

Classification and Tax Incidence on Companies

Lesson 12

KEY CONCEPTS

■ Indian Company ■ Domestic Company ■ Foreign Company ■ Minimum Alternate Tax ■ Dividend ■ Carbon Credit ■ Equalization Levy ■ Buyback ■ Amalgamation ■ Mergers ■ De-mergers

Learning Objectives

To understand:

- What are the constitutional provisions for Companies with regard to Income tax?
- The provisions related to Tax Incidence on Companies
- When the provisions of Minimum Alternate Tax 'MAT' shall be applicable?
- Provision related to Carbon Credit
- Provision related to Equalization Levy
- Specific provisions related to:
 - Buyback of Shares
 - Tax on Income distributed by specified company or Mutual Fund
 - Tax liability of Company in the event of liquidation
 - Taxation aspects of Share Premium
 - Taxation aspects of Amalgamation, Mergers and De-mergers

Lesson Outline

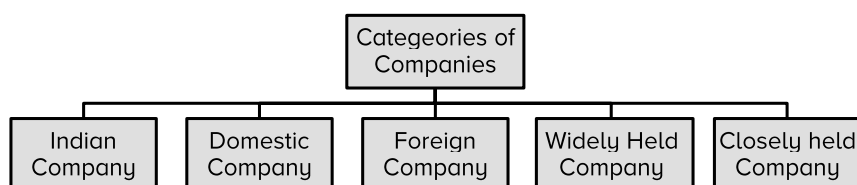
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| ➤ Background | ➤ Equalization Levy |
| ➤ Tax Incidence on Companies | ➤ Tax liability of Company in the event of liquidation |
| ➤ Corporate Tax Rate | ➤ Taxation of Share Premium |
| ➤ Minimum Alternate Tax 'MAT' | ➤ Taxation aspects of Amalgamation, Mergers and De-mergers |
| ➤ Meaning of Book Profit | ➤ Lesson Round-Up |
| ➤ MAT Credit | ➤ Test Yourself |
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| ➤ Carbon Credit | ➤ Other References |
| ➤ Buyback of Shares | |
| ➤ Tax on Income distributed by specified company or Mutual Fund | |

REGULATORY FRAMEWORK

Sections	Income-tax Act, 1961
Section 2(26)	Indian Company
Section 2(22A)	Domestic Company
Section 2(23A)	Foreign Company
Section 6(3)	Residential Status of Company
Section 115BA	Tax on Income of certain manufacturing Domestic Companies
Section 115BAA	Tax on Income of certain Domestic Companies
Section 115BAB	Tax on Income of new manufacturing Domestic Companies
Section 115JB	Minimum Alternate Tax
Section 115JB(2)	Meaning of Book Profit
Section 115JAA	MAT Credit
Section 115BBG	Carbon Credit
Section 115QA	Tax on Buy-back of Shares
Section 115R	Tax on Income Distributed by Specified Company or Mutual Fund
Section 163-172	Equalisation Levy
Section 179	Tax liability of Company in the event of liquidation
Section 56(2)(viib)	Taxation of Share Premium

BACKGROUND

Before we begin to examine and understand the taxability and tax incidence on companies, we must understand the meaning of company and its types that are in existence today scenario post the Companies Act, 2013.

**Indian Company**

Section 2(26) of the Income-tax Act, 1961 defines the expression '**Indian Company**' as a company formed and registered under the Companies Act, 2013 and the registered office or the principal office should be in India and it also includes:

- a company formed and registered under any law relating to companies formerly in force in any part of India [other than Jammu and Kashmir, and the Union Territories specified in (d) below];
- any corporation established by or under a Central, State or Provincial Act;
- any institution, association or body which is declared by the Board to be a company under Section 2(17) of the Income-tax Act, 1961;

- (d) in the case of any of the Union Territories of Dadra and Nagar Haveli, Goa, Daman and Diu and Pondicherry, a company formed and registered under any law for the time being in force in that Union Territory.

Provided that the registered or, as the case may be, principal office of the company, corporation, institution, association or body in all cases is in India.

From the above definition, it may be seen that statutory corporations as well as government companies are automatically treated as Indian companies for purposes of the Income-tax Act, 1961. The definition of an Indian company has been specifically given under the Income-tax Act, 1961 because of the fact that Indian companies are entitled to certain special tax benefits under this Act.

Domestic Company

Section 2(22A) of the Income-tax Act, 1961, defines –

- Domestic company as an Indian company or
- Any other company which, in respect of its income liable to tax under the Income Tax Act, has made the prescribed arrangements for the declaration and payment within India, of the dividends (including dividends on preference shares) payable out of such income.

From this definition, it is clear that –

- All Indian companies are domestic companies while
- All domestic companies need not necessarily be Indian companies. In other words, a non-Indian company would be considered as a domestic company if it makes the prescribed arrangements for the declaration and payment of dividends in India on which tax is deductible under Section 194.

Under Rule 27 of Income tax rules, the prescribed arrangements are as follows:

- (i) the **share register of the company concerned, for all its shareholders, shall be regularly maintained at its principal place of business within India** in respect of any assessment year from a date not later than the first day of April of such year;
- (ii) the **general meeting** for passing the accounts of the previous year relevant to the assessment year declaring any dividends in respect thereof shall be **held only at a place within India**;
- (iii) the **dividends declared**, if any, shall be **payable only within India** to all shareholders.

Foreign Company

Section 2(23A) of the Income-tax Act defines –

- Foreign company as a company, which, is not a domestic company.
- However, all non-Indian companies are not necessarily foreign companies. If a non-Indian company has made the prescribed arrangements for declaration and payments of dividends within India, such a non- Indian company must be treated as a “**domestic company**” and not as a “**foreign company**”.

Company in which public are substantially interested (A widely-held company)

Section 2(18) of the Income-tax Act defines the expression “**company in which the public are substantially interested**”. A company is said to be one in which public are substantially interested in the following cases:

A company owned by Government / RBI	If it is a company owned by the Government (either central or state but not foreign) or the Reserve Bank of India or in which not less than 40 per cent of the shares, whether singly or taken together, are held by the Government or the Reserve Bank of India or a corporation owned by the Reserve Bank of India; or
Section 8 company	If it is a company which is registered under Section 8 of the Companies Act, 2013 ; or
A company having no share capital declared by CBDT	If it is a company, having no share capital and if, having regard to its objects, the nature and composition of its membership and other relevant considerations, it is declared by an order of the Board (CBDT) to be a company in which the public are substantially interested. However, such a company shall be deemed to be one in which the public are substantially interested only for the assessment year(s) as may be specified in the declaration; or
Nidhi/ Mutual Benefit Society	If it is mutual benefit finance a company which carries on, as its principal business, the business of acceptance of deposits from its members and which is declared by the Central Government under Section 406 of the Companies Act, 2013 to be a Nidhi or Mutual Benefit Society; or
A company owned by Co-operative Society	If it is a company in which shares carrying not less than 50 per cent of the voting power have been allotted unconditionally to or acquired unconditionally by, and are throughout the relevant previous year beneficially held by, one or more cooperative societies; or
Listed Company	If it is a company which is not a private company as defined in Companies Act, and equity shares of the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in the profits, i.e., preference shares) were, as on the last day of the relevant previous year, listed in a recognised stock exchange in India;
Public company owned by Govt. and/ or public limited company	If it is a company which is not a private company within the meaning of the Companies Act, and the shares in the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than 50 per cent (40 per cent in case of an industrial company) of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant accounting year beneficially held by (a) the Government, or (b) a corporation established by a Central or State or Provincial Act, or (c) any company in which the public are substantially interested or a wholly owned subsidiary company.

Note: Industrial Company means an Indian company where business consists mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power.

It may be noted that, a public company under the Companies Act, need not necessarily fall within the meaning of a company in which the public are substantially interested under the Income-tax Act, 1961 because a public company under the Companies Act, may be considered as one in which the public are not substantially interested under the Income-tax Act, 1961 after considering the nature and extent of shareholding.

Illustration 1:

State with reason whether in the following cases Companies are widely held or closely held:

(a) The shares of ABC Private Limited are held as follows:

i	A corporation owned by RBI	15%
ii	Central Govt.	18%
iii	R.B.I.	10%
iv	Mr. Raman	28%
v	Mr. Bhuvan	27%

(b) 85% equity shares of Progressive Private Limited were held by the public and its affairs during the relevant previous year were controlled by seven persons.

Solution:

(a) Shares held by Govt., RBI and Corporation owned by RBI = $18\% + 10\% + 15\% = 43\%$.

As shares held by CG along with RBI are more than 40%, therefore, ABC Pvt. Ltd. is a Govt. Participating company. Hence it is a company in which Public is substantially interested, i.e., widely held.

(b) As none of the criteria mentioned in Section 2(18) are met in case of Progressive Pvt. Ltd. (such as Govt. Participating, Section 8 Company or Nidhi etc.) therefore, it is a closely held company.

Closely Held Company

A closely held company is not explicitly defined in the Income Tax Act, 1961. Instead, the Act defines the term “company in which the public are substantially interested” under Section 2(18). Any company that does not meet this criterion is, by implication, known as a “closely held company”—also referred to as a private company or an unlisted public company.

Legal Reference: Section 2(18)

- Section 2(18) of the Income Tax Act defines a “company in which the public are substantially interested” as:
- A company owned by the Government or the Reserve Bank of India (RBI).
- A company in which not less than 40% of the shares are held by the Government, RBI, or a government-owned corporation.
- Companies registered under Section 8 (non-profit) of the Companies Act.
- Certain mutual benefit societies and other entities specifically notified by the Central Government.

Conversely, any company falling outside the scope of Section 2(18) (i.e., where the public are not substantially interested) is considered a *closely held company*

Tax Implications

- **Section 2(22)(e) – Deemed Dividend:**
 - Applies special rules to closely held companies (companies in which the public are not substantially interested).

- When such a company advances loans or gives benefits to significant shareholders (holding $\geq 10\%$ voting power), they may be taxed as “deemed dividends” to the extent of the company’s accumulated profits.
- **Section 56(2)(viib):**
 - This section targets closely held companies for scrutiny when they issue shares at a price higher than the fair market value, particularly when issued to a resident. The excess over fair market value is taxable as “income from other sources” in the hands of the company.
- **Section 79:**
 - Closely held companies face restrictions on carrying forward and setting off losses if there is a change in beneficial ownership of more than 49% of voting power, subject to exceptions

Comparison: Closely Held vs. Widely Held Companies

Criteria	Closely Held Company	Widely Held Company (Public)
Ownership	Small group; not the public	Broad-based; open to public
Public Shareholding	No substantial public interest	Significant public interest
Share Trading	Not traded publicly	Traded on stock exchanges
Tax Treatment	Stricter rules (e.g., deemed dividends, Section 56(2)(viib))	Different exemptions; fewer restrictions

TAX INCIDENCE ON COMPANIES

The incidence of Income tax depends upon the residential status of a company in India during the relevant previous year. A Company may be either resident or non-resident in India, i.e., company cannot be ordinary or not-ordinary resident.

According to Section 6(3) of the Act, a company is said to be resident in India (resident company) in any previous year, if:

- (i) It is an Indian company; or
- (ii) Its place of effective management, (POEM), in that year, is in India.

If any of the above two tests is satisfied the company would be a resident company in India during that previous year.

A foreign company is resident in India if its Place of Effective Management (POEM) during the previous year is in India. For this purpose, the Place of Effective Management means a place where Key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance are made.

