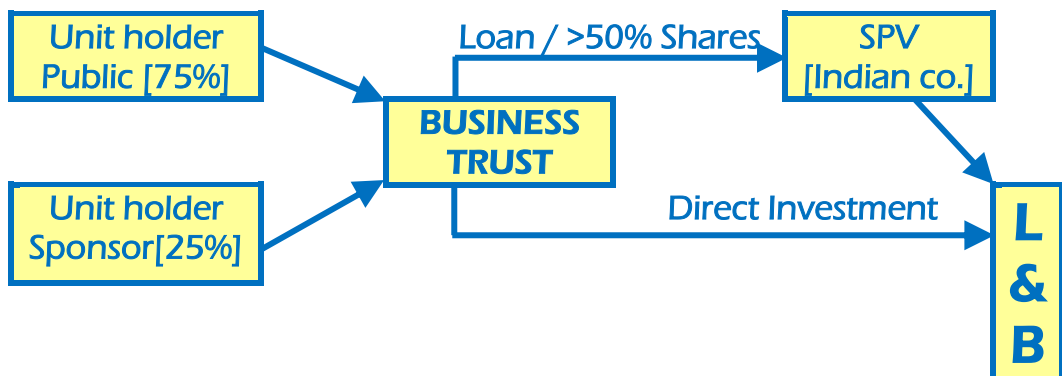
## HOW DOES IT OPERATE?

Real estate investment trust (REIT) is normally an initiative of a person engaged in real estate business. This person who takes the initiative is called **sponsor**.

The sponsor will **create** a business trust and get it **registered** with SEBI as REIT. After registration, the business trust becomes a legal entity.

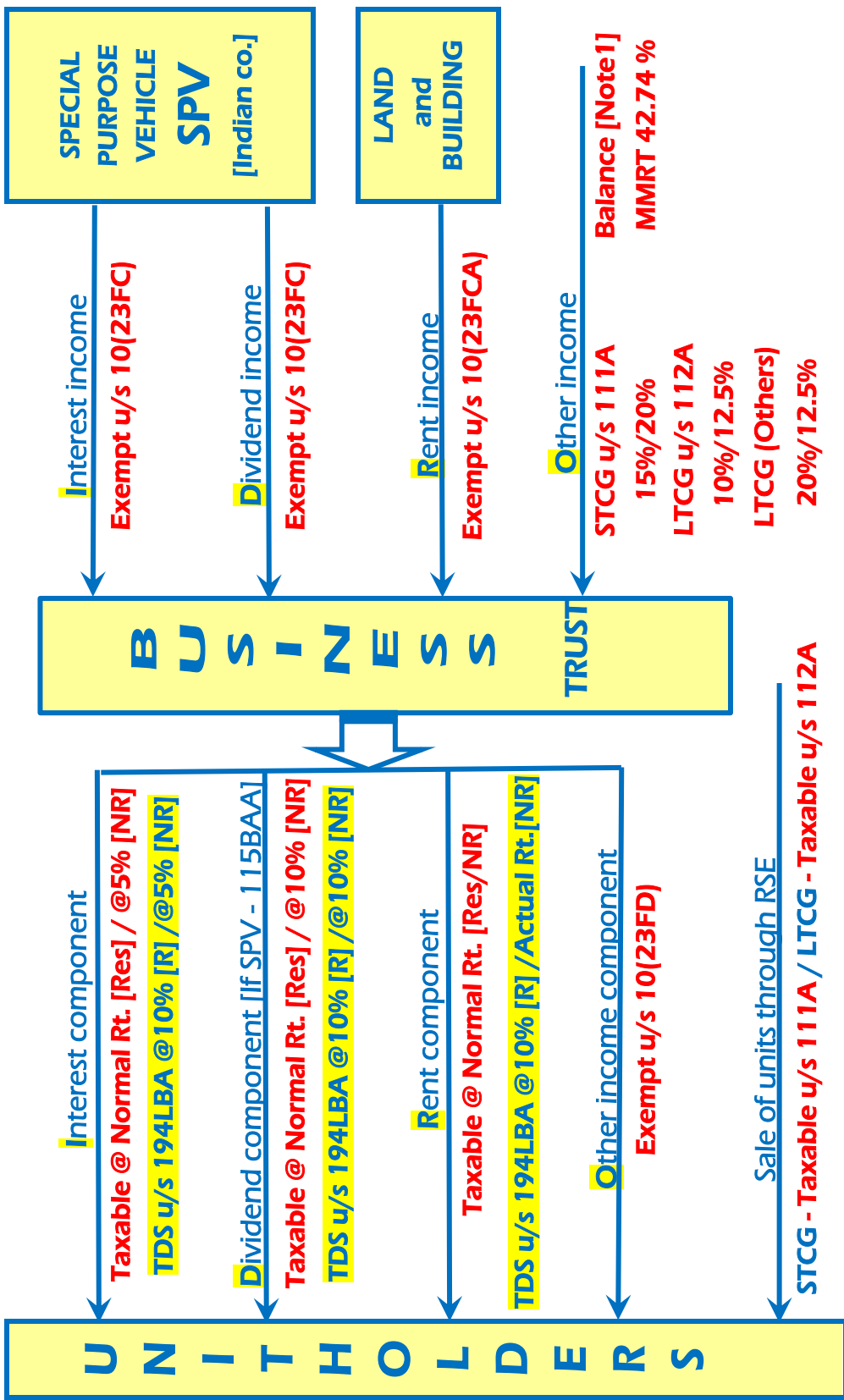
The business trust will now make a **public issue of units**. In this public issue, the sponsor will subscribe minimum of 25% & the balance will be subscribed by Public.

The **proceeds** of the IPO will be **invested in real estate** i.e. land and building either **directly** or **indirectly** [Indirectly means – The business trust will acquire controlling interest i.e. more than 50% shares in an Indian Company engaged in real estate business]. This Indian Company is known as **“Special Purpose Vehicle”**.



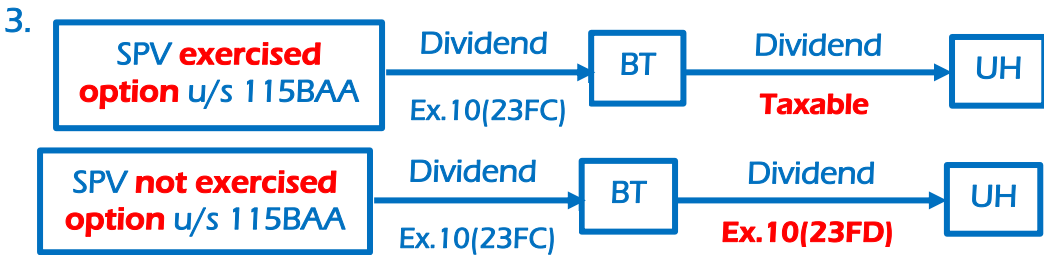
Purpose achieved by business trust:

- ⇒ Public who cannot afford to buy properties directly are able to get some stake in real estate (through investment in units).



**NOTES**

1. The other income [Balance] of Business Trust shall be taxable at maximum marginal rate of tax [30% + Surcharge 37% + HEC 4%].
2. **Int.** and **Dividend** from **SPV** are Exempt u/s **10(23FC)**  
**Int.** & **Div.** from **Non-SPV** are Taxable as other income at **MMRT**



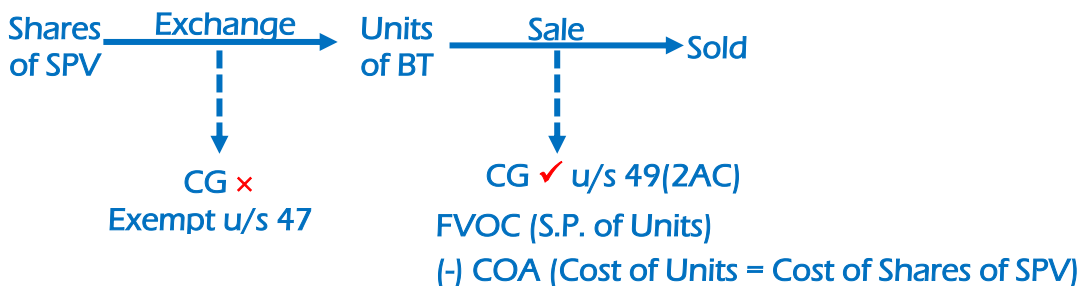
4. Unit-holders will show the distributed income in their return in the **same nature** and in the **same proportion** in which business trust has earned it.
5. The units of Business Trust may be listed in RSE & subject to STT. Accordingly, if these units are sold through RSE, LTCG shall be taxable u/s 112A & STCG shall be taxable u/s 111A.
6. Sponsor will subscribe in “units of business trust” by exchanging his “Shares in SPV”. This amounts to an “exchange” which falls in the definition of transfer but as per **Sec. 47**, this transfer is exempt.

Later on, when these units are transferred, provisions of **section 49(2AC)** shall apply as follows:

**Cost** of Units of BT = Cost of **Shares of SPV**.

**Period** of Units of BT = Date of purchase of **Shares of SPV** up to the date of transfer of Units of BT

**Indexation** will be done from the year when **Shares of SPV** were purchased up to the year of transfer of Units of BT



7. Interest/Dividend from SPV and Rental income of business trust is exempt in the hands of business trust but the same is taxable in the hands of unitholders. All other incomes are taxable in the hands of business trust but exempt for the unitholders.

As per Finance Act, 2023, if business trust receives some amount [which is **not in the nature of income**] and distributes the same to the unitholders then such amount is not taxable for the business trust but it will be **taxable for the unitholders**.

$$\begin{aligned} & \text{Taxable Amt. for the U/H} \\ & = \text{Amt. distributed till date} - \text{Issue Price} \end{aligned}$$

Eg:

| PY 2024-25                                                                                            | BT             | UH                      |
|-------------------------------------------------------------------------------------------------------|----------------|-------------------------|
| Interest/Dividend from SPV/Rent income                                                                | Ex.            | T                       |
| Other income                                                                                          | T              | Ex.                     |
| <b>Other receipts [Not an income]</b><br>Eg: Bus. trust recd a "repayment of loan"                    | <b>₹10</b> Ex. | <b>T*</b><br><b>Nil</b> |
| * Taxable Amt = Amt distributed till date – Issue Price<br>= ₹10 – ₹12 (Assumed as Issue Price) = Nil |                |                         |

| PY 2025-26                                                                                | BT            | UH                     |
|-------------------------------------------------------------------------------------------|---------------|------------------------|
| Interest/Dividend from SPV/Rent income                                                    | Ex.           | T                      |
| Other income                                                                              | T             | Ex.                    |
| <b>Other receipts [Not an income]</b><br>Eg: Bus. trust recd a "repayment of loan"        | <b>₹9</b> Ex. | <b>T*</b><br><b>₹7</b> |
| * Taxable Amt = Amt distributed till date – Issue Price<br>= ₹19 – ₹12 (Issue Price) = ₹7 |               |                        |

| PY 2026-27                                                                                                     | BT            | UH                     |
|----------------------------------------------------------------------------------------------------------------|---------------|------------------------|
| Interest/Dividend from SPV/Rent income                                                                         | Ex.           | T                      |
| Other income                                                                                                   | T             | Ex.                    |
| <b>Other receipts [Not an income]</b><br>Eg: Business trust recd a "repayment of loan"                         | <b>₹6</b> Ex. | <b>T*</b><br><b>₹6</b> |
| * Taxable Amt = Amt distributed till date – Issue Price<br>= ₹25 – ₹12 (Issue Price) = ₹13 - 7 [Already Taxed] |               |                        |

**ILLUSTRATION:** Details of the income of Business Trust:

|                                                           | Amt.         |
|-----------------------------------------------------------|--------------|
| 1) Interest from SPV                                      | 500          |
| 2) Interest from Non SPV                                  | 100          |
| 3) Dividend from SPV<br>[SPV exercised option u/s 115BAA] | 500          |
| 4) Dividend from Non SPV                                  | 100          |
| 5) Rent from commercial properties                        | 500          |
| 6) STCG on sale of equity shares                          | 100          |
| 7) LTCG on sale of commercial properties                  | 100          |
| 8) STCG on sale of residential properties                 | 50           |
| 9) Other incomes                                          | 50           |
|                                                           | <b>2,000</b> |

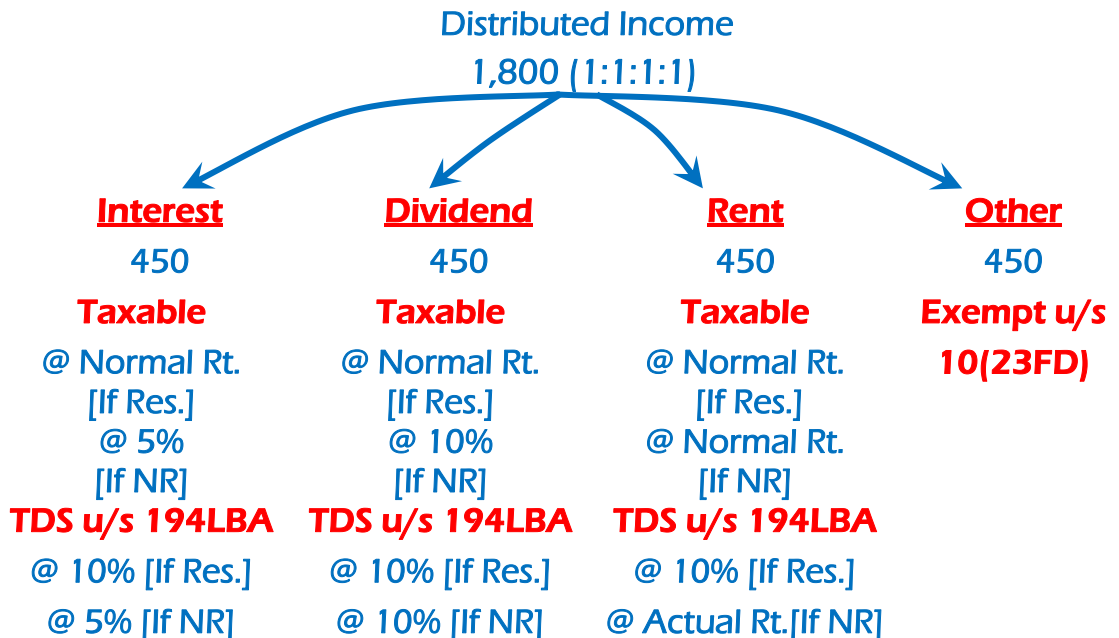
Out of total Income of Rs.2,000, the business trust distributed Rs.1,800 to unit holders.

**ANSWER:****TAX TREATMENT FOR BUSINESS TRUST**

| Particulars             |                      | Amt.         |
|-------------------------|----------------------|--------------|
| <b>Interest Income:</b> |                      |              |
| From SPV                | Exempt u/s 10(23FC)  | <b>500</b>   |
| <b>Dividend Income:</b> |                      |              |
| From SPV                | Exempt u/s 10(23FC)  | <b>500</b>   |
| <b>Rent Income:</b>     |                      |              |
| From comm.properties    | Exempt u/s 10(23FCA) | <b>500</b>   |
| <b>Other Incomes:</b>   |                      |              |
| STCG [Eq. Shares]       | 20% Tax u/s 111A     | 100          |
| LTCG [Comm. Prop..]     | 12.5% Tax            | 100          |
| Dividend [Non SPV]      | 42.74% MMRT          | 100          |
| Interest [Non SPV]      | 42.74% MMRT          | 100          |
| STCG [Res. Properties]  | 42.74% MMRT          | 50           |
| Other incomes           | 42.74% MMRT          | 50           |
| <b>TOTAL INCOME</b>     |                      | <b>2,000</b> |

**TAX TREATMENT FOR UNIT-HOLDERS**

Out of the total income of Rs. 2,000, the business trust has distributed Rs. 1,800. This distributed income of Rs. 1,800 is assumed to be earned by the unit-holders in the **same nature** and in the **same proportion** in which business trust has earned it. Since the business trust has earned the **interest** from SPV, **dividend** from SPV, **rent** and **other** income in the ratio of **500 : 500 : 500 : 500** [see above working], the unit-holders are assumed to have earned the distributed income of Rs. 1,800 in the same ratio i.e. 1:1:1:1. Tax treatment of such distributed income is as follows:



The business trust is required to **furnish** a **Statement** of income [with **break up**] to the:

- **Unit holders** up to **30<sup>th</sup> June** of the AY
- and**
- **CIT** up to **30<sup>th</sup> Nov.** of the AY

# TAXATION OF INVESTMENT FUND

## WHAT IS INVESTMENT FUND?

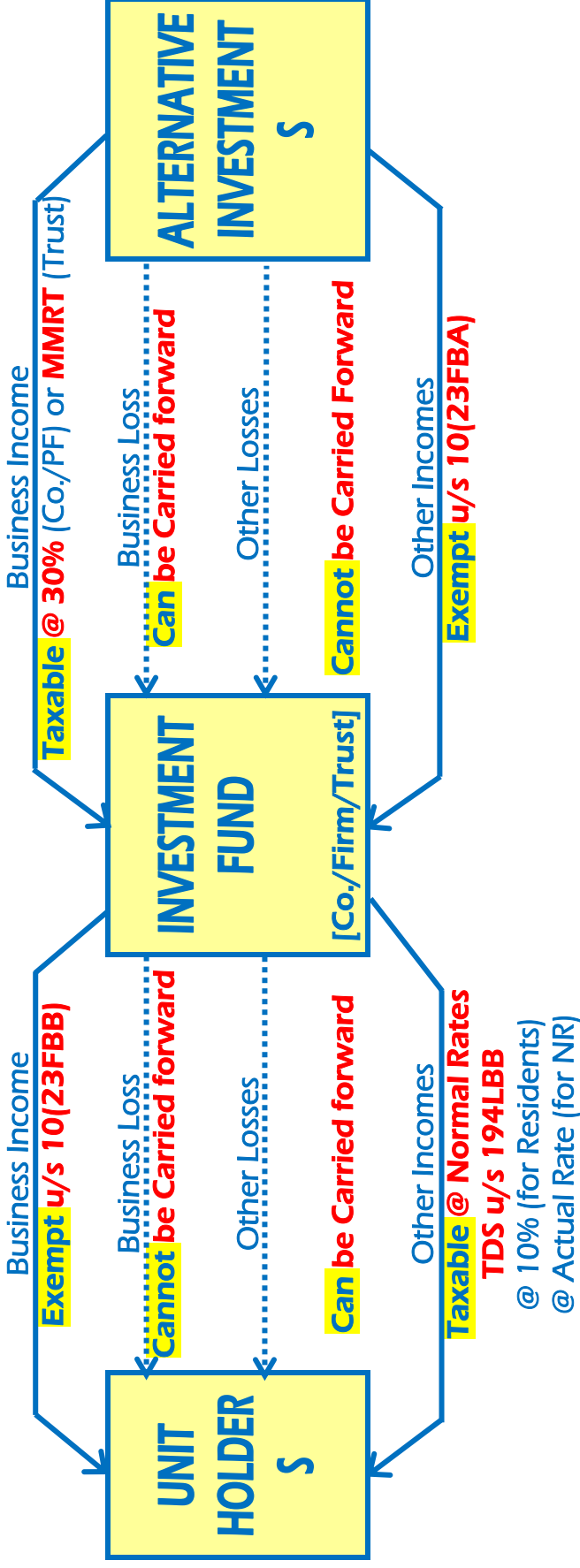
Investment fund is a **company** or a partnership **firm** or a **trust** which is registered with **SEBI** as **Alternate Investment Fund (AIF)**.

Investment fund raises money by **private pooling** (by issuing units to **few rich people** – each investing minimum 1 crore).

The fund raised is utilised to **invest in different areas** as prescribed by SEBI [These investments are not of routine type] Eg: Private equity, start-up, derivatives, socially desirable projects etc...



**TAX TREATMENT OF INVESTMENT FUND AND ITS UNIT-HOLDERS**



Since **business** income is **taxable** at the level of Inv. Fund, **C/f** of business loss is allowed to **Inv. Fund** [U/H are exempt – neither tax nor carry forward]

However, in case of **other** income/other loss, its **taxability** and **C/f** is **passed on to the U/H** [Inv. Fund is exempt – neither tax nor carry forward]

**Set-off of any loss in the same year** [i.e. the year in which loss arises] is **always done by Inv. Fund** [whether business loss or others]

Notes:

- 1) Unit-holders will show the distributed income in their return in the **same nature** and in the **same proportion** in which Investment Fund has earned it.
- 2) Unit-holders are required to show the income from **Investment Fund** on **accrual basis** [whether received or receivable] whereas unit-holders of **business trust** are required to show their income from business trust on **receipt basis** [amount actually received].
- 3) The Investment Fund is required to furnish a **Statement** of income (with **break-up**) to the:
  - **Unit-holders** upto **30<sup>th</sup> June** of A.Y. and
  - **CIT** upto **15<sup>th</sup> June** of A.Y.
- 4) **Any Loss** arising to Investment Fund shall be **set-off** at the level of **Investment Fund**. However, if such loss cannot be set-off in the same year then the unadjusted:
  - **Business loss** can be **carried forward** by **Inv. Fund**
  - **Other losses** can be **carried forward** by **Unit-Holders** [if the U/H have held their units for **atleast 12 months**]. Otherwise, other losses shall be c/f by the Inv. Fund.

**Example 1:**

**Income of Investment Fund:**

|                 |           |
|-----------------|-----------|
|                 | ₹         |
| Business Income | 50,00,000 |
| LTCG            | 20,00,000 |
| Interest Income | 10,00,000 |
|                 | 80,00,000 |

Out of the total income of ₹ 80,00,000, the investment fund distributed ₹ 60,00,000 to the unit holders.

Discuss the tax treatment for Investment Fund & Unit-Holders.

**Solution:**

|                        | Investment Fund      | Unit Holders         |
|------------------------|----------------------|----------------------|
| Business Income        | 50,00,000            | 50,00,000            |
|                        | <b>Taxable</b>       | <b>Ex. 10(23FBB)</b> |
| LTCG                   | 20,00,000            | 20,00,000            |
|                        | <b>Ex. 10(23FBA)</b> | <b>Taxable</b>       |
| IFOS (Interest Income) | 10,00,000            | 10,00,000            |
|                        | <b>Ex. 10(23FBA)</b> | <b>Taxable</b>       |

**Note 1:**

Out of ₹ 80,00,000; the unit holders have received only ₹ 60,00,000. But while filing the return, the unit holders are required to show **full 80,00,000** [₹ 60,00,000 as received & ₹ 20,00,000 as receivable]. In short, unit holders will show Income on Accrual Basis. However, the unit holders of "BT" are required to show the income on "Receipt Basis". [Amount actually received]

**Note 2:**

The Investment Fund is required to deduct **TDS u/s 194LBB @ 10%** for Resident & @ Actual Rate for NR unitholder.

**Example 2:**

**Income of Investment Fund:**

|                 |            |
|-----------------|------------|
|                 | ₹          |
| Business Loss   | (2,00,000) |
| LTC Loss        | (6,00,000) |
| LTCG            | 5,00,000   |
| Interest Income | 12,00,000  |

**Solution:**

|                                  | Investment Fund |                     | Unit Holders   |
|----------------------------------|-----------------|---------------------|----------------|
| LTCG                             | 5,00,000 Ex.*   |                     |                |
| <b>Less: LTCL set-off</b>        | (6,00,000)      | (1,00,000)          | (1,00,000)     |
|                                  |                 | <b>Cannot C/f</b>   | <b>Can C/f</b> |
| IPOS (Interest Income)           | 12,00,000 Ex.*  |                     |                |
| <b>Less: Business Loss S/off</b> | (2,00,000)      | 10,00,000           | 10,00,000      |
|                                  |                 | <b>Ex 10(23FBA)</b> | <b>Taxable</b> |

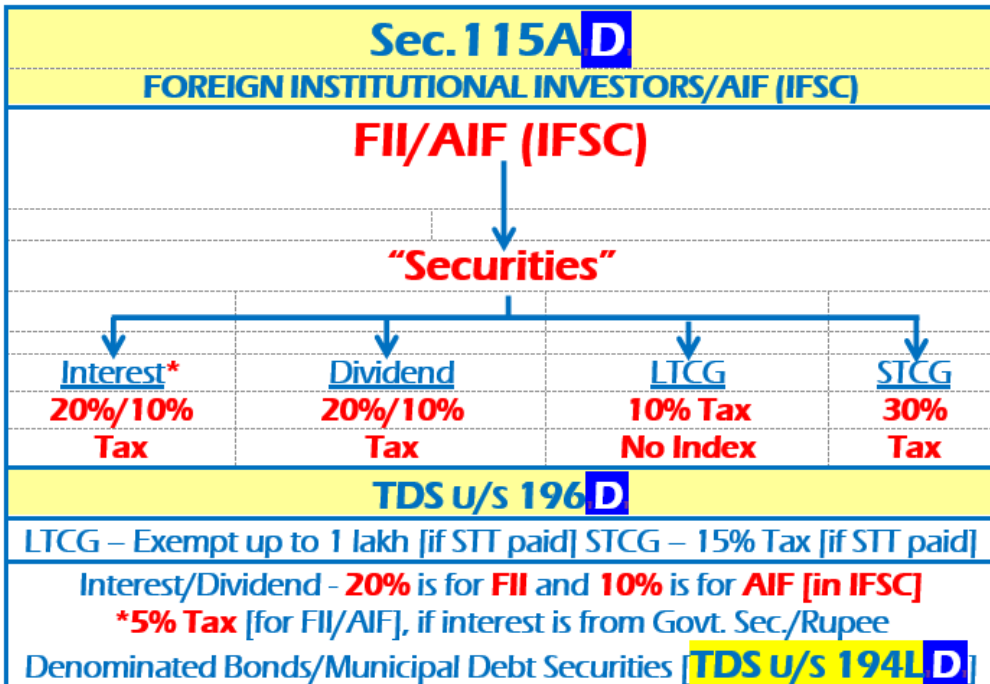
\* Normally, losses cannot be set off against exempt incomes. However, here LTCL and business loss of ₹ 6L and ₹ 2L can be set-off against Exempt LTCG and Exempt Interest income respectively because the true nature of LTCG and interest income is taxable but its taxability is passed on to the unit holders. Hence, the **taxability** of Net Interest income **after setting-off** business loss shall be **passed to the U/H** [i.e. ₹ 10L]. Similarly, **carry forward** of Net LTCL **after setting off** LTCG is **passed to the U/H** [i.e. ₹ 1,00,000].

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**SPECIAL TAX REGIME FOR CATEGORY III AIF**

Category III AIF mainly operates like a hedge fund. It employs diverse or complex trading strategies [investing in derivatives etc.] If a **Category III AIF** [Alternate Investment Fund] is **located in IFSC** [International Financial Services Centre] then the income of such AIF is taxed in the same way as is in case of income of FII u/s **115AD** i.e. concessional tax treatment u/s 115AD is also applicable to such AIF provided **all the units** of such AIF are **held by non-residents** [except units held by sponsor].

**Logic:** AIF is one of the most significant, growing & stable fund management industry in India. However, the fund mngt. industry around the globe is still located in sophisticated offshore financial hubs like Singapore, Hong Kong etc. on account of excellent infrastructure and ease of doing business. Hence, there was a need to provide tax incentive to Category-III AIFs (located in the IFSC) in order **to encourage relocation of foreign AIFs to the IFSC.**



Above incomes of AIF [covered u/s 115AD] **shall not be subject to Surcharge and HEC.**

Apart from above concessional tax rates, **certain incomes** of such AIF are **exempt u/s 10(4D)**. All **other incomes** of such AIF shall be taxable at **normal rates** [30% if such AIF is a company/firm and MMRT, if such AIF is a Trust]. In the hands of **unitholders**, any income from such AIF [whether by holding the units or transfer of units] is **fully exempt u/s 10(23FBC)**.

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## IFSC : INTERNATIONAL FINANCIAL SERVICES CENTRE:

To promote the concept of IFSC and to make India a world class hub for financial services, following incentives are granted under income tax [provided transactions are in foreign currency]:

If a **STOCK EXCHANGE** is located in IFSC

- **No STT** – **Still** benefit of sec. **112A/111A** can be taken.
- Bonds or GDR or Rupee Denominated Bonds or Derivative or other notified securities (BGRDO) **transferred by NR** through such stock exchange is **exempt u/s 47**.
- Interest earned by **FC/NR** (Foreign companies/Non-residents) from **Long-term Bond** or **Rupee Denominated Bond** listed in such Stock exchange is taxable at a concessional rate of **4% u/s 115A (9% on or after 1/7/2023)**

If **Any UNIT** is located in IFSC

- **MAT/AMT @ 9%**
- As per **sec. 80LA**, **100%** deduction shall be allowed in respect of income from business of unit located in IFSC. Deduction is allowed for any **10 consecutive years out of first 15 years** starting from the year in which permission under relevant law is obtained [permission for locating business in IFSC].
- **Interest** earned by **NR** from a unit located in IFSC is fully **exempt u/s 10(15)**.
- **Dividend** from unit in IFSC earned by **Foreign Co./NR** is taxable **@10% u/s 115A**

If an **INVESTMENT FUND (AIF)** is located in IFSC:

- If Category III AIF [Alternate Investment Fund] is located in IFSC then income of such AIF will be taxed at **concessional rate u/s 115AD** [discussed in the topic of Investment Fund] provided **all the units are held by non-residents** [except units held by sponsor]. Income of unit holders from such AIF is fully **exempt u/s 10(23FBC)** [including income from sale of units].
-

→ **SECTION 10(4D):**

In case of **AIF Category-III (located in IFSC),**

- Capital Gains on transfer of **BGRDO** through **Stock Exchange (located in IFSC);** and
- Income from **Foreign Securities** (Sec..issued by NR without PE) is exempt **to the extent of NR Investors (%) in such AIF.**

Eg: If 80% Investment is by NR and 20% by Resident (sponsor) then only 80% of such income shall be exempt.

