TAXMANN®'S

Corporate Tax Planning & Business Tax Procedures

With Case Studies

Dr. Vinod K. Singhania
Dr. Monica Singhania

23rd Edition
September 2019

॥ श्रीमत्कुञ्जबिहारिणे नमः ॥

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Dedicated to
H.N.A.M.E-I.
H.K.A.K.

LAW STATED IN THIS BOOK IS AS AMENDED BY

FINANCE (NO. 2) ACT, 2019

[Law applicable for the assessment years 2019-20 and 2020-21 is given. Tax planning problems/case studies are based upon law applicable for the assessment year 2020-21; other practical problems are solved as per law applicable for the assessment year 2019-20]

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A FEW WORDS FROM THE AUTHORS

To state that tax shelters are extensively used and highly popular in India, would, perhaps, be an understatement. Taxpayers and the corporate sector in particular, pursue the quest for tax shelters with obsessive fervour and zeal.

Tax planning implies the use of legitimate tax shelters: deductions, exemptions, allowances and rebates, to reduce the tax liability to the minimum. Noteworthy in the above stated definition of tax planning is the key word *'legitimate'*.

Every taxpayer can, with some thought, care and study, legitimately reduce his tax burden. What is important, however, is that he should be able to distinguish between planning and avoidance, and avoid the pitfalls, *i.e.*, resort to illegitimate means of minimising tax burden. The strength of this book on tax planning and management lies in the exclusive emphasis on legitimate tax planning. It should go a long way in facilitating a viable tax-saving strategy. The distinctive and distinguishing taxpayer-friendly features of the book are the following:

- *The book is structured into three parts. Book One covers the provisions of Indian Income Tax Law in brief. Book Two covers corporate tax in India, tax planning concepts and various tax planning devices. In addition this part of the book gives detailed provisions with respect to non-residents and business restructuring practices prevalent in India. Book Three covers business tax procedures and management. This part specifically provides details on concepts such as advance tax, TDS, interest, return assessment, penalties, Settlement Commission and search provisions.*
- *Numerous multiple choice problems are included at the end of each chapter so as to enable clarity of thought and quick revision.*
- *The entire treatment of the subject is based on "Teach yourself" technique which enables the readers to grasp the issues without any further assistance.*
- *Each para (with a distinct number) starts with an analytical discussion supported by well-thought-out original problems.*
- *The book has taken into account the legal position as amended up to August 20, 2019.*
- *The book is useful whether the reader is—*
    - *a student of tax planning and management,*
    - *a professional tax consultant,*
    - *an official in the tax department,*
    - *a taxpayer who wants to familiarise himself with different techniques to lawfully minimise his current and future tax liability.*

Readers' views, comments and criticism relating to the present work are most welcome.

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BOOK

LAW OF INCOME-TAX IN BRIEF

1

CHAPTER

BASIC CONCEPTS

Assessment year

"Assessment year" means the period starting from April 1 and ending on March 31 of the next year. Income of previous year of an assessee is taxed during the next following assessment year at the rates prescribed by the relevant Finance Act.

Previous year

Income earned in a year is taxable in the next year. The year in which income is earned is known as previous year and the next year in which income is taxable is known as assessment year. Previous year is the financial year immediately preceding the assessment year. All assessees are required to follow financial year (*i.e.*, April 1 to March 31) as the previous year. This uniform previous year has to be followed for all sources of income.

Previous year in the case of newly set-up business/ profession

In the case of a newly set-up business/profession or in the case of a new source of income, the previous year is determined as follows—

- The first previous year commences on the date of setting up of the business/profession (or, as the case may be, the date on which the source of income newly comes into existence) and ends on the immediately following March 31. Thus, in the case of a newly set-up business/profession or new source of income, the first previous year is a period of 12 months or less than 12 months. It can never exceed 12 months.
- The second and subsequent previous years are always financial years. The second and subsequent previous years are always of 12 months each (*i.e.*, April to March).

Connection between previous year and assessment year

Rule - Income of a previous year is taxable in the immediately following assessment year.

Exception - In the following cases income of previous year is taxable in the previous year itself—

a. income of non-resident from shipping;

b. income of persons leaving India either permanently or for a long period of time;

c. income of bodies formed for short duration;

d. income of a person trying to alienate his assets with a view to avoiding payment of tax; and

e. income of a discontinued business.