***POEM provisions have been discussed in details under the concept of residential status in Lesson 2.**

According to Section 5(1) of the Act, the total income of any previous year of a resident company would consist of:

- (i) Income received or deemed to be received in India during the previous year by or on behalf of such company;

- (ii) Income which accrues or arises or is deemed to accrue or arise to it in India during the previous year;
- (iii) Income which accrues or arises to it outside India during the previous year.

Under Section 5(2) of the Act, the total income of any previous year of **non-resident company** would consist of:

- (i) Income received or deemed to be received in India in the previous year by or on behalf of such company;
- (ii) Income which accrues or arises or is deemed to accrue or arise to it in India during the previous year.

CORPORATE TAX RATES (AY 2026-27)

Key Rates for Companies

Company Type	Basic Rate AY 25-26	Basic Rate AY 26-27	Surcharge	Health & Education Cess
Domestic ($\leq$ ₹400 cr turnover FY 2022-23)	25%	NA	7% (if Income is ₹1–10 cr), 12% (if Income is > ₹10 cr)	4%
Domestic ($\leq$ ₹400 cr turnover FY 2023–24)	NA	25%		
Domestic (others)	30%	30%		
Domestic (Section 115BAA)	22%	22%	10%	4%
Domestic (Section 115BAB)	15%	15%	10%	4%
Foreign Company	35%	35%	2% (if Income is between ₹ 1–10 cr), 5% (if Income is > ₹10 cr)	4%

Comparison of Key Regimes

Criteria	Section 115BA	Section 115BAA	Section 115BAB
Intended for	Manufacturing companies	Any domestic company	New manufacturing companies
Core Conditions	New; manufacturing; no select deductions	No exemptions/ deductions	New; manufacturing by set date; use primarily new assets; no select deductions
Tax Rate	25%	22%	15%

Criteria	Section 115BA	Section 115BAA	Section 115BAB
Surcharge	7%/12% as per regular slab	10% flat	10% flat
Cess	4%	4%	4%
MAT	Yes (15% of book profits)	No	No

Criteria for Sections 115BA, 115BAA, 115BAB

Section	Applicable To	Conditions	Effective From
115BA	Domestic Co. (Manufacturing)	– Set up on or after 01/03/2016 – Engaged in manufacturing – No specified deductions claimed	AY 2017–18 onward
115BAA	Any Domestic Co.	– No specified deductions – No SEZ benefits – No additional depreciation – Irrevocable option	AY 2020–21 onward
115BAB	New Manufacturing Co.	– Incorporated on/after 01/10/2019 – Manufacturing commenced by 31/03/2024 – No old assets/building	AY 2020–21 onward

Note: All options must be exercised **before the due date of ITR filing** via **Form 10-IC (115BAA)** or **Form 10-ID (115BAB)**.

Marginal Relief

Marginal Relief is not codified under a specific section of the Income Tax Act. Instead, it is embedded in the surcharge computation mechanism outlined in the Finance Act each year.

When Is It Applicable?

Marginal Relief applies in two broad cases:

1. Surcharge Thresholds

Entity Type	Thresholds for Surcharge	Surcharge Rate
Domestic Companies	₹1 crore / ₹10 crore	7% / 12%
Foreign Companies	₹1 crore / ₹10 crore	2% / 5%

Marginal relief ensures that **tax + surcharge** on income **just above the threshold** does **not exceed** Tax on threshold income + Excess income

Health and Education Cess: The amount of income-tax and the applicable surcharge, shall be further increased by health and education cess calculated at the rate of 4% of such income-tax and surcharge.

Domestic companies have to pay tax at the specified rate on profit earned during the previous year. Generally the tax rate applicable on domestic companies is 30%. It is 25% if the total turnover or gross receipt does not exceed Rs. 400 crore during the preceding previous year.

In addition to the above tax rate, there are three other sections i.e. Section 115BA / BAA / BAB of the Income tax Act, 1961. Domestic Companies have the option to choose to pay tax in any of these sections only on fulfillment of certain conditions. The conditions are appended below:

Criteria	<i>Tax on Income of certain manufacturing Domestic Companies [Section 115BA]</i>	<i>Tax on income of certain Domestic Companies [Section 115BAA]</i>	<i>Tax on Income of new manufacturing Domestic Companies [Section 115BAB]</i>
Tax Rates	25% + SC as applicable + HEC @ 4%	22% + SC @ 10% + HEC @ 4%	15% + SC @ 10% + HEC @ 4%
Set-up and engaged	Company has been set-up & registered on or after 01-03-2016 and engaged in business of manufacture/production of any article/thing and research in relation to, or distribution of, such article or thing manufactured	Applicable on Domestic Companies	Company should be set-up as a domestic company engaged in manufacturing / production of any article and include research or distribution of such article. The company has been set-up and registered on or after 1st Oct 2019 and must commence manufacturing on or before 31st March, 2024. Is not formed by splitting up or reconstruction of business already in existence (exception provided for undertaking formed as a result of reestablishment, reconstruction or revival of business referred to in section 33B of the Act). Does not use any building previously used as a hotel or convention centre, as the case may be, in respect of which deduction under section 80-ID has been claimed and allowed.

Criteria	<i>Tax on Income of certain manufacturing Domestic Companies [Section 115BA]</i>	<i>Tax on income of certain Domestic Companies [Section 115BAA]</i>	<i>Tax on Income of new manufacturing Domestic Companies [Section 115BAB]</i>
Following Deduction not allowed while calculating total Income	● Section 10AA: Deduction from special economic zone unit. ● Section 32AD: Investment allowance towards new plant and machinery made in notified backward areas. ● Section 33AB: Deduction for Tea, Coffee and Rubber manufacturing. ● Section 33ABA: Deposits made by companies engaged in production or extraction of petroleum and natural gas in India towards the site restoration fund. ● Deduction under section 32AC, 35(1)(ii)(ia)(iii) or 35(2AA)(2AB) or 35AC ● Section 35AD: Capital expenditure by any specified business. ● Section 35CCC: Expenditure on an agriculture extension project. ● Section 35CCD: Expenditure on skill development project ● Section 80C to 80U (profit based) other than u/s 80JJAA. ● Additional depreciation u/s 32.	● Section 10AA: Deduction from special economic zone unit. ● Section 32AD: Investment allowance towards new plant and machinery made in notified backward areas. ● Section 33AB: Deduction for Tea, Coffee and Rubber manufacturing. ● Section 33ABA: Deposits made by companies engaged in production or extraction of petroleum and natural gas in India towards the site restoration fund. ● Deduction under section 32AC, 35(1)(ii)(ia)(iii) or 35(2AA)(2AB) or 35AC. ● Section 35AD: Capital expenditure by any specified business. ● Section 35CCC: Expenditure on an agriculture extension project. ● Section 35CCD: Expenditure on skill development project ● Section 80C to 80U (profit based) other than u/s 80JJAA. ● Additional depreciation u/s 32.	● Section 10AA: Deduction from special economic zone unit. ● Section 32AD: Investment allowance towards new plant and machinery made in notified backward areas. ● Section 33AB: Deduction for Tea, Coffee and Rubber manufacturing. ● Section 33ABA: Deposits made by companies engaged in production or extraction of petroleum and natural gas in India towards the site restoration fund. ● Deduction under section 32AC, 35(1)(ii)(ia)(iii) or 35(2AA)(2AB) or 35AC. ● Section 35AD: Capital expenditure by any specified business. ● Section 35CCC: Expenditure on an agriculture extension project. ● Section 35CCD: Expenditure on skill development project. ● Section 80C to 80U (profit based) other than u/s 80JJAA. ● Additional depreciation u/s 32.

Criteria	<i>Tax on Income of certain manufacturing Domestic Companies [Section 115BA]</i>	<i>Tax on income of certain Domestic Companies [Section 115BAA]</i>	<i>Tax on Income of new manufacturing Domestic Companies [Section 115BAB]</i>
Set-off of loss	No set off of any loss c/f from any earlier AY if such loss is attributable to any of the deductions referred above	No set off of any loss c/f from any earlier AY if such loss is attributable to any of the deductions referred above	No set off of any loss c/f from any earlier AY if such loss is attributable to any of the deductions referred above.
MAT	Applicable	Not Applicable	Not Applicable
Exercise of Options	This Option has to be exercised upto due date of income tax return filing.	This Option has to be exercised upto due date of income tax return filing.	This Option has to be exercised upto due date of income tax return filing.
Opt-out options	Company cannot opt out once this option has been exercised ,except when the company choose to opt for Section 115BAA.	Company exercises the option under Section 115BAA for a given assessment year, it cannot withdraw it for the same or subsequent assessment years.	Company exercises the option under Section 115BAB for a given assessment year, it cannot withdraw it for the same or subsequent assessment years.

MINIMUM ALTERNATE TAX (MAT) [SECTION 115JB]

Minimum Alternate Tax (MAT) is a mechanism under the Indian Income Tax Act, 1961 designed to ensure that companies that make substantial book profits and pay little or no income tax due to various exemptions or deductions, pay a minimum amount of tax to the government.

At times it may happen that a taxpayer, being a company, may have generated income during the year, but by taking the advantage of various provisions of Income-tax Law (like exemptions, deductions, depreciation, etc.), it may have reduced its tax liability or may not have paid any tax at all. Due to increase in the number of zero taxpaying companies, MAT was introduced. The objective of introduction of MAT is to bring into the tax net “zero tax companies” which in spite of having earned substantial book profits and having paid handsome dividends, do not pay any tax due to various tax concessions and incentives provided under the Income-tax Law. Since the introduction of MAT, several changes have been introduced in the provisions of MAT and today it is levied on companies as per the provisions of section 115JB.

MAT Applicability

If the income tax payable by a company on its total income as computed under the normal provisions of the Income Tax Act in respect of any previous year relevant to the assessment year, is less than 15% of such book profit plus surcharge plus health and education cess, then such book profit shall be treated as total income of the company and the tax payable for the relevant previous year shall be deemed to be 15% (add surcharge and cess) of such book profit. This non- absolute provision will override any other provision of the Income-tax Act.

Note: MAT is levied at the rate of 9% (plus surcharge and cess as applicable) in case of a company, being a unit of an International Financial Services Centre and deriving its income solely in convertible foreign exchange.

Minimum Alternate Tax 'MAT' vs Alternate Minimum Tax 'AMT':

Particulars	MAT	AMT
Applicable to	Companies	Non-corporate entities (LLPs, etc.)
Governing Section	Section 115JB	Section 115JC
Base of calculation	Book Profit (P&L account)	Adjusted Total Income
Rate	15%	18.5%

MAT provision shall not apply to:

- (i) any income arising to a company from life insurance business.
- (ii) Domestic Company who has exercised the option referred to under sections 115BAA or 115BAB.
- (iii) a foreign company resident of a country with which India has a Double Taxation Avoidance Agreement (DTAA) and such company does not have a permanent establishment in India.
- (iv) the foreign company is a resident of a country with which India does not have an agreement (DTAA) and such company is not required to seek registration under any law for the time being in force relating to companies.
- (v) a foreign company, whose total income comprises of profits and gains arising from business referred to in section 44B, 44BB, 44BBA, or 44BBB and such income has been offered to tax at the rates specified in those sections.