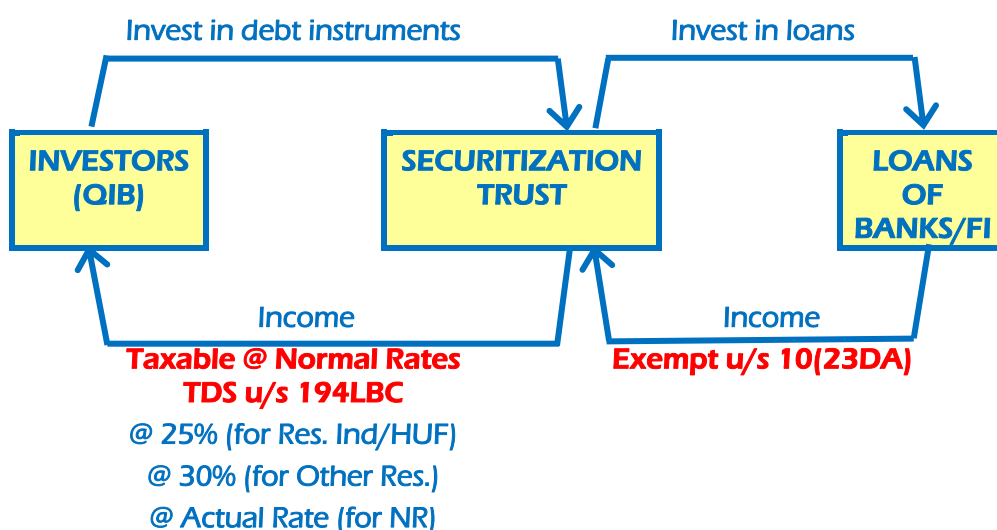
→ **SECTION 10(4F):**

Any income of NR by **Leasing Aircrafts/ Ships** to **IFSC Unit** (any unit located in IFSC) shall be fully exempt.

# TAXATION OF SECURITISATION TRUST

Securitization Trust raises fund by issuing **securitized debt instruments** to few qualified investors. Such investors are known as **Qualified Institutional Buyers (QIB)**. The money raised by the trust is utilised to **purchase loans** & advances of **banks** & financial institutions [Banks who are in need of money sell their loans to the trust].

## TAX TREATMENT



**Note 1:** Investors are required to show the income from **Securitisation Trust** on **accrual basis** [whether received or receivable] whereas unit-holders of **business trust** are required to show their income from business trust on **receipt basis**.

**Note 2:** The Securitisation Trust is required to **furnish a statement** of income (**with break-up**) to the:

- ➔ **Investors** upto **30<sup>th</sup> June** of A.Y. and
- ➔ **CIT** upto **30<sup>th</sup> November** of A.Y.

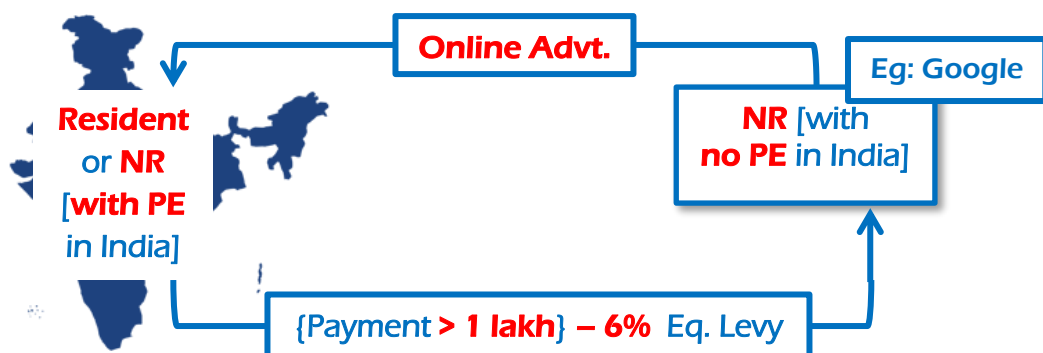
## EQUALISATION LEVY

Normally, if a foreign entity intends to earn from India by carrying on business in India then it will have a permanent establishment in India and once it has PE in India, income will be said to accrue in India. Accordingly, foreign entities will be taxed in India.

However, in today's world of E-commerce (i.e. online business without any shop etc.), there are companies like Google, Facebook etc. who earn huge profits by carrying on business in India without any PE in India and since they don't have PE in India, their income is not taxed in India.

Hence, in order to tax such entities, Govt. has introduced a new type of tax under Chapter VIII in Finance Act, 2016 [which is known as Equalisation Levy]

As per **section 165** of Finance Act, 2016, there shall be **6% levy** on amount received/receivable by a **NR having no PE** in India from a **Resident** carrying on business in India [or a **NR with a PE** in India]. This levy is only in respect of **online advertisement** services or **other services** as may be **specified by Govt.** and only if the aggregate amount paid or payable for such service during the financial year is **more than ₹ 1,00,000**.



**Notes:**

- 1) The Payer shall **deduct such levy like TDS** and Equalisation levy so deducted should be **deposited by 7<sup>th</sup> of next month**. Even if the payer **fails to deduct** such levy, he is liable to deposit such levy by 7<sup>th</sup> of next month [from his **own pocket**] **plus** he is also liable to pay **penalty** [amount of penalty = amount of levy not deducted].
- 2) For Delay in depositing Eq.Levy, the payer is liable to pay Interest and Penalty as follows:
  - **Interest for delay** in depositing  
= Amount of levy X **1% p.m.** X No. of months\* of delay  
[Period after 7<sup>th</sup> of next mnth up to the date when deposited]  
\*part of the month is treated as full month
  - **Penalty for delay** in depositing = **Rs. 1,000 per day** subject to maximum of the amount of levy not deposited.
- 3) If the assessee fails to deduct the levy or after deducting, fails to deposit it up to the due date of filing return then such expenditure of online advt. etc. will be **disallowed [Sec 40(a)]**.
- 4) The NR who earns such income by way of online advt. etc. will be **exempt** from paying tax **u/s 10(50)** because 6% levy is already deducted.
- 5) The payer shall furnish a statement in prescribed form (**Equalisation Return in Form No. 1**) setting forth details of all the specified services during the financial year. This statement i.e. the return of equalisation levy should be filed up to **30<sup>th</sup> June** of the next financial year. If there is delay in filing the return or if there is mistake in the return filed then a **belated** return or a **revised** return can be filed **within 2 years** from the end of the financial year in which specified service was provided. **Penalty** for not filing the return upto the due date i.e. 30<sup>th</sup> June = **Rs. 100 per day**  
This return will be **processed** for adjustment of any **arithmetical error**. After processing the return, if any amount is payable, it shall be demanded and if any refund is due, it shall be granted. This is done by sending **intimation within 1 year** from the end of the year in which return is filed.

### **EQUALISATION LEVY ON E-COMMERCE SUPPLY/SERVICES**

Till PY 2019-20, equalization levy was applicable only on online advertisement services/other specified services.

However, from PY 2020-21, equalization levy is also applicable on **online sale of goods/services** by a **non-resident** E-Commerce operator [**having no PE in India**] like Amazon, Flipkart etc if it's total sales/gross receipts from such online sale during the PY is **Rs. 2 crores or more**.

This equalization levy is payable **@2% on consideration** received/receivable in respect of following 2 transactions:

#### **→ Transaction 1:**

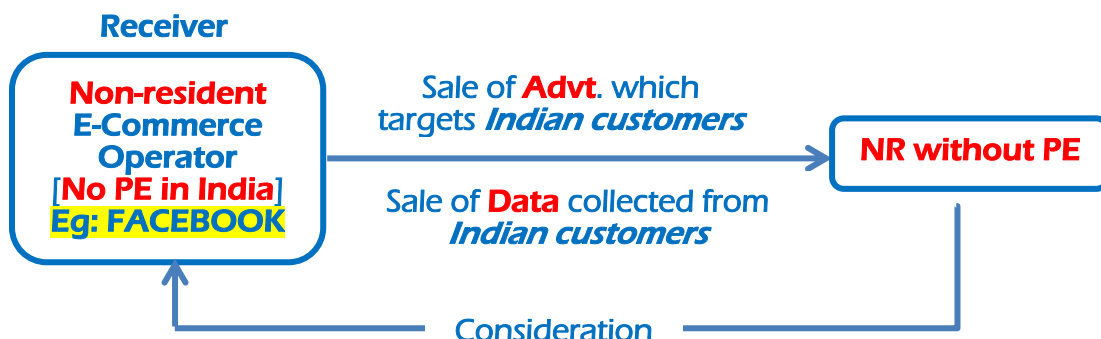


\* The goods or services sold on the platform of such E-commerce operator [Eg: Amazon] should be **owned by:**

- i) Such **E-commerce operator** or  
[Eg: any product of Amazon]
- ii) Any **NR without PE** in India or  
[Eg: Video lectures of coaching class in U.S.]
- iii) Any **NR with PE** in India and the goods/service sold online is **not connected** with such PE  
[Eg: laptop sold by Singaporean company having PE of coaching class in India]

Hence, if the goods/services sold online are owned by a **resident** [Eg: video lectures of Shirish Vyas] or if such goods/services are **connected with PE of NR in India** [Eg: Video lectures of Singaporean coaching class in India] then such levy is **not applicable**.

→ **Transaction 2:**



**Note 1:** E-Commerce operator = **NR [without PE in India]** who owns or operates a digital **platform** for online sale of goods/services.

**Note 2:** Indian Customers means a customer who is **Resident** in India or who uses **IP address of India**.

**Note 3:** This levy does not operate like TDS. It is **payable by the receiver** to the Government.

**Important Note**

**2% Equalisation levy is discontinued w.e.f 1<sup>st</sup> August, 2024**

| EQUALISATION LEVY ON<br>NR WITH NO PE IN INDIA                                              |                                                                                                                                                                                                 |
|---------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Online <b>Advt./Specified Services</b>                                                      | Online Sale of <b>Goods/Services</b>                                                                                                                                                            |
| If > Rs. 1,00,000                                                                           | If >= Rs. 2 crores                                                                                                                                                                              |
| <b>6%</b> of Gross Consideration                                                            | <b>2%</b> of Gross Consideration                                                                                                                                                                |
| Operates like TDS                                                                           | Does not operate like TDS                                                                                                                                                                       |
| <b>Payer</b> has to deduct 6% levy and pay <b>to the Government</b>                         | <b>Receiver</b> has to pay 2% levy <b>to the Government</b>                                                                                                                                     |
| To be deposited by the payer by <b>7<sup>th</sup> of next month</b>                         | To be deposited by the receiver by <b>7<sup>th</sup> of next quarter</b>                                                                                                                        |
|                                                                                             | Apr./May/June. – By 7 <sup>th</sup> of July<br>Jul./Aug./Sep. – By 7 <sup>th</sup> of Oct.<br>Oct./Nov./Dec. – By 7 <sup>th</sup> of Jan.<br>Jan./Feb./Mar. – <b>By 31<sup>st</sup> of Mar.</b> |
| All <b>other provisions</b> like interest, penalty, sec.10(50), returns etc are <b>same</b> |                                                                                                                                                                                                 |

**Example 1:**

During June 2024, Amazon Ltd. (NR with no PE in India) made following online sale to customers resident in India or customers using IP address of India:

Sale of its own goods – Rs. 10 crores

Sale of Goods owned by Janta Shoes (Resident) – Rs. 10 crores

Sale of Goods owned by Max Clothing (NR without PE) – Rs. 10 cr.

Amazon charged 10% to Janta Shoes and Max Clothing for facilitating online sale through its platform.

**Answer:**

**Amazon** is liable to pay **Equalisation levy** only on online sale of its **own goods** and sale of goods owned by others who are **NR [without PE in India]**.

→ Amt. of Eq. Levy payable by Amazon = 2% of 20 cr. = Rs. 40 lakhs



**Amazon** is liable to deduct **TDS u/s 194-O** on payment to Janta Shoes [**Resident**] for sale of Janta Shoes through its platform.



→ TDS to be deposited by Amazon = 1% of 10 cr. = Rs.10 lakhs

**Example 2:**

During May 2024, Facebook [NR with no PE in India] did an online advertisement campaign for a London based Ethnic wear company [a NR without PE in India].

The advt. campaign targets Indian customers.

Amt. received by Facebook for this campaign is Rs. 3 crores.

**Answer:**

This transaction is between Facebook [**NR with no PE**] and London based [**NR without PE**]. Since the consideration received by FB is for advt. which **targets Indian customers**, equalization levy is payable by the Facebook @**2%** of Rs. 3 crores.

**Note:** If Facebook provides online advertisement services to a **resident person** carrying on business in India then equalization levy of **6%** is applicable.

**SUMMARY OF TOPIC**

**Equalisation levy [6%] u/s 165 on online advt/specified service:**

This is attracted if following conditions are satisfied:

- Transaction is of online advertisement/other specified services;
- Payer is Resident [carrying business/prof.] or NR [with PE in India];
- Receiver is NR [without PE in India];
- Aggregate amount paid or payable during the year is > ₹1 lakh.

**Equalisation levy [2%] u/s 165A\* on E-comm. supply/service:**

This is attracted if following conditions are satisfied:

- E-commerce operator is NR [without PE in India];
- Product is owned by NR [without PE in India];
- Customers are Indian customers;
- Total consideration from such e-commerce supply or service is >/= ₹2 crores during the previous year [**From 1/4/24 to 31/7/24**].

\*Equalisation levy u/s 165A is also applicable on sale of advertisement targeting Indian customers or sale of data collected from Indian customers [where the receiver as well as payer are NR without PE in India].

**Note:** Indian customer means person who is a resident of India or a person using IP address of India].

## TAX PLANNING/EVASION/AVOIDANCE AND GAAR

### ⇒ TAX PLANNING:

Tax planning means using **deductions, exemptions** and **incentives** in the Income Tax Act to minimize tax liability. It is within the objective of the Govt. It is **legal** and **desirable**.

**Eg:** Investing for the purpose of Section **80C**, reinvesting in new asset to claim exemption u/s **54, 54B, 54EC** etc.

### ⇒ TAX EVASION:

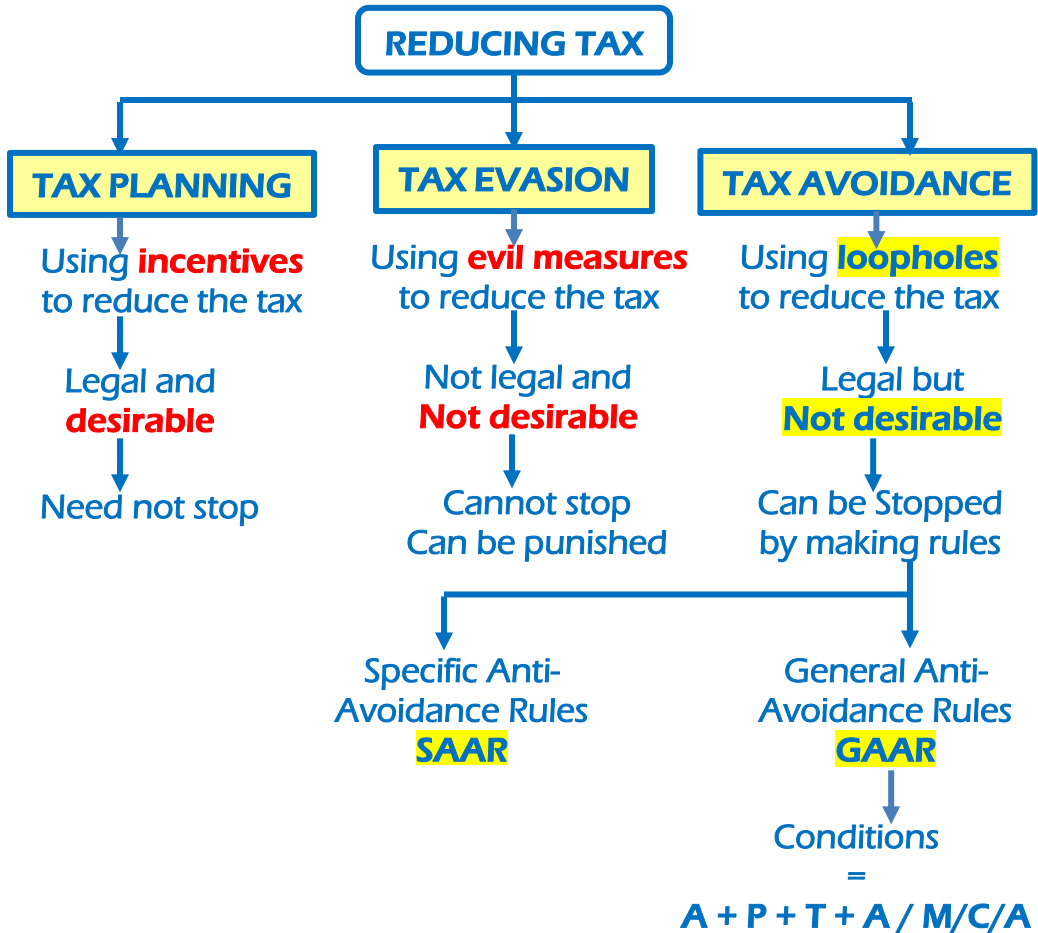
Tax Evasion means using **evil measures** by understating the income or overstating the losses and reduce tax liability. It is **illegal** and **not desirable**.

**Eg: Commission** earned and **not disclosed** in the return, claiming deduction for **expenditure** which was **never incurred** etc.

### ⇒ TAX AVOIDANCE:

Tax Avoidance means using the **loopholes** in the act to reduce tax liability. It works within the four corners of law but it goes against the objective of Govt. It is **legal** but **not desirable**.

**Eg:** Making **cash payment** exceeding Rs.10,000 to a party for a particular transaction either by making **separate bills** or making payment on **different days** or in any other way that provisions of sec **40A(3)** are **not contravened** [whereas the objective of the act is to not use cash in such case].



## GENERAL ANTI – AVOIDANCE RULES

(Chapter X-A: Sec.95 to 102)

Tax planning is legal and moral – need not be restricted.

Tax evasion is illegal and undesirable and it cannot be stopped by any legal provisions. At the most, it can be punished when the assessee is caught.

However, **tax avoidance** which works within the four corners of law **can be controlled** by making adequate provisions in the Act which can safeguard Govt against tax avoidance. Such provisions are known as Anti – Avoidance Rules.

There are two sets of Anti – Avoidance Rules as follows:

→ **Specific Anti – Avoidance Rules [SAAR]**

→ **General Anti – Avoidance Rules [GAAR]**

**SAAR** means there are **specific provisions** [Sections] in the Act to control tax avoidance

Eg: Transfer pricing provisions, section 94B, deemed dividend u/s 2(22)(e), section 50C etc.

**GAAR** means **general provisions** in the Act to control tax avoidance strategies which are not specifically covered under any specific section.

Hence, if any tax avoidance strategy is covered by a specific section then such specific section shall apply. However, if such strategy is not covered by any specific provision then GAAR shall apply.

### Conditions for GAAR

{ **APT AMCA** }

- 1) There must be an **Arrangement on/after 1/4/2017** [which is not covered by SAAR].
- 2) The main purpose or one of the main **Purpose** of such arrangement is to obtain tax benefit.
- 3) **Tax benefit** arising from such arrangement is **more than Rs.3 crores**.
- 4) Such arrangement is either:
  - **Not at Arm's length** [Refer **Eg: 1**] **or**
  - Results in **Misuse/Abuse** of the tax provisions [i.e. law is followed in words rather than spirit] [Refer **Eg: 2**] **or**
  - **Lacks Commercial substance** [Refer **Eg: 3**] **or**
  - Carried out in an **Abnormal** manner [Refer **Eg: 4**].

If all the above conditions are satisfied then such arrangement is treated as **Impermissible Avoidance Arrangement [IAA]**

**A + P + T + A or M or C or A = IAA**

Note 1: Any such arrangement before 1/4/2017 is grandfathered.

Note 2: Once the arrangement is treated as IAA, such arrangement shall be **disregarded** or **recharacterized** or treated as if never entered into and the **tax benefit** will be **denied**.

### Example 1:

#### NOT AT ARMS LENGTH:

X Ltd. [in India] entered in to a **composite contract** with a foreign company for **supply of machinery** along with provision of **technical services**. Since it was a composite contract, there was a single bill of Rs. 30 crores including:

**Rs. 25 crores** – For the supply of machinery [Taxable at **40%**]

**Rs. 5 crores** – Fees for technical service [Taxable at **10%** u/s 115A]

In order to avoid tax i.e. to obtain the tax benefit, X Ltd and foreign company agreed to prepare the bill of Rs.30 crores as follows:

**Rs. 12 crores** – For the supply of machinery [Taxable at **40%**]

**Rs. 18 crores** – Fees for technical service [Taxable at **10%** u/s 115A]

Since X Ltd and foreign company are not AE, Transfer pricing provisions [SAAR] cannot be invoked. However, it is possible to invoke GAAR because it is an arrangement **not at arm's length** [with a purpose to obtain tax benefit].

### Example 2:

#### MISUSE/ABUSE OF TAX PROVISIONS:

Assume there is a **DTAA** between India and a particular foreign country "M" [where there is no CG tax].

As per the provisions of this DTAA, capital gains will be **exempted** in the country of **source** and will be **taxed** in the country of **residence**.

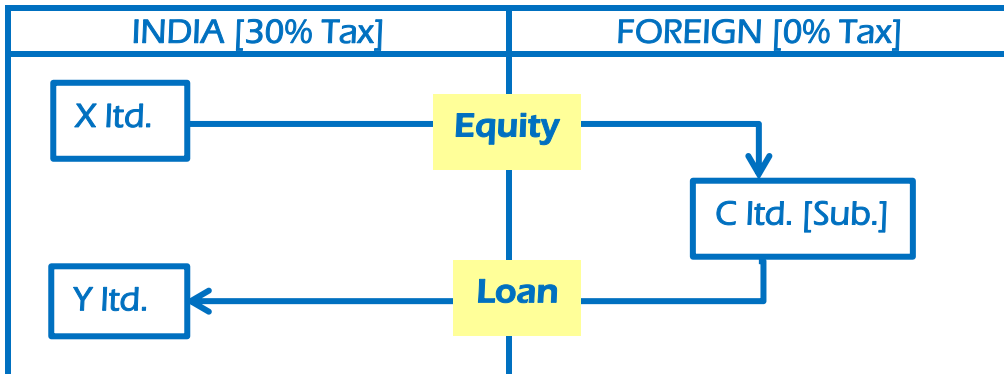
Now, if a person [resident of foreign country "M"] transfers a capital asset located in India then such CG is exempt in India as per DTAA and also exempt in foreign country "M" as there is no CG tax in this country. This is a **treaty benefit** or we can say "loophole". To take advantage of this treaty benefit, a person located in some other foreign country say country "N" might incorporate a **shell**

**company** in country “M” with a purpose to become resident of country “M” and take benefit of the treaty between India and country “M”.

In such case, if there is **specific provision** in the treaty to restrict such practice [called **Limitation of Benefit clause**] then it means there is **SAAR** in the DTAA. However, if there is no specific provision in the treaty to control such practice then GAAR can be invoked and the benefit of treaty can be denied to the shell company in country “M”.

**Example 3:**

**LACKS COMMERCIAL SUBSTANCE:**



In the above eg.; X Ltd. wants to earn **interest income** by giving loan to Y Ltd. but if X Ltd. earns interest from Y Ltd. then it will have to pay 30% tax. Hence, in order to avoid tax:

X Ltd. incorporates a wholly owned subsidiary company C Ltd. in a foreign country where there is no tax [by investing in the equity of C Ltd].

Equity money received by C Ltd is given as loan to Y Ltd.

C Ltd. earns interest from Y Ltd.

Interest earned is given to X Ltd. as dividend.

Effect of this arrangement is:

Interest received by **C Ltd.** – **Not Taxable** in foreign country

Dividend recd. by **X Ltd.** – Taxable in India @ **15%** only u/s 115BBD.

This is a case of **round tripping** of funds i.e. X Ltd. [instead of giving the loan directly to Y Ltd.] gave the **loan to Y Ltd via C Ltd.** The only purpose of incorporating C Ltd was to obtain tax benefit. Hence,

the arrangement of forming C ltd **lacks commercial substance**. In such case GAAR can be invoked i.e. the law will disregard C ltd. and interest income will be taxable in the hands of X ltd.

**Note:** To control such practice, **sec. 115BBD** is **abolished** with effect from 1/4/2022. Accordingly, dividend income from foreign company is now taxable at normal rate.

#### **Example 4:**

#### **ABNORMAL MANNER:**

Under normal tax provisions, **LTCG** on sale of units of EOF [before 23/7/24] is exempt up to Rs. 1,00,000 and balance is **taxable u/s 112A @10%** only. However, a company has to pay **MAT @15%** on such **LTCG** as it is not eligible for deduction from book profits.

To **avoid additional tax of 5%** under MAT on such LTCG, a company forms a partnership firm with one of its employee [PSR – 99 : 1].

All the units held by company are **transferred to P. Firm** at cost so that there is no CG u/s 45(3).

Later on, the **P. Firm sells** all the units; claims exemption up to Rs. 1,00,000 and pays tax @10% only. Afterwards, this gain is shared by partners in 99 : 1. The company gets it's share which is **exempt u/s 10(2A) under normal tax as well as MAT**.

There is no SAAR for such arrangement. Hence, GAAR can be invoked as it is an arrangement carried out in an **abnormal manner** [with a purpose to obtain tax benefit].

Accordingly, Company will be liable to pay MAT on such LTCG assuming such arrangement never took place and company directly sold the shares.

#### **IMPORTANT NOTE:**

In order that these wide powers of GAAR are not misused by tax authorities, there is a **two-level approval** process:

**First** it should be approved by **CIT** and

**Then** it should be approved by a **Panel headed by a HC Judge**.

**Note:** Please refer the examples given in the module also.

# TAXATION OF CHARITABLE TRUST

## → SUMMARY:

|         |            |              |             |
|---------|------------|--------------|-------------|
| MEANING | CONDITIONS | REGISTRATION | COMPUTATION |
|---------|------------|--------------|-------------|

### PART - I

### MEANING

A charitable trust is a trust created for **Charitable purpose**. As per **Section 2(15)**, charitable purpose means **REMP YO**:

**R**elief of poor

**E**ducation

**M**edical Relief

**P**reservation of Environment and Preservation of Monuments, Objects and Places of historic/artistic importance.

**Y**oga and

**O**ther objects of general public utility.



### Note:

Trust with **REMPY** object

Treated as "Charitable Trust" even if it carries on **business** (of **any size**)

Trust with **Other** objects

Treated as "Charitable Trust" either if it carries on **no business** OR if it carries on business whose **gross receipts** does not exceed **20% of total receipts**

## PART - II

## CONDITIONS

The income of a charitable/religious trust is exempt u/s 11 & 12 if following conditions are satisfied:

### BR<sub>2</sub>A<sub>2</sub>W

1. The Trust Should maintain **BOOKS OF ACCOUNT** & Documents Prescribed under **Rule 17AA** (Books should be kept at registered office and to be preserved for **10\* years** from the end of A.Y.)
  2. The Trust should be **REGISTERED** with Income Tax Authority.
  3. The Trust should file its **RETURN** of Income. Such return can be timely or belated but it **should not be an updated return**. Accordingly, if a trust has not filed the return [neither timely nor belated] and it files an updated return later then it cannot claim exemption u/s 11 and 12.
  3. The Accounts of the trust should be **AUDITED** if the total income of the trust (before exemption u/s 11 & 12) is more than basic exemption.
  4. Atleast **85%** of the Income of trust should be **APPLIED** for charitable/religious purpose.
  5. The trust should be **WHOLLY** for charitable/religious purpose.
- \* If the case of the trust is reopened u/s 147 in the 10<sup>th</sup> year then the trust is required to preserved the books even beyond 10 years till the order u/s 147 is passed.

## PART - III

## REGISTRATION – Sec 12AB

Income of Charitable / Religious Trust is exempt only if such trust is registered with Income Tax Authority.

### → PROCEDURE FOR REGISTRATION:

Step I: Getting Provisional Registration

Step II: Converting Provisional Registration into Final Registration

**Step I: Provisional Registration:**

The Trust (which has not yet commenced its activities) can apply for Provisional Registration **at least one month prior** to the **commencement of PY** (from which registration is sought). Application should be made to CIT. After receipt of Application, the CIT shall **grant Provisional Registration** (Without detailed enquiry) **within one month** from end of the month in which application is received by CIT. The Provisional Registration is **valid for 3 years**.

**Note:**

Earlier, all the trusts were supposed to take provisional registration first and then convert in to regular registration.

Now, provisional registration is required only for a trust which has not yet commenced its activities. The trust which has **already commenced its activities** does not require provisional regn. It can **directly apply for regular registration**.