MEANING OF BOOK PROFITS

As per Explanation 1 to section 115JB(2) "book profit" for the purposes of section 115JB means net profit as shown in the statement of profit and loss prepared in accordance with Schedule III to the Companies Act, 2013 as increased and decreased by certain items prescribed in this regard. The items to be increased and decreased are as follows:

Computation of Book Profits (Table A)	Amount
Net profit as per statement of profit and loss prepared in accordance with Schedule III to the Companies Act, 2013	
Add: Following items (if they are debited to the statement of profit and loss)	
Income-tax paid/payable and the provision thereof (*)	
Amounts carried to any reserves by whatever name called (Other than reserve specified under Section 33AC)	
Provisions for unascertained liabilities	
Provisions for losses of subsidiary companies	
Dividends paid/proposed	
Expenditure related to incomes which are exempt under section 10 [other than section 10(38)] section 11 and section 12	
The amount or amounts of expenditure relatable to, income, being share of the taxpayer in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86	

Computation of Book Profits (Table A)	Amount
The amount or amounts of expenditure relatable to income accruing or arising to a taxpayer being a foreign company, from: (a) the capital gains arising on transactions in securities; or (b) the interest, dividend royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII if the income-tax payable on above income is less than the rate of MAT	
The amount representing notional loss on transfer of a capital asset, being share or a special purpose vehicle to a business trust in exchange of units allotted by that trust referred to in clause (xvii) of section 47 or the amount representing notional loss resulting from any change in carrying amount of said units or the amount of loss on transfer of units referred to in clause (xvii) of section 47	
Expenditure relatable to income by way of royalty in respect of patent chargeable to tax under section 115BBF	
Amount of depreciation debited to P & L A/c	
Deferred tax and the provision thereof	
Provision for diminution in the value of any asset	
The amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such an asset if not credited to statement of profit and loss	
The amount of gain on transfer of units referred to in clause (xvii) of section 47 computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through statement of profit and loss as the case may be	
Less: Following items (if they are credited to the statement of profit and loss)	
Amount withdrawn from any reserve or provision if credited to P&L account (**)	
Incomes which are exempt under section 10 [other than section 10(38)] section 11 and section 12	
Amount of depreciation debited to statement of profit and loss (excluding the depreciation on revaluation of assets)	
Amount withdrawn from revaluation reserve and credited to statement of profit and loss to the extent it does not exceed the amount of depreciation on revaluation of assets	
The amount of income, being the share of the taxpayer in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86, if any such amount is credited to the statement of profit and loss	
The amount of income accruing or arising to a taxpayer being a foreign company, from: (a) the capital gains arising on transactions in securities; or (b) the interest, dividend royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII if such income is credited to the statement of profit and loss and the income-tax payable on above income is less than the rate of MAT.	

Computation of Book Profits (Table A)	Amount
The amount (if any, credited to the statement of profit and loss) representing (a) notional gain on transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust referred to in clause (xvii) of section 47; or (b) notional gain resulting from any change in carrying amount of said units; or	
(c) gain on transfer of units referred to in clause (xvii) of section 47, The amount representing notional gain on transfer of units referred to in clause (xvii) of section 47 computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through statement of profit and loss, as the case may be.	
Income by way of royalty in respect of patent chargeable to tax under section 115BBF	
Aggregate amount of unabsorbed depreciation and loss brought forward in case of: a) A company and its subsidiary and the subsidiary of such subsidiary, where, the Tribunal, on an application moved by the Central Government under Section 241 of the Companies Act, 2013 has suspended the Board of Directors of such company and has appointed new directors who are nominated by the Central Government under Section 242 of the said Act; A company against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under Section 7 or Section 9 or Section 10 of the Insolvency and Bankruptcy Code, 2016	
Amount of brought forward loss or unabsorbed depreciation, whichever is less as per books of account (in case of a company other than the company undergoing insolvency proceedings)	
Profits of a sick industrial company till its net worth becomes zero/positive	
Deferred tax, if credited to statement of profit and loss	
Book profit to be used to compute MAT	

(*) The amount of Income-tax shall include:

- i. Any tax on distributed profits under section 115-O (dividend distribution tax - i.e., DDT) or tax on distributed income under section 115R;
- ii. Any interest charged under this Act;
- iii. Surcharge, if any, as levied by the Central Acts from time-to-time;
- iv. Education Cess on Income-tax, if any, as levied by the Central Acts from time-to-time; and
- v. Secondary and Higher Education Cess on Income-tax, if any, as levied by the Central Acts from time-to-time.

(**) Withdrawals made from reserves created or provisions made on or after the 1-4-1997, shall be deducted only if the book profit of the year of creation of such reserve has been increased by the amount transferred to such reserve or provisions (out of which the said amount was withdrawn)

Meaning of book profit for Indian Accounting Standards (Ind AS) compliant companies

- (1) As per newly inserted section 115JB(2A) by the Finance Act, 2017, "book profit" for Ind AS compliant company for the purpose of section 115JB means the book profit as computed in accordance with Explanation 1 to section 115JB(2) as mentioned above:-

- (a) increased by all amounts credited to other comprehensive income (OCI) in the statement of profit and loss that will not be re-classified to profit or loss;
 - (b) decreased by all amounts debited to other comprehensive income (OCI) in the statement of profit and loss that will not be re-classified to profit or loss;
 - (c) increased by all amounts or aggregate of amounts debited to the statement of profit and loss on distribution of non-cash assets to shareholders in a demerger of companies in accordance with Appendix A of Ind AS 10; and
 - (d) decreased by all amounts or aggregate of amounts credited to the statement of profit and loss on distribution of non-cash assets to shareholders in a demerger of companies in accordance with Appendix A of Ind AS 10.
- (2) Any item credited/debited to OCI that will not re-classified to profit or loss should be ignored for the purpose of computing book profit if that item is:
- i. Revaluation surplus for fixed assets and intangible assets under Ind AS 16 and Ind AS 38; or
 - ii. Gains or losses from investments in equity instruments measured at fair value through other comprehensive income (FVTOCI) as per Ind AS 109.

But, the book profit of the previous year in which the asset or investment as referred to in above points (i) and (ii) is retired, disposed, realised or otherwise transferred shall be increased or decreased by the amounts of above points (i) and (ii) to the extent relatable to the disposed asset or investment.

- (3) In the case of a resulting company, where the assets and liabilities of the undertaking or undertakings being received by it are recorded at values different from values appearing in the books of account of the demerged company immediately before demerger, any change in such value shall be ignored for the purpose of computation of book profit of the resulting company.

So, for the computation of book profit of an Ind AS compliant company, may proceed as follows:

<i>Particulars</i>	<i>Amount</i>
Book profit as computed in Table A	
Adjustments as mentioned in point (3) above	
Adjustments for revaluation gain/loss for fixed assets & intangible assets in the year of their disposal or transfer	
Adjustments for gains or losses from investments in equity instruments measured at FVTOCI in the year if their disposal or transfer	
Adjustments for any other OCI items that will not be re-classified to profit or loss	
Book profit to be used to compute MAT	

MAT CREDIT [SECTION 115JAA]

MAT Credit for taxes paid as per Section 115JB in earlier years (in which MAT liability was more than tax liability as per normal provisions of the Act) is available in the Assessment year in which Tax payable on the total income computed under the normal provisions of this Act is more than tax payable u/s 115JB for that Assessment year.

No interest is paid on MAT Credit by the government.

MAT Credit to be set off in an AY = Regular Income tax - Minimum alternate tax

Summary Table: MAT Credit under Section 115JAA

Particulars	Details
Tax Credit Allowed For	Excess tax paid under MAT over normal tax
Calculation	MAT Paid – Normal Provisions Tax
Set Off Availability	Year when normal tax > MAT
Carry Forward Period	15 assessment years
Interest on MAT Credit	Not allowed
FTC Adjustment	Excess FTC ignored for MAT credit
Lapse of MAT Credit	If not utilized within 15 years
Applicability	Companies paying MAT (not applicable if opted out)

Carried Forward of MAT Credit

Credit of MAT in respect of tax excess paid under Section 115JB will be available and it can be carried forward for **15 Assessment Years** succeeding the assessment year in which the credit became allowable.

The amount of MAT credit shall not be allowed to be carried forward to the subsequent year to the extent such credit relates to the difference between the amount of foreign tax credit (FTC) allowed against MAT and FTC allowable against the tax computed under regular provisions of the Act.

In case of conversion of a company into LLP, MAT Credit available in the hands of company shall not be allowed to LLP.

Illustration 2:

Number of years for which credit of MAT excess paid under section 115JB can be carried forward is –

- (a) 7 Assessment years (b) 8 Assessment years
(c) 15 Assessment years (d) 9 Assessment years.

Solution: (c) 15 Assessment years

Illustration 3:

A domestic company ABC Ltd furnishes the following particulars for AY 2026-27 and solicits your advice on the application of section 115JB. You are also required to compute the total income and tax payable.

Particulars		Amount (Rs.)
	Profits as per P&L Account as per Companies Act, 2013	1,95,00,000
	This includes:	
a)	Excess realized on sale of land held as investment	30,00,000
b)	Depreciation on SLM basis	1,00,00,000
c)	Provision for losses of subsidiaries	60,00,000
	Depreciation allowable per Income Tax Rules, 1962	1,50,00,000

	STCG on sale of land mentioned above	40,00,000
	B/f losses	50,00,000
	Unabsorbed Depreciation	60,00,000

The Company has also represented to you that the excess realized on sale of land cannot form part of the book profits u/s 115 JB. You will have to deal with the issue assuming that the Co. is not required to comply with Ind. AS. The annual turnover of ABC Ltd. was INR 40 Crores.

Solution:**Computation of Total Income**

<i>Particulars</i>		<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>
	Net Profit per P&L Account		1,95,00,000
Less:	Excess realized on sale of land (treated separately)		(30,00,000)
			1,65,00,000
Add:	Depreciation on SLM Basis	1,00,00,000	
	Provisions for losses of subsidiaries	60,00,000	
			1,60,00,000
	Total		3,25,00,000
Less:	Depreciation allowable per Income-tax Act		(1,50,00,000)
	Business Income		1,75,00,000
Less:	Set-off of B/F losses		(50,00,000)
	Net Business Income		1,25,00,000
	Capital Gains		40,00,000
	Total Income		1,65,00,000
Less:	Unabsorbed Depreciation		(60,00,000)
	Total Income per as Income-tax Act, 1961		1,05,00,000

Computation of Book Profit u/s 115JB

<i>Particulars</i>		<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>
	Net Profit per P&L Account		1,95,00,000
Add:	Depreciation on SLM Basis	1,00,00,000	
	Provisions for losses of subsidiaries	60,00,000	1,60,00,000

			3,55,00,000
Less:	Depreciation		(1,00,00,000)
	Business Income		2,55,00,000
Less:	B/f Business Loss as it's less than Unabsorbed Depreciation		(50,00,000)
	Book Profits		2,05,00,000

- (a) Note that the profit on sale of land held as investment is not excluded from the P&L for purposes of computing the Book Profits.
- (b) Note that the least of the B/f loss and the Unabsorbed Depreciation is reduced to compute Book Profits.

Income Tax Liability under Normal Provisions		
Tax Liability @ 25% as the Turnover is < 400 Crores		26,25,000
Add:	Surcharge @ 7% as the Income is > 1 Cr.	1,83,750
	Total Tax Payable	28,08,750
Add:	Health and Education Cess @ 4%	1,12,350
	Total Income Tax Liability	29,21,100

Income Tax Liability as per MAT Provisions		
15% of Book Profits		30,75,000
Add:	Surcharge @ 7% as the Income is > 1 Cr.	2,15,250
	Total Tax Payable	32,90,250
Add:	Health and Education Cess @ 4%	1,31,610
	Total Income Tax Liability	34,21,860

Note:

- (a) Since 15% of book profits exceeds the tax payable per Income-tax Act, 1961, the book profit would be deemed to be the total income and the tax payable on such total income, which is INR 34,21,860 (rounded off) would become the liability for AY 2026-27 for the Company.
- (b) With regards to the company's representation, in respect of the capital gains, whether liable for book profit tax u/s 115JB, it may be noted that since the excess realised on sale of land which was held as investment, has been included in the net profit computed per Sch. III of the Companies Act, 2013, it shall form part of Book Profits (Bombay HC Judgement in *CIT vs. Veekay Lal Investment Co Pvt Ltd.*).

Illustration 4:

Mona Ltd., a resident Co., earned a profit of INR 15,00,000/- after debit / credit of the following amounts:

Items debited

- a) Provisions for the losses of Subsidiaries; INR 70,000
- b) Provision for doubtful debts; INR 75,000
- c) Provision for Income Tax; INR 105,000
- d) Provision for Gratuity basis actuarial valuation; INR 200,000
- e) Depreciation; INR 360,000
- f) Interest to Financial Institution (unpaid before filing of return); INR 100,000
- g) Penalty for infraction of law; INR 50,000

Items credited

- a) Profits from unit(s) established in SEZ; INR 500,000
- b) Share in income of an AOP as a member; INR 175,000
- c) Long Term Capital Gains; INR 300,000

Other Information

- a) Depreciation includes INR 150,000 on account of revaluation of fixed assets
- b) Depreciation per Income Tax Rules is INR 280,000
- c) Balance of P&L Account on the assets side of B/S as on last day of p/y was INR 10,00,000; of which the unabsorbed depreciation was INR 400,000
- d) Capital Gains has been invested in specified assets u/s 54EC
- e) The AOP, of which the Co. is a member has paid the tax at maximum marginal rate
- f) Provision for Income Tax includes INR 45,000 as interest

You are required to compute the MAT u/s 115JB of the Income Tax Act, 1961 for AY 2026-27, assuming that the Co. is not required to comply with IND AS.

Solution:**Computation of Book Profit u/s 115JB**

<i>Particulars</i>		<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>
	Net Profit per P&L Account		15,00,000
<i>Add:</i>	Provisions for subsidiaries' losses	70,000	
	Provision for doubtful debts	75,000	
	Provision for Income Tax	1,05,000	

	Depreciation	3,60,000	
			6,10,000
			21,10,000
Less:	Share in income of an AOP	1,75,000	
	Depreciation (excl. Reval. Amounts)	2,10,000	
	Unabsorbed Business Losses	4,00,000	
			(7,85,000)
	Book Profits		13,25,000
	MAT Liability @ 15%		19,87,50
Add:	Health and Education Cess @ 4%		7,950
	MAT Liability (rounded off)		20,6700

Note:

1. Interest to FI's / Banks which are unpaid prior to filing of return and penalties are not specified items u/s 115JB and hence not added back
2. Provision for Gratuity Liability based on actuarial valuation is an ascertained liability and hence should not be added back to ascertain book profits (*CIT vs. Echjay Forgings P. Ltd.*)
3. Capital Gains reflected in the P&L will form a part of the book profits even if the investments u/s 54EC have been made. Therefore, these cannot be reduced. (*CIT vs. Veekaylal Investment Co. P. Ltd.*)
4. Share of the AOP's income as a member is reduced as the AOP has already paid the tax at maximum marginal rate

Illustration 5:

The table below highlights and explains the modus of MAT Credit, and how it is utilised and carried forward.

MAT CREDIT UTILISATION AND C/F					
F.Y.	Normal Tax Liability	Liability (MAT)	Tax Payable	Credit utilised	Credit c/f
2014-15	100	300	300	-	200
2015-16	120	90	120	30	170
2016-17	150	110	150	40	130

2017-18	180	200	200	-	150
2018-19	200	190	200	10	140
2019-20	300	280	300	20	120
2020-21	250	230	250	20	100
2021-22	225	175	225	50	50
2022-23	250	240	250	10	40
2023-24	275	270	275	5	35
2024-25	350	315	350	35	0

CASE LAW

ABC (P) Ltd. is in the business of manufacturing Plastic. For the assessment year 2025-26, it paid tax@15% on its book profit computed under section 115JB. The Assessing Officer though satisfied that it is liable to pay book profit tax under section 115JB, wants to charge interest under sections 234B and 234C as no advance tax was paid during the financial year 2024-25. The company seeks your opinion on the proposed levy of interest.

Solution : The issue under consideration is whether interest under sections 234B and 234C can be levied where a company is assessed on the basis of its book profit under section 115JB.

The Supreme Court, in Joint CIT v. Rolta India Ltd. (2011) 330 ITR 470, observed that there is a specific provision in section 115JB(5) providing that all other provisions of the Income-tax Act, 1961 shall apply to every assessee, being a company, mentioned in that section. Section 115JB is a self-contained code pertaining to MAT, and by virtue of sub-section (5) thereof, the liability for payment of advance tax would be attracted.

According to section 207, tax shall be payable in advance during any financial year, in accordance with the provisions of sections 208 to 219 (both inclusive), in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year.

Under section 115JB(1), where the tax payable on total income is less than 15% of “book profit” of a company, the “book profit” would be deemed to be the total income and tax would be payable at the rate of 15%.

Since in such cases, the book profit is deemed to be the total income, therefore, as per the provisions of section 207, tax shall be payable in advance in respect of such book profit (which is deemed to be the total income) also.

Therefore, if a company defaults in payment of advance tax in respect of tax payable under section 115JB, it would be liable to pay interest under sections 234B and 234C.

Therefore, even though ABC (P) Ltd. is assessed on the basis of its book profit under section 115JB for A.Y.2025-26, it is liable to pay advance tax. Since ABC (P) Ltd. has not paid any advance tax during the financial year 2024-25, the levy of interest under section 234B and 234C is valid.

TAXATION OF DIVIDEND

Dividend Distribution Tax 'DDT' [Section 115-O]

115-O. (1) Notwithstanding anything contained in any other provision of this Act and subject to the provisions of this section, in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2003 but on or before the 31st day of March, 2020, whether out of current or accumulated profits shall be charged to additional income-tax (hereafter referred to as tax on distributed profits) at the rate of fifteen per cent:

Provided that in respect of dividend referred to in sub-clause (e) of clause (22) of section 2, this sub-section shall have effect as if for the words "fifteen per cent", the words "thirty per cent" had been substituted.

(1A) The amount referred to in sub-section (1) shall be reduced by,—

the amount of dividend, if any, received by the domestic company during the financial year, if such dividend is received from its subsidiary and,—

- a) where such subsidiary is a domestic company, the subsidiary has paid the tax which is payable under this section on such dividend; or
- b) where such subsidiary is a foreign company, the tax is payable by the domestic company under section 115BBD on such dividend:

The provisions of section 115-O(1) shall not be applicable w.e.f. April 1, 2020 as dividend shall now taxable in the hands of the recipient [As amended by Finance Act, 2020].

The Finance Act, 2020 has abolished the DDT and move to the classical system of taxation wherein dividends are taxed in the hands of the investors. Therefore, the provision of Section 115-O shall not be applicable if the dividend is distributed on or after 01-04-2020. **Thus, if the dividend is distributed on or after 01-04- 2020 the domestic companies shall not liable to pay DDT and, consequently, shareholders shall be liable to pay tax on such dividend income.** As dividend would now be taxable in the hands of the shareholder, various provisions of the Act have been revived such as allow ability of expenses from dividend income, deductibility of tax from dividend income, treatment of inter-corporate dividend, etc.

As per the Finance Act, 2020 amended Section 57(i), effective from April 1, 2021 states that a taxpayer can claim a deduction of interest expenses for earning a dividend income and Interest on money borrowed for investing in the shares can be claimed as a deduction **subject to a maximum of 20% of dividends or income** in respect of units of a mutual fund [i.e. **(a) Actual Income or (b) 20% of Dividend or Income whichever is lower**]. In nut shell, taxpayer cannot claim a deduction of any expense against dividend income, except interest expense on cash borrowed for investment and the dividend income will be taxable. It is immaterial of the sum received at applicable income tax slab rates.

Inter-corporate Dividend relief: As the taxability of dividend has been shifted from companies to shareholders w.e.f. 01.04.2020, the Government has introduced **a new section 80M** under the Act to remove the cascading effect where a domestic company receives a dividend from another domestic company. However, nothing has been prescribed where a domestic company receives dividend from a foreign company and further distribute the same to its shareholders. **[As amended by Finance Act, 2020].**

The taxability in such cases shall be as under:

Domestic company receives dividend from another domestic company: The provisions of **section 80M** removes the cascading effect by providing that inter-corporate dividend shall be reduced from total income of company receiving the dividend if same is further distributed to shareholders one month prior to the due date of filing of return.

Section 80M	Deduction in respect of certain Inter Corporate Dividend (ICD)	
Meaning of ICD	When a company receives dividend by virtue of its shareholding in another company is known as ICD.	
Applicability	(1) Where the gross total income of a domestic company in any previous year includes any income by way of dividends from any other domestic company or a foreign company or a business trust, there shall, in accordance with and subject to the provisions of this section, be allowed in computing the total income of such domestic company, a deduction of an amount equal to so much of the amount of income by way of dividends received from such other domestic company or foreign company or business trust as does not exceed the amount of dividend distributed by it on or before the due date. (2) Where any deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed under sub-section (1) in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.	
Coverage (Period)	Dividend distributed on or after the 1st of April 2020 (AY 2021-22 onwards).	
Amount of Deduction (₹)	A. Amount of dividend received from domestic companies	***
	B. Amount of dividend distributed 1 month prior to the due date of filing return	***
	Amount of Deduction= A or B Whichever is lower	***

CASE 1

DP Ltd (A Domestic Company) provides you the information related to AY: 2025-26. Dividend received from ACC Ltd. (A Domestic Company) ₹1200000 (Interest paid for borrowed money for investment in ACC Ltd ₹300000 and dividend collection charges paid would be ₹7000). Income from Mutual Fund (HDFC Equity Oriented) ₹300000 (Interest paid for borrowed money for investment in MF ₹16000 and other charges paid would be ₹4000). DP Ltd company has distributed the dividend to shareholders:

Particulars	FY	Date of Payment	Amount
Interim Dividend	2024-25	23-7-2024	2,50,000
Interim Dividend	2024-25	29-11-2025	90,000

You are required to compute Taxable Dividend Income and Deduction under section 80M and Section 57 of Income Tax Act.

Solution:**Computation of Taxable Dividend Income and deduction u/s 57**

<i>Particulars</i>		<i>Amount</i>
Dividend received from ACC Ltd		1,20,0000
Less: Deduction u/s 57 in terms of Interest		
(a) Actual Amount	3,00,000	
(b) 20% of income (i.e. 20% *12,00,000)	2,40,000	
a or b whichever is lower		(2,40,000)
Dividend income received		9,60,000
Income from Mutual Fund (HDFC Equity oriented)		3,00,000
Less: Deduction u/s 57 in terms of Interest		
(a) Actual Amount	16,000	
(b) 20% of income (i.e. 20% *3,00,000)	60,000	
a or b whichever is lower		(16,000)
Income received		2,84,000

Computation of Deduction u/s 80M

Due date of filling of return	30.9.2022
(a) Amount of dividend received from domestic companies (As per above)	9,60,000
(b) Amount of dividend distributed 1 month prior to the due date of filing return (i.e.30-9-2025)	2,50,000
Amount of Deduction u/s 80M = A or B Whichever is lower	2,50,000

Note: Dividend collection charges and other charges are not allowed as a deduction.

The domestic company can claim deduction for any expense incurred by it for the purposes of earning such dividend income.