**Step II: Converting Provisional to Regular Regn.:**

The trust which is provisionally registered should apply for Final Registration:

**Within 6 months** from the date of **commencement of Activities** of Trust; or

**At least 6 months prior** to the expiry of provisional registration.

whichever is **earlier**.

After receiving the application, the CIT shall call for **Information and Documents** in order to satisfy himself about the **Genuineness** of the Activities of the Trust and **Compliance with other laws**.

If the CIT is **not satisfied** then it shall **reject** the application and **cancel provisional registration**.

If the CIT is **satisfied** then he shall **grant final registration**.

This is done by passing an **Order** (Refusing/Granting) **within 6 months** from the **end of the quarter** in which application is received by CIT.

The Final Registration is **valid for 5 years** [from the first year of Provisional Registration]

**Note:** **Atleast 6 months prior** to the expiry of 5 years, the trust should apply for **Renewal of Registration**.

**→ CANCELLATION OF REGISTRATION:**

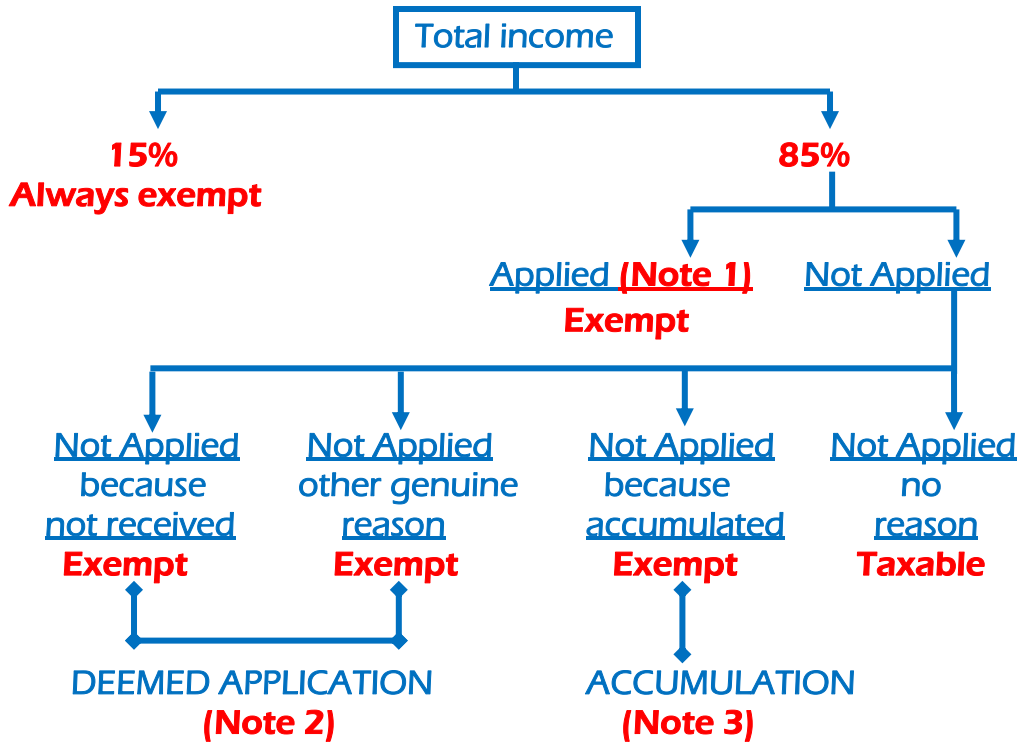
In case of following **specified violations**, the registration of trust can be cancelled by CIT.

- 1) The Activities of the Trust are **not Genuine**.
- 2) The Activities of the Trust are **not in accordance** with the **conditions of registration**.
- 3) The Income of the Trust has been applied **other than** for the **objects** of the Trust.
- 4) If a trust (for **charitable** purpose) **applied** Income for the benefit of a **particular religious community/caste**.
- 5) The Trust is carrying on a **Business** which is **not incidental** to the achievement of the objects of trust or the trust is carrying on a business which is incidental but **Separate books** of such business are **not maintained**.
- 6) If the **application** for registration is **incomplete** or it contains **false information**.
- 7) The trust is **not complying** with the requirements of **other laws** (provided the non-compliance is not disputed by the trust or if disputed, the matter has achieved finality).

If the CIT comes to know about the above specified violations (either on his own or from A.O. or as per the Risk Management Strategy of CBDT) then the CIT shall **issue a notice** to the trust requiring the trust to furnish **Information & Documents** and he shall make such **Enquiry** as he thinks fit (in order to satisfy himself about the specified violations) .If the CIT is satisfied with the specified violations then he shall pass an **order for cancellation** of Registration **within 6 months** from the **end of the quarter** in which notice was issued to the trust.

**Note:** If the trust is **not satisfied** with the order of cancellation then it can **appeal to ITAT**.

**PART - IV** **COMPUTATION**



**Note 1: APPLICATION OF INCOME:**

Income of the trust is exempt only if it is **applied for charitable or religious purpose**. The term applied includes following outflows on **actual payment** basis:

- **Revenue** Expenditure
- **Capital** Expenditure
- **Repayment** of loan taken for charitable purpose
- **Donation** to other charitable/religious trust

Provisions of **section 40(a)** and **section 40A(3)** are also **applicable to charitable trust**. Accordingly, any expense is incurred without deducting TDS – 30%/100% of such expense cannot be claimed as income applied for charitable purpose.

Similarly, any payment exceeding Rs.10,000 in cash cannot be claimed as income applied for charitable purpose.

**Note 2: DEEMED APPLICATION:**

If the income of trust is not applied during the year either because it is not received or due to some other genuine reason then such income is deemed to be applied in the current year provided the trust **intimates** the reason (in **Form 9A**) to the A.O. (**atleast 2 months prior** to the due date of filing return)

If the income is not applied because it is **not received** then such income should be applied in the year of receipt or the year following the **year of receipt**. Otherwise, the unapplied income shall be taxable in the year following the year of receipt **@30% u/s 115BBI**.

If the income is not applied because of some **other genuine reason** then such income should be applied in the **next year** (year after current PY). Otherwise, the unapplied income shall be taxable in the next year (year after current PY) **@30% u/s 115BBI**.

**Note 3: ACCUMULATION OF INCOME:**

If the income of the trust is not applied during the current P.Y. because it intends to accumulate it for future charitable/religious purpose then such accumulated income is exempt if following conditions are satisfied:

- a. The trust should furnish a **Statement in Form 10** to A.O. (**atleast 2 months prior** up to the due date of filing return). The application should specify the **purpose** and the **period** for which income is accumulated [**max. 5 years** can be specified]. The trust should file the return on or before the due date of filing return.
- b. The accumulated income should be **invested/deposited** in modes specified u/s 11(5).

If the accumulated income is **misused** then the misused amount shall be **taxable** in the **year of misutilization @30% u/s 115BBI**.

If the accumulated income which is invested in specified securities u/s 11(5) **ceases to remain invested** then **exemption** allowed earlier shall be **withdrawn** in the year in which it ceases to remain so invested and such amount shall be taxable **@30% u/s 115BBI.**

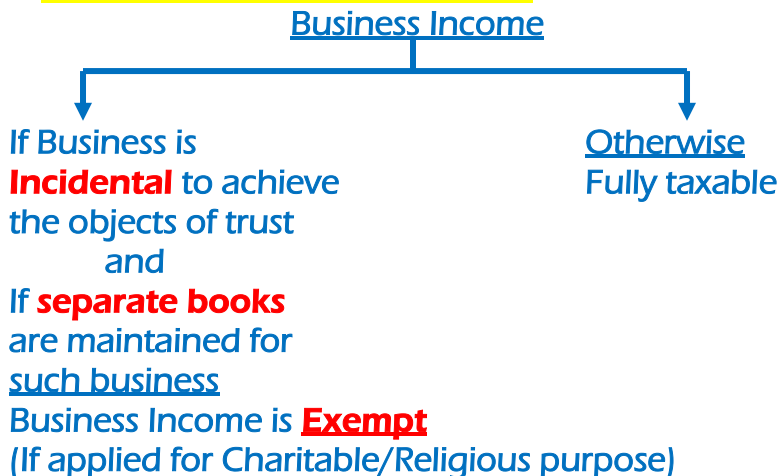
If the accumulated income is **not used** within the specified period, then the unused amount shall be **taxable** in the **year in which specified period expires @30% u/s 115BBI.**

If, due to unavoidable reasons, the trust intends to **change the specified purpose** then it has to make an **application to A.O.** If the A.O. is satisfied with the reason and if the new purpose is in conformity with the objects of the trust then the A.O. shall allow the change of purpose (The purpose can change but the period cannot change).

**Note 4: PURCHASE OF ASSETS:**

If the trust purchases an asset then cost of such asset **can be claimed as applied.** However, if the cost is claimed as applied then **depreciation will not be allowed** on such cost.

**Note 5: BUSINESS INCOME OF TRUST:**



**Note 6: LOAN FOR CHARITABLE/RELIGIOUS PURPOSE:**

When loan is **taken – Ignore** [it's not an income]

When loan is **used – Ignore** [it's not an income]

When loan is **repaid** – It's appln of income and it will be **exempt** if following **2 conditions\*** are satisfied:

- Loan should be **used for ch./rel. purpose**
- Loan should be **repaid within 5 years** from the end of the year in which loan was used.

**Note 7: CORPUS DONATIONS:**

Corpus donation means donation received with a **specific direction**. Such donations are **fully exempt** provided such donations are **invested in securities specified u/s 11(5)**. Such donations are in the nature of **liability**. Hence, exempt (not included in the statement).

When corpus is **received** – **Exempt** [if invested as per sec.11(5)]

When corpus is **used** – **Ignore** [it's not appln of income]

When corpus is **rebuilt/reinvested** – It's appln of income and it will be **exempt** if following **2 conditions\*** are satisfied:

- Corpus donation should be **used for ch./rel. purpose**
- Corpus should be **rebuilt/reinvested within 5 years** from the end of the year in which corpus was used.

**Note 8: DONATION TO OTHER TRUST:**

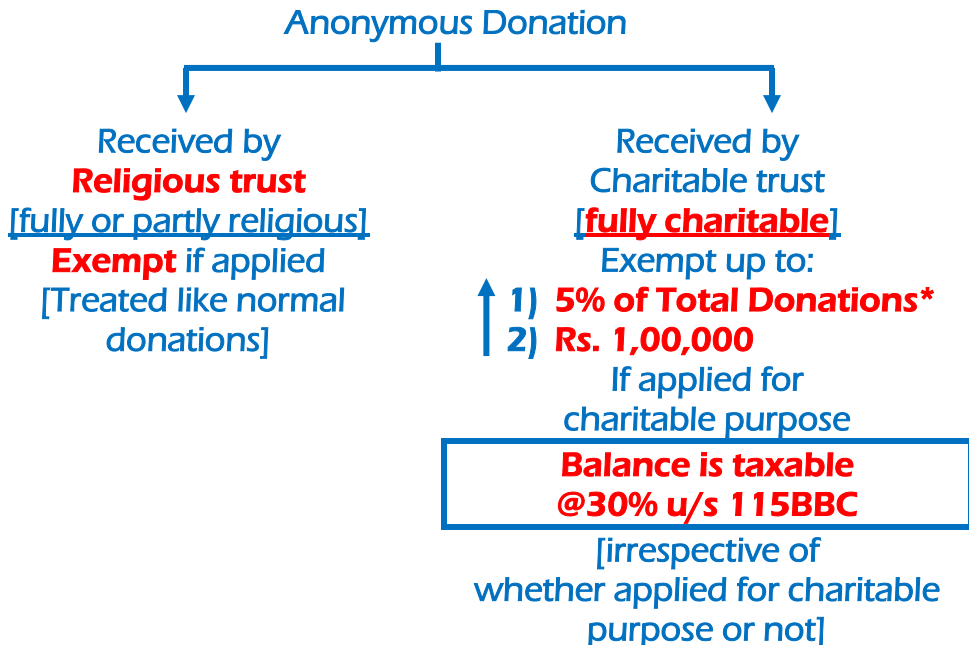
Donation to other registered trust is treated as income applied for charitable/religious purpose **only if current years income is donated in current year itself**. This means, if current year's income is accumulated then donation to other trust in future is not allowed (it is treated as misutilisation).

If current years income is donated to other registered trust as **Corpus donation** then such donation **cannot be claimed as applied**.

Earlier, donation given to other registered trust was fully treated as applied for charitable/religious purpose. Now, **donation** given to other registered trust is **treated as income applied** for charitable/religious purpose **only to the extent of 85%** of amount donated.

**Note 9: ANONYMOUS DONATIONS:**

Anonymous donation means donation in respect of which, the **identity of the donor is not known**. This means, the trust has **no records** for such donations like name, address etc.



\* Total donations = Normal donations + Corpus donations + Anonymous donations + Govt. grant (Alternatively, Govt. grant can be excluded).

**Note 10: EXEMPTIONS U/S 10:**

A registered trust claiming exemption u/s 11/12 **cannot claim** any exemption under any provision of Sec. 10 **except Sec. 10(1)**.

**Note 11: EXCESS APPLICATION OF PAST:**

Excess of application of past **cannot be adjusted** in current year. E.g. Past income Rs. 100 and applied for charitable purpose in past Rs. 300. Excess application of Rs. 200 in past cannot be adjusted in current year.

**Note 12: 30% TAX IN CERTAIN CASES [ADIA] - Sec. 115BBI:**

A Charitable/Religious Trust is required to pay 30% tax on following incomes **[ADIA]**:

- a) Income which is **not ACCUMULATED in accordance** with the Income Tax Act i.e. income accumulated without furnishing statement in Form 10 or without investing in modes u/s 11(5).  
Accumulated income which is **not utilized** within prescribed time or **misutilised** or accumulated income which **ceases to remain invested**.
- b) Income **DEEMED TO APPLIED**:  
⇒ **Not applied** in the year following the year of receipt [if it was not received in the current year]  
⇒ **Not applied** in the immediate .../.....next year [if it could not be applied in the current year due to other genuine reason].
- c) Income which is taxable on account of **not being INVESTED** in modes prescribed u/s 11(5) [E.g. Corpus donation is exempt only if invested in specified modes. If not invested so then it will be taxable @30%].
- d) Income **applied for the benefit of** specified person [**ATS** or Relative of ATS or a concern where ATS has substantial interest]. [ATS = Author, Trustee and substantial contributor i.e. who donated more than 50,000]. Such income is taxable @30% plus the trust is also liable to penalty u/s 271AAE.

**Note 13: PENALTY u/s 271AAE:**

As per **section 13**, income of the trust should not be applied for the benefit of **ATS** or **Relative** of ATS or a concern where ATS has **substantial interest**.

If the income is applied for the benefit of such person then such income is taxable @ 30% u/s 115BBI. In addition, the trust is liable to pay penalty u/s 271AAE as follows:

→ **Amount of penalty:**

**First time**, when income is applied for ATS etc.

Penalty = **100%** of the income so applied.

**Next time**, when income is applied for ATS etc. (in future)

Penalty = **200%** of the income so applied.

**Note 14: ACCRETED INCOME [SEC. 115TD]:**

When a charitable institution is:

- **C - CONVERTED** in to non-charitable institution or
- **M - MERGED** with a non-charitable institution or
- **D - DISSOLVED** without transferring its assets to another charitable institution within 12 months from the end of the month of dissolution,

then the assets of the trust which were promised to be used for charitable purpose are **no more for charitable** purpose.

Since the asset base of charitable trust was created out the income of the trust which is exempt u/s 11 and 12 with a promise that such assets will be used for charitable purpose, it amounts to a **default** on the part of charitable trust which gets converted or merged or dissolved as stated above.

For this default, the charitable trust will be liable to pay an **exit tax** at maximum marginal rate of tax as follows:

**34.94%** of (**FMV of total assets\*** on the date of CMD i.e. conversion/merger/dissolution – **Liabilities** in respect of such assets)

**\* Valuation for the purpose of Exit Tax:**

Balance Sheet of Trust as on CMD Date

| Liabilities                             | Amt.          | Assets                                | Amt.                                                     |
|-----------------------------------------|---------------|---------------------------------------|----------------------------------------------------------|
| Corpus                                  | Ignore        | <b>S</b> hares & Securities           | <b>Average of highest &amp; lowest price</b> on CMD date |
| Reserves & Surplus                      | Ignore        | <b>U</b> nquoted equity sh...         | <b>Valuation below (Note "a")</b>                        |
| Provision for unascertained liabilities | Ignore        | <b>B</b> usiness undertaking of trust | <b>Valuation below (Note "b")</b>                        |
| Excess provision for tax                | Ignore        | <b>I</b> mmovable property            | Higher of <b>SDV</b> or <b>FMV</b>                       |
| Other Liabilities                       | <b>Deduct</b> | <b>O</b> ther Assets                  | <b>FMV</b>                                               |

Total assets **excludes:**

- Assets acquired out of **agricultural income** exempt u/s 10(1).
- Assets acquired **between** the **creation** of the trust **and its registration**.
- Assets **transferred to other charitable trust within 12 months** from the end of the month of dissolution.

**Note "a":**

Balance Sheet of Unquoted Company as on CMD Date

| Liabilities                             | Amt.   | Assets              | Amt.                                          |
|-----------------------------------------|--------|---------------------|-----------------------------------------------|
| Equity Share Capital                    | Ignore | Shares & Securities | Average of highest & lowest price on CMD date |
| Res. & Sur./Prop. Div.                  | Ignore | Unquoted equity sh. | Valuation                                     |
| Provision for unascertained liabilities | Ignore | Jewellery           | FMV                                           |
| Excess provision for tax                | Ignore | Immovable property  | Higher of SDV or FMV                          |
| Other Liabilities                       | Deduct | Other Assets        | Book Value                                    |

↓  
Net Assets × % held by trust

**Note "b":**

Balance Sheet of Business Undertaking of Trust as on CMD Date

| Liabilities                             | Amt.   | Assets              | Amt.                                          |
|-----------------------------------------|--------|---------------------|-----------------------------------------------|
| Corpus                                  | Ignore | Shares & Securities | Average of highest & lowest price on CMD date |
| Res. & Sur./Prop. Div.                  | Ignore | Unquoted equity sh. | Valuation                                     |
| Provision for unascertained liabilities | Ignore | Jewellery           | FMV                                           |
| Excess provision for tax                | Ignore | Immovable property  | Higher of SDV or FMV                          |
| Other Liabilities                       | Deduct | Other Assets        | Book Value                                    |

↓  
Entire Net Assets

**Note 1:**

In CMD, "C" means converting into non-charitable/religious institution. Conversion means:

- **Cancellation** of registration
- **Modification** of objects of trust (for which, either the trust has not applied or if applied, it was rejected).
- **Failure to convert** it's provisional registration in to regular registration or **failure to renew** it's regular registration.

**Note 2:**

The trust is required to pay the Exit Tax u/s 115TD **within 14 days** from the following date:

|                               |                                                                                                                                                                                              |
|-------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| In case of <b>Conversion</b>  |                                                                                                                                                                                              |
| → Cancellation of Regn.       |                                                                                                                                                                                              |
| ⇒ If Appeal filed             | Date of <b>order of appellate authority</b> [giving finality]                                                                                                                                |
| ⇒ If Appeal not filed         | Date when prescribed <b>time for filing the appeal expires</b>                                                                                                                               |
| → Modification of objects     |                                                                                                                                                                                              |
| ⇒ If not applied for          | <b>End of the PY</b> in which modification is adopted                                                                                                                                        |
| ⇒ If applied & rejected       | <u>If Appeal Filed:</u><br>Date of <b>order of appellate authority</b> [giving finality]<br><u>If Appeal is not Filed:</u><br>Date when prescribed <b>time for filing the appeal expires</b> |
| In case of <b>Merger</b>      | Date of <b>merger</b>                                                                                                                                                                        |
| In case of <b>Dissolution</b> | From the date when <b>12 mnths expire</b>                                                                                                                                                    |

For delay in payment of Exit tax, the trust is liable to pay **interest @ 1% per month** [part of the month is full month]

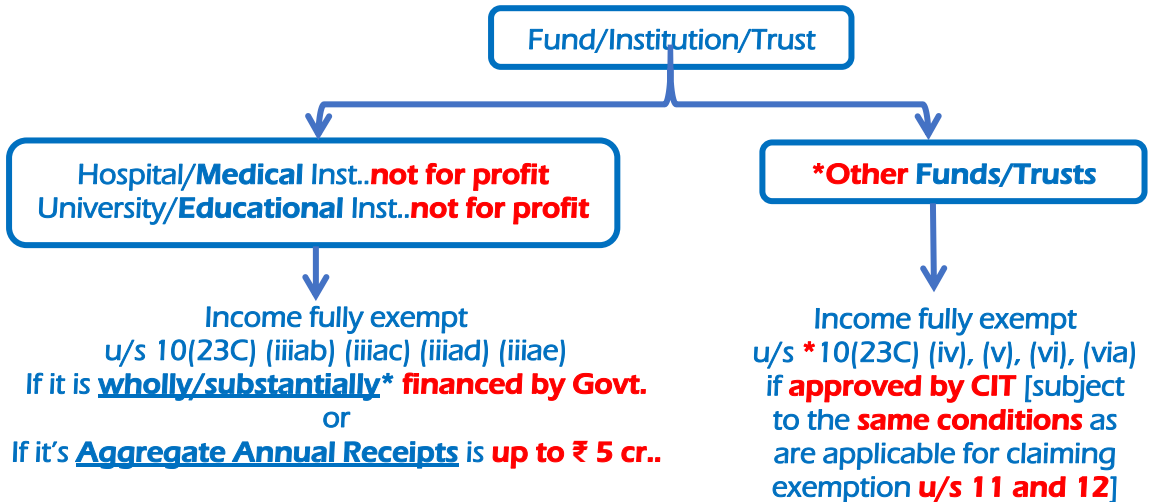
Format for computation of the Income of Trust

| Particulars                                                                                                | Amt.       |
|------------------------------------------------------------------------------------------------------------|------------|
| Income from property held under trust                                                                      | XXX        |
| Income from incidental business                                                                            | XXX        |
| Agricultural income [Exempt u/s 10(1)]                                                                     | —          |
| Corpus donation [Exempt if invested u/s 11(5)]                                                             | —          |
| Normal donations                                                                                           | XXX        |
| Anonymous donation (full amt. – if religious trust)                                                        | XXX        |
| Anonymous donation (upto 5% of total donations or ₹ 1 Lakh, whichever is high - if fully charitable trust) | XXX        |
| Other income                                                                                               | XXX        |
| <b>TOTAL INCOME</b>                                                                                        | <b>XXX</b> |
| <u>Less:</u> 15% exempt                                                                                    | - XX       |
|                                                                                                            | XXX        |
| <u>Less:</u> Applied (Payment basis)                                                                       | - XX       |
|                                                                                                            | XXX        |
| <u>Less:</u> Not applied (Because not received)                                                            | - XX       |
|                                                                                                            | XXX        |
| <u>Less:</u> Not applied (Because other genuine reason)                                                    | - XX       |
|                                                                                                            | XXX        |
| <u>Less:</u> Not applied (Because accumulated)                                                             | - XX       |
|                                                                                                            | XXX        |
| <u>Add:</u> Non-incidental business income or incidental business income without separate books            | + XX       |
| <u>Add:</u> Past exemption withdrawn                                                                       | + XX       |
| <u>Add:</u> Corpus donation uninvested                                                                     | + XX       |
| <u>Add:</u> Excess anonymous donation (in case of fully ch.. trust)                                        | + XX       |
| <b>TAXABLE INCOME</b>                                                                                      | <b>XXX</b> |

Computation of Tax

|                | Income u/s 115BBI | Excess Anonymous | Balance Income      |
|----------------|-------------------|------------------|---------------------|
| Taxable Income | XXX               | XXX              | XXX                 |
| Tax on above   | XXX<br>[30%]      | XXX<br>[30%]     | XXX<br>[Slab Rates] |
| Add: Surcharge |                   | XXX<br>+ XX      |                     |
| Add: HEC @4%   |                   | XXX<br>+ XX      |                     |
| Tax Payable    |                   | XXX              |                     |

**EXEMPTION u/s 10(23C)**



**\*Substantially financed by Govt.** means amount of **Govt. Grant** is **> 50%of Total Receipts** of Hospital/Med. Inst./University/Ed. Inst..

\* Before 1/10/24, these other funds/trusts had the option the claim exemption either u/s 10(23C) or u/s 11/12. However, **w.e.f. 1/10/24**, exemption can be claimed only u/s 11/12 [sec.10(23C) – **not applicable for other funds/trusts**].

## ASSESSMENT OF CO-OPERATIVE SOCIETIES

### STATEMENT OF TOTAL INCOME

| Particulars                                         | Rs.        |
|-----------------------------------------------------|------------|
| Income from Salaries (Not possible)                 | —          |
| <u>Income from House Property:</u>                  |            |
| → Letting of Godowns & warehouses (100% dedn)       | XXX        |
| → Others                                            | XXX        |
| <u>Income from Business: (Note 1)</u>               |            |
| → BCA <sub>3</sub> FLM activities (100% dedn)       | XXX        |
| → Other activities (Max. 50,000/1,00,000 dedn)      | XXX        |
| Capital Gains                                       | XXX        |
| <u>Income from Other Sources:</u>                   |            |
| → Int./Div. from other co-op. societies (100% dedn) | XXX        |
| → Other Incomes                                     | XXX        |
| <b>GROSS TOTAL INCOME</b>                           | <b>XXX</b> |
| <u>Less: Deduction under Chapter VI A:</u>          |            |
| → Section 80P: Dedn for specified income            | - XX       |
| → Other Sections                                    | - XX       |
| <b>NET TAXABLE INCOME</b>                           | <b>XXX</b> |

#### Tax on above:

- ⇒ STCG u/s 111A – 15%/20% Tax,
- ⇒ LTCG u/s 112A – 10%/12.5% Tax
- ⇒ LTCG (Others) – 20%/12.5% Tax,
- ⇒ Winnings – 30% Tax
- ⇒ Balance NTI:
  - First 10,000 10%
  - Next 10,000 20%
  - Balance 30%

Surcharge – 7% (if NTI > 1 crore) and 12% [if NTI > 10 crores]

HEC – 4%

#### Note 1: Income from Business:

Specified Activities (BCA<sub>3</sub> FLM activities) – 100% Dedn

Other Activities:

Max. 1,00,000 Dedn – For Consumer Co-operative Societies

Max. 50,000 Dedn – For Other Co-operative Societies

### BCA<sub>3</sub> FLM activities:

- B – **Banking** & Providing Credit Facilities to its members
- C – **Cottage** Industries
- A<sub>1</sub> – Marketing of **Agricultural** Produce grown by its members
- A<sub>2</sub> – Processing of **Agricultural** Produce grown by its members  
(without the aid of power)
- A<sub>3</sub> – Supplying **ASLO** to its members (Agricultural implements, Seeds, Livestock & Other items for agriculture)
- F – **Fishing** & Allied Activities
- L – Collective Disposal of **Labour**
- M – Supplying **Milk, Oil seeds, Fruits & Vegetables** grown by its members to Government/Federal Co-operative Societies.

### Section 80PA

### Dedn for PRODUCER COMPANIES

Producer company is similar to a Co-operative society. The difference is that:

A **Co-operative society** can carry on **any activity** for the benefit of its member but a **Producer company** carries on **primary agricultural activities** for the benefit of its members.

A Co-op.. society is regd under **Co-operative societies Act** but a Producer company is registered under **Companies Act**.

A deduction similar to section 80P is allowed to Producer companies but it is under section 80PA. Deduction u/s 80PA is allowed to producer companies [having turnover of **less than Rs. 100 crores**] in respect of following incomes:

1. Income from **marketing** of agricultural produce grown by its members;
2. Income from **supplying** ASLO to its members;
3. Income from **processing** of agricultural produce grown by its members [**with or without** the aid of power].

The above incomes shall be **first included** under the head “Income from Business” and **then deducted fully** under section 80PA of Chapter VIA.

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# ADVANCE TAX AND INTEREST

## → What is Advance Tax?

Normally, tax is paid in the assessment year. However, if tax is **paid in the previous year** itself then it is known as advance tax. Any tax **paid up to 31<sup>st</sup> March of the PY** is treated as advance tax.

## → Who should pay Advance Tax?

An Assessee whose tax liability is **Rs. 10,000 or more** is required to pay the tax in advance i.e. in the previous year itself.

Note: A **resident senior citizen** [not having income from business] is **not required** to pay advance tax.

## → How to pay Advance Tax?

An Assessee should **estimate** his total income at the beginning of the year and if his tax liability [**after deducting various credits and reliefs** like TDS/TCS/MAT credit etc.] is Rs. 10,000 or more then he should pay his tax liability during the previous year – in **installments** as per following **due dates**:

Due Dates	Advance Tax
Upto <b>15<sup>th</sup> June</b> of the PY	<b>15%</b> of Tax Liability
Upto <b>15<sup>th</sup> Sept.</b> of the PY	<b>45%</b> of Tax Liability
Upto <b>15<sup>th</sup> Dec.</b> of the PY	<b>75%</b> of Tax Liability
Upto <b>15<sup>th</sup> Mar.</b> of the PY	<b>100%</b> of Tax Liability

Note: An Assessee subject to **presumptive taxation** u/s 44AD or 44ADA is required to pay the whole of advance tax in **one installment** [up to **15<sup>th</sup> March** of PY]

## → Failure to pay Advance Tax?

For failure to pay advance tax, an assessee is liable to pay **interest u/s 234B and 234C @ 1% per month**.

Interest u/s **234B** is for **non-payment/short payment** of advance tax **upto 31<sup>st</sup> March of PY**.

Interest u/s **234C** is for the **non-payment/short payment** of advance tax **on due dates of four installments** of advance tax.

**Example:**

If the tax liability of an assessee is **Rs. 1,00,000** then the assessee should pay this amount up to 31<sup>st</sup> March of PY. However, he **pays only Rs. 80,000** up to 31<sup>st</sup> March of PY and balance is paid at the time of filing the return say on 24<sup>th</sup> July of AY.

In such case, interest u/s 234B is payable on the **short payment** of advance tax of **Rs. 20,000** @1% pm for the period after 31/3 of PY i.e. from 1<sup>st</sup> April of AY up to the date of actual payment i.e. 24<sup>th</sup> July of AY [4 months].

Hence, Interest u/s 234B = 20,000 x 1% pm x 4 months = 800

Thus, formula for interest u/s 234B is as follows:

**INTEREST U/S 234B**

$$= \text{Advance tax not paid / short* paid} \times 1\% \text{ p.m.} \times \text{Period of delay}$$

[Total Tax liability – Tax paid upto 31<sup>st</sup> March of month is treated as full month] [starting from 1<sup>st</sup> April of AY upto the actual date of payment]

\* if **90%** or more of the tax liability is paid in advance [up to 31<sup>st</sup> March of the PY] then it is **not treated is short payment** and there will be **no interest** under this section [Since advance tax is paid on estimated basis in the PY itself, an assessee cannot be expected to pay the entire amount of his actual tax liability by the end of PY]

In the above example, tax liability of **Rs.1,00,000** was supposed to be paid in 4 installments. However, assessee paid **Rs. 80,000** only out of which:

- Rs. 5,000** was paid on **10<sup>th</sup> June**,
- Rs. 20,000** was paid on **12<sup>th</sup> Sep**,
- Rs. 35,000** was paid on **8<sup>th</sup> Dec** and
- Rs. 20,000** was paid on **14<sup>th</sup> March**.

Hence, interest u/s 234C will be calculated as follows:

CA SHIRISH VYAS / CA FINAL / DIRECT TAX / ADVANCE TAX

Due dates (1)	Advance tax required to be paid (2)	Tax paid (3)	Shortfall (2) – (3)	Amount of Interest u/s 234C
Upto 15 <sup>th</sup> Jun	15,000	5,000	10,000	10,000 x 1% x 3* months
Upto 15 <sup>th</sup> Sep	45,000	25,000	20,000	20,000 x 1% x 3* months
Upto 15 <sup>th</sup> Dec	75,000	60,000	15,000	15,000 x 1% x 3* months
Upto 15 <sup>th</sup> Mar	1,00,000	80,000	20,000	20,000 x 1% x 1* month
Total Interest u/s 234C				1,550

\* Shortfall in each installment is assumed to be paid in next installment. Hence, in first 3 installments, delay of 3 months is subject to interest. However, shortfall in last installment is assumed to be paid by 31<sup>st</sup> March. Hence, in last installment, delay of 1 month is subject to interest. In fact, in our example, shortfall in last installment i.e. Rs.20,000 is paid on 24<sup>th</sup> July. So, there is delay of 5 months [from 16<sup>th</sup> March to 24<sup>th</sup> July] but out of these 5 months, 4 months [1/4 to 24/7] is subject to interest u/s 234B and 1 month [16/3 to 31/3] will be subject to interest u/s 234C.

Thus, formula for interest u/s 234C is as follows:

## INTEREST U/S 234C

Due dates (1)	Advance tax required to be paid (2)	Tax actually paid (3)	Shortfall (2) – (3)	Amount of interest u/s 234C
Upto 15 <sup>th</sup> June	15% of Tax	xxx	xxx	<b>Shortfall x 1% x 3 months</b>
Upto 15 <sup>th</sup> Sept.	45% of Tax	xxx	xxx	<b>Shortfall x 1% x 3 months</b>
Upto 15 <sup>th</sup> Dec.	75% of Tax	xxx	xxx	<b>Shortfall x 1% x 3 months</b>
Upto 15 <sup>th</sup> Mar.	100% of Tax	xxx	xxx	<b>Shortfall x 1% x 1 month</b>
Total Interest u/s 234C				

If tax actually paid upto 15<sup>th</sup> June is **12% or more** and  
 If tax actually paid upto 15<sup>th</sup> Sept. is **36% or more**  
 then there is **no interest on such shortfall** [because these are initial installments and it's difficult to estimate the tax liability in the initial installments]. However, if the tax paid is less than 12%/36% then the interest will be calculated on the entire shortfall based on 15%/45%.

Capital gains, dividends and winnings cannot be estimated in advance. Hence, tax on capital gains, dividend and winnings is required to be paid only after such income arises [upto due date immediately falling after the date on which such income arises]. However, tax on all other incomes is required to be estimated and paid from the beginning of the year.

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**Note:**

Interest u/s **234B** is calculated on **Tax as per assessment** but while filing the return, the assessee will pay this interest on tax as per return. Later on, when assessment is done, A.O. will compute the interest on tax as per assessment and if assessee has paid less then it will be demanded. However, interest u/s **234C** is always calculated on **tax as per return** and this interest will not change on assessment.

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# DEDUCTION u/s 10AA

## STATEMENT OF TOTAL INCOME

|                                            |             |
|--------------------------------------------|-------------|
| Income from Salaries                       | XXX         |
| Income from House Property                 | XXX         |
| Income from Business                       | XXX         |
| Capital Gains                              | XXX         |
| Income from Other Sources                  | XXX         |
| <b>GROSS TOTAL INCOME</b>                  | <b>XXX</b>  |
| <u>Less:</u> Deductions under chapter VI A | - XX        |
|                                            | XXX         |
| <b>Less: Deduction u/s 10AA</b>            | <b>- XX</b> |
| <b>NET TAXABLE INCOME (N.T.I.)</b>         | <b>XXX</b>  |

Deduction u/s 10AA is allowed if export business of a manufacturer or software developer is located in SEZ.

### Amount of Deduction

|                                                     |                                                                                                                                                                                                               |
|-----------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>= Taxable IFB of Eligible Unit X</b></p>      | $\frac{\text{Export Turnover of Eligible Unit}}{\text{Total Turnover of Eligible Unit}}$                                                                                                                      |
| <p>First 5 yrs.<br/>Next 5 yrs.<br/>Next 5 yrs.</p> | <p style="text-align: center;"><b>100%</b> of above formula<br/><b>50%</b> of above formula</p> <p style="text-align: center;">↓ (i) <b>50%</b> of above formula<br/>(ii) Amt. transfer to <b>SEZRARA</b></p> |

Special Economic Zone Re-investment Allowance Reserve A/c

**Note 1:**

**EXPORT TURNOVER**

|                                                                                                                                                                                                       |            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| Export proceeds <b>brought in India</b> in convertible foreign exchange within <b>6 months</b> from the end of previous year or such extended time as may be allowed by RBI/Other competent authority | XXX        |
| <u>Add:</u> Export proceeds <b>deposited</b> in a special Bank A/c opened <b>outside India</b> with the permission of RBI (within aforesaid <b>6 m</b> )                                              | XXX        |
| <u>Less:</u> Freight, Insurance, Telecommunication charges & Fees for Technical Services incurred <b>outside</b> India                                                                                | (XXX)      |
| <b>EXPORT TURNOVER</b>                                                                                                                                                                                | <b>XXX</b> |

**CONDITIONS**

- (1) The Assessee should create **SEZRARA** in the last 5 years.
- (2) This reserve should be utilized for acquisition of **Plant & Machinery within 3 years** from the end of the year in which such reserve is created (within 3 years, it should be acquired and put to be use).
- (3) Till the acquisition of plant & machinery, the reserve can be used for business purpose except "DAR":  
 D – Dividend distribution  
 A – Asset creation outside India  
 R – Remittance outside India
- (4) If the reserve is **not used** within 3 years for purchase of plant & machinery then the unused amount shall be **taxable** in the **4<sup>th</sup> year**.  
 If the reserve is **misused** (DAR) then the misused amount shall be **taxable** in the **year of misutilisation**.
- (5) Along with the return of income, the assessee should furnish the **Details of Plant & Machinery** (in the year in which plant & machinery is put to use).

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## DEDUCTIONS UNDER CHAPTER VIA

SECTION	NATURE OF DEDN	ASSESSEE	AMT. OF DEDUCTION	OTHER POINTS
<b>80U</b>	Deduction for <b>Handicapped Assessee</b>	Resident Individual	Disability 1) <u>Less than 40%</u> Nil 2) $\geq 40\%$ & $< 80\%$ <b>₹ 75,000 (flat)</b> 3) $\geq 80\%$ (Severe) <b>₹ 1,25,000 (flat)</b>	The assessee should submit a copy of certificate of disability issued by the medical authority.
<b>80DD</b>	<b>Treatment And Maintenance of HDR</b>	Resident Individual, Resident HUF	Same as 80U	<p>(1) The assessee should: (a) spend on the treatment of HDR; or (b) deposit some amount with LIC/UTI/Other Insurance Co. for maintenance of HDR.</p> <p>(2) HDR <b>H</b> – Handicapped <b>D</b> – Dependent <b>R</b> – Relative (a) <u>In case of Individual</u> Spouse/Children/Parents/Brothers/Sisters (b) <u>In case of HUF</u> Any member</p> <p>(3) The assessee should submit a copy of certificate of disability issued by the medical authority.</p>

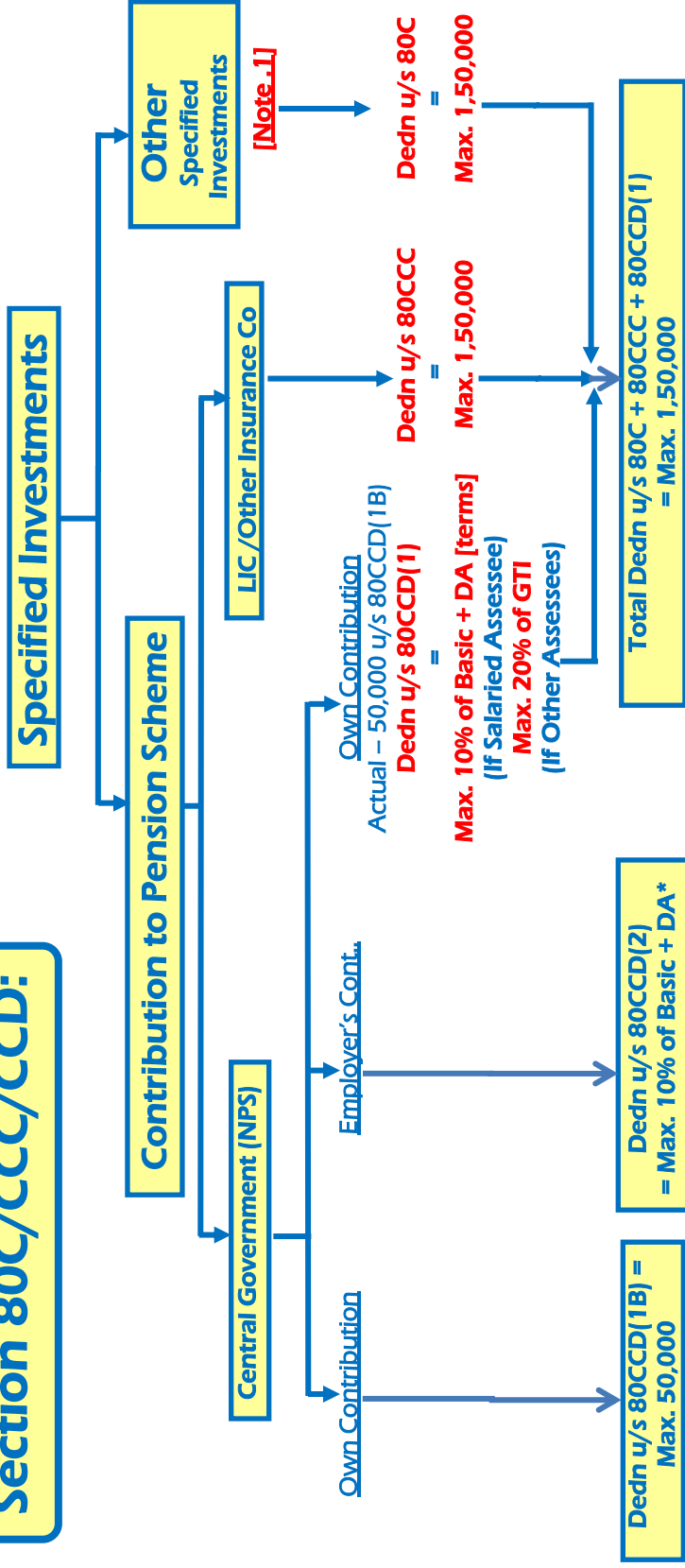
CA SHIRISH VYAS / CA INTER / DIRECT TAX / CHAPTER VIA

<b>80DDB</b>	Treatment of <b>Specified Disease</b>	Resident Individual and Resident HUF	<b>Max. 40,000*</b> Less: Recovery from Insurance Co./Employer	(1) The assessee should spend on the treatment of specified Disease (either for himself or dependent relative). Meaning of relative is same as in Section 80DD. (2) The Disease should be specified in Rule 11DD. (3) Patient = <b>*Senior Citizen – Max ₹ 1 lakh</b>						
<b>80E</b>	<b>Interest on loan for Higher Education</b>	Individual	<b>Amt. of Interest (Max. 8 yrs.)</b>	<p>Loan should be taken</p> <table border="0"> <tr> <td><b>For what</b></td> <td><b>For whom</b></td> <td><b>From whom</b></td> </tr> <tr> <td>Higher Education (Any course after Senior Secondary Examination)</td> <td>- Assessee - Spouse - Children - Student for whom Assessee is a Guardian</td> <td>- Banks - Fin..Inst.. - Approved Charitable Institution</td> </tr> </table>	<b>For what</b>	<b>For whom</b>	<b>From whom</b>	Higher Education (Any course after Senior Secondary Examination)	- Assessee - Spouse - Children - Student for whom Assessee is a Guardian	- Banks - Fin..Inst.. - Approved Charitable Institution
<b>For what</b>	<b>For whom</b>	<b>From whom</b>								
Higher Education (Any course after Senior Secondary Examination)	- Assessee - Spouse - Children - Student for whom Assessee is a Guardian	- Banks - Fin..Inst.. - Approved Charitable Institution								
<b>80GG</b>	Deduction for <b>Rent Paid</b>	Individual	<p>1) <b>25% of AGTI</b></p> <p>2) <b>₹ 5,000 p.m.</b></p> <p>3) <b>Rent paid – 10% of AGTI</b></p>	<p>(1) The assessee should not receive HRA</p> <p>(2) The assessee, his spouse, minor children &amp; HUF (where he is a member) should not own a Residential Accommodation at a place where he resides/performs his duties.</p> <p>(3) AGTI – Adjusted Gross Total Income Gross Total Income                   XXX Less: All dedn except sec.80GG       -XXX</p>						

CA SHIRISH VYAS / CA INTER / DIRECT TAX / CHAPTER VIA

<b>80GGA</b>	<b>Donation</b> for Scientific Research, Rural Development	All assessee except those having IFB	<b>100%</b> of amt. donated	Donation exceeding ₹ 2,000 should be paid by cheque (or any mode other than cash)
<b>80GGB</b>	<b>Donation</b> to Political Party or Electoral Trust	Indian Companies	<b>100%</b> of amt. donated	The political party should be registered under Representation of People Act, 1951 (ROPA) [Donation in cash – Not Allowed]
<b>80GGC</b>	<b>Donation</b> to Political Party or Electoral Trust	Other Assessee	<b>100%</b> of amt. donated	The political party should be registered under Representation of People Act, 1951 (ROPA) [Donation in cash – Not Allowed]
<b>80 QQB</b> <b>80 RRB</b>	<b>Royalty</b> from <b>Books</b> [Sec.80QQB] and <b>Patents</b> [Sec.80RRB]	Resident Individuals	(1) <b>100%</b> of [Indian Royalty + Foreign Royalty brought in India]  (2) <b>₹ 3,00,000</b>	(1) Royalty should be received from books of Literary, Artistic or Scientific Nature. (2) Patents – Regd. under Patents Act, 1970 (3) In case of Foreign Royalty, dedn is allowed only if the royalty is <b>brought in India</b> in convertible foreign exchange <b>within 6 mnths</b> from the end of the P.Y. or such extended time as may be allowed by RBI/Other Competent Authority. (4) In case of royalty from books, the amount of royalty <b>should not exceed 15% of Sales.</b>
<b>80TTA</b>	Interest on <b>Savings A/c</b> [Bank/PO]	Ind./HUF	<b>Max. 10,000</b>	—
<b>80TTB</b>	Interest on <b>Any A/c</b> [Bank/PO]	<b>Senior Citizen</b>	<b>Max. 50,000</b>	Senior Citizen means resident individual [60years or more]

# Section 80C/CCC/CCD:



\* 14% of Basic Salary + DA [in terms], in case of Govt. Employees

**Note 1:**

**Section 80C: LIST OF SPECIFIED INVESTMENTS**

Deduction of **Max. ₹1,50,000** is allowed in respect of following payments:  
**LUMP<sub>3</sub> – N<sub>2</sub>T<sub>2</sub>RS<sub>2</sub>**

- 1) Payment of **Life Insurance Premium\***
- 2) Investment in **UTI:**
  - Contribution to ULIP [Unit Linked Insurance Plan]
  - Investment in E.L.S.S. [Equity Linked Saving Scheme]
- 3) Investment in **Mutual Fund:**
  - Investment in E.L.S.S. [Equity Linked Saving Scheme]
- 4) Employees Contribution to **Provident fund [SPF and RPF]**
- 5) Deposit in 5 years POTD A/c [**Post Office Time Deposit A/c**]
- 6) Deposit in **PPF A/c** [Interest – Ex. u/s 10(11)]
- 7) Investment in **NSC** [National Savings Certificate]  
Note: Interest on NSC is also eligible for deduction u/s 80C  
 [First included in IFOS & then deduction u/s 80C]
- 8) Investment in Bonds of **NABARD**
- 9) **Term Deposit** with Bank [5 years or more]
- 10) **Tuition fees** of maximum 2 children [school fees, college fees, etc.]
- 11) **Repayment of Housing Loan** taken from Banks/Financial Institutions [Only principal amt. is eligible; interest can be deducted u/s 24 in IFHP]. Stamp duty/Registration fees paid for purchase of house is also eligible for deduction.
- 12) Investment in **Senior Citizen Saving Scheme**
- 13) Deposit in **Sukanya Samriddhi A/c Scheme**

In case of following payments, deduction is allowed whether the payment is for himself, spouse, children:

- ⇒ Payment of L.I.C. Premium
- ⇒ Contribution to U.L.I.P.
- ⇒ Deposit in P.P.F. A/c

**\*Limit on Life Ins. Premium**  
 Max. 20%/10%/15% of sum assured  
**20%** - If policy taken before 1.4.2012  
**10%** - If policy taken on/after 1.4.2012  
**15%** - If policy taken on/after 1.4.2013

## Section 80D

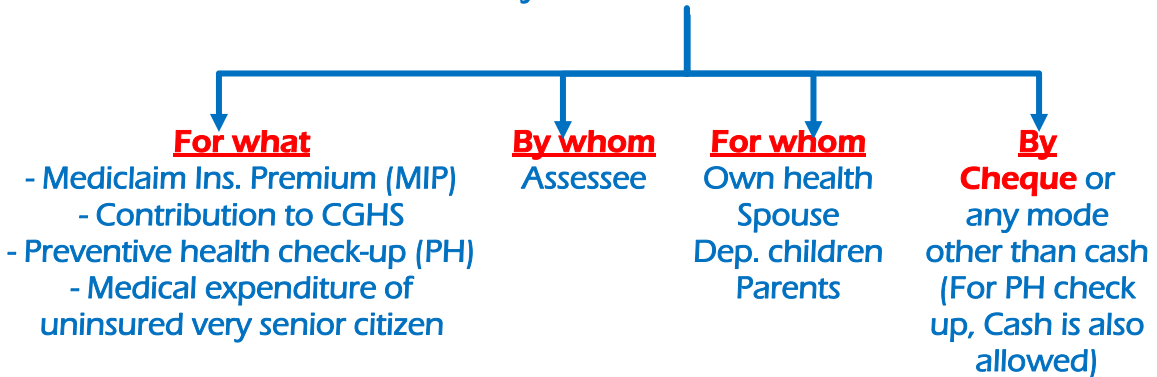
### Mediclaime Insurance Premium

→ **Eligible Assessee:**

Individual and HUF

→ **Conditions:**

Payment should be made



→ **Amount of Deduction:**

→ In case of <b>INDIVIDUALS:</b>		
<u>Payment for <b>Self/Spouse/Dependent Children:</b></u>		
Additional Dedn for Senior citizen (MIP)	Max. 25,000	
Basic Dedn for Senor citizen/Others (MIP + CGHS + PH)	Max. 25,000	
Medical Exp.. of Senior citizen who is not insured	Max. 50,000	
	<b>TOTAL</b>	<b>Max. 50,000</b>
	+	
<u>Payment for <b>Parents:</b></u>		
Additional Dedn for Senior citizen (MIP)	Max. 25,000	+
Basic Dedn for Senor citizen/Others (MIP + CGHS + PH)	Max. 25,000	
Medical Exp.. of Senior citizen who is not insured	Max. 50,000	
	<b>TOTAL</b>	<b>Max. 50,000</b>
	=	=
	<b>Max. 5,000</b>	<b>Max.1,00,000</b>
→ In case of <b>HUF:</b>		
<u>Payment for <b>Any Member:</b></u>		
Additional Dedn for Senior citizen (MIP)	Max. 25,000	
Basic Dedn for Senor citizen/Others (MIP + CGHS + PH)	Max. 25,000	
Medical Exp.. of Senior citizen who is not insured	Max. 50,000	
	<b>TOTAL</b>	<b>Max. 50,000</b>

## Section 80G DONATIONS

Following donations are eligible for deduction:

### Unlimited Category

In respect of following donations, there is no limit on the amount of donation but some are eligible for 50% deduction and some for 100% deduction

U 50%	U 100%				
P	P	A	N E C	Z L M A	G S
↓	↓	↓			
D	C	A	C <sub>2</sub>		
	N	B	I		
	T	S	T		
		D <sub>2</sub>			

### UNLIMITED (50% Deduction)

**P** rime Minister **D** rough Relief Fund

**UNLIMITED (100% Deduction)**

**P** rime Minister Fund for:

- N** ational Relief\*
- A** rmenia Earthquake Relief
- T** sunami Relief

**A** frica (Public Contribution – India) Fund

**N** ational Funds for:

- C** ommunal Harmony
- C** hildren Fund
- B** lood Transfusion
- I** llness Assistance
- S** ports / Culture
- T** echnology Development
- D** efence Fund
- D** rug Abuse Control

**E** ducational Institution of National Eminence

**C** hief Minister Earthquake Relief Fund (Maharashtra)

**C** hief Minister Cyclone Relief Fund (Andhra Pradesh)

**Z** illa Saksharta Samiti

**L** ieutenant Governor’s Relief Fund

**M** edical Relief to Poor (State fund)

**A** rmy/Airforce/Navy Welfare Fund

**G** ujarat Earthquake Relief Fund

Clean **G** anga Fund

(only for residents)

**S** wachh Bharat Kosh

*\*or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND)*

**Limited Category**

In respect of following donations, there is a limit i.e. the total amount of all the following donations should not exceed 10% of AGTI (Adjusted gross total income)

L 100%		L 50%			
<b>F</b>	<b>O</b>	<b>C</b>	<b>H</b>	<b>M</b>	<b>T</b>

**F** amily Planning (Given to Govt., Local Authority or Approved Institution)

**O** lympic Association/any other institution (for sports infrastructure or sponsorship of sports in India)

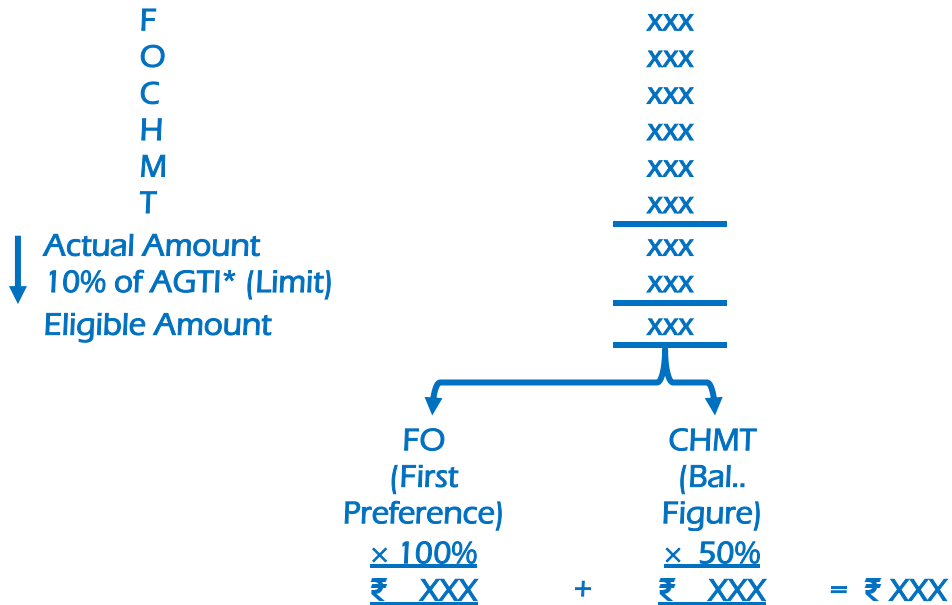
**C** haritable Purpose (Given to Govt., Local Authority or Approved Institution)

**H** ousing Development Authority (HDA)

**M** inority Community

**T** emples, Church, Mosque, Gurudwara & Historical Places [notified]  
[only for Repairs and Renovations]

→ **Amount of Deduction:**



\* **AGTI (Adjusted Gross Total Income):**

Gross Total Income	XXX
(Excluding STCG u/s 111A, LTCG u/s 112A and Other LTCG)	
<u>Less: Deductions under Chapter VIA (Excluding Sec. 80G)</u>	<u>-XX</u>
Adjusted Gross Total Income	<u>XXX</u>

**Note:**

Donation in kind (Not Allowed)

Donation **exceeding ₹ 2,000** should be paid by **any mode other than cash**)

## Section 80EE/80EEA

### Interest on Housing Loan

Interest on housing loan is allowed as **deduction u/s 24** (under the head IFHP).  
If following conditions are satisfied then **additional deduction** for interest is allowed u/s 80EE/80EEA:

Section 80EE	Section 80EEA
Value of HP ≤ <b>50 Lakhs</b>	Value of HP ≤ <b>45 Lakhs</b>
Loan amt. should not exceed ₹ <b>35L</b>	No such condition
Loan should be taken in <b>P.Y. 16-17</b>	Loan should be taken <b>during 2019-22</b>
Dedn = Interest Amt. [ <b>Max. 50,000</b> ]	Dedn = Interest Amt. [ <b>Max. 1,50,000</b> ]
Assessee <b>should not own</b> any residential HP on the date of sanction of loan.	
Loan should be taken from <b>Banks/Financial Institutions</b>	

## Section 80EEB

### Interest on Loan for ELECTRIC VEHICLE

In case of **individuals**, loan taken from **Banks/Financial Institutions** for purchase of **Electric Vehicle** is allowed as deduction.

⇒ Amount of deduction = Interest Amount [**Max. 1,50,000**]

## **Section 80JJAA**

### **Employment of New Employee**

→ **Amount of Deduction:**

= 30% of additional employee cost incurred in the P.Y.  
(for 3 consecutive years)

→ **Additional Employee Cost means**

Salary paid to New employee appointed during the year

**Excluding:**

- i) An employee whose salary is **more than ₹ 25,000 p.m.**
- ii) Employee appointed for **less than 240/150\* days** during P.Y.
- iii) An employee who **does not participate in RPF.**

→ **Eligible Assessee:**

Assessee whose accounts are subject to audit u/s 44AB

**\*150 days**, if assessee engaged in the business of manufacturing of **apparel, footwear or leather products.**

**Note:**

Even after employment of new employee, if there is **no increase in the total number of employees** compared to the total number of employees employed as on the last day of the preceding year then deduction is **not allowed.**

Employee cost should be paid by **account payee cheque/draft/ECS/other electronic mode.**

## **Section 80 – IAC**

### **DEDUCTION IN RESPECT OF START-UP BUSINESS**

Under this section, 100% deduction is allowed in respect of the profits from eligible start-up business i.e. business involving:

Innovation, development or improvement of  
**product, process or service or a scalable business model**  
with high potential of  
**employment generation or wealth creation**

100% dedn can be availed by eligible start-ups for **any 3** consecutive years **out of first 10 yrs.**

#### **→ Conditions:**

- (a) The Assessee should be a Company or LLP;
- (b) It should be incorporated on/after the 1.4.2016 but before 1.4.2023;
- (c) The total turnover should not exceed ₹ 100 crores in the year in which dedn is claimed.
- (d) It holds a certificate of eligible business from the Inter-Ministerial Board of Certification.