Nature of Dividend	Taxability
Final	In the year of declaration at the AGM by Company
Deemed	In the year of distribution or paid by the Company
Interim	In the year of receipt by the shareholders

Exemption for inter-corporate dividend distribution within IFSC Units engaged in the aircraft leasing business [Section 10(34B)]

The Finance Act 2023 has introduced a new clause (34B) in Section 10, which will come into effect from the assessment year 2024-25. This clause exempted dividend income earned by an IFSC unit primarily engaged in aircraft leasing business. However, the exemption is subject to the condition that the company paying the dividend should also be an IFSC unit and engaged in the aircraft leasing business.

Taxability of Dividend in hands of Recipient

Section 10(34), which provides an exemption to the shareholders in respect of dividend income, **is withdrawn from Assessment Year 2021-22**. Thus, dividend received during the financial year 2020-21 and onwards shall now be taxable in the hands of the shareholders. Consequently, Section 115BBDA which provides for taxability of dividend in excess of Rs. 10 lakhs has no relevance as the entire amount of dividend shall be taxable in the hands of the shareholder.

The taxability of dividend and tax rate thereon shall depend upon many factors like residential status of the shareholders, relevant head of income. In case of a non-resident shareholder, the provisions of Double Taxation Avoidance Agreements (DTAAs) and Multilateral Instrument (MLI) shall also come into play. **[As amended by Finance Act, 2020]**

Taxable in the hands of resident shareholder

Dividend income are taxable under the head 'Income from other sources' irrespective of fact that person held securities either as a trader or as an investor.

Deductions from dividend income

The assessee can claim deduction of only interest expenditure which has been incurred to earn that dividend income to the extent of 20% of total dividend income. No deduction shall be allowed for any other expenses including commission or remuneration paid to a banker or any other person for the purpose of realising such dividend.

Tax rate on dividend income

The dividend income shall be chargeable to tax at normal tax rates as applicable in case of an assessee except where a resident individual, being an employee of an Indian company or its subsidiary engaged in Information technology, entertainment, pharmaceutical or bio-technology industry, receives dividend in respect of GDRs issued by such company under an Employees' Stock Option Scheme. In such a case, dividend shall be taxable at concessional tax rate of 10% without providing for any deduction under the Income-tax Act. However, the GDRs should be purchased by the employee in foreign currency.

Taxability in case of non-resident shareholders including FPIs

A non-resident generally invests in India either directly as private equity investors or as Foreign Portfolio Investors (FPIs). A non-resident person can also be a promoter of an Indian Company. A non-resident person generally hold shares of an Indian company as an Investment and, therefore, any income derived by way of dividend is taxable under the head other sources.

As regards FPIs, securities held by them are always treated as a capital asset and not as stock-in-trade. Thus, in case of FPIs also, the dividend income shall always be taxable under the head other sources

Tax rate on dividend income

The dividend income, in the hands of a non-resident person (including FPIs and non-resident Indian citizens (NRIs)), is taxable at the rate of 20% without providing for deduction under any provisions of the Income-tax Act. However, dividend income of an investment division of an offshore banking unit shall be taxable at the rate of 10%

If the withholding tax rate as per DTAA is lower than the rate prescribed under the Finance Act then tax shall be deducted at the rate prescribed under DTAA.

CARBON CREDIT [SECTION 115BBG]

Meaning of Carbon Credit	● "carbon credit" in respect of one unit shall mean reduction of one tonne of carbon dioxide emissions or emissions of its equivalent gases which is validated by the United Nations Framework on Climate Change and which can be traded in market at its prevailing market price. ● It is a tradable permit or certificate to an industrial undertaking for reduction of the emission keeping in mind of global warming.
Coverage and Applicability	● Where the total income of an assessee includes any income by way of transfer of carbon credits the income-tax payable shall be the aggregate of – a) the amount of income-tax calculated on the income by way of transfer of carbon credits, at the rate of ten per cent; and b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (a).
Tax Rate	● Concessional rate of 10% (+SC+HEC) on the gross amount of such income. ● No expenditure or allowance in respect of such income shall be allowed.

BUY-BACK OF SHARES

Levy of additional income-tax @ 20% on Buyback of Shares [Section 115QA]

The Finance (No. 2) Act, 2019 has extended the levy of additional income-tax on buy back of shares to all companies including listed companies with effect from 05.07.2019. Thus, hereafter, in case of buyback of shares (whether listed or unlisted) by domestic companies, additional income-tax @ 20% (plus surcharge @ 12% and cess @ 4%) is leviable in the hands of the company.

Consequently, the income arising to the shareholders in respect of such buyback of shares by the domestic company would be exempt under section 10(34A), since the domestic company is liable to pay additional income-tax on the buyback of shares.

It means additional income tax is applicable to all companies, whether listed or unlisted, with effect from 5th July, 2019. However, the provision of this sub-section shall not apply to such buy-back of shares being the shares listed on recognized stock exchange in respect of which public announcement has been made before 5th July, 2019 in accordance with the provisions of SEBI (Buy Back of Securities) Regulation 2018 made under the SEBI Act, 1992 as amended from time to time.

Note: Prior to 05.07.2019, additional income-tax was attracted only in case of buy-back of unlisted shares by domestic companies. Consequently, only holders of unlisted shares were entitled to exemption under section 10(34A).

Taxation provisions in respect of buyback effected on or after 5.7.2019 but before 1.10.2024

I	II	III	IV
Taxability in the hands of	Buyback of shares (listed or unlisted) by domestic companies	Buyback of shares by a company, other than a domestic company	Buyback of specified securities by any company
Company	Subject to additional income-tax @ 23.296%.	Not subject to tax in the hands of the company.	Not subject to tax in the hands of the company.
Shareholder/ holder of specified securities	Income arising to shareholders exempt under section 10(34A)	Income arising to shareholder taxable as capital gains u/s 46A	Income arising to holder of specified securities taxable as capital gains u/s 46A.

Such tax should be paid to the credit of the Central Government within 14 days from the date of payment of any consideration for such buyback to the shareholder

Meaning of buyback and distributed Income:

- 1. Buyback:** Purchase by a company of its own shares in accordance with the provisions of any law for the time being in force to companies [clause (i) of Explanation to section 115QA]
- 2. Distributed Income:** The consideration paid by the company on buy-back of shares as reduced by the amount which was received by the company for issue of such shares, determined in the manner as may be prescribed [clause (ii) of Explanation to section 115QA]

The provisions of this sub-section shall not apply in respect of any buy-back of shares, that takes place on or after the 1st day of October, 2024.” [Amendment vide Finance Act, 2024]

Accordingly, the income arising to the shareholders in respect of such buyback of shares by the domestic company would be taxable in the hands of Shareholders as exemption provided u/s 10(34A) has been withdrawn vide amendment Finance Act, 2024.

TAX ON INCOME DISTRIBUTED BY SPECIFIED COMPANY OR MUTUAL FUND

Section 115R(2)

Any amount of income distributed by a Mutual Fund, to its unit holders after 1st April, 2003 **but on or before 31 March, 2020** shall be chargeable to tax and the Mutual Fund becomes liable to pay additional tax on such distribution. Section 10(35), which provides an exemption to the unit holder in respect of income distributed by a Mutual Fund, is withdrawn from Assessment Year 2021-20. Thus, any income distributed by a Mutual Fund received during the financial year 2020-21 and onwards shall not be taxed under section 115R and shall now be taxable in the hands of the Unit holders. **[As amended by Finance Act, 2020]**

EQUALISATION LEVY

The rapid growth of the information and communication technology has resulted in substantial expansion of the supply and procurement of digital goods and services globally, including India, and the digital economy is growing at approximately 10% per annum, faster than the economy as a whole.

These new business models have brought along with themselves, challenges. The typical issues / concerns around taxation vis-à-vis e-commerce are:

- a) difficulty in characterizing the nature of payment and establishing a link / nexus between taxable transaction, activity and taxing jurisdiction.
- b) the difficulty in locating the transaction, activity and identifying the tax payer.

The Organization for Economic Cooperation and Development (OECD), has recommended several options to tackle these challenges.

In order to address these challenges, Chapter VIII of the Finance Act, 2016 titled “Equalization Levy” provides for an equalization levy of 6% on the amount of consideration for specified services, received / receivable by a non- resident, not having permanent establishment in India, from a resident in India, who carries out business / profession, or from a non-resident who has a permanent establishment in India.

As amended by Finance Act, 2020, an equalization levy of 2% shall be charged on or after 01.04.2020 on the consideration by an e-commerce operator from e-commerce supply made or provided by it:

- (a) to a person resident in India;
- (b) to a non-resident in the specified circumstances as referred to in sub-section (3);
- (c) to a person who buys such goods or services or both using internet protocol address located in India.

Where e-commerce operator means a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both.

E-commerce supply or services means-

- (i) online sale of goods owned by the e-commerce operator;
- (ii) online provision of services provided by the e-commerce operator;
- (iii) online sale of goods or provision of services or both, facilitated by the e-commerce operator;
- (iv) any combination of activities listed in clause (i), (ii) or clause (iii).

The equalisation levy shall not be charged in the following cases:

- (a) where the e-commerce operator making or providing or facilitating e-commerce supply or services has a permanent establishment in India and such e-commerce supply or services is effectively connected with such permanent establishment;
- (b) where the equalisation levy is leviable @ 6% under consideration for specified services;
- (c) sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated is less than 2 Crore rupees during the previous year.

Note: The equalization levy of 2% charged on the consideration by an e-commerce operator from e-commerce supply made or provided by it shall not be applicable to consideration received or receivable for e-commerce supply or services, on or after the 1st day of August, 2024. [Amendment vide Finance Act, 2024]

The equalisation levy, shall be paid by every e-commerce operator to the credit of the Central Government for the quarter of the financial year ending with the date specified in column (2) of the Table below by the due date specified in the corresponding entry in column (3) of the said Table:

S. No.	Date of ending of the quarter of financial year	Due date of the financial year
1	30th June	7th July
2	30th September	7th October
3	31st December	7th January
4	31st March	31st March

Refer to the table below to understand the various parameters and aspects involved.

Section	Subject	Provisions
166	Person responsible for deduction of equalization levy	Every person being a resident in India, who carries out business / profession, or a non-resident who has a permanent establishment in India shall deduct equalization levy from the amount paid / payable to a non-resident in respect of the specified service.
	Rate	6% of the amount of consideration for a specified service, received / receivable by a non-resident, not having permanent establishment in India, from a resident in India, who carries out business / profession, or from a non-resident who has a permanent establishment in India, rounded off to the nearest ten rupees. 2% on Consideration received or receivable by E-Commerce supply of services [Amendment vide Finance Act, 2020]. Note: The equalization levy of 2% charged on the consideration by an e-commerce operator from e-commerce supply made or provided by it shall not be applicable to consideration received or receivable for e-commerce supply or services, on or after the 1st day of August, 2024. [Amendment vide Finance Act, 2024]
	Threshold	Equalization Levy is deductible if the aggregate amount of consideration for a specified service in a previous year exceeds INR 100,000.
	Time-period	The Equalization Levy so deducted during any calendar month shall be paid by every assessee to the credit of the Central Government by the 7th of following month.
	Consequence of failure	Any assessee who fails to deduct, would anyway continue to be liable to pay to the credit of the Central Government, the Equalization Levy by 7th of the following month.