## **Section 80 – IBA**

### **DEDUCTION IN RESPECT OF AFFORDABLE HOUSING PROJECTS**

As per this section, 100% deduction is allowed in respect of profits from:  
Building and Developing  
**Affordable Housing Projects**

#### **→ Conditions:**

- 1) The project should be approved by the competent authority after 1<sup>st</sup> June, 2016 but before the 31<sup>st</sup> March, 2022.
- 2) The project should be completed within a period of 5 years from the date of approval (Otherwise, deduction allowed earlier shall be withdrawn and it will taxable as income from business in the year in which period of 5 years expires)
- 3)\*\* The project should be on a plot of land measuring:
  - Min. 1000 sq. meters – If project is located in Delhi, Mumbai, Chennai & Kolkata; or
  - Min. 2000 sq. meters – If project is located in any other place.

- 4)\*\* The carpet area of each residential unit should be:
  - ➔ Max. 30 sq. meters– If project is located in Delhi, Mumbai, Chennai & Kolkata; or
  - ➔ Min. 60 sq. meters – If project is located in any other place.
- 5) The carpet area of the shops and other commercial establishments included in the housing project should not exceed 3% of the aggregate carpet area.
- 6) Where a residential unit is allotted to an individual, no other residential unit should be allotted to such individual, or the spouse or minor children of such individual.
- 7) The assessee should maintain separate books of account in respect of affordable housing project.
- 8) No deduction is allowed to any undertaking, which executes the housing project as a works contract awarded by any person including State or Central Government.  
The Competent Authority means authority empowered by the Central Government to approve building plan.

\*\* For projects **approved on or after 1-09-2019**, condition 3 and 4 [Above] shall read as follows:

- 3) The project should be on a plot of land measuring:
  - ➔ Min. 1000 sq. meters – If project is located in Delhi NCR, Mumbai, Chennai, Kolkata, Bengaluru & Hyderabad; or
  - ➔ Min. 2000 sq. meters – If project is located in any other place.
- 4) The carpet area of each residential unit should be:
  - ➔ Max. 60 sq. meters– If project is located in Delhi NCR, Mumbai, Chennai, Kolkata, Bengaluru & Hyderabad; or
  - ➔ Min. 90 sq. meters – If project is located in any other place.

For projects **approved on or after 1-09-2019**, following **3 additional conditions** should be satisfied:

- 1) The project is the only housing project on the plot of land;
- 2) The stamp duty value of a residential unit is up to Rs. 45 lakhs;
- 3) The project utilises—
  - ⇒ Atleast 90% of the floor area ratio permissible in respect of the plot of land under the Govt. rules (If project is located in Delhi NCR, Mumbai, Chennai, Kolkata, Bengaluru & Hyderabad); or
  - ⇒ Atleast 80% of such floor area ratio (If project is located in any other place).

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# CLUBBING OF INCOME

## Income of a Minor Child

Income of a minor child will be clubbed in the hands of parent (i.e. Father or Mother) whose net taxable income is greater. However, following income of minor child shall not be clubbed:

1. Income earned by minor child by doing **manual work**.
2. Income earned by minor child through his **talent, knowledge, skill or experience**.
3. Income earned by **handicapped minor child specified u/s 80U**.

Note: Income of a minor child is exempt u/s 10(32) — **Max ₹ 1,500 per minor child**.

## Income of Spouse

If following 2 conditions are satisfied then income of spouse will be clubbed in the hands of assessee:

1. The income should be **salary, fees, commission or any other remuneration**.
2. Such income should be derived from a concern where assessee has a **substantial int. (holding atleast 20% shares)**

Note: Clubbing will not take place if spouse holds any **professional, talent, knowledge, technical qualification skill or experience**.

If husband and wife – both are substantial interest holder and they both do not have any professional or technical qualification then income will be clubbed in the hands of that assessee whose income is greater.

## Transfers for inadequate consideration

In case of following transfers, income earned by the transferee shall be clubbed in the income of transferor if such transfer is for **no price or low price** (inadequate consideration):

- a) Transfer to spouse
- b) Transfer to any other person for the benefit of spouse
- c) Transfer to son's wife
- d) Transfer to any other person for the benefit of son's wife
- e) Transfer to HUF

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## SET OFF & CARRY FORWARD OF LOSSES

Losses can be adjusted against income by following 3 steps:

### STEP 1: Inter Source Adjustment: (Sec. 70)

This means loss from one source can be adjusted against the income from another source **within the same head**.

### STEP 2: Inter Head Adjustment: (Sec. 71)

This means loss under **one head** can be adjusted **against** income under **another head** with the same year.

#### → **Exceptions:**

- (1) **Speculation** loss can be adjusted only against **speculation** income.
- (2) Loss from activity of **owning & maintaining** race horses can be adjusted only against income from **same activity**.
- (3) **LTCL** can be adjusted only against **LTCG**.
- (4) **STCL** can be adjusted against **STCG/LTCG**.
- (5) **Business loss** (normal) can be adjusted against any income **except** Income from **Salaries**.
- (6) Business loss (**Sec.35AD**) can be adjusted only against business income (**Sec.35AD**)
- (7) **House property** loss - **Max.2 lakhs** - can be set-off

### STEP 3: Carry Forward:

If a loss cannot be adjusted in the year in which loss was suffered then it can be c/f and s/off in subsequent yrs as follows:

Sec.	Type of loss	To be adjusted against	Period of C/f	Return "in time"
71B	HP (Loss)	Same head (IFHP)	8 yrs.	Not reqd.
72	Normal Bus. Loss	Same head (IFB)	8 yrs.	Necessary
73	Spec. Bus. Loss	Spec.Bus. Income	4 yrs.	Necessary
73A	Sec. 35AD Loss	Sec. 35AD Income	Unltd	Necessary
74	LT Loss	LTCG	8 yrs.	Necessary
	ST Loss	STCG/LTCG	8 yrs.	Necessary
74A	O & M Loss	O & M Income	4 yrs.	Necessary

**Note:**

Any loss from exempt source of income cannot be set off & carried forward.

**→ Summary:**

Loss under Heads	Set off in the <b>Year of loss</b>	Set off in <b>Subsequent yr.</b>
Income from Salaries	Not possible	
Income from HP	Anywhere [max. 2 L]	Same head
<b>Income from Business:</b>		
- Normally	Anywhere (except IFS)	Same head
- Speculation	Speculation Income	Spec.. Income
- O & M	O & M	O & M
- 35AD Business	35AD Business	35AD Business
<b>Capital Gains:</b>		
- LT	LT	LT
- ST	ST/LT	ST/LT
IFOS	Anywhere	C/f not allowed

**Important Notes:**

- (1) Business loss (Normal/Speculation) can be c/f **even if the business is discontinued**. However, loss from activity of O & M race horses cannot be c/f if the activity is discontinued.
- (2) In case of discontinued business, loss for the year in which business was **discontinued** can be c/f and set off **even after 8 years**, if there is income **taxable u/s 41**.  
E.g. If there is bad debts recovery after 8 years then the loss of the **year of discontinuance** can be adjusted against such recovery.
- (3) If a business is **discontinued** due to natural calamities, riots, fire or enemy attack then loss of such business can be c/f for **fresh 8 yrs** provided the business is **re-established within 3 yrs** from the end of the year in which business was discontinued. [8 yrs = Year of re-establishment + 7 yrs]

- (4) Normally, loss of 1 person cannot be c/f by another person. However, in following 4 cases:
- Loss of 1 person can be c/f by another person,**
- (A) **Inheritance:**  
In case of inheritance, loss of predecessor can be c/f by successor.
- (B) **Amalgamation:**  
In case of amalgamation, loss of amalgamating co. can be c/f by amalgamated co. if conditions specified u/s 72A are satisfied.
- (C) **Demerger:**  
In case of demerger, loss of demerged co. can be c/f by resulting co.
- (D) **Business reorganisation:**  
[Prop/P.firm “converted” into Company]  
In such case, loss of sole trader/PF can be c/f by the new company.
- (5) **Carry forward in case of amalgamation [Sec. 72A]:**  
In case of amalgamation, loss of amalgamating co. can be c/f by amalgamated co. if following conditions are satisfied:
- (i) It should be amalgamation of a co. owning an **industrial undertaking, hotels, or ships** or amalgamation of a public sector co. owning **airlines** or amalgamation of **banks**.
- (ii) The **amalgamating** co. should have carried on the **business** [which suffered loss] for at least **3 years**.  
The **amalgamating** co. should have continuously **held** at least **75% of the FA** [Held by it **2 yrs.** prior to the date of amalgamation]
- (iii) The **amalgamated** co. should continue the business of amalgamating co. for atleast **5 years**.  
The **amalgamated** co. should **retain** at least **75% of the FA** taken over (for at least **5 years**)  
The **amalgamated** co. should satisfy conditions under **Rule 9C**. [Should achieve a production of at least 50% of the installed capacity within 4 years and should maintain it till the end of 5<sup>th</sup> year. It should submit a report of C.A.]

**Note:**

In case of amalgamation of **co-operative banks**, the above conditions are applicable but Sec. is **72AB**.

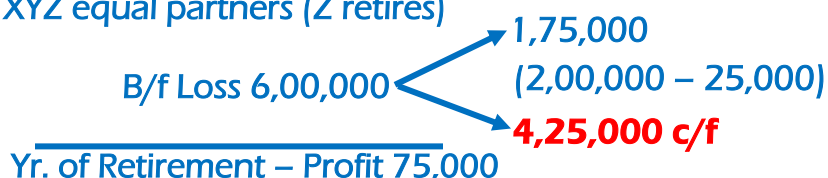
In case of amalgamation of other banks, the above conditions may or may not be satisfied but approval of Central Govt. is must.

Losses of amalgamating co. can be carried forward by amalgamated co. for **fresh 8 assessment years**. [Set off in year of amalgamation & c/f for further 8 yrs.]

- (6) In case of demerger, the **loss attributable to the division transferred** can be c/f by the resulting co. If the loss is not relatable to the division transferred then the loss to be carried forward will be distributed between the demerged co. & the resulting co. in the ratio of assets retained & assets transferred.  
[Here there is no rule of fresh 8 years. Only **unexpired period** will be available].

- (7) **Change in constitution of partnership firm [Sec. 78(1)]:**  
If there is retirement or death of a partner then the partnership firm **cannot carry forward** loss to the extent of **retiring/deceased partners** share in b/f losses (after deducting his share in profit for the year of retirement/death)

E.g. XYZ equal partners (Z retires)



- (8) **Loss of closely held company [Sec. 79]:**  
In case of a closely held company, losses can be carried forward if **at least 51% shareholding remains with the same persons** i.e. those holding atleast 51% as on 31/3 of the year of loss are still holding atleast 51% as on 31/3 of the year of set-off.

**Example:**

X Pvt. Ltd.

Loss ₹ 5,00,000 (21 - 22)

X : 20%

Y : 25%

**Z : 30%**  
**A : 25%** } **55%**

Profit (24 - 25) ₹ 20,00,000

M : 20%

N : 45%

**Z : 10%**  
**A : 25%** } **35%**

In such cases, we should check the percentage held by common persons i.e. Z and A [those who were shareholder in the year of loss as well as in the year of set-off]. Since 51% shareholding is not maintained by Z and A, loss of 5 lacs cannot be c/f.

In case of **closely held start-up company**, rule of **51%** shareholding is **not applicable** in respect of losses suffered in **first 10 years**. However, **all the persons** who were the shareholders as on 31/3 of the year of loss **should remain as the shareholders** as on 31/3 of the year of set-off [with **same number** of shares].

**Example:**

X Pvt. Ltd.

Loss ₹ 5,00,000 (21 - 22)

**X : 2,000 shares**  
**Y : 2,000 shares**  
**Z : 2,000 shares** } **100%**

Profit (24 - 25) ₹ 20,00,000

**X : 2,000 shares**  
**Y : 2,000 shares**  
**Z : 2,000 shares**  
**M : 18,000 shares** } **25%**

Since X, Y and Z are still the shareholders with the same number of shares, loss of 5 lakhs can be set-off in PY 2023-24 [although the % held by X, Y and Z has reduced from 100% to 25%].

**Note:**

The restriction on carry-forward of losses in case of change in shareholding of closely held companies is **not applicable** if change in shareholding is due to following reasons:

- a) **Death**
- b) **Gift** to Relatives

- c) Corporate **insolvency resolution** plan [approved under Insolvency and Bankruptcy Code, 2016]
- d) Corporate **mismanagement resolution** plan [approved by NCLT]

(9) **Unabsorbed Depreciation:** It means loss in business due to depreciation i.e. the profits are not sufficient to absorb the deduction of depreciation u/s 32.

- (1) It can be c/f for **unlimited** number of years
- (2) It can be s/o against **any income/head** except IFS]
- (3) It can be c/f even if the return is filed late.

Example:

NP	XX
(+) Disallowed Exps.	XX
(-) Non-Business Income	XX
(-) Unrecorded Bus. Exps	XX
(+) Unrecorded Bus. Income	<u>XX</u>
	(30,000) Business loss (8 yrs)
(-) Dep. as per IT	(20,000) Unabs..dep. (Unlimited)

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## POLITICAL PARTY & ELECTORAL TRUST

### POLITICAL PARTY

As per **Section 13A**

- (1) Income from House Property
- (2) Capital Gains
- (3) Income from Other Sources & voluntary contributions received by a political party are exempt if the following conditions are satisfied:
  - B – **Books** of accounts should be maintained
  - R – The political party should be **registered** with the Representation of Peoples Act, 1951
  - A – The accounts of the political party should be **audited** and return of income should be filed as required by Section 139(4B)
  - V – A record of each **voluntary contribution in excess of 20,000** should be maintained and a report of the same should be submitted to the election commission [Donation > Rs.2,000 should be received by A/c Payee Chq./Draft/ECS].

### ELECTORAL TRUST

As per **Section 13B**,

**Voluntary contribution** received by on Electoral trust is fully exempt if following conditions are satisfied:

1. The ET should **FUNCTION** as per the rules of Central Govt.
2. The ET should be **APPROVED** by CBDT
3. The ET should **DISTRIBUTE** 95% of total voluntary contributions to registered political party.

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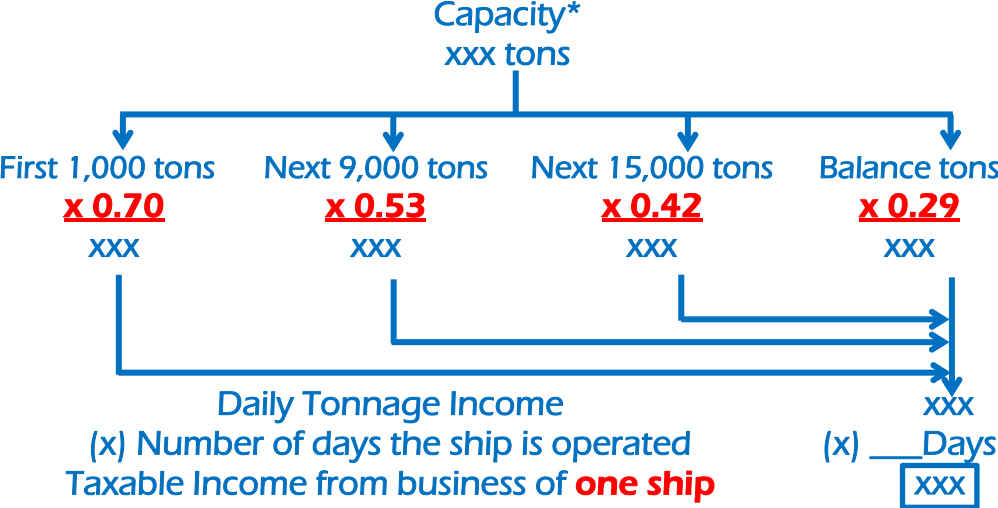
# TONNAGE TAX SCHEME

⇒ **INTRODUCTION:**

Tonnage Tax Scheme (TTS) is a scheme of **presumptive** taxation for Indian Companies engaged in **shipping** business. This scheme is an **incentive** to promote shipping business.

⇒ **COMPUTATION:**

As per TTS, income from shipping business is computed according to the capacity of the ship (measured in tons).



\*The capacity of the ship — rounded off to nearest hundred.  
 E.g. 19,482 tons = 19,500 tons;  
 19,450 tons = 19,500 tons;  
 19,423 tons = 19,400 tons

⇒ **CONDITIONS:**

**Q. ART. CB**

TTS is an optional scheme and to avail the option of TTS following conditions should be satisfied:

**1...QUALIFYING COMPANY:**

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The A'ee should be a **Qualifying Company:**

- ↓
- Indian Company
- Effective Management (in India)
- Main Object (Operating ships)
- Own atleast one **Qualifying ship**
  - ↓
  - Sea going vessel
  - Capacity (minimum 15 tons)
- Registered under Merchant Ship Act, 1958
- Should hold a valid certificate indicating its tonnage

**2...APPLICATION:**

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- a. In order to avail TTS, the qualifying company should make an application in **Form 65** to JC (within **3 months** from the date of incorporation or the date when the company becomes qualifying company).
- b. After Receipt of application, the JC may call for **records and documents** (in order to satisfy himself that the company is qualifying or not).
- c. If the JC satisfied then he shall pass an order of **approval** and if he is not satisfied then he shall pass an order of **refusal**. (opportunity of being heard should be given). Such order (approval/refusal) should be passed within **1 month** from the end of the month in which application is received.
- d. If the option of TTS approved then the scheme shall remain in force for a period of **10 consecutive years** starting from the year in which option is exercised.

**3...RESERVE:**

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The company availing TTS should transfer atleast **20% of the Book Profits** (u/s 115JB) to Tonnage Tax Reserve A/c (TTRA).

**4... TRAINING:**

The company availing TTS should comply with **minimum training requirement** (as may be prescribed by **Director General of Shipping**).

**5... CHARTERED IN PROPORTION:**

The company availing TTS should not charter-in [hire] more than **49% of the total tonnage** of Qualifying Ships.

**6... SEPARATE BOOKS:**

The company availing TTS should maintain separate books for the business of **Qualifying ships** and **Other business**. Along with the ROI, the company should submit the **Report of CA**.

* IFS	XX	
* IFHP	XX	
* <u>IFB</u>		
- <b>Q. Ships</b>	<b>XX</b>	→ <b>Presumptive basis</b>
- NO. Ships	XX	
- Other Business Income	XX	
* CG	XX	
* IFOS	XX	

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# DOMESTIC TRANSFER PRICING

## Sec. 92BA: SPECIFIED DOMESTIC TRANSACTIONS

If the aggregate of following domestic transactions entered into by the assessee during the P.Y. is **more than ₹ 20 crores** then the following domestic transactions shall be subject to Transfer Pricing Provisions (i.e. Income from such transactions shall be computed having regard to ALP and all other Transfer Pricing Regulations shall apply).

- a) Transaction of transfer of goods and service between unit (eligible for Sec. 80IA to IE & 10AA) and unit (not eligible for these sections).
- b) Transaction between assessee (eligible for **Section 80IA to IE & 10AA**) and any other person.
- c) Transaction between assessee (opting for **Section 115BAB**) and any other person.
- d) Any other transaction as may be prescribed.

In above cases, **Deduction u/s 80IA to 80IE & Sec. 10AA** will be computed on the basis of reasonable profits – **computed based on ALP**.

**Example:** If a person [X Ltd.] claiming dedn. u/s 80IA to 80IE/10AA may enter in to an income transaction with other person [Y Ltd.] at high price because X Ltd. doesn't mind showing high income as it is eligible for 100% deduction and by doing so, the other person [Y Ltd.] can show more expense and reduce it's profit. In such case, as per sec. 92BA, X Ltd. shall get deduction u/s 80IA to 80IE/10AA at 100% of **reasonable profits** computed as per **Arms Length Price**. Excess profits declared shall be taxable.

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## CASE LAWS

- 1) Expense on providing freebies or incentives by pharmaceutical companies to doctors – Allowed or not?

**Apex Laboratories Pvt. Ltd.**

**Ans.** As per **CBDT circular**, expense on providing freebies or incentives to doctors is an **illegal expense** because doctors are **prohibited by law** to accept such freebies etc. **Indian Medical Council Regulations** prohibits this. Although, the regulations prohibit doctors, the act of giving such freebies is also illegal from the point of view of pharmaceutical co. Hence, such expense is **disallowed**.

- 2) Assessee engaged in leasing business – loss incurred in foreign currency fluctuation at the time of repayment of loan taken for acquisition of P & M to be given on lease/hire purchase – Allowed or not? Can the ITAT entertain a fresh claim for the first time in exercise of its powers under section 254?

**Wipro Finance Ltd.**

**Ans.** Since the assessee is engaged in the **business of leasing** and giving P&M **hire purchase**, the loss arising out of foreign currency fluctuation on repayment of loan for P&M is **revenue in nature**. Hence, it is **allowed**. However, in this case, the assessee did not claim this loss in the return. It was claimed later in front of ITAT. In this regard, it should be noted that the **A.O. cannot allow fresh claim** [which were not claimed in return] **but appellate authorities are empowered to admit fresh claim** of assessee in appeal. Hence, ITAT can entertain fresh claim.

- 3) Whether interest income on margin money deposited with bank for obtaining bank guarantee to carry on business, taxable the head 'Profits and Gains from Business or Profession' or under the head 'Income from other sources'?

**K & Co.**

**Ans.** Obtaining the bank guarantee was **necessary for obtaining business contract** and margin money requirement was **essential** for bank guarantee. If the assessee had not furnished bank guarantee, it would not have got the contract. Hence, the interest income received on margin money for obtaining the bank guarantee would be taxable under the head "**Profits and gains of business or profession**".

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- 4) Assessee – engaged in Cinema business – new project of taking over a theatre & converting into multiplex – Incurred feasibility expenses – project dropped because not feasible – Feasibility expenses – Allowed or not?

**Priya Village Roadshows Ltd.**

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**Ans.** If the project materializes then deduction is allowed u/s35D. Since, in the given case, the **project is dropped, feasibility expenses** can be claimed as deduction u/s **37(1)** [Revenue in nature & Related to business as the feasibility is in the **same line of business**]

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- 5) Compensation received from supplier by way of liquidated damages on account of failure to supply the machinery within stipulated time – Taxable or Not?

**Saurashtra Cement Ltd.**

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**Ans.** **Compensation** received from supplier for **failure to supply the machine** is a **capital receipt**. It is not an income [No give and take; only take – take; it is not our earnings]. Hence, it is **not taxable**.

**Note:** If the machinery is finally purchased then the compensation received can be deducted from the cost of machine.

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- 6) Assessee (Steel business) took loan for purchase of assets. Later on, the loan was waived. Is it taxable?

**Steel Authority of India Ltd.**

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**Ans.** Since, the **loan** is for purchase of **asset**, **waiver** of such loan is a **capital receipt**. Since it is connected to a capital expenditure i.e. the cost of asset, it should be **deducted from the cost of asset**. Similar judgment given in the case of **Mahindra & Mahindra Ltd.**

Note: If the waiver is of **working capital loan** then it is revenue in nature and it will be **taxable**.

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- 7) In a case where payment of bonus due to employee is paid to a trust and such amount is subsequently paid to the employee before the due date of filing return, would the same be allowable under section 36(1)(ii) ?

**Shasun Chemicals & Drugs Ltd.**

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**Ans.** As per section 43B, Bonus and commission to employees is allowed if it is paid up to the due date of filing return.

In this case, the bonus was first paid to the trust and then the trust paid to the employees. However, deduction will be **allowed** even in this case because finally the bonus is paid to the employees up to the due date of return [it is **immaterial** whether the payment is **directly** made to employees or **indirectly**].

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- 8) State Govt. sold stamp papers to stamp vendors at say ₹ 90 and the stamp vendors sold to public at say ₹ 100. Is ₹ 10 commission – subject to TDS u/s 194H?

**Ahmedabad Stamp Vendors Association**

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**Ans.** Since, the stamp papers are sold to the vendors, the **ownership** is **transferred** to the vendors. Hence, there is no element of agency & it is the transaction on **principal to principal** basis Hence, difference of Rs.10 is **not commission** (No TDS u/s 194H).

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- 9) Bharti Cellular Ltd. sold SIM cards/Recharge coupon to distributors at discounted price [eg: ₹ 90] and distributors are free to sell these products to public at any price below the printed price [eg: ₹ 100]. Is the income earned by distributors subject to TDS u/s 194H?

**Bharti Cellular Ltd.**

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**Ans.** The income earned by distributors [i.e. the difference between the sale price and purchase price] is not treated as commission and it's not subject to TDS u/s 194H because of following reasons:

- i) SIM cards/recharge coupons are sold & ownership is transferred to the distributors.
- ii) Sec. 194H fixes liability to deduct TDS on the "person responsible to pay the commission". However, in this case, the distributors are free to sell the SIM cards/recharge coupons at any price and they determine their own profit. Hence, Bharti cellular is not the person responsible to pay commission.

Hence, the difference between the sale price and purchase price is the business profit earned by distributors and it cannot be treated as commission.

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- 10) Qatar Airways sold tickets to the agents at say ₹ 90 and the agents were allowed to sell such tickets above ₹ 90 upto say max ₹ 100. Can the difference be treated as commission – subject to TDS u/s 194H?

**Qatar Airways**

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**Ans.** Same as above.

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Note: As per CBDT circular, TDS is not attracted u/s 194H on retentions by advertising agencies from payments remitted to Media [TV Channels/Newspaper companies]. This is because the transaction between the agencies and media is on principal to principal basis [where the agency purchases the airtime/print space from the media at discount and sells it to the customers]



However, in the case of Prasar Bharati [Doordarshan TV Channel], Supreme Court gave the judgment that Prasar Bharati was liable to deduct TDS on amount retained by its accredited agencies as in this case, Prasar Bharati entered in to an agreement with the agencies for giving them accredited status and appointing them as agents. Hence, the terms of the agreement created a principal-agent relationship giving rise to an obligation to deduct TDS u/s 194H.

- 11) Landing fee and parking fee paid for use of "Land" by Airline Company. Is it subject to TDS?

**Japan Airlines Co. Ltd. | Singapore Airlines**

**Ans.** Landing fees and parking fees is not just for the use of land. It is also for other facilities like proper runway, safe landing, passenger safety etc. The **airport** is **constructed** by Airport Authority of India as per the **requirement & specification** of **Airline companies**. Hence, the payment is in the nature of contact payment & **TDS u/s 194C** shall be attracted.

- 12) Transaction charges paid by share broker to stock exchange for providing fully automated online trading facility. Is it in the nature of payment for technical services? Is it subject to TDS u/s 194J?

**Kotak Securities Ltd.**

**Ans.** The charges paid by share broker to stock exchange cannot be treated as payment for technical services because full automated online trading facility is a **common facility** for all the brokers and **not specially customized** as per the requirement of a particular broker. Hence, no TDS u/s 194J.

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13) Can winnings of prize money on unsold lottery tickets held by distributor of lottery tickets be assessed as business income and be subject to normal rates of tax instead of 30%?

**Manjoo & Co.**

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**Ans.** Winnings from lottery is always taxable as **IFOS** as per section 56, **even if assessee is dealer in lottery**. As per **section 115BB**, winnings are always taxable at flat rate of **30%**.

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14) Assessee paid commission to a non-resident agent [for selling Indian goods abroad] without deducting TDS u/s 195. Is it disallowed u/s 40(a) ?

**Maruti Suzuki India Ltd.**

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**Ans.** Payment to NR is subject to **TDS u/s 195 only if** such payment is an income of NR **accruing or arising in India**. In this case, since the NR agent has performed the agency **work outside** India, the commission for such work **accrues/arises outside** India. Hence, such commission is **not taxable in India** and there is **no requirement to deduct TDS u/s 195**. Accordingly, disallowance u/s **40(a)** **cannot be attracted**.

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15) Payment to non-resident umpires and match referees for games played in India – Is it subject to TDS u/s 194E?

**Indcom**

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**Ans.** Umpires/Refrees participate in games but they are **not the sportsperson**. Hence, no TDS u/s 194E. However, since it is payment to non resident, TDS u/s 195 is applicable.

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- 16) Would income from letting out of properties by a company, whose main object as per its memorandum of association is to acquire and let out properties, be taxable as its business income or income from house property?

**Chennai Properties and Investments Ltd.**

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**Ans.** Since **letting out** of property is the **business** of assessee, rent income will be taxable under the head "**Income from Business**". However, as per Finance Act (No. 2), 2024, rental income will be taxable a IFHP. It cannot be classified as PGBP.

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- 17) Assessee transferred a long term capital asset and he invested the net consideration in the purchase of a new house in the name of his wife. Is he entitled to exemption u/s 54F?

**Kamal Wahal | Ravinder Kumar Arora | Gurnam Singh**

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**Ans.** For claiming exemption u/s 54, 54B,.....etc, the investment in the new asset should be made **by the assessee** (whether the new asset is in his own name or in the name of wife, mother, son, joint name etc.)

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- 18) Assessee – started new project – made fresh issue of shares at premium – claimed dedn for preliminary expenses as 5% of Capital Employed [incl. amt. of share premium]. Is it right?

**Berger Paints India Ltd.**

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**Ans.** As per section 35D, Capital Employed =  
**Amt of Share Capital + Debentures + Long Term loans.**  
This definition **does not include share premium** amount. It includes share capital at face value. Hence, the claim of assessee is wrong. Accordingly, the limit of **5% shall be calculated on capital employed [excluding share premium amount]**.