Section	Subject	Provisions
167	Furnishing the statement	Every assessee or e-commerce operator shall, within the time prescribed after the end of the FY, submit a statement in the prescribed Form # 1, on or by 30th June immediately following the FY, setting forth all details for specified services pertaining to that FY
	Revised Statement	If the assessee or e-commerce operator notices omissions / errors / wrong details, he can furnish a revised statement before the expiry of 2 years from the end of the FY in which the specified service was provided.
	Notice by the Assessing Officer (A.O.)	Where any assessee has failed to file the statement within the prescribed time, the A.O. is empowered to issue a notice calling for the statement and in which case the statement has to be furnished within 30 days of date of serving of such notice.
168	Processing of the Statement	The statement shall be processed, and the amount payable along with interest if any, shall be computed towards the Equalization Levy. The net amount payable by or refundable to the assessee or e-commerce operator has to be worked out and an intimation must be served upon the assessee. However, no intimation is to be sent after the expiry of one year, from the end of the FY in which the statement is furnished.
169	Rectification of mistake	With a view to rectifying a mistake apparent on the record, the A.O. may amend the intimation and such intimation must be amended within one year from the end of the FY in which the intimation sought to be amended was issued.
170	Interest on delayed payments	Every assessee or e-commerce operator who fails to deposit to the credit of the Central Government, the applicable Equalization Levy, within 7th of the month following the month in which it was deducted, the assessee shall be liable to pay Interest @ 1% of such levy for every month / part of the month of delay.
171	Penalty	If the assessee or e-commerce operator fails to deduct the Equalization Levy, in addition to the Equalization Levy and Interest, penalty equal to the amount of Equalization Levy that he failed to deduct would be applicable. If the assessee fails to remit the Equalization Levy so deducted to the credit of the Government by 7th of the following month, a penalty of INR 1000 per day would be leviable, subject to a maximum of the equalization levy that he was to deduct.
172	Penalty for delay in furnishing the statement	If the assessee fails to furnish the statement within 30th June of the following FY, or within 30 days of the notice served by the A.O., a penalty of INR 100 per day is leviable on the assessee.

An assessee aggrieved by an order of the A.O., may appeal to the Commissioner of Income Tax (Appeals) within

30 days of receipt of date of order. An assessee aggrieved by an order of the Commissioner, may appeal to the Appellate Tribunal within 60 days of receipt of date of order.

Illustration 7:

DEF Ltd. is in the business of manufacture and sale of formal apparels and in order to expand its footprints globally, has launched a massive online campaign. For the purpose of the online advertisements, it utilized the services of GHI Ltd., based out of Singapore. During the PY, DEF Ltd. paid a consideration of INR 20,00,000 to GHI Ltd. for such services.

Entail the implications if:

- (a) GHI Ltd. has no permanent establishment in India.
- (b) GHI Ltd. has a permanent establishment in India.

Solution:

- (a) In case GHI Ltd. has no permanent establishment in India, the consideration paid to GHI Ltd. by DEF Ltd. would attract Equalization Levy to be deducted @ 6%. Hence, INR 120,000 has to be deducted by DEF Ltd. and deposited to the credit of the Central Government within 7th of the following month. Non-deduction of equalization levy would attract a disallowance u/s 40(a)(ib) of 100% of the amount paid, while computing business income.
- (b) In case GHI Ltd. has a permanent establishment in India, Equalization Levy would not be attracted. Therefore DEF Ltd. need not deduct Equalization Levy from the payment of consideration to GHI Ltd. However, tax has to be deducted u/s 195 in respect of such payments towards TDS. Non-deduction of TDS would attract a disallowance u/s 40(a)(i) of 100% of the amount paid, while computing business income.

CASE 1

Mr. DP has advertised on Facebook for his business purpose. For that, he has to pay Rs. 200000 to Facebook for said advertising services. Discuss the tax implications under chapter VIII of Finance Act, 2016 read with Section 10(50) of Income Tax Act, 1961.

Solution:

Mr. DP deduct Equalization Levy = 6% of 200000 = Rs. 12,000 and Pay balance Rs. 1,88,000 to Facebook, the said advertisement. As per section 10(50) of the Income tax Act, 1961, Rs. 200000 shall be exempted in the hands of Facebook.

CASE 2

Mama web online portal owned by Kremal corp. (US Based Company) providing online platform to Indian and foreign customers. Goods and services provided to Indian customer's amounts to Rs. 20 crores where provided to Non-resident amounting to Rs. 70 crores (other than u/s 165 & 165A). However, online services provided to Indian Customer XL Virtual by way of online advertisement amounts to Rs. 10,00,000. Discuss the tax implications in relation to Equalization Levy?

Solution:

1. If Mama web online portal has PE in India. In above case, Equalization Levy is not applicable and company is required to pay tax as per normal income tax provisions.
2. If Mama web online portal does not have PE in India. In above case, Equalization Levy is applicable.
 - EL payable by Mama Web online portal to Govt. = $2\% \times 20 \text{ Crores} = \text{Rs. } 4,00,000$
 - XL Virtual is required to deduct Equalization Levy for online advertisement = $6\% \text{ of } 10,00,000 = \text{Rs. } 60,000$

CASE 3

Nozy Inc., a USA based company, is carrying on the business of manufacture and sale of Cosmetic". In order to increase its Indian Market share, Company launched a massive advertisement campaign of its products. For the purpose of online advertisement, it utilized the services of Kuka Inc., a Ghana based company which also owns and operates a digital platform. The gross receipt of Kuka Inc from provision of such services during the P.Y. 2021-22 is Rs 3 crores. During the previous year 2021-22, Nozy Inc. paid Rs. 5 lakhs to Kuka Inc. for such services. Discuss the tax implications in line with reference to Equalization Levy If –

- (a) Nozy Inc. and Kuka Inc. have no PE in India
- (b) Nozy Inc. has a PE in India but Kuka Inc. has not PE in India
- (c) Kuka Inc. has a PE in India and the advertisement services are effectively connected with such PE

Solution:**(1) Nozy Inc. and Kuka Inc. have no PE in India**

- Equalization levy would not be applicable. Therefore, the Nozy Inc. is not required to deduct equalization levy @ 6%
- Equalization levy @2% under section 165A is leviable on Rs. 5 lakhs as the amount of consideration received by Kuka Inc, an e-commerce operator from e-commerce services provided by it to Nozy Inc., a non-resident in the specified circumstance (i.e. sale of advertisement) which targets a customer, who is resident in India, since the gross receipt of Kuka Inc. in the P.Y. 2021-22 exceeds Rs. 2 crores.

(2) Nozy Inc. has a PE in India but Kuka Inc. has not

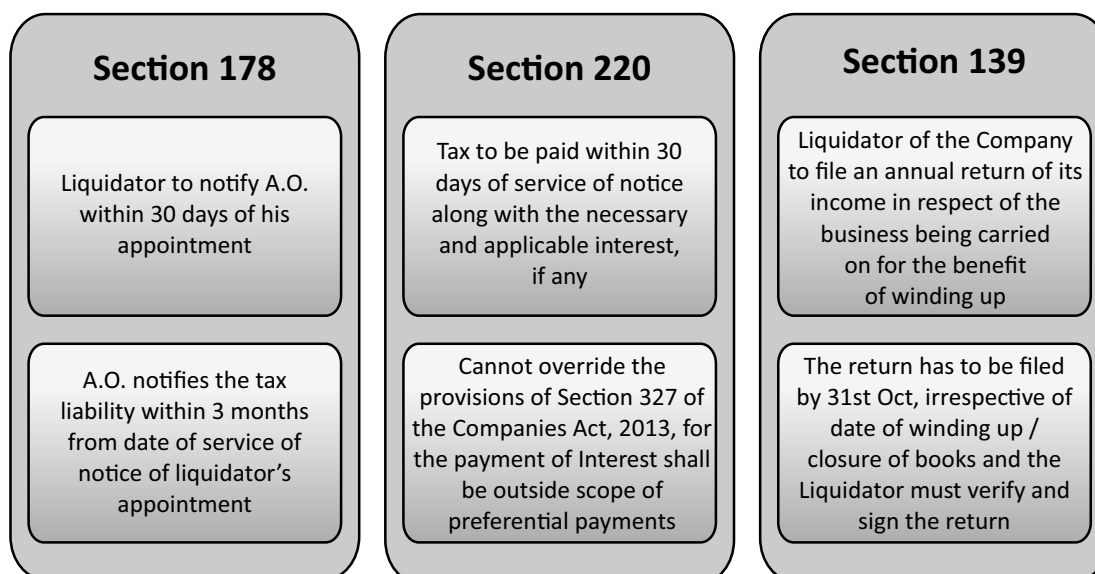
- Equalization levy @6% is leviable on Rs 5,00,000 received by Kuka Inc., a non-resident not having a PE in India.
- Hence, Nozy Inc. is required to deduct equalisation levy of Rs 30,000 ($6\% \times 5 \text{ lakhs}$) as Services provided by Nozy Inc., a non-resident having no permanent establishment in India.
- Since, equalisation levy is attracted on the amount of Rs 5 lakhs, the said amount is exempt from income-tax by virtue of section 10(50) of the Income-tax Act, 1961.

(3) Kuka Inc. has a PE in India and the advertisement services are connected with such PE

- Equalisation levy would not be applicable as the non-resident service provider Kuka Inc., has a PE in India and the service is effectively connected to the permanent establishment in India.
- Hence, Nozy Inc. is not required to deduct equalisation levy on Rs 5 lakhs, being the amount paid towards online advertisement services to Kuka Inc, in this case.
- Since equalisation levy is not applicable in this case hence no exemption under section 10(50) of the Income-tax Act, 1961 would be available.
- It is immaterial whether Nozy Inc. has a PE in India or not for the purpose of equalisation levy implication of advertisement transaction, as in both the cases, equalisation levy would not be attracted.

TAX LIABILITY OF COMPANIES IN THE EVENT OF LIQUIDATION

The table / diagram below explain the various aspects that require careful reading and evaluation.



Key Points		
Section 178	Section 220	Section 139
1. Until the liquidator receives the intimation of tax liability, he is not permitted to part with the assets of the Company. 2. If the A.O. fails to notify the tax liability within the 3 months' time period, then the demand made by the A.O. after the expiry of the	1. The Kerala High Court has held that a Company in Liquidation cannot be deemed to be an assessee in default on the same footing as any other assessee for the purposes of Section 200 of the Income-tax Act, because the Company is under the control of a Liquidator, who acts as such, in accordance to the Companies	If the company fails to file the return, such eventualities could be serious in nature as the company may then lose its

statutory period of 3 months falls outside the scope of preferential payment within the meaning of Section 327 of the Act and hence, such tax liability then assumes the same preference, i.e., ranks pari passu with the claims of ordinary creditors.	Act. Hence, he cannot be equated to be a defaulter and thereafter asked to pay the interest u/s 220 or penalty u/s 221. 2. It is settled law that a “company in liquidation” is not the same kind of assessee as a “working company”. Interest claim in respect of tax due from the company, prior to the date of winding up, is not entitled to priority u/s 327 of the Companies Act, 2013.	exemptions and the tax liabilities may then interfere with and adversely affect the claims of its creditors.
3. In case the liquidator fails to notify his appointment, or parts with any assets of the Company in contravention with the provisions of the section, he will be personally liable for the payment of tax which otherwise the company was liable to pay.	3. The High Court of Kerala held that the provisions of Companies Act are special and those of the Income Tax Act are general and if there is an apparent conflict between the two enactments, the provisions of the Companies Act shall prevail.	
4. Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.		

Note: It must be noted that u/s 46, where the assets of the Company are distributed to the Shareholders, on its liquidation, such distribution will not be regarded as a transfer vis-à-vis Capital Gains.

Liability of Directors & Shareholders

- Section 179 of the Income-tax Act fastens the directors of a private company with a personal liability in the event of non-recovery of its tax dues. This liability is “joint and several”.
- Section 2(22)(c) of the Income-tax Act, any distribution made to the shareholders of the company on liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before the liquidation, whether capitalized or not, would be consider as deemed dividend.

Taxation in case of Liquidation	
In the hands of Company	● Distribution made to the shareholders of the company on liquidation is treated as “Deemed Dividend” u/s 2(22) (c) ● If the assets of company are distributed in the event of liquidation, then such distribution shall not be considered as “Transfer”. Hence, Capital Gain shall not be applicable to company.

In the hands of Shareholders	If the money or other sums received by shareholders on liquidation, then capital gain is applicable to shareholders in the year of receipt of assets and computed below:	
	Consideration received	**
	Add: Fair Market Value of the assets received on date of distribution	**
	Less: Amount assessed as dividend u/s 2(22) (c)	(**)
	Sale Consideration	**
	Less: Cost of Acquisition of shares	**
	Capital Gain (Short Term/Long Term)	**
	Note: Cost of Acquisition of assets shall be Fair Market Value of assets on the date of distribution u/s 55.	

CASE 1

XP Private Ltd. went into liquidation on 1.6.2025. The company was apprehended and controlled of the following funds prior to the distribution of assets to the shareholders: Share capital of Rs. 500000 which was issued on 1st April 2016, Accumulated profit till date would be Rs. 300000. Moreover, Rs. 500000 has been an excess realisation on liquidation. There are five shareholders, each of whom received Rs. 2,60,000 from the liquidator in full settlement. Being Company Secretary of Company, throw light on the various issues and advice the shareholders and company about their liability to Income tax.

Solution:

Facts: XP Private Ltd. went into liquidation on 1.6.2025 and having accumulated profit prior to liquidation would be Rs. 300000.

Issue: Taxability in case of liquidation i.e. in the hands of company and shareholder.

Analysis:**In the hands of Company:**

- Distribution made to the shareholders of the company on liquidation is treated as **“Deemed Dividend” u/s 2(22)(c)**
- If the assets of company are distributed in the event of liquidation, then such distribution shall not be considered as “Transfer”. **Hence, Capital Gain shall not be applicable to company.**

In the hands of Shareholders:

- If the money or other sums received by shareholders on liquidation, then capital gain is **applicable to Shareholders in the year of receipt of assets.**

In this case, the accumulated profits immediately before liquidation is Rs 3,00,000. The share of each shareholder is Rs 60,000 (i.e. 300000/5) shall be treated as deemed dividend under section 2(22) (c). The same is taxable in the hands of the shareholder under the head “Income from other sources”.

Consideration received	260000
Add: Fair Market Value of the assets received on date of distribution	-
Less: Amount assessed as dividend u/s 2(22) (c)	(60000)
Sale Consideration in the hands of each shareholder as per section 46(2)	200000

TAXATION OF SHARE PREMIUM

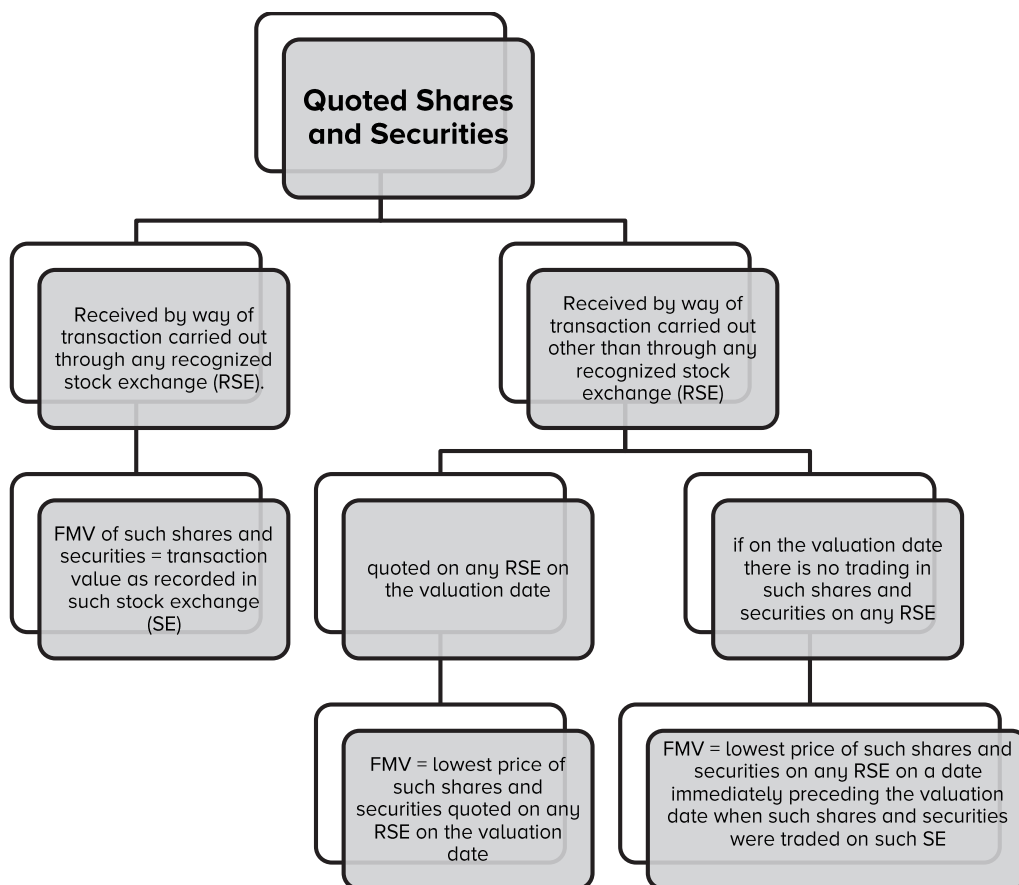
Section 56(2)(viib) of the Income-tax Act, 1961 states that, where a company, not being a company in which the public are substantially interested, receives in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value (FMV) of the shares, shall be chargeable to tax under the head "Income from other sources".

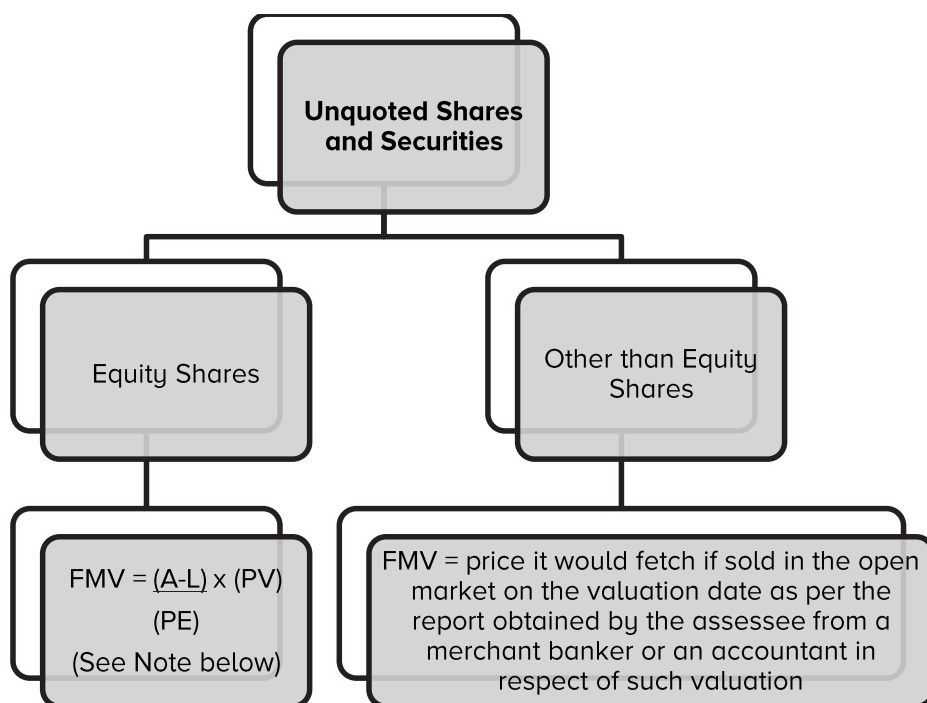
Provided that this clause shall not apply where the consideration for issue of shares is received

- (i) by a venture capital undertaking from a venture capital company or a venture capital fund; or
- (ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf.

Rule 11UA

The rules prescribe separate framework for quoted and unquoted securities in the context of determination of FMV.



**Note:**

A = Book value of the assets in Balance Sheet as reduced by certain amounts specified in Rule 11UA(c)(b).

L = Book value of liabilities shown in the Balance Sheet but not including amounts stated in (i) to (vii) in Rule 11 UA(c)(b)

PE = Total amount of paid up equity share capital as shown in Balance Sheet

PV = The paid up value of such equity shares

Illustration 8:

The following details of the shares issued by the following closely held companies are available. You are required to advise the Company on the applicability or otherwise of Section 56(2) (viib).

Company	No. of Shares	FV of Shares (INR)	FMV of Shares (INR)	Issue Price (INR)	Applicability & Chargeable Tax
A (P) Ltd.	10000	100	120	130	Section 56(2) (viib) attracted as the shares are issued at premium. 10000 x (130-120) = INR 100,000 would be chargeable to tax under the head "Income from other sources"

Company	No. of Shares	FV of Shares (INR)	FMV of Shares (INR)	Issue Price (INR)	Applicability & Chargeable Tax
B (P) Ltd.	20000	100	120	110	Section 56(2) (viib) attracted as the shares are issued at premium. However, no amount is chargeable to tax as the Issue Price is < the FMV
C (P) Ltd.	30000	100	90	98	Section 56(2) (viib) are not attracted as the shares are not issued at premium, rather at a discount on FV, even though the issue price is > FMV
D (P) Ltd.	40000	100	90	110	Section 56(2) (viib) attracted as the shares are issued at premium. $40000 \times (110-90) = \text{INR } 800,000$ would be chargeable to tax under the head "Income from Other Sources"

TAXATION ASPECTS OF AMALGAMATIONS, MERGERS AND DEMERGERS

Section 2(1B) of the Income-tax Act, 1961, defines the term "amalgamation" as follows:

"Amalgamation in relation to Companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company, the companies which so merge being referred to as the "amalgamating company" and the company with which they merge or which is formed as a result of the merger, being referred to as the "amalgamated company", in such a manner that:

- all the property of the amalgamating company(ies) before the amalgamation become the property of the amalgamated company by virtue of the amalgamation
- all the liabilities of the amalgamating company(ies) before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation
- shareholders holding not less than 3/4ths in value of the shares in the amalgamating company become shareholders of the amalgamated company by virtue of the amalgamation

(Example: Say, X Ltd merges with Y Ltd in a scheme of amalgamation and immediately before the amalgamation, Y Ltd held 20% of shares in X Ltd, the above mentioned condition will be satisfied if shareholders holding not less than 75% in the value of remaining 80% of shares in X Ltd i.e. 60% thereof, become shareholders in Y Ltd by virtue of amalgamation)

otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first mentioned company.

Capital Gains

Under Section 47(vi) and (vii) transfer does not include any transfer in a scheme of amalgamation of a capital asset by the amalgamating company to the amalgamated company if the latter is an Indian company. From the assessment year 1993-94, any transfer of shares in an Indian company held by a foreign company to another foreign company in pursuance of a scheme of amalgamation between the two foreign companies will not be regarded as a transfer for the purpose of levying tax on capital gains. This provision will apply if $\geq 25\%$ of the shareholders of the amalgamating company continue to remain shareholders of the amalgamated foreign company and such transfer does not attract tax in the country in which the amalgamating company is situated.