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- 19) Assessee's agricultural land was compulsorily acquired by State Govt. – Assessee negotiated for additional compensation which was granted. Since, the additional

compensation was negotiated and allowed to him, can it be treated as a voluntary sale denying exemption u/s 10(37)?

**Balakrishnan**

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**Ans.** Just because the compensation was negotiated by the assessee, the nature of the transaction **cannot become a voluntary sale**. As the process initiated by State Govt. was a **compulsory acquisition** under Land Acquisition Act, it will remain the same even if the compensation is negotiated later [a person has right to negotiate under Right to fair compensation Act]. Hence, the capital gains shall be exempt u/s 10(37).

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20) Assessee's agricultural land was compulsorily acquired under Land Acquisition Act, 1894 – Initial compensation was fixed at say 1,00,000. Assessee challenged this compensation in the court – After 10 yrs., the court ordered for an additional compensation of Rs. 5 lakhs along with interest of Rs. 20 lakhs for 10 yrs. Is Interest taxable as Capital Gains or IFOS?

**Movaliya Bhikhubhai Balabhai**

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**Ans.** Under Land Acquisition Act, 1894, there are two sections for interest on compensation. One is **sec. 28** which allows interest for **late determination** of compensation and the other is under **sec. 34** which allows interest on **late payment** of compensation after it is determined. As per the judgement of HC, interest on **late determination** is towards the value of asset and its in the nature of **capital gains** and interest on **late payment** is taxable as **IFOS** subject to 50% dedn. In the given case, the interest is for late determination which is in the nature of CG [Ex. u/s 10(37)].

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21) Assessee filed return showing business income of Rs.100 cr [claiming dedn u/s 80IB @30% i.e. 30 cr]. During scrutiny, the AO disallowed an expense of Rs.20cr. and increased the returned income to 120 cr. Is the assessee entitled to

deduction u/s 80IB on increased amount of Rs. 120 cr. or the original amt of 100 cr ?

**Sunil Vishwambarnath Tiwari**

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**Ans.** As per the circular of CBDT, if a business expenditure is disallowed u/s 40(a), 40A(3), 43B etc. then **deduction u/c VIA** should be allowed with reference to the **increased income**.

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22) Assessee made public issue – Amount received on share application was deposited in bank till the allotment of shares was completed – Assessee earned interest on such deposit – Is the interest earned taxable as IFOS?

**Sree Rama Multi Tech Ltd.**

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**Ans.** Normally, any surplus money deposited in bank for the purpose of earning interest income is taxable as IFOS. However, in this case, share application money was not deposited in bank for earning interest income. It was deposited in the bank as it was a **legal requirement** to deposit share application money till the allotment of shares is completed. Interest accrued on such deposit is merely incidental. Since interest accrued is **incidental to public issue**, it should be **deducted from the public issue expenses** which is capital in nature [**Not taxable as IFOS**].

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23) Assessee engaged in business of manufacturing fertilizers. Sale price fixed by Govt. and many times, such price is below cost of prodn. Hence, to compensate the manufacturer, Govt gives fertilizer subsidy. Sometimes due to cash crunch, the Govt. issues fertilizer bonds instead of giving cash subsidy. These bonds are saleable in market. The assessee sold such bonds & incurred loss. Is this loss capital loss or business loss?

**Gujarat State Fertilizers and Chemicals Ltd.**

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**Ans.** Since **subsidy** received from Govt is taxable under the head "**Income from business**", fertilizer bonds received in

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place of cash subsidy shall also be taxable under the head Income from business and any loss on subsequent sale of such bonds is allowed as **business loss**.

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24) Interest on loan from PFI/SFC/SIIC/SB/NBFC was paid by issue of debentures. Is it allowed or not?

**M.M. Aqua Technologies Ltd.**

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**Ans.** As per the judgment of **Supreme Court** in the case of **M.M.Aqua Technologies Ltd.**, payment of interest on loan taken from PFI/SFC/SIIC/SB/NBFC by issue of debentures is **allowed** as deduction. However, this judgment is not applicable now in view of **amendment** made by **Finance Act, 2022**. As per this amendment, if interest on any such loan is **converted into a loan** or borrowing or advance **or debenture or any other instrument** by which the liability to pay is deferred to a future date, the interest so converted and not "actually paid" **shall not be deemed as actual payment**, and hence **would not be allowed as deduction**.

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25) Receipt of bonus shares – Is it taxable as Gift u/s 56(2)(x)

**Dr. Ranjan Pai**

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**Ans.** Although bonus shares are received without any consideration, it **cannot be treated as gift** because when company issues bonus shares, the **market value** of shares **goes down (indirectly, the shareholder has to bear the cost)**.

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26) Is payment made by a Bank for services rendered by NFS [National Financial Switch] treated as commission and subject to TDS u/s 194H?

**Corporation Bank**

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**Ans.** The High Court observed that the relationship between the bank and National Financial Switch (NFS) is not of an

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agency but that of **two independent parties** on principal to principal basis.

Hence, the High Court held that the provisions of **Sec.194H** are **not attracted** on payment made by Corporation Bank.

Note: NFS is an ATM network which links together the country's ATMs in a single network [allowing us to withdraw money from any ATM].

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- 27) Assessee wanted to vacate leased premises. The lessor disputed i.e. he didn't allow the assessee to vacate the premises. However, the assessee vacated the premises by foregoing the security deposit. Can foregoing of security deposit be considered as revenue expenditure?

**Mahle Anand Filter Systems Pvt. Ltd. (SC)**

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**Ans.** Since the character of security deposit is capital in nature, foregoing of such deposit is a **loss of capital nature**. It cannot be considered as a revenue expenditure.

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- 28) Air India had taken an engine on lease from a foreign company. The foreign company does not have PAN in India. The assessee deducted TDS @10% on lease rental as per the provisions under DTAA between India and foreign country. Can provisions of sec. 206AA which prescribe higher rate of TDS in case of non-furnishing of PAN, override the DTAA that specify a lower rate of tax?

**Air India Ltd.**

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**Ans.** As per **section 90(2)**, an assessee is governed by:

- Provisions of **DTAA** or
- Provisions of **Income Tax Act**

Whichever is **beneficial** to the assessee

In the given case, the provisions of DTAA which prescribe for tax rate of 10% are beneficial to the assessee. Hence, it shall override section 206AA which provides for TDS @20%. (Decided by HC – upheld by SC)

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- 29) Assessee received interest income [net of TDS]. However, the deductor failed to deposit the TDS with Government. Hence, it was not reflected in Form 26AS. Can assessee get the credit of TDS in such case?

**BDR Finvest Pvt. Ltd.**

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**Ans.** Section 199 allows the credit of tax deducted at source.

As per section 205, once tax is deducted at source, the assessee cannot be called upon to pay the tax.

In view of these provisions, the assessee is **entitled to the credit** of TDS **even if the same is not deposited**.

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- 30) Assessee (GoDaddy.Com, a Foreign company) having no PE in India – is an accredited registrar for Internet Corporation for Assigned Names and Numbers (ICANN). It provides various services like domain name registration, website design etc.

Can fees charged by assessee for domain name registration from customers in India be treated as royalty and taxable in India?

**GoDaddy.Com LLC**

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**Ans.** As per section 9, **royalty** means consideration for **transfer of rights** in respect of a patent, invention, model, design, secret formula or process or trademark or similar property.

By providing service of **domain name registration**, the assessee **is not transferring any right to use the name** to the customers. Domain name is **not the property of assessee**. Role of assessee is to register the domain name chosen by its customers. Hence, the charges for domain name registration **cannot be treated as royalty**. It shall be treated as normal **business profits** and it **cannot be taxed in India in absence of PE**.

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31) Can the assessee claim the credit for foreign tax if he fails to submit Form 67 on time?

**Duraiswamy Kumaraswamy**

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**Ans.** As per **Rule 128**, credit of foreign tax is allowed on furnishing specified documents which includes **Form 67**. Earlier Form 67 was required to be filed upto the due date of filing the return. Now, it is required to be filed up to end of A.Y. Credit of foreign tax shall be denied if Form 67 is not filed. However, such **credit cannot be denied if there is delay in filing Form 67**.

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## ADDITIONAL CASE LAWS

- 1) A Non-resident received consideration for software embedded in the hardware [the software having no independent existence]. It cannot be treated as royalty; its consideration for sale of goods [If royalty then taxable for NR u/s 9 but if sale of goods then not taxable as there is no PE]. In this case, its sale of goods because hardware is “goods” [software in it, has no independent existence]. However, if a software is independently provided then it can be treated as royalty.  
**[Alcatel Lucent Canada].**
- 2) Exp. on Glow sign boards displayed at dealer outlets – Revenue expenditure – Allowed u/s **37(1)** because it has a **shorter life** & its needs to be replaced frequently.  
**[Orient Ceramics and Industries Ltd.]**
- 3) Assessee engaged in leasing vehicles – Vehicles leased out were registered in the name of lessee under Motor Vehicles Act, 1988 but assessee reserved all the rights of ownership in the lease agreement. Since assessee enjoyed all the ownership rights – eligible for depreciation.  
**[ICDS Ltd.]**
- 4) Computers – 40% depn. – Even computer accessories & peripherals like printer, scanner etc. – 40% depn.  
**[BSES Yamuna Powers Ltd.]**
- 5) Once the partners remuneration is within the limit prescribed under section 40(b), it will be allowed even if it is excessive as per section 40A(2) because section 40(b) is a specific provision & specific provision shall prevail over general section 40A(2).  
**[Great City Manufacturing Co.]**
- 6) Referring patients for commission is against the code of conduct of medical profession. It is prohibited by law. Hence, the commission paid by diagnostic center to doctors is an illegal expense – not allowed.  
**[Kap Scan and Diagnostic Centre P. Ltd.]**
- 7) Expenses on issue of convertible debentures is revenue in nature. Hence, allowed.  
**[ITC Hotels Ltd.]**
- 8) Assessee paid some amount to Police and Gundas to stay away from it's theatre and not to cause disturbance in the theatre – Illegal (like bribe) – Not allowed. **[Neelavathi & Others]**

- 9) Assessee [construction company] – violated building bye-laws – construction not as per municipal law – paid Regularization fees – Breach of Law – Not Allowed.  
**[Millennia Developers P. Ltd.]**
- 10) Advance given for purchase of Land/Bldg/P&M amounts to utilization of capital gains – eligible for exemption u/s 54G.  
**[Fibre Boards P. Ltd.]**
- 11) Section 54EC – Assessee invested in bonds within 6 months but allotment after 6 months – Exemption allowed.  
**[Hindustan Unilever Ltd.]**
- 12) If a closely held company's substantial business is lending money then no deemed dividend u/s 2(22)(e).  
**[Parle Plastics Ltd.]**
- 13) A shareholder helped the closely held company – in return, the company gave loan to such shareholder – not a deemed dividend u/s 2(22)(e) because loan is in consideration for the help.  
**[Pradip Kumar Malhotra]**
- 14) Loss or unabsorbed depn of a business eligible for dedn u/s 80IA, 80IB etc. can be set-off against profits of non-eligible business.  
**[Swarnagiri Wire Insulations Pvt. Ltd.]**  
However, loss from business specified u/s 35AD cannot be set-off against non-specified business.
- 15) In case of manufacturing business in backward areas, deduction of 30% of the profits is allowed u/s 80IB. Here, profit means profits from manufacturing activity. Transport subsidy, interest subsidy and power subsidy received by the assessee is received to reduce the manufacturing cost. Hence, these subsidies are part of manufacturing profits – Eligible for deduction u/s 80IB.  
**[Meghalaya Steels Ltd.]**
- 16) Provisions of Advance tax applies to a company whether it pays normal tax or MAT and if there is default then assessee is liable to pay interest u/s 234B & C [Interest will be calculated either on normal tax or MAT, whichever is higher] **[Rolta India Ltd.]**
- 17) Income of Indian shipping company is computed on presumptive basis as per tonnage tax scheme. This scheme is applicable even for slot charter [slot charter means hiring a slot in a ship owned by some other person]  
**[Trans Asian Shipping Services P. Ltd.]**

- 18) Tips received by hotel company from its customers and distributed to the employees is not income from salaries for the employees; it is IFOS [because it is outside the contract of employment]  
**[ITC Ltd.]**
- 19) Ownership of some amount of money was in litigation. Hence, the Registrar General of the High Court kept the funds in its custody until the matter is decided by the Court. These funds were kept in bank in a fixed deposit a/c. On such Bank FD interest, the bank is not liable to deduct TDS because the FD is held in the name of registrar who is just the custodian of funds and not the beneficial owner.  
**[UCO Bank]**
- 20) Payment made by mobile operators for the use of telecom towers is in the nature of Rent of Plant, Machinery & Equipment. Hence, TDS u/s 194 - I @2%.  
**[Indus Towers Ltd.]**
- 21) There is TCS on sale of scrap and scrap means items which are not usable as such due to breakage, cutting up etc. Hence, if the items sold can be used as it is in the same condition then it is not sale of scrap – No TCS.  
**[Priya Blue Industries]**
- 22) An assessee cannot revise the particulars filed in the original return by filing a revised statement of income. Revised return is to be filed [not a revised statement]  
**[Orissa Rural Hsg. Development Corp. Ltd]**
- 23) Section 206AA [deducting TDS @20%, if PAN is not furnished] – Not applicable if the receiver does not have PAN because his total income is below basic exemption.  
**[Kowsalya Bai]**
- 24) Assessee can make additional claim [which was not claimed in the return] before appellate authority without a revised return. However, additional claim cannot be made before AO without a revised return. **[Pruthvi Brokers & Shareholders]**
- 25) ITAT cannot review its order or recall its order entirely.  
**[Reliance Telecom Ltd./Reliance Communications Ltd.]**

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# FUNDAMENTALS OF BEPS

The OECD/G20 project on BEPS provides for solutions to problems in international taxation arising due to difference in domestic laws of different countries. These solutions are called Action Plans. There are 15 Action Plans published by OECD for BEPS issues.

## Action Plan 1:

### CHALLENGES OF DIGITAL ECONOMY

#### → **Issues:**

In traditional economy [non-digital], to produce income in a particular country, a person needs to physically locate a place of business [PE] in that country. Accordingly, income produced from such physical location [PE] can be taxed in such country. Hence, no challenge for tax authorities.

However, in digital economy, **business doesn't occur at a physical location**; it takes place in cyberspace. Hence, the tax authorities of different countries face **challenges in taxing profits of digital business** [as the business runs **without PE**].

#### → **Recommendations:**

- 1) Modifying the existing PE rule such that a **PE** shall also include **substantial digital presence** in a country [if an enterprise is engaged in digital activities].
- 2) Introducing the concept of **virtual PE** if an enterprise maintains a website on a server of a physical enterprise and carries on business through such website.
- 3) Imposing **Equalisation Levy** on certain digital transactions.

#### → **Action taken by India:**

- 1) Chapter VIII [Finance Act, 2016] on **EQUALISATION LEVY** was introduced in Indian Income Tax Law which provides for levy of **6%** on the consideration for online advertisement or other specified services received/receivable by a NR having no PE in India.

- 2) Finance Act, 2020 has expanded the scope of equalization levy by introducing **2%** levy on consideration for online sale of goods and services by a non-resident E-Commerce operator [having no PE in India].
- 3) Introduction of the concept of **SIGNIFICANT ECONOMIC PRESENCE** in the definition of business connection u/s 9 which enables Indian Tax Authorities to tax **non-residents** if payment arising from transactions of NR in India **exceeds 2 crores** or if such NR engages and interacts with **minimum 3 lakhs users** in India.

## Action Plan 2:

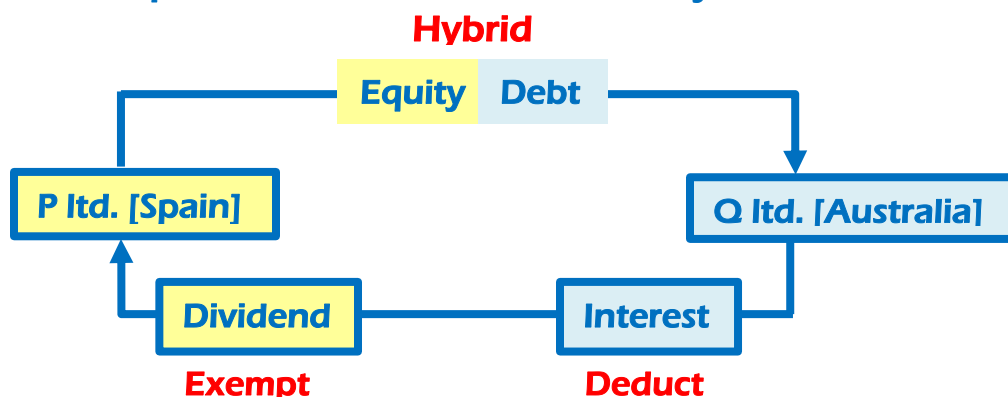
### HYBRID MISMATCH ARRANGEMENTS

There are arrangements across the globe which make use of hybrid instrument to achieve **double non-taxation**.

#### → **Issue in Hybrid instrument:**

Hybrid instrument means an instrument which is recognized as **debt** in one country and **equity** in other country.

#### Example to understand BEPS issue in hybrid instrument:



In the above example, P Ltd. has invested in Q Ltd through an instrument which qualifies as Equity in Spain and Debt in Australia. Interest paid by Q Ltd. is deducted as expense. Dividend received by P Ltd. is exempt. Hence, there is double non-taxation.

→ **Recommendation:**

There should be a rule **denying exemption of dividend** income from hybrid instruments.

→ **Action Plan 3:**

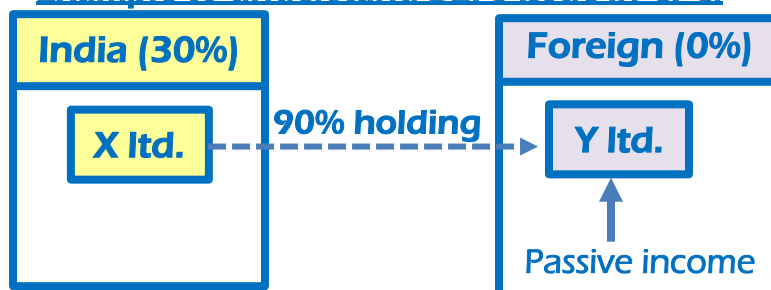
**CONTROLLED FOREIGN COMPANY RULES**

→ **Issue:**

A company can **shift** its investment / **passive income** to countries having **no tax** or **low tax**. A company intending to earn passive income shall:

- 1) First, **form a subsidiary company** in a country where there is no tax/low tax. Such subsidiary is called CFC [Controlled Foreign Company]
- 2) Then the foreign **subsidiary** shall **make investment** in debt or equity or properties.
- 3) The **income** from debt/equity/properties will arise **in the name of subsidiary** on which either there is no tax/low tax.
- 4) The **parent company** can get this income from subsidiary by way of **dividend** from subsidiary and this dividend will be taxable for the parent company. However, the tax on dividend can be **postponed** by taking the dividend in future or it can be avoided either by not taking the dividend or taking it in the form of loan. Hence, tax base of passive income is shifted from parent country to subsidiary country.

**Example to understand BEPS issue in CFC:**



X Ltd. wants to invest in foreign country and earn passive income like interest and rent but instead of investing in its own name, X Ltd has formed a subsidiary company [Y Ltd.] in a foreign country by

investing in its equity. The Equity money is used by foreign company [Y Ltd.] to invest in securities and properties to earn interest and rent. Now, income by way of interest and rent will be earned by foreign company [Y Ltd.] where there is no tax. X Ltd. will get this income from foreign company [Y Ltd.] by way of dividend income which can be postponed and tax can be deferred.

→ **Recommendation:**

- 1) **Taxing** income of CFC in the parent country **even if not distributed**;
- 2) Providing **relief when** the dividend is **actually distributed** out of CFC income or when the taxpayer disposes off its interest in CFC;

→ **Action taken by India**

At present, there are **no CFC rules in India** [though it was proposed by Direct Tax Code].



**Action Plan 4:**



**INTEREST DEDUCTION**

→ **Issue:**

Multinational companies are able to **erode** their **tax base** i.e. they are able to reduce their taxable profits with **interest expense** by inter-group loans [directly or indirectly]. This can be done when a group company [located in high tax country] is mainly financed by debt. This is known as **Thin Capitalisation**.

→ **Recommendation:**

**Linking** interest deduction of an entity to its economic activity [i.e. **EBITDA**] by using a fixed ratio rule.

→ **Action taken by India:**

**Section 94B** has been introduced in the Income Tax Act which limits interest deduction to 30% of EBITDA if interest expense is more than 1 crore.

### Action Plan 5:

#### CONTROL HARMFUL PRACTICES

→ **Issue:**

Companies **locate** their **income** in **low/no tax jurisdiction** whereas the **activity** generating such income is **substantially** carried out in **high tax jurisdiction**.

**Example:** A company whose **intellectual property** is **developed** in a country having **high tax** rate may **register** it in the name of its subsidiary company which is located in a country having **no tax** so that royalty is earned by its subsidiary free of tax. Hence, the tax base of the country [where the intellectual property was developed] is eroded.

→ **Recommendation:**

Introducing **preferential tax regime** in the country which owns the income in substance.

→ **Action taken by India**

India has introduced **section 115BBF** in Income Tax Act which provides for a **preferential tax regime on royalty** [i.e. Royalty from patents developed in India shall be taxed at a concessional rate of **10%**]. This will incentivize Indian residents to locate their royalty income in India [so that royalty from patents **developed in India** should remain in India].

### Action Plan 6:

#### PREVENTING TREATY ABUSE

→ **Issue:**

Sometimes, a DTAA provides for beneficial tax treatment on certain incomes and such beneficial tax treatment is meant only for the residents of contracting state. To avail such benefit, if a person who is **not a resident** of the contracting states becomes resident by incorporating a **shell company** then it leads to abuse/misuse of treaty.

Example:

Assume there is a **DTAA** between India and a particular foreign country "M" [where there is no CG tax].

As per the provisions of this DTAA, capital gains will be **exempted** in the country of **source** and will be **taxed** in the country of **residence**.

Now, if a person [resident of foreign country "M"] transfers a capital asset located in India then such CG is exempt in India as per DTAA and also exempt in foreign country "M" as there is no CG tax in this country. This is a **treaty benefit**. To take advantage of this treaty benefit, a person located in some other foreign country say country "N" might incorporate a **shell company** in country "M" with a purpose to become resident of country "M" and take benefit of the treaty between India and country "M". This is known as **treaty shopping** or misuse/abuse of treaty.

→ **Recommendations:**

- 1) Including a **clear statement** in the title and preamble of DTAA that "The intention of the contracting states is to eliminate double taxation without creating opportunities for tax evasion and avoidance through treaty shopping"
- 2) Introducing a **Limitation of Benefit clause [LOB]** in the treaty wherever the treaty provides for a benefit stating that "The benefit is meant for genuine residents and not for the shell companies".
- 3) Introducing **Principal Purpose Test Rule [PPT]** i.e. providing for general anti-avoidance rule by looking in to the principal purpose of an arrangement [GAAR].

→ **Action taken by India:**

India has introduced a **LOB clause in India-Mauritius Treaty**.

Treaty provides that capital gains on transfer of shares of an Indian company [purchased on/after 1/4/2017] arising out of transfer between 1/4/2017 and 31/3/2019 shall be taxable in India at rate which is half of the normal tax rate in India.

The LOB clause states that:

A shell company claiming to be resident of contracting state shall not be entitled to this benefit. A shell company means a resident

with negligible or no business operations i.e. whose operating expense is less than 15,00,000 Mauritian Rupees in the 12 months immediately preceding the date of transfer.

A similar clause has been introduced in **India-Singapore Treaty**.

## Action Plan 7:

### ARTIFICIAL AVOIDANCE OF PE

A Tax Treaty generally provides that business profits of a foreign enterprise shall be taxable in a country only if such enterprise carries on business in such country through a PE. The definition of PE included in the tax treaties is therefore crucial.

#### → **Issue:**

A foreign entity may artificially avoid the status of PE. This can be done in various ways:

- 1) Carrying on business in a country by **fragmenting** business operation in to small operations of preparatory/auxiliary character [overall effect of which is substantially carrying on business in such country];
- 2) Having an **agent** in the country for selling goods and **not giving authority to conclude** contracts in the name of principal [whereas the agent **plays** the **main role** leading to conclusion of contracts and the contract is **concluded by the principal** without material changes];
- 3) Having a **construction project** in a country which actually last for more than 12 months but the contract is **split** in to **two contracts** each lasting for a period **less than 12 month**.

#### → **Recommendations:**

- 1) Modifying and **strengthening** the **definition** of PE in the treaties like having **anti-fragmentation rules** in treaty, modifying the criteria of **agency PE** etc.
- 2) Introducing **Principal Purpose Test Rule [PPT]** which denies the benefit of treaty if the intention is to obtain tax benefit.

→ **Action taken by India:**

India has modified its treaties with various countries in order to include **anti-fragmentation rule** and expand the scope of **agency PE** [DAPE – Dependent Agent Permanent Establishment].

→ **Action Plan 8,9,10:**

**ALIGNING TRANSFER PRICING  
OUTCOMES WITH VALUE CREATION**

→ **Issue:**

- 1) Profit should be allocated to the country where value is created. However, MNCs allocate less profits to the country where the tax rate is high and high profits to the country where there is no tax/low tax. Hence, the issue is that the **transfer prices** are **not in line with value creation** and misallocation of the profits generated by valuable intangibles is a serious BEPS issue.
- 2) **Low value-adding intra-group services** i.e. back-office services are **overvalued**.

→ **Recommendations:**

- 1) If an intangible is jointly created then allocation of functions performed, assets employed and risk undertaken as per the **contract should not be relied upon. Actual conduct** of the parties **must be seen**.
- 2) **Low value-adding intra-group services** like back-office services may be intangible but it does not require use of unique intangibles and does not assume significant risk. These are support services; not forming part of the core business of MNC group. Hence, value of such intangible should be the **actual cost-plus nominal mark-up**.

## Action Plan 11:

### MEASURING & MONITORING BEPS

#### → Issue:

BEPS has adverse fiscal and economic impacts like:

- Loss of **Tax Revenue**,
- Mis-directing **Foreign Direct Investments**,
- Aggravating the corporate **Debt-bias** and
- Reducing the financing of needed **Public infrastructure**.

#### → Recommendations:

It is recommended that a country should measure and monitor BEPS although measuring the scale of BEPS is challenging because of the complexity of BEPS and serious data limitations.

Following are the **six indicators** which indicate existence of BEPS in a country:

- 1) **Profit rates** of MNC in low-tax countries is higher than the average worldwide profit rate of the whole group;
- 2) **Tax rates** effectively paid by large MNCs are lower than that of similar domestic enterprises;
- 3) **Foreign direct investment** is increasingly concentrated;
- 4) **Separation** of taxable profits from the location where value is created [particularly in case of intangible assets];
- 5) **Royalties** is received in low-tax countries;
- 6) **Debt** is more concentrated in high-tax countries.

## Action Plan 12:

### DISCLOSURE OF AGGRESSIVE TAX PLANNING

→ **Issue:**

- 1) **Lack of information** on aggressive tax planning strategies.
- 2) **Delayed response** to aggressive tax planning strategies.

→ **Recommendations:**

- 1) It is recommended to introduce **mandatory disclosure rules** so that the tax authorities can obtain **early information** on potentially aggressive or abusive tax planning schemes.
- 2) **Design principles** and Objectives of such rules should be:
  - Clear and easy to **Understand**;
  - Ensuring effective **Use of information** collected;
  - Additional **Compliance cost** to tax payers should balance with the benefits obtained by tax authorities;
  - Effective in achieving their **Objectives**;
  - **Flexibility** and dynamism [which allows the tax authorities to respond to new risks and carve-out obsolete risks].

## Action Plan 13:

### TRANSFER PRICING DOCUMENTATION

→ **Issue:**

**Lack of transparency** in the operations of MNE and **lack of data** with the tax authorities makes it difficult to carry out transfer pricing assessments.

→ **Recommendations:**

This action plan recommends **revised standards** for transfer pricing documentation including:

- A Local file
- A Master file and
- A Country by Country Report

→ **Action taken by India:**

India has introduced the provisions of filing **Master File** and **CBC Report** as per the recommendation of OECD.

## Action Plan 14:

### MAKING DISPUTE RESOLUTION EFFECTIVE

#### → **Issue:**

Measures introduced to control BEPS may result in unnecessary **uncertainty** for a compliant tax payer and a genuine person may have to suffer due to strict law.

#### → **Recommendations:**

- Improved dispute resolution mechanisms.
- **Consistent** and proper **implementation** of tax treaties.
- Effective and **timely resolution** of disputes.

## Action Plan 15:

### DEVELOPING A MULTILATERAL INSTRUMENT

#### → **Issue:**

Implementation of BEPS work on anti-avoidance may require **amendment in the tax treaties** and since a country has many treaties, it will require **lot of time and cost** to amend each treaty separately. Example: If Action plan 6 on preventing treaty abuse is to be implemented by India then necessary amendment may be required in many treaties.

#### → **Recommendations:**

It is recommended to develop Multi-Lateral Instrument which will enable countries to swiftly modify their tax treaties to include several anti-tax avoidance measures developed in the course of the BEPS work. Amendment in MLI will **automatically amend all the treaties**. Tax treaties that are modified by MLI are called **Covered Tax Agreements**.

Example: India, USA and Singapore are signatories to MLI. Before the MLI mechanism, suppose all three countries are proposing to amend a specific clause in the DTAA's between each country. Each of the DTAA [India-US, India-Singapore and USA-Singapore] needs to be amended separately, leading to lot of time and cost involved. Post the signing of MLI, suppose the three countries are proposing to amend a specific clause, all the agreements are amended automatically.

→ **Action taken by India:**

On 7<sup>th</sup> June, 2017, OECD hosted a signing ceremony at Paris for Multilateral Convention [to implement treaty related measures to prevent BEPS]. The Honorable Finance Minister Shri Arun Jaitley signed the Multilateral Convention on behalf of India.

India has modified the definition of PE in its treaties by including **Anti-fragmentation rule** and expanding the scope of **Agency PE** with the help of **Multilateral Convention**. Hence, by modifying MLI, all the treaties of India covered by such MLI are automatically amended.

### **IMPORTANT POINTS ON MLI**

**1) Covered Tax Agreement:**

It means a DTAA between two countries with respect to which **both the countries have notified** to the Depository as a listed agreement under the MLI.

Eg: Out of 93 Indian DTAA's, India has notified only 70 DTAA's. Out of these 70 countries, 60 countries have also notified DTAA with India to be covered by MLI. Hence, out of 93 Indian DTAA's, only 60 DTAA's [where India as well other countries have notified] will be covered by MLI. These 60 DTAA's are known as Covered Tax Agreements.

**2) Mandatory Minimum Standards:**

The MLI gives flexibility to the parties through compatibility and reservation clause [where countries have choice to adopt some amendments made in MLI and choice to not adopt some amendments]. However, to ensure there is some consistency, the countries have to incorporate some mandatory amendments.

These are known as mandatory minimum standard provisions in the MLI. The four minimum standards prescribed under the BEPS action plans are:

Action 5 - Countering Harmful Tax Practices

Action 6 - Treaty abuse prevention mechanism

Action 13 - Country by Country Reporting

Action 14 - Effective Dispute Resolution Mechanism

Hence, any amendment in MLI to give effect to above action plans are mandatory to adopt.

**3) Entry in force date:**

The MLI will apply only to those countries which have:

- Signed the MLI;
- Ratified or approved the MLI under the domestic law and
- Deposited such ratified instrument with the OECD depository.

The MLI enters into force on the **first day of the month after** the expiry of **3 months** from the end of the month in which ratified instrument is deposited.

Amendments in MLI will become effective only **both the countries** of DTAA have **deposited** the ratified instrument.

**Example:** India – Singapore DTAA:

|                                | India                      | Singapore                   |
|--------------------------------|----------------------------|-----------------------------|
| Signing Date                   | 4 <sup>th</sup> May, 2020  | 16 <sup>th</sup> June, 2020 |
| Ratification date              | 12 <sup>th</sup> Jun, 2020 | 14 <sup>th</sup> July, 2020 |
| Deposit of Ratified Instrument | 23 <sup>th</sup> Jun, 2020 | 29 <sup>th</sup> July, 2020 |
| Period of 3 mnths              | July/Aug/Sept              | Aug/Sept/Oct                |
| <b>Entry in force date</b>     | <b>Oct. 1, 2020</b>        | <b>Nov. 1, 2020</b>         |

**4) Effective date:**

For some provisions of DTAA, MLI becomes effective from **1<sup>st</sup> January** of the **year following** the entry in force date [whichever is later of the above 2 “entry in force” date i.e. Nov. 1, 2020] and for some provisions of DTAA, MLI becomes effective **after 6 months** from the entry in force date.

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## MODEL TAX CONVENTIONS

Model tax convention means model adopted by different countries for entering in to a **TAX TREATY** i.e. **DTAA**. There are 3 models used across the world for entering in to DTAA as follows:

### OECD Model

Model developed by  
Organization for Economic Co-operation and Development  
Mostly adopted for treaties between **developed** countries.  
It gives importance to **resident-based** taxation. It has **32** Articles.

### UN Model

Model developed by United Nations  
Adopted for treaties between developed & **developing** countries.  
It gives importance to **source-based** taxation. It has **31** Articles.

### US Model

Model developed by United States  
This is adopted by **United States**. It has **30** Articles.

These models act as **guidelines** which a country follows while entering in to a DTAA. These are **draft** treaties.  
These are **not legally binding**.

**ARTICLE 4:**

**RESIDENT**

This article defines “Resident”. This article is important because the benefit of treaty can be taken only by Resident of Contracting State.

If an Individual is a Resident of both the Contracting States then a **tie-breaker rule** is adopted as follows: **[P.V.HN C]**

Country where he has **Permanent home** = Country of residence

If this doesn't work then

Country where he has **Vital Interest** = Country of residence

[i.e. the country where his personal/economic relations are closer]

If this doesn't work then

Country of **Habitual Abode** = Country of residence

[i.e. the state where maximum time is spent]

If this doesn't work then

Country of **Nationality** = Country of residence

[i.e. the country where he has official right to belong]

If this doesn't work then

**Competent Authorities** will decide the place of residence by Mutual Agreement Procedures.

## ARTICLE 5:

## PERMANENT ESTABLISHMENT

This article is important because business profits of an enterprise can be taxed by the Source Country only if such enterprise has PE in the source country. Hence, meaning of PE is important.

As per this Article, PE:

### Means:

- A **Fixed Place** of Business through which business of an enterprise is carried on wholly or partly

### Includes:

- A Building Site or Construction or Installation Project [only if it lasts for > **12 mnths**]

#### As per UN Model:

- The above lasting period is > **6 months** and
- PE also includes **supervisory** activities in connection with above project [if it lasts for > 6 months]
- PE also includes **furnishing services** by an enterprise through employees etc. if such activities continue for a period or periods aggregating >**183 days** in a period of 12 months.

### Excludes:

A Place **solely** for **SDDPPIO**

- **S**torage
- **D**isplay
- **D**elivery [*not excluded in UN Model*]
- **P**rocessing
- **P**urchasing goods
- Collecting **I**nformation
- Any **O**ther activity of preparatory/auxiliary character

### The term PE also includes an AGENCY PE:

As per above definition, there must be a fixed place of business. However, in some cases, even if there is no fixed place of business, there shall be a PE if an enterprise has an Agent in the Source Country provided all the following conditions are satisfied [**DCN**]

## TAXING RIGHTS

For all the incomes, **country of residence** [i.e. the country where person earning the income resides] has the **primary** or **fundamental right** to tax. However, the right of **source country** [i.e. the country where income accrues/arises] **depends upon** the **type of income** and the type of **Model** adopted while entering in to DTAA. This is discussed below:

Type of Income	OECD Model	UN Model
<b>Article 7:</b> <b>Business Profits</b>	Source country has <b>full right</b> to tax <b>if there is PE</b> in Source country. Source country can tax <b>only profits from PE</b>	Source country has <b>full right</b> to tax <b>if there is PE</b> in Source country. Source country can tax <b>profits from PE as well as profits from direct sale</b> of same/similar goods [ <b>Force of Attraction – Note 1</b> ]
<b>Article 14:</b> <b>Independent Personal Services</b> Professional services	<b>No such article</b> in OECD model. Such income is treated as business profits	<b>Same as Article 7</b> [only difference is that this article uses the term <b>Fixed Base</b> instead of PE].
<b>Article 11:</b> <b>Interest income</b>	Source country has <b>limited right</b> to tax [ <b>Max. 10%</b> ]	Source country has <b>limited right</b> to tax [ <b>Tax @ __%, to be agreed</b> ]
<b>Article 12:</b> <b>Royalty income</b>	Source country has <b>no right</b> to tax	Source country has <b>limited right</b> to tax [ <b>Tax @ __%, to be agreed</b> ]
<b>Article 12A:</b> <b>Fees for Technical Services</b>	<b>Not there</b> in OECD model. Hence, it is either treated as business profits or other income.	Source country has <b>limited right</b> to tax [ <b>Tax @ __%, to be agreed</b> ]
<b>Article 12B:</b> <b>Automated Digital Services</b>	<b>Not there</b> in OECD model. Hence, it is either treated as business profits or other income.	Source country has <b>limited right</b> to tax [ <b>Tax @ __%, to be agreed</b> ]
<b>Article 13:</b> <b>Capital Gains</b>	Source country has <b>full right</b> to tax if capital gains is from <b>prescribed assets</b> .	Source country has <b>full right</b> to tax if capital gains is from <b>prescribed assets</b> .
<b>Article 21:</b> <b>Other Income</b>	Source Country has <b>no Right</b> to tax other income.	Source Country has <b>full Right</b> to tax other income.

**Note 1: FORCE OF ATTRACTION [FOA] RULE in UN Model:**

This rule implies that once an enterprise has PE in source country for a particular activity then such country has right to tax **all the profits** of such enterprise **earned in such country** from such activity [**whether through PE or not**]

**Example:**

A NR has a showroom of cars in India. It sells cars through showroom [i.e. PE] and also directly to a bulk customer in India. Under FOA principle, profits arising from direct sale to customer is also deemed as profit attributed to PE. Hence, [profits from sale of cars through showroom + profits from direct sale to customers] is taxable in India.

**Note 2: Definition of INTEREST:**

The term interest means income from debt claims [loan etc.], Govt. Securities, bonds and debentures.

**Including** Premiums and Prizes attached to such securities and **Excluding** Penalty for late payment.

**Note 3: Definition of ROYALTY:**

The term Royalty means consideration for the use of:

- 1) Copyright of literary, artistic or scientific work including cinematograph films or films/tapes used for Radio/T.V.
- 2) Patent, Trademark, Design or Model
- 3) Plan, Secret formula or Process
- 4) Industrial, Commercial or Scientific equipment

Only in UN Model

**Note 4: Definition of TECHNICAL SERVICES:**

Fees for Technical Services means payment for **Managerial, Technical** or **Consultancy** services. It excludes technical services for **personal** use, services as **employee** and services as a **teacher**

**Note 5: Definition of PROFESSIONAL SERVICES:**

Professional services = LAST PA<sub>2</sub>DLE

Literary, **A**rtistic, **S**cientific, **T**eaching or Educational activities and activities of **P**hysicians, **A**rchitects, **A**ccountants, **D**entists, **L**awyers and **E**ngineers.

**Note 6: Definition of AUTOMATED DIGITAL SERVICES:**

It means any service provided on **internet** or other electronic network requiring **minimal human involvement** from the service provider. The service should be such that once the service is developed, then, the business can be provide that service to one user or many more on **automated basis** with the same basic business process.

**Examples:**

- Online Advertisement services
- Supply of user data
- Online search engine
- Social media platforms
- Online gaming
- Digital content services
- Standardized online teaching services
- Cloud computing services

**ARTICLE 23:**

**METHODS OF ELIMINATING DOUBLE TAX**

OECD/UN Model provides right to tax various incomes to the Contracting States.

Where, by virtue of this convention, a resident is **taxed in the country of source also** then the country of residence shall provide relief to such resident as follows:

- 1) Exemption Method
- 2) Tax Credit Method

Already discussed in the chapter of Double Taxation

## ARTICLE 24: NON-DISCRIMINATION

This article states that there should be no discrimination between residents of contracting states.

## ARTICLE 25: MUTUAL AGREEMENT PROCEDURE

This article provides for mechanism to be adopted in case there is any dispute arising due to DTAA.

- 1) In case of any dispute, a person can **PRESENT** his case to the **competent authority** of the country where he is resident. However, in OECD Model, a person can present his case to competent authority of any country.
- 2) If the objection of the person is justified then competent authority shall **resolve** the dispute **alone on its own**. However, if the competent authority is **not able to resolve** the dispute alone then it can resolve the case with the help of competent authority of other country [by **MUTUAL AGREEMENT**].
- 3) If the competent authority is not able to decide by mutual agreement then the unresolved issue is referred to the **ARBITRATOR**.

### Example of dispute:

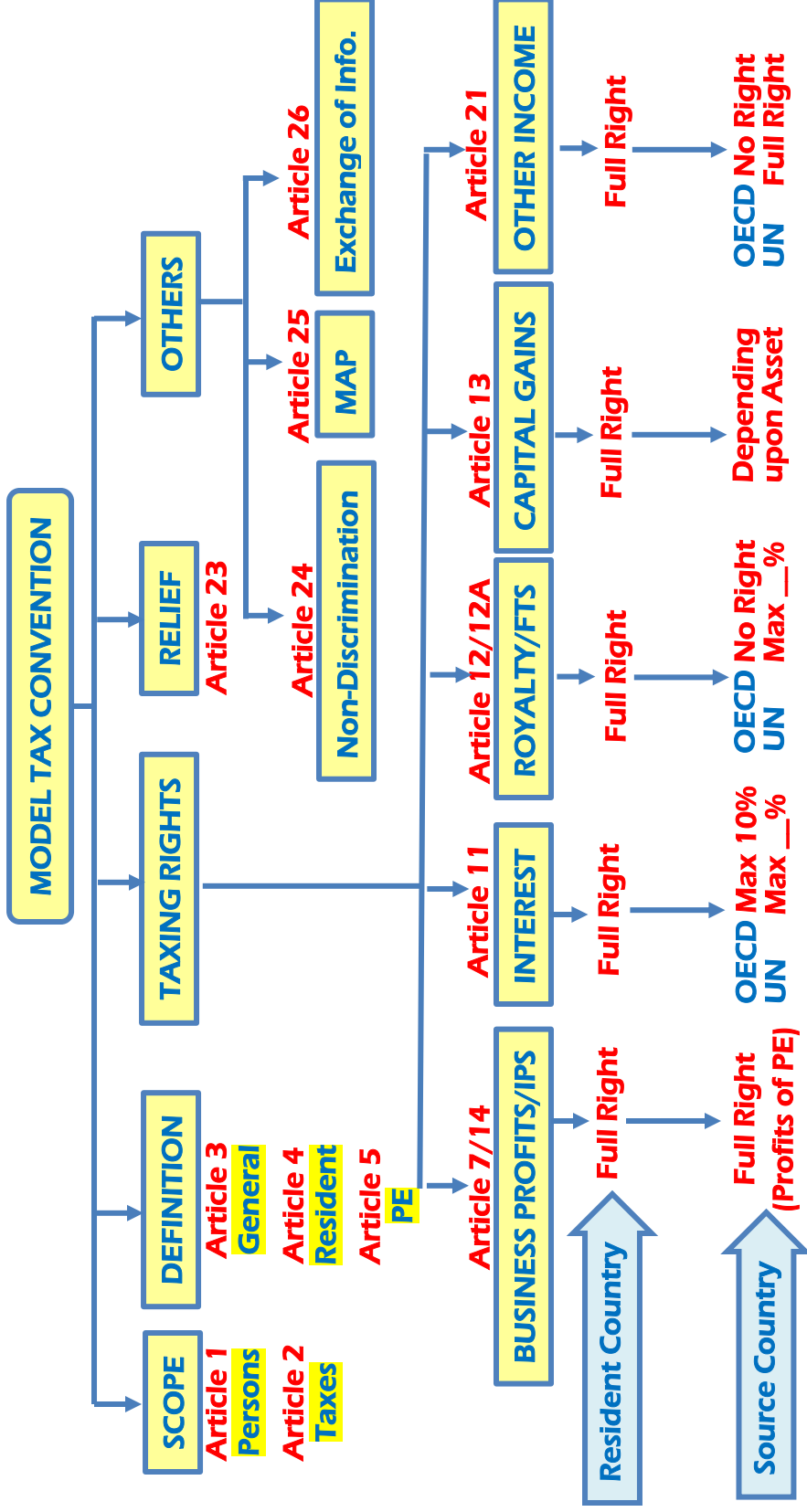
An Indian company earning profits from Singapore reported all the profits in India but nothing in Singapore. Subsequently, Singapore Govt. assessed 25% tax on profits attributable to its PE in Singapore. Now, the dispute of the Indian company is that the business activities in Singapore are preparatory and auxiliary in nature and it does not constitute PE. Such disputes are resolved as per provisions of Article 25 as discussed above.

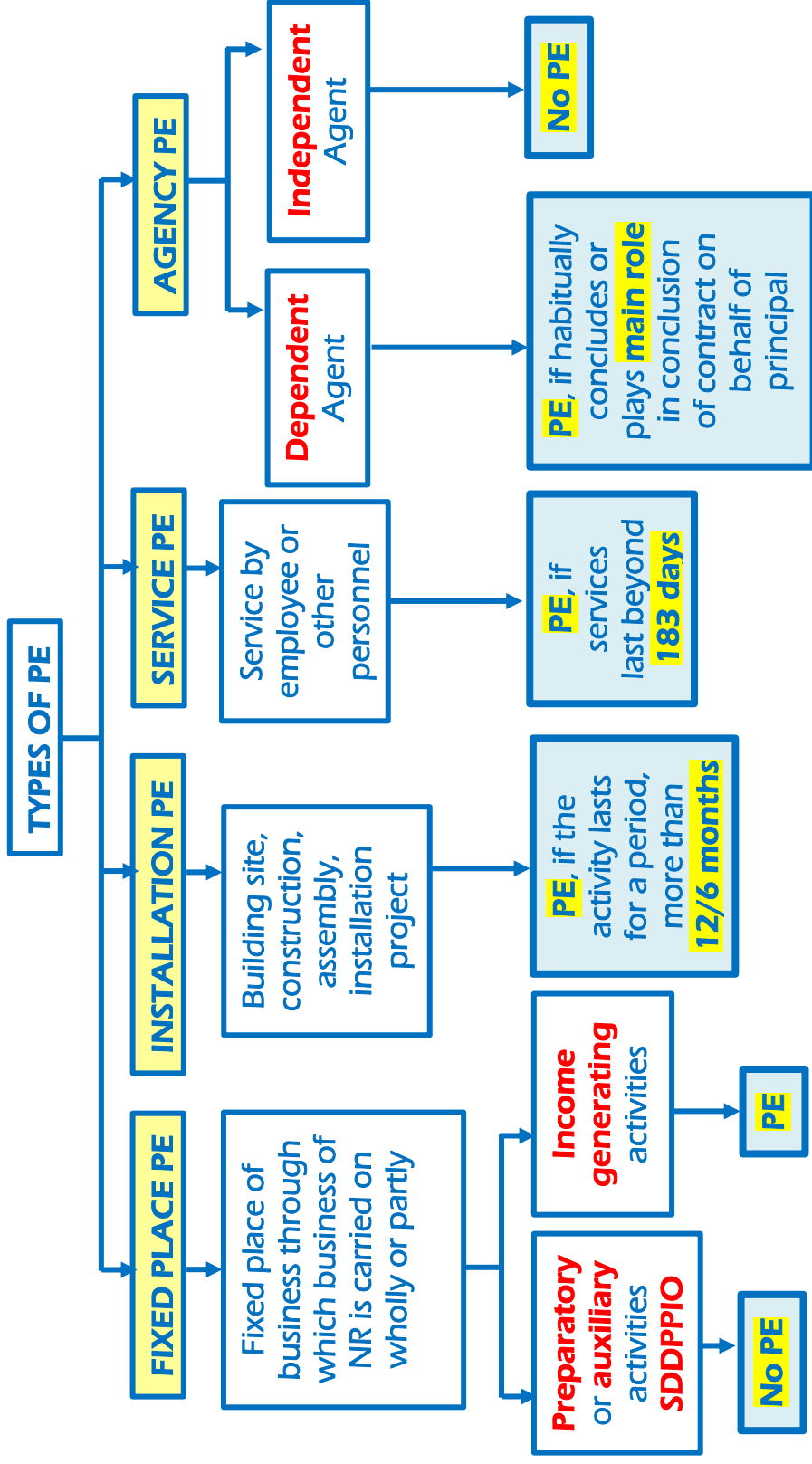
**ARTICLE 26:**

**EXCHANGE OF INFORMATION**

This article covers rules for exchange for information between the contracting states for **proper of application of treaty** and for tracing the **tax evaders**.

- 1) This article entitles a contracting state to **request** for information from other contracting state.
- 2) Any information received shall be treated as **secret information**. It can be used only by tax authorities.
- 3) A contracting state shall **not impose** the other contracting state:
  - a. For information which **against the Law** of that country;
  - b. For information which is **not Obtainable** and
  - c. For information which would disclose the **trade Secret** of the country.





# TAX TREATIES

## → SUMMARY:

### I) DOUBLE TAX – CONNECTING FACTORS AND TYPES

#### II) TAX TREATIES

- Definition
- Purpose/Role/Need for Treaties
- Types of DTAA

#### III) INTERPRETATION OF TAX TREATIES

- Introduction
- Principles of Interpretation
- Extrinsic Aids
- Vienna Convention on Law of Treaties

## PART I:

### DOUBLE TAX – CONNECTING FACTORS & TYPES

#### → Connecting Factors:

There are two connecting factors of taxation i.e. taxation is connected with following two factors:

- **Residence**
- **Source**

A person can be taxed in a country either because of his residence link or source link. Hence, if a person has residence in one country and source in other country then there will be double taxation.

#### → Types of Double Taxation:

There are two types of double taxation as follows:

- **Juridical Double Taxation**
- **Economic Double Taxation:**

**Juridical double taxation** happens when an income arising from the same transaction is taxed in two different countries in the hands of **same person**.

**Economic double taxation** happens when an income arising from the same transaction is taxed in two different countries in the hands of two **different person**.

**Example:** Dividend from Indian company – Indian law taxes the company distributing the dividend whereas the foreign country may tax the shareholder who receives the dividend.



## TAX TREATIES

### → **Definition:**

As per Article 2 of Vienna Convention on Law of Treaties, 1969, treaty is an **international agreement** between States in written form governed by **international law** [embodied in a single instrument or in two or more related instruments].

### → **Purpose / Role / Need of Tax Treaties:**

Tax in the country of source is a cost and tax in the country of residence is an obligation. This leads to double taxation. Hence, a tax treaty is entered between two countries to:

- Eliminate **Double Taxation**
- Allocate taxing **Rights**
- Promote mutual economic **Relation**, trade and investment
- Ensuring Non-**Discrimination** between R and NR
- Resolution of **Disputes** arising out of treaty interpretation
- Control tax **Evasion/avoidance** by exchange of information

### → **Types of DTAA:**

There are two types of DTAA as follows:

**Limited DTAA** which is limited to certain types of income only.

Eg: India-Pak DTAA is limited to Shipping and Aircraft Profits only.

**Comprehensive DTAA** which covers almost all types of incomes.

**PART III:**

**INTERPRETATION OF TAX TREATIES**

**→ Introduction:**

Tax treaty is an international agreement. Hence, it should be interpreted as per the rules of international law as laid down in **Vienna Convention on Law of Treaties**. However, while applying the tax treaty in domestic forum, the appellate authorities and courts are primarily governed by the **domestic laws of interpretation**.

If there is a **specific provision** in **DTAA** then it will **prevail** over the general provisions of Act;

If there is **no specific provision** in DTAA then the provisions of **Act** shall **prevail**; and

If there is specific provision in the DTAA as well as Act then the provisions of Act/DTAA [**whichever is beneficial to the assessee**] shall apply.

**→ Principles of interpretation:**

If the words used by a treaty are ambiguous or vague or if leads to different meanings then the treaty is interpreted by following rules of Customary International Law:

**1) Objective Interpretation:**

First, the words should be understood as per their **plain, literal and natural meaning**. However, if the grammatical interpretation leads to absurdity or is not consistent with the other provisions of treaty then it should not be adopted.

**2) Subjective Interpretation:**

The words of the treaties should be interpreted according to the common **intention** of contracting states at the time the treaty was concluded. Intention can be ascertained from the words used in treaty or from the speech of Finance Minister.

### **3) Purposive/Teleological Interpretation:**

In this approach, treaty is interpreted keeping in mind the aims, objective or **purpose** of the treaty.

#### Example:

The preamble to the India-Mauritius treaty states that it is for encouragement of mutual trade and investment. Hence, this purpose should be kept in mind while interpreting the treaty.

### **4) Principle of Effectiveness:**

As per this principle, the treaty should be interpreted in a way that it renders the treaty most effective and useful as a whole; it should **not render the treaty as void and useless**.

### **5) Principle of Contemporanea Expositio:**

Language of the treaty must be understood in the sense in which it was understood when the treaty was made [i.e. interpretation adopted by the courts **at the time treaty was made** should be given importance]

### **6) Liberal Interpretation:**

It means treaties should be interpreted **liberally** i.e. it should not be interpreted literally or in strictly legal manner which defeats the basic object of the treaty.

### **7) Treaty as a Whole – Integrated Approach:**

Any provision should **not** be interpreted in **isolation**; entire treaty should be read **as a whole**.

### **8) Reasonableness and Consistency:**

Words interpreted in some portion of treaty should be given **consistent** meaning **in the other parts of treaty** [so that the interpretation is reasonable].

**Note:**

Normally, Article 3 of a treaty provides that the meaning of term not defined in the treaty shall be interpreted in accordance with the provisions of domestic tax laws of Contracting State. In such case, a question arises as to what meaning to be assigned to the said term – the one which prevailed at the time of signing the treaty or the one prevailing at the time of application of treaty. In this matter, there are two approaches:

**Static Approach** i.e. assigning the meaning that prevailed at the time of **signing** the treaty

**Ambulatory Approach** i.e. assigning the meaning prevailing at the time of **application** of treaty.

All Model Commentaries favor ambulatory approach. However, this approach should not be followed if there is radical amendment in the domestic law which changes the meaning of the term substantially.

→ **Extrinsic Aids to Interpretation of Treaty:**

Following are the extrinsic aids to interpret a tax treaty:

- 1) Provisions of **Parallel Tax Treaties**
- 2) International **Articles/Essays/Reports**
- 3) **Cahiers** published by International Fiscal Association, Netherlands [Annual publication dealing with two major topics each year]
- 4) **Protocol** setting out agreed interpretations.  
In order to put certain matters beyond doubt, there is a protocol annexed at the end of treaty. Eg: Protocol to India-France treaty contains the **Most Favoured Nation (MFN)** Clause which means that India has agreed to extend the benefits\* to the residents of France which it has promised to other OECD countries [\*like Benefit of concessional tax rate when India is the source country for France].
- 5) **Preamble** setting out the object and purpose of the treaty
- 6) **Mutual Agreement Procedure**
- 7) **Commentaries** on OECD/UN Model on different articles
- 8) Foreign **Courts decisions** relating to similar treaties
- 9)

## → Vienna Convention on Law of Treaties [VCLT]:

VCLT provides the basic rules of interpretation of any international agreement [including tax treaties]. Following are some of the articles of VCLT which will help in understanding the manner of interpretation of treaties:

### **1) Article 26: Pacta Sunt Servanda:**

Every treaty is binding upon the parties and must be followed in good faith.

### **2) Article 28: Non-retroactivity of treaties:**

Unless the treaty provides so, it cannot have retrospective application.

### **3) Article 29: Territorial Scope of Treaties:**

Unless the treaty provides so, it is binding on each state in respect of its entire territory.

### **4) Article 31: General Rule of Interpretation:**

Normally, an ordinary meaning should be given to the terms used in treaty keeping in mind the object\* and the purpose of treaty. However, a special meaning can be given if it is established that the parties so intended.

\* The object can be understood from the preamble of the treaty and the annexure to the treaty [annexure means any other connected agreement].

### **5) Article 32: Supplementary means of Interpretation:**

Meaning resulting from the general interpretation by applying article 31 should be in conformity with the preparatory work of treaty and the circumstances under which treaty was concluded.

### **6) Article 33: Treaties in two or more languages:**

If a treaty is authenticated in two or more languages then the text in each language is equally authoritative [unless the treaty provides that in case of divergence, a particular text shall prevail]. The version of a particular text in any other language [other than the languages in which treaty is authenticated] shall prevail only if the treaty provides so.

**7) Article 34: General rule regarding third states:**

Treaty **shall not** create any right or obligation for a **third State**.

**8) Termination or suspension of treaty:**

As per **Article 42**, termination of treaty may take place **only as per the provisions** of the treaty.

As per **Article 60**, a **material breach** by one of the parties entitles the other party to invoke the breach as a ground for termination or suspension of treaty either in part or whole.

As per **Article 61**, a party may invoke the **impossibility of performing** provision of a treaty as a ground for terminating or suspending the treaty.

As per **Article 62**, **fundamental change of circumstances** cannot be a ground for termination of a treaty. However, if the essential basis of entering in to treaty was the existence of some circumstances then any fundamental change in such circumstances can be a ground to terminate the treaty.

As per **Article 64**, if a **new peremptory norm** of general international law emerges then any treaty which is in conflict with that norm becomes void and stands terminated.

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# BLACK MONEY ACT, 2015

## → SUMMARY:

- I) INTRODUCTION
- II) BASIS OF CHARGE
- III) VALUATION
  - JB PDAI
  - Quoted shares and securities
  - Unquoted equity shares
  - Share in P Firm
  - Bank Account
  - Asset Sold
  - Other Assets
- IV) COMPUTATION
- V) ASSESSMENT
- VI) RECTIFICATION/APPEALS/REFERENCE/REVISION
- VII) PENALTIES

## INTRODUCTION

Passed on 26/5/15



Effective from **PY 2015-16**



Whole of India



To tax black money **located abroad**

All the assesseees having undisclosed foreign assets were given an **option** to voluntarily **declare the same** latest **by 30<sup>th</sup> Sep, 2015** and **pay** the tax @ 30% on the value of such assets along with an equal amount of penalty latest **by 31<sup>st</sup> Dec, 2015**.