Further, the term “transfer” does not include any transfer by a shareholder in a scheme of amalgamation, of a capital asset, being shares held by him in the amalgamating company, if the transfer is made in consideration of allotment to him, shares in the amalgamated company, and the amalgamated company is an Indian Company. Even, per se, amalgamation doesn’t entail exchange or relinquishment of assets, and hence, capital gains tax is not attracted. The same was upheld in the case *CIT vs. Rasik Lal Manek*. However, the benefit doesn’t continue if the shareholders of amalgamating company are allotted something more than the share in the amalgamated company, viz., bonds / debentures etc. as this was upheld in the case of *CIT vs. Gautam Sarabhai Trust*.

Taxation Treatment		
Shareholders	Amalgamating Company	Amalgamated Company
According to Section 47, It is not considered to be “Transfer” hence, No capital gain would be attracted when shares are allotted to shareholders of amalgamating company.	According to Section 47, No capital gain will be attracted on transfer of capital assets by amalgamating company to amalgamated company.	As per section 49(1), Cost of Acquisition of the assets becomes the property of the amalgamated company. PGBP losses and unabsorbed depreciation of amalgamating company can be carried forward and set off by amalgamated company.

Carry Forward and Set Off of Accumulated loss and unabsorbed depreciation of the amalgamating company [Section 72A]

A special provision is made which relaxes the provision relating to carrying forward and set off of accumulated business loss and unabsorbed depreciation allowance in certain cases of amalgamation. Where there has been an amalgamation of:

- (i) a company owning an industrial undertaking or a ship or a hotel with another company, or
- (ii) an amalgamation of a banking company with a specified bank,
- (iii) one or more public sector company or companies engaged in the business of operation of aircraft with one or more public sector company or companies engaged in similar business.
- (iv) an erstwhile public sector company with one or more company or companies, if the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company and the amalgamation is carried out within five years from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends,

then the accumulated losses or the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or the unabsorbed depreciation of the amalgamated company for the PY in which the transfer was effected. Consequently, the amalgamated company can carry forward such loss for 8 AY’s immediately succeeding the relevant AY in which the amalgamation was effected.

However, the above relaxations shall not be allowed if:

- (a) the amalgamated company is engaged in the business in which the accumulated loss or depreciation remains unabsorbed for ≥ 3 years;
- (b) the amalgamated company has held continuously as on date of the amalgamation $\geq 3/4$ ths of the book value of fixed assets 2 years prior to the date of amalgamation;
- (c) the amalgamated company holds continuously for ≥ 5 years from the date of amalgamation, $\geq 3/4$ ths of the book value of fixed assets of the amalgamating company so acquired;
- (d) the amalgamated company continues the business of the amalgamating company for ≥ 5 years from the date of amalgamation.

If any of the above conditions are not complied with, then the set off of loss / depreciation, made in any PY, in the hands of the amalgamated company, shall be deemed to be the income of the amalgamated company chargeable to tax for the year of non-compliance.

Treatment of Expenditure	
Preliminary Expenses	The benefit of amortization of preliminary expenses under section 35D are ordinarily available only to the assessee who incurred the expenditure. However, the benefit will not be lost in case the undertaking of an Indian company which is entitled to the amortization is transferred to another Indian company in a scheme of amalgamation within the 10 years/ 5-year period of amortization. In that event, the deduction in respect of previous year in which the amalgamation takes place and the following previous year within the 10 years / 5 years period will be allowed to the amalgamated company and not to the amalgamating company.
Capital Expenditure on Scientific Research & Know-how	In case of an amalgamation, if the amalgamating company transfers to the amalgamated company, which is an Indian company, any asset representing capital expenditure on scientific research, provision of section 35 would apply to the amalgamated company as they would have applied to amalgamating company if the latter had not transferred the asset. The same principle applies in essence for the expenditure on know-how.
Expenditure on Amalgamation	Section 35DD provides that where an assessee being an Indian company, incurs any expenditure, wholly and exclusively for the purposes of amalgamation or demerger of an undertaking, the assessee shall be allowed, a deduction of an amount equal to one-fifth of such expenditure for each of the five successive previous years beginning with the PY in which such amalgamation / demerger takes place.

LESSON ROUND-UP

- **'Indian Company'** as a company formed and registered under the Companies Act, 2013 and the registered office or the principal office should be in India and it also includes:
 1. a company formed and registered under any law relating to companies formerly in force in any part of India [other than Jammu and Kashmir, and the Union Territories specified in (4) below];
 2. any corporation established by or under a Central, State or Provincial Act;

3. any institution, association or body which is declared by the Board to be a company under Section 2(17) of the Income-tax Act, 1961;
 4. in the case of any of the Union Territories of Dadra and Nagar Haveli, Goa, Daman and Diu and Pondicherry, a company formed and registered under any law for the time being in force in that Union Territory;
- **Domestic company** means an Indian company or any other company which, in respect of its income liable to tax under the Income Tax Act, has made the prescribed arrangements for the declaration and payment within India, of the dividends (including dividends on preference shares) payable out of such income.
 - **Foreign company** as a company which is not a domestic company.
 - Company in which the public is not substantially interested is known as a **closely held company**.
 - According to Section 6(3) of the Act, a company is said to be resident in India (resident company) in any previous year, if it is an Indian company; or its place of effective management, (POEM), in that year, is in India.
 - The provision related to tax incidence on Companies as well as Tax Rates.
 - **Minimum Alternate Tax** will be applicable if the income tax payable by a company on its total income as computed under the normal provisions of the Income Tax Act in respect of any previous year relevant to the assessment year, is less than 15% of such book profit plus surcharge plus health and education cess, then such book profit shall be treated as total income of the company and the tax payable for the relevant previous year shall be deemed to be 15% (add surcharge and cess) of such book profit. This non-absolute provision will override any other provision of the Income-tax Act.
 - **Credit of MAT** in respect of tax excess paid under Section 115JB will be available and it can be carried forward for 15 Assessment Years succeeding the assessment year in which the credit became allowable.
 - **Specific provisions related to:**
 - Buyback of Shares
 - Tax on Income distributed by specified company or Mutual Fund
 - Tax liability of Company in the event of liquidation
 - Taxation aspects of Share Premium
 - Taxation aspects of Amalgamation, Mergers and De-mergers

TEST YOURSELF

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

Multiple Choice Questions “MCQs”

1. Tax credit in respect of MAT paid as per section 115JB will be allowed only in the previous year in which the tax payable on the total income at the normal rate is –
 - (a) More than the tax payable under section 115JB

- (b) Less than the tax payable under section 115JB
- (c) Equal to the tax payable under section 115JB
- (d) All of the above.

Answer: (a) More than the tax payable under section 115JB

2. Metro Ltd., a domestic company, is assessed with a total income of Rs. 11.25 crore. The surcharge payable by the company shall be at the rate of –
- (a) 2% (b) 5%
 - (c) 10% (d) 12%.

Answer: (d) 12%

3. Dividend received from domestic company will be included in the total income of the shareholder and will be charged to tax at –
- (a) 15 % (b) 18.5 %
 - (c) 30% (d) Normal slab rate of tax as applicable to assessee.

Answer: (d) Normal slab rate of tax as applicable to assessee

4. Provisions of Section 115JB are applicable in case of –
- (a) Domestic companies only (b) Foreign companies only
 - (c) All companies (d) Closely held companies.

Answer: (c) All companies.

5. For computing the Book Profit under section 115JB, which of the following is not added back to the profits?
- (a) Income-Tax
 - (b) Provision for Tax
 - (c) Dividend Distribution Tax U/S 115-O
 - (d) Securities Transaction Tax

Answer: (d) Securities Transaction Tax

6. Mr. Ganapathy a resident individual received Rs. 12 lakhs during the financial year 2025-26 by way of dividend from domestic companies. The applicable rate of dividend distribution tax under Section 115-O on the dividend declared shall be:
- (a) 10.4% (b) 31.2%
 - (c) Nil (d) 15.60%

Answer: (c) Nil

7. A domestic company whose turnover for the previous year 2020-21 Rs. 420 crores; for previous year 2022-23 Rs. 380 crore and for previous year 2023-24 Rs. 120 crores. Its total income (computed) for the assessment year 2025-26 is Rs. 30 crores. The rate of income tax applicable for such company (without cess) is:
- (a) 30% (b) 22%
 - (c) 15% (d) 25%

Answer: (d) 25%

8. ABC Pvt. Ltd. has a business loss of Rs. 10 lakh. There is unexplained share application money to the tune of Rs. 25 lakh. The total income of the company will be:

- (a) Rs. 15 lakh (b) Rs. 35 lakh
- (c) Rs. 25 lakh (d) None of the above

Answer: (c)

9. Provisions of Minimum Alternate Tax (MAT) are applicable to the companies which are:

- (a) Indian companies
- (b) Foreign companies in certain situations
- (c) LLP
- (a) (i) and (iii) (b) (i) and (ii)
- (c) All the three (d) None of the above

Answer: (b)

10. At present, MAT Provisions are given in section _____ of Income Tax Act, 1961

- (a) 115J (b) 115A
- (c) 115JA (d) 115JB

Answer: (d)

11. MAT provisions are applicable to

- (a) Public Co (b) Private company
- (c) Domestic Co (d) All companies

Answer: (d)

12. As per Explanation 1 to section 115JB(2) "book profit" for the purposes of section 115JB means net profit as shown in the statement of profit and loss prepared in accordance with _____ of the Companies Act as increased and decreased by certain items prescribed in this regards

- (a) Schedule V (b) Schedule III
- (c) Schedule II (d) Schedule I

Answer: (b)

13. Rate of MAT in case of a unit located in International Financial Service Centre

- (a) 15% (b) 9.5%
- (c) 15.5% (d) 9%

Answer: (d)

14. MAT Credit to be set off _____

- (a) Regular Income tax - Minimum alternate tax
- (b) Regular Income tax + Minimum alternate tax
- (c) Regular Income tax / Minimum alternate tax
- (c) Zero

Answer: (a)

15. Credit of MAT in respect of tax excess paid under Section 115JB will be available and it can be carried forward for _____

- (a) 15 Financial Year (b) 15 Assessment Year
(c) 15 Calendar Year (d) 15 Year of Receipt

Answer: (b)

True and False

1. As per section 115JB(5A) MAT shall not apply to any income accruing or arising to a company from life insurance business referred to in section 115B. **(True)**
2. As per section 115JB(5A) MAT shall apply to any income accruing or arising to a company from life insurance business referred to in section 115B. **(False)**
3. If in any year the company pays liability as per MAT, then it is entitled to claim credit of MAT paid over and above the normal tax liability in the subsequent year(s). **(True)**

LIST OF FURTHER READINGS

- **Direct Taxes Law and Practice**
Author: Dr. Vinod K. Singhania & Dr. Kapil Singhania
Publisher: Taxmann
- **Direct Taxes Ready Reckoner with Tax Planning**
Author: Dr. Girish Ahuja & Dr. Ravi Gupta
Publisher: Wolters Kluwer

OTHER REFERENCES (INCLUDING WEBSITES AND VIDEO LINKS)

- **Income Tax Act, 1961:** <https://www.incometaxindia.gov.in/Pages/acts/income-tax-act.aspx>
- **Income Tax Rules, 1962:** <https://www.incometaxindia.gov.in/Pages/rules/income-tax-rules-1962.aspx>
- **Circulars:** <https://www.incometaxindia.gov.in/Pages/communications/circulars.aspx>
- **Notifications:** <https://www.incometaxindia.gov.in/Pages/communications/notifications.aspx>