The assesseees who **failed** to make declaration under this scheme shall be subject to **stringent provisions** under BLACK MONEY ACT if the AO comes to know about any UFI/UFA [i.e they will suffer **high penalties** and **prosecution** also]

## BASIS OF CHARGE

Tax under this Act is levied **if the A.O. comes to know** about a person's undisclosed foreign income [UFI] or undisclosed foreign asset [UFA] — **30% Tax** on (UFI + UFA)

Since the Act came in to effect on or after 1/4/2015, Tax on **UFI** is levied only if it is **earned on or after 1/4/2015**. However, in case of **UFA**, tax will be levied irrespective of whether it was **acquired before or after 1/4/2015**.

Tax under this Act is levied whether the assessee is ROR, NOR or NR. As per the **latest amendment**, a person who is **NR/NOR** can also be taxed on UFI/UFA if he was Resident in the PY in which such UFI was earned or PY in which such UFA was acquired.

## VALUATION [Rule 3]

Tax on undisclosed foreign assets is on its value and value of UFA is computed as follows:

Note: Almost all assets are valued based on its FMV as on the valuation date i.e. **1<sup>st</sup> April** of the financial year in which A.O. comes to know.

### (1) Value of JB PDAI

JB PDAI = Jewellery, Bullion, Precious stones, DPSA, Archaeological collections & Immovable property

- ↑ 1. Cost of Acquisition
- ↑ 2. **FMV** as on valuation date [as per the valuation report of the Valuer approved by Govt. of foreign country/territory]

### (2) Value of Quoted Shares & Securities

- ↑ 1. Cost of Acquisition
- ↑ 2. **Avg of highest & lowest stock exch.. price** as on valn. dt.

(If such shares/securities are not traded on valuation date then consider the average price as on the traded day immediately preceding the valuation date.)

### **(3) Value of Unquoted Equity Shares**

- ↑ 1. Cost of Acquisition
2. **Net Assets Value** as per Valuation in **Note.1**

#### **Note 1:**

|                                                 | Amt.         |
|-------------------------------------------------|--------------|
| JB PDAI                                         | Rule 3 Value |
| Shares and securities                           | Rule 3 Value |
| Other Assets excluding Advance tax & misc. exp. | Book Value   |
|                                                 | XXX          |
| <u>Less:</u> Outside Liabilities**              | - Book Value |
| <u>Less:</u> Preference Share Capital           | - Book Value |
| <u>Less:</u> Arrears of Preference dividend     | - Book Value |
| Net Assets (for ESH)                            | XXX          |

Value per share

**= Net Assets x Paid up value per share/Total Paid up ESCapital**

\*\*Outside liabilities excludes:

- Equity Share Capital
- Reserves and Surplus
- Proposed Dividend
- Provision for unascertained liabilities
- Excess Provision for tax [excess over tax payable]
- Contingent Liabilities

**(4) Value of Share in Partnership firm/LLP/AOP**

|                                   | Partner A | Partner B | Total      |
|-----------------------------------|-----------|-----------|------------|
| To the extent of Capital          | xxx ←     | xxx ←     | xxx ←      |
| Balance in *Dissolution ratio/PSR | xxx ←     | xxx ←     | xxx ←      |
| Value of share in firm etc..      | xxx       | xxx       | <b>xxx</b> |

**Net Assets Value of firm as prescribed in Note. 1**

\*Dissolution ratio means the ratio agreed by partners for distribution of assets at the time of dissolution. If there is no such ratio then consider PSR.

**(5) Value of Bank account**

**Sum of all deposits** made in the account from the date of opening the account. However, if such bank account was declared under voluntary declaration scheme then the value = sum of all deposits from the date of such declaration.

**Less:** Bank withdrawal utilised for purchase of **new asset**.

**Less:** Bank withdrawal **redeposited** in bank

**(6) Value of Asset transferred before valn. date**

|                                                                   |            |
|-------------------------------------------------------------------|------------|
| ↑ 1. Cost of Acquisition                                          | xxx        |
| 2. <b>Sale Price*</b> of the asset                                | xxx        |
| <b>Less:</b> Sale proceeds utilised for pur.. of <b>new asset</b> | - xx       |
| <b>Less:</b> Sale proceeds <b>deposited in bank</b>               | -xx        |
| Taxable Value of Asset trfd before valn date                      | <u>xxx</u> |

\* if such asset is transferred for no price or low price then FMV of such asset on the date of transfer.

**(7) Value of all other assets held on valn. date**

|                                    |
|------------------------------------|
| ↑ 1. Cost of Acquisition           |
| 2. <b>FMV</b> as on valuation date |

All the above values are in foreign currency. Hence, the above values should be **converted** into Indian currency as per the **rate specified by RBI** on the valuation date.

However, if the currency is **not a permitted currency** as per RBI i.e. if it is not convertible in India then it should be:

- **First converted** in to **US dollars** at the rate specified by the **Central bank** of the country/territory where the asset is located and
- **Then** the value in US dollars should be converted in to **Indian currency** as per the rate specified by **RBI**.



## ASSESSMENT [Section 10]

### NOTICE

Once AO comes to know about a person's UFI/UFA, he shall send a notice requiring such person to produce **accounts, documents, evidence** on a specified date

### INQUIRY

In order to obtain full information about UFI/UFA, the AO can make **any such inquiry** as he thinks fit

### ORDER

On the basis of: Materials gathered by AO and Evidence produced by assessee, the AO shall **compute the UFI/UFA and tax.** This is done by passing an **order within 2 years** from the end of the year in which notice is issued.

## RECTIFICATION, APPEALS, REFERENCE & REVISION

Provisions are same as in Income Tax Act, 1961

|                  | I.T. Act, 1961   | BMITA, 2015  |
|------------------|------------------|--------------|
| Rectification    | Sec. 154         | Sec. 12      |
| Notice of Demand | Sec. 156         | Sec. 13      |
| Appeal to CIT(A) | Sec. 246A to 251 | Sec. 15      |
| Appeal to ITAT   | Sec. 252 to 255  | Sec. 18      |
| Reference to HC  | Sec. 260A & 260B | Sec. 19      |
| Reference to SC  | Sec. 261 & 262   | Sec. 21      |
| Revision         | 263 & 264        | Sec. 23 & 24 |

## PENALTIES

| Sec | Nature of Default                                                                                                                                                                  | Penalty                         |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| 41  | Having <b>UFI/UFA</b>                                                                                                                                                              | 3 x Tax                         |
| 42  | <b>Return</b> of foreign income/Asset <u>not filed</u> <sup>1</sup>                                                                                                                | Rs.10 lakhs                     |
| 43  | <b>Info.</b> about foreign asset <u>not furnished</u> in return <sup>2</sup>                                                                                                       | Rs.10 lakhs                     |
| 44  | <b>Tax</b> computed on UFI/UFA <u>not paid</u>                                                                                                                                     | Amt of tax                      |
| 45  | <u>Not Answering</u> questions put by tax authority<br><u>Not Signing</u> statement made by him<br><u>Not Attending</u> office<br><u>Not Producing</u> <b>Accounts</b> & documents | Min.50,000<br>to<br>Max.2 lakhs |

<sup>1</sup> If willful then prosecution also (6 months to 7 years)

<sup>2</sup> If willful then prosecution also (6 months to 7 years)

### Note:

**No penalty** u/s 42 & 43 if the foreign asset is a **foreign bank account**/accounts, aggregate balance in which is **up to Rs.5 lakhs** throughout the PY.

### **→ PROCEDURE FOR LEVY OF PENALTY u/s 41 and 45:**

#### Step 1:

The AO shall issue a **show cause notice** to the assessee requiring him to show cause as to why penalty should not be imposed on him. For **penalty u/s 41**, SCN can be issued **anytime** during the assessment proceedings and for **penalty u/s 45**, notice can be issued **within 3 yrs** from the end of the year in which default is committed.

#### Step 2:

The AO shall take the **permission of JC**.

→ AO = **ITO** then permission required if Penalty **exceeds 1 L**.

→ AO = **AC/DC** then permission required if Penalty **exceeds 5 L**.

#### Step 3:

The AO shall pass the **order** of penalty **within 1 year** from the end of the year in which SCN is issued.

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# SEARCH AND SEIZURE

## → **SUMMARY:**

- I. When search can be authorized?
- II. Who can authorize search?
- III. Who will conduct search?
- IV. How search is conducted? [S<sub>3</sub>EMI- O]
- V. Notes [C – SP – RP]
- VI. Assessment in Search Cases → **Section 158B to BI**
- VII. Application of Seized Assets → **Section 132B**

**Section 132**

## **PART - I**

### **WHEN SEARCH ?**

Search can be authorized by the Income Tax Authority if he has **reasons to believe** (on the basis of information in his possession) that:

- i. A person has failed to produce or will not produce **BD\*** as required by notice u/s 142(1) or summon u/s 131.
- ii. A person is in possession of **MBJO\*** which represents his undisclosed income or property.

\* **B**ooks of Accounts

**D**ocuments

**M**oney

**B**ullion

**J**ewellery

**O**ther Valuable Articles



**Reasons** to believe **need not be disclosed** to any person.

## **PART – II**

### **WHO CAN AUTHORISE ?**

Search can be authorised by the following Income Tax Authority:

- CCIT / DGIT
  - CIT / DIT
  - Additional CIT / DIT
  - JC / JD
- } If empowered by CBDT

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DGIT = Director General of I.Tax DIT = Director of I.Tax JD = Joint Director

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## PART - III

## WHO CONDUCTS ?

The above Income Tax Authority shall authorize his **subordinate authority** to conduct search. Such subordinate authority is known as **Authorized Officer**.

## PART - IV

## HOW CONDUCTED ?

### S<sub>3</sub>EMI – O

The authorized officer can:

- 1) Enter and **Search** any **B.PAV<sub>2</sub>** where he has reason to suspect that the required **BD** are kept.  
Note: The authorized officer can break open the lock of any door, locker, box etc. (if the keys are not available).  
B – Building  
P – Place  
A – Aircraft  
V<sub>1</sub> – Vessel.  
V<sub>2</sub> – Vehicle
- 2) **Search** any **person**:
  - Who is in the **B.PAV<sub>2</sub>** or
  - Who has got out of **B.PAV<sub>2</sub>**, or
  - Who is about to get in **B.PAV<sub>2</sub>**if the Authorized Officer has reason to suspect that such person has secreted **BD**.
- 3) **Seize** the **BD** found as a result of search.
- 4) Require any person who is in possession of **BD** in **Electronic form** [i.e. in computer] to afford him necessary facility [i.e. password] to inspect such **BD**.
- 5) Place **Marks** of identification on **BD**.
- 6) Make **Inventory** of **BD**.
- 7) Examine any person on **Oath**. Statements given by such person can be used as evidence.

**PART - V**

**NOTES:**

**C – SP – RP**

**C: CONSTRUCTIVE SEIZURE**

If it is not possible to take the physical possession of any valuable article due to its **weight, volume and other physical characteristics** then the authorized officer shall serve an order to the owner or any person in immediate possession thereof that he shall **not remove/ deal with / part with** such valuable article without the prior permission of authorised officer. This is known as constructive seizure or **deemed seizure**.

**S: STOCK IN TRADE**

If the bullion, jewellery or any other valuable article is held as stock in trade then the authorized officer **shall not seize** such stock in trade. He shall **make inventory** of such stock in trade.

**P: POLICE ASSISTANCE**

For the purpose of search, the authorized officer can take the help of police or any officer of Govt.. or Professionals [approved by CCIT].

**R: REQUISITION U/S 132A**

If the required BDMBJO is in the custody of an officer or authority under any **"other law"** then the authorized officer shall **require** such other officer/authority to deliver the BDMBJO (after their purpose is over). This is known as requisition u/s 132A. The authorized officer, in such case, is known as **requisitioning officer**.

**P: PRESUMPTIONS [BCSA]**

Following presumptions can be made in respect of BDMBJO found as a result of search:

- 1) It is presumed that the BDMBJO **BELONGS** to the person in **possession** thereof.
- 2) **CONTENTS** of BD are presumed to be **true**.
- 3) **SIGNATURE** or every other part of BD which **purports** [appears] to be in the handwriting of a particular person is presumed to be in the handwriting of such person.
- 4) Documents which **purport** [appear] to be **ATTESTED**, stamped or executed by a particular person are presumed to be attested, stamped or executed by such person.

→ Either **during search** or **within 60 days** from the date of completion of search, the authorized officer can **refer valuation** of seized assets to **valuation officer** or a **registered valuer [approved by CCIT]**. The valuation officer or the registered valuer shall furnish the **report of valuation within 60 days** from the date of reference.

→ During search or within 60 days from the date search is completed, the authorised officer can provisionally **attach** the **property** of assessee for **max. 6 months** (with prior approval of CIT/CCIT.)

## **PART – VI** → **APPLICATION OF SEIZED ASSETS:**

### **a] Amount to be recovered:**

The seized assets can be utilised to recover:

- **Existing** liability under Income Tax Act, Exp. Tax Act, Interest Tax Act, Gift Tax Act, Wealth Tax Act and Black Money Act.
- **New** liability [Tax + Interest + Penalty] computed on completion of block assessment.

Note: Seized assets can be sold (if required).

### **b] Release of explained assets:**

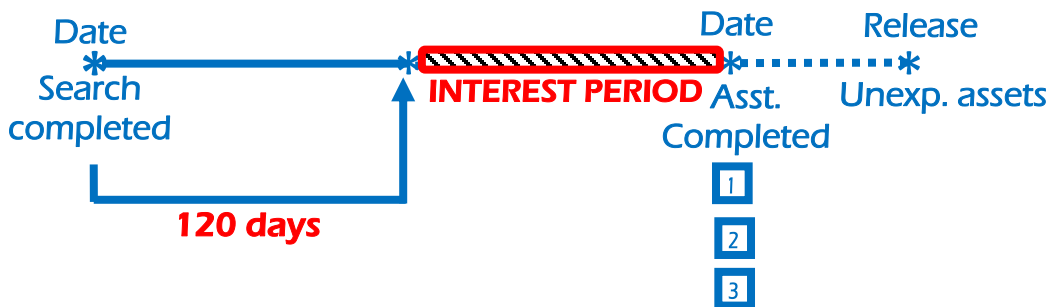
- ⇒ The person on whom search is conducted can make an **application** to the A.O. for release of explained assets (within **30 days** from the end of month in which **assets are seized**).
- ⇒ The application should state the **nature & source** of acquisition of such assets.
- ⇒ If the A.O. is satisfied, then he shall release the explained assets after taking the **permission of CIT/CCIT** & after **deducting existing** liabilities (if any).
- ⇒ The explained assets shall be released within **120 days** from the date on which **search is completed** i.e. date on which last of the authorizations for search is executed.

**c] Release of unexplained assets:**

The unexplained assets shall be released **after completion of assessment** i.e. after passing the all the orders & it shall be released **after deducting all the liabilities**.

The release of surplus assets shall carry **interest @ 0.5% p.m.** as follows (part of the month is treated as full month)

Interest Amt. = Surplus Assets × 0.5% p.m. × No. of months [see below]



**d] Release of BD:**

The BD shall be released within **30 days** from the **date of completion of assessment**. For retaining BD beyond this period, permission of CIT/CCIT is required.

**PART – VII**

**ASSESSMENT IN SEARCH CASES:**

If search is initiated **before 1<sup>st</sup> September, 2024**, then assessment in such case shall be done under **section 147**.

However, if search is initiated **on or after 1<sup>st</sup> September, 2024** then assessment in such case shall be done as per the provisions of Chapter XIV-B (**section 158B to 158BI**). Assessment u/s 158B to 158BI is known as **block assessment**.

Block assessment means one **consolidated\*** assessment of block period. **Block period** means:

Period of **6 years preceding** the year in which search is initiated  
**plus**

Period starting from the **1<sup>st</sup> April** of the year in which search is initiated up to the date when **search is completed**.

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\* Normally, assessment is done year wise but in search cases, single assessment is done for multiple years.

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**→ PROCEDURE – 3 STEPS:**

**Step 1:**

After the search is completed, the A.O. shall issue a **notice u/s 158BC** to the person on whom search is conducted requiring him to **file the return** of the block period within the time prescribed in such notice (**max. 60 days** can be prescribed).

**Step 2:**

After the return is filed u/s 158BC, the A.O. shall issue a **notice u/s 143(2)** requiring such person to **attend the office** and **produce evidence**. This notice should be served i.e. it should be received by the person searched within **3 months** from the end of the year in which return [in response to above notice] is filed.

**Step 3:**

After calling such person and after hearing such person, the A.O. shall compute the total income and tax of the block period. This is done by passing an **assessment order u/s 158BC**. As per sec. 158BE, order of block assessment should be passed **within 12 months** from the end of the **month** in which **search is completed**

[i.e. the month in which last of the authorisations for search is executed].

→ **NOTES:**

1) Tax on total income of the block period shall be calculated @60% as follows:

	₹
Total income (ignoring loss) <b>disclosed</b> in return filed u/s 158BC	<b>A</b>
Total income (ignoring loss) <b>assessed</b> in block period	B
Total income (ignoring loss) <b>returned</b> in block period	C
Total income (ignoring loss) of the <b>current year</b> up to the date of completion of search	D
<b>Undisclosed</b> income determined by the A.O. based on evidence found during search	<b>E</b>
<b>TOTAL INCOME OF BLOCK PERIOD</b>	<b>XXX</b>
<b>Less:</b> Total income under B, C and D	- XX
<b>UNDISCLOSED INCOME OF BLOCK PERIOD</b>	<b>XXX</b>
<b>Tax</b> on above @60% u/s 113 [No SC and HEC]	XXX
<b>Add:</b> <b>Interest u/s 158BFA</b> on non-filing/late filing of return u/s 158BC [ <b>1.5% pm</b> of above tax] from the expiry of prescribed time to file the return up to the date of assessment u/s 158BC [part of the month is treated as full month]	+ XX
<b>Total amount payable</b>	<b>XXX</b>

In addition to above, the assessee is also liable to pay **penalty u/s 158BFA @50% of the tax** on undisclosed income. However, this penalty and penalty u/s 271AAD, 271D, 271E and 271DA shall not be levied if the assessee:

- Declares the undisclosed income in the return filed u/s 158BC,
- Pays the tax on the same,
- Furnishes the proof of the same and
- Does not appeal against such income

Interest u/s 234A/B/C and Penalty u/s 270A is not applicable in case of block assessment.

- 2) Once search is initiated, all the **pending assessment** proceedings u/s 143(3)/144/147 in respect of block period shall **"abate"**. However, if the block assessment proceedings are **annulled** in any appeal/legal proceedings then the abated proceedings shall **revive**. The revived asst shall be completed **within 1 year** from the end of the **month of such revival**.
- 3) Return required u/s 158BC **cannot be revised** and it shall **not** be **processed** u/s 143(1).
- 4) If the A.O. is satisfied that the seized BDMBJO belongs to some **"other person"** then he shall **handover** such BDMBJO to the A.O. having jurisdiction over such other person. In such case, the other A.O. shall proceed u/s 158BC against such other person.  
As per sec. 158BE, the time limit for completion of assessment in the case of such other person shall be **12 months** from the end of the **month** in which the **notice under section 158BC was issued** to such other person.
- 5) As per sec. 158BG, block assessment should be done by an A.O. **not below the rank of AC/DC**. Before issuing notice u/s 158BC and before passing order u/s 158BC, the A.O. shall take the **prior approval of JC/Addl. CIT**.

→ **SECTION-WISE SUMMARY:**

**CHAPTER XIV-B**

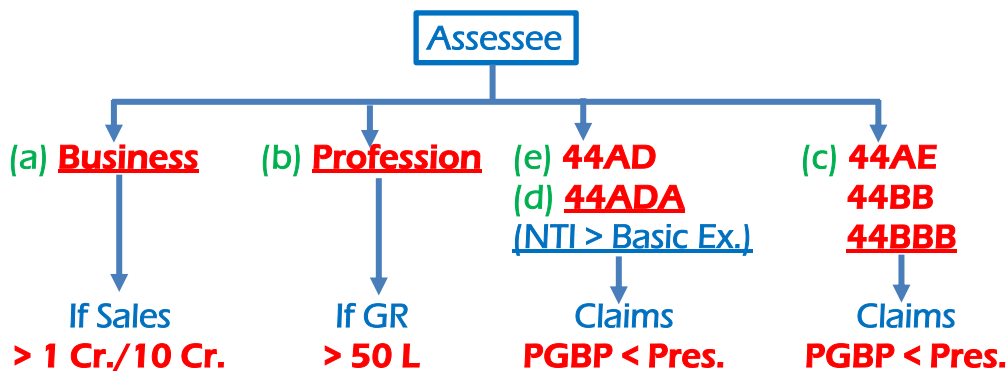
Section	Particulars
158B	Defn of <b>Block Period</b> and Undisclosed Income
158BA	For search initiated on/after 1/9/24, the AO shall make block assessment. Once search is initiated, all the pending assessments shall <b>abate</b> and on annulment of block assessment, the abated proceedings shall <b>revive</b> .
158BB	<b>Computation</b> of the total income of Block period
158BC	Issue of <b>notice</b> to file return and passing of <b>order</b> of block assessment
158BD	Assessment of <b>Other persons</b>
158BE	<b>Time limit</b> for passing order of block assessment
158BF	Interest u/s <b>234A/B/C</b> and Penalty u/s <b>270A</b> is not applicable in block asst.
158BFA	<b>Interest @1.5% pm</b> for non-filing/late filing of return u/s 158BC and Levy of <b>Penalty @50%</b> on undisclosed income
158BG	AO not below the <b>rank of AC/DC</b> Prior <b>approval of JC/Addl. CIT</b> for issue of notice u/s 158BC and passing of order u/s 158BC
158BH	In absence of any specific provision in respect of block assessment proceedings, general provisions shall apply.
158BI	Provisions of this chapter are not applicable to search initiated before 1/9/24.

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# TAX AUDIT & ETHICAL COMPLIANCES

**Sec. 44AB**

**Compulsory Tax Audit:**

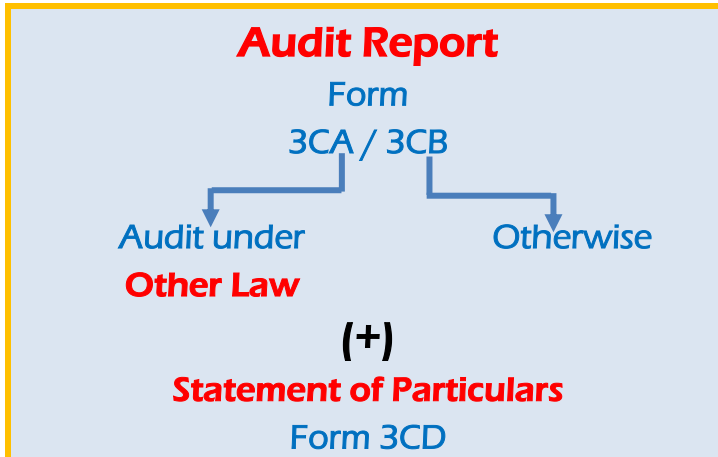


\*  $\geq 95\%$  Receipts +  $\geq 95\%$  Payments  
A/c Payee Chq. / Draft / ECS

**Sales – ST + PR . C. DISA**

|                                             |            |
|---------------------------------------------|------------|
| Sales                                       | XXX        |
| Less: Sales Return                          | -XXX       |
| Less: Trade / Turnover Discount             | -XXX       |
| <del>Cash Discount</del>                    |            |
| Add: Perquisites / Benefit                  | +XXX       |
| Add: Reimb. of exps. [Net Surplus]          | +XXX       |
| Add: Cash Assistance from Govt.             | +XXX       |
| Add: Duty Drawback                          | +XXX       |
| Add: Ins. Claim (Stock)                     | +XXX       |
| Add: Sale of Scrap                          | +XXX       |
| Add: Advance recd. from customers forfeited | +XXX       |
|                                             | <u>XXX</u> |
|                                             | <u>XXX</u> |

Agg. of  
**All Business**



**One month prior to**  
the due date  
of filing Return

**Sec. 40(a)/43B**  
**Revise upto**  
**end of A.Y.**

## Form 3CD Statement of Particulars

### Clause 1

Name of the Assessee

### Clause 2

Address

### Clause 3

PAN

### Clause 4

GST No. / ID No.

### Clause 5

Status of Assessee

[Ind./HUF/PF/Co. etc.]

**Clause 6**

Previous Year

**Clause 7**

Assessment Year

**Clause 8**

Clause of Sec. 44AB

**Clause 8a**

Concessional Tax Regime [opted or not]

**Clause 9**

- a) Name of Partners/Members & their PSR
- b) Change in Partners/Members & PSR

**Clause 10**

- a) Nature of Business/Prof.
- b) Change in Business/Prof.

**Clause 11**

Books of Accounts (List and Address)

**Clause 12**

Amt. of profit taxable on presumptive basis  
(alongwith section)

**Clause 13**

Method of Accounting  
Change/Effect of such change on profit  
Adjustment in profit due to ICDS

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**Clause 14**

Method of Stock Valuation

Effect on Profit if such method deviates  
from Sec. 145A

**Clause 15**

Conversion of CA into SIT

(Name of such CA, Purchase date,  
COA, Amt. at which converted)

**Clause 16**

- Income not recorded in P & L
- Drawback/Refund claim  
admitted but not recorded in P & L
- Escalation claim  
admitted but not recorded in P & L
- Capital Receipts, if any

**Clause 17**

If Immovable property trfd. below SDV then provide details of  
such property, Actual SP and SDV [Sec. 50C/43CA]

**Clause 18**

Particulars of Depn. As per I. Tax.  
(Rates, Op. WDV, Additions, Adjustment to Actual Cost,  
Deductions, Amt. of Depn.)

**Clause 19**

Dedn. u/s 33AB/ABA, 35, 35AD & Other 35's  
[Amt. charged to P & L and Amt. allowed]

**Clause 20**

Bonus and Commission to employee  
Employees' cont. to PF  
(Due Date and Actual Dep. date)

**Clause 21**

Exps. Disallowed [Cap. Exp., Pers. Exp.,  
Sec. 37(2B), 40(a), 40(b), 40A(3) etc.]

**Clause 22**

Specify interest inadmissible u/s 23  
of MSMEDA, 2006

**Clause 23**

Payment to Relatives u/s 40A(2)

**Clause 24**

Deemed Income Taxable u/s 33AB/ABA  
(If Deposit Amt. Not used/Misused)

**Clause 25**

Deemed Income Taxable u/s 41

**Clause 26**

Exps. Disallowed u/s 43B

**Clause 27**

- a) ITC availed & it's effect in P & L
- b) Prior period items

**Clause 29**

Details of Issue of Shares at Premium  
(In case of closely held co.)  
IP in excess of FMV taxable u/s 56(2)(viib)

**Clause 29A**

Advance money forfeited

**Clause 29B**

Amt. taxable u/s 56(2)(x) – Gifts

**Clause 30A**

Transfer Pricing Details  
[Amt. of Primary Adj., Repatriation of Excess Money,  
Amt. of Deemed Interest Income]

**Clause 30B**

Details of Interest exp. > 1 crore  
on debts covered u/s 94B  
[Amt. of Int., EBITDA, Excess Int. c/f etc...]

**Clause 30C**

Impermissible Avoidance Arrangement  
Amt. of Tax Benefit

**Clause 31**

Details of Loan Taken/Repaid ( $\geq 20,000$ )  
Details of Receipts ( $\geq 2,00,000$ )

**Clause 32**

Details of Losses  
- B/f Loss – Spec. loss – 35AD loss  
- Change in S/H'ing

**Clause 33**

Details of Chapter VI A / 10AA

**Clause 34**

Details of TDS / TCS

**Clause 35**

Quantitative Details  
(Op. St., Purchases, Sales, Cl. St. etc.)

**Clause 36A**

Details of Loan / Advance received  
deemed as Dividend u/s 2(22)(e)

**Clause 37**

Disagreement on any matter reported by Cost Auditor

**Clause 38**

Disagreement on any matter reported under Excise Audit

**Clause 40**

Turnover, GP Ratio, NP Ratio  
Stock Turnover Ratio  
Material cons. To FG Ratio

} of PY  
and  
Preceding Yr.

**Clause 41**

Deemed / Refund (Other Tax Laws)

**Clause 42**

Reporting entity Id. No. (SFT)  
Due Date of Furnishing (SFT)  
Actual Date of Furnishing (SFT)

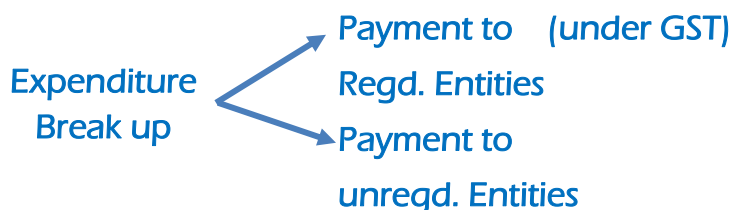
**Clause 43**

Whether Filing of CBC Report applicable

Who files?

Assessee, Parent Entity or  
Alternate Reporting Entity

**Clause 44**



**OTHER POINTS**

Opinion of Tax Auditor  $\neq$  Opinion of Assessee

State both the opinions  
Report such difference in opinion  
in Audit Report

No Info. / Inadequate Info. from Assessee  
Qualify his Audit Report

**PENALTY u/s 271B**

- 1) 0.5% of Sales
- 2) 1,50,000

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