In these cases, income of a previous year may be taxed as the income of the assessment year immediately preceding the normal assessment year.

Person

The term "person" includes :

a. an individual;

b. a Hindu undivided family;

c. a company;

d. a firm;

e. an association of persons or a body of individuals, whether incorporated or not;

f. a local authority; and

g. every artificial juridical person not falling within any of the preceding categories.

These are seven categories of persons chargeable to tax under the Act. The aforesaid definition is inclusive and not exhaustive.

Assessee

"Assessee" means a person by whom income-tax or any other sum of money is payable under the Act. It includes every person in respect of whom any proceeding under the Act has been taken for the assessment of his income or loss or the amount of refund due to him. It also includes a person who is assessable in respect of income or loss of another person or who is deemed to be an assessee, or an assessee in default under any provision of the Act.

Income

As generally understood - Income is a periodical monetary return with some sort of regularity. It may be recurring in nature. It may be broadly defined as the true increase in the amount of wealth, which comes to a person during a fixed period of time.

Extended meaning given under section 2(24) - Under section 2(*24*), the term "income" specifically includes the following :

1. Profits and gains

2. Dividend

3. Voluntary contributions received by a trust

4. Perquisites in the hands of employee

5. Any special allowance or benefit

6. City compensatory allowance/dearness allowance

7. Any benefit or perquisite to a director

8. Any benefit or perquisite to a representative assessee

9. Any sum chargeable under sections 28, 41 and 59

10. Capital gains

11. Insurance profit

12. Banking income of a co-operative society

13. Winnings from lottery

14. Employees' contribution towards provident fund

15. Amount received under keyman insurance policy

16. Fair market value for inventory (which is converted into stock-in-trade)

17. Amount exceeding Rs. 50,000 by way of gift received by a person

18. Issue of shares at premium by a closely held company (if amount received exceeds fair market value of shares)

19. Advance received while negotiating transfer of a capital asset (if capital asset is not transferred and the advance is forfeited by recipient)

20. Any compensation or other payment referred to in section 56(2)(*xi*) [*i.e.*, compensation on termination of employment or modification of terms of employment]

21. Assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) received (in cash or kind) from the Central Government or State Government or any authority or body or agency [not being subsidy/grant which is taken into consideration for calculating "actual cost" under section 43(*1*) and not being subsidy/grant by the Central Government for the purpose of the corpus of a trust/institution established by the Central/State Government].

Gross total income [GTI]

As per section 14, income of a person is computed under the following five heads :

1. Salaries.

2. Income from house property.

3. Profits and gains of business or profession.

4. Capital gains.

5. Income from other sources.

The aggregate income under these heads is termed as "gross total income". In other words, gross total income means total income computed in accordance with the provisions of the Act before making any deduction under sections 80C to 80U.

Rounding-off

The taxable income and tax liability shall be rounded-off to the nearest multiple of ten rupees.

Exemption *vs.* Deduction

If an income is exempt from tax, it is not included in the computation of income. Exemption can never exceed the amount of income. Deduction is generally given from income chargeable to tax. Deduction can be less than or equal to or more than amount of income. If amount deductible is more than the amount of income, the resulting amount will be taken as loss.

Capital receipts *vs.* Revenue receipts

Receipts are of two types - Capital receipts and revenue receipts. Capital receipts are exempt from tax unless they are expressly taxable. For instance, capital gains are taxable under section 45 even if they are capital receipts. On the other hand, revenue receipts are taxable, unless they are expressly exempt from tax. For instance, income exempt under section 10.

Method of accounting

Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" is to be computed in accordance with the method of accounting regularly employed by the assessee.

In other cases, method of maintaining books of account is irrelevant.

Types of accounting methods

Mainly there are two types of accounting methods - Mercantile system and cash system.

- *Mercantile system* - Under mercantile system, income and expenditure are recorded at the time of occurrence during the previous year.
- *Cash system* - Under cash system of accounting, revenue and expenses are recorded only when received or paid.

Tax rates

Tax rates [including surcharge (SC) and health and education cess (HEC)] are given in Appendix 1.

RESIDENTIAL STATUS

Relevance of residential status

There are two types of taxpayers – resident in India and non-resident in India. Indian income is taxable in India whether the person earning income is resident or non-resident. Conversely, foreign income of a person is taxable in India only if such person is resident in India. Foreign income of a non-resident is not taxable in India.

Types

For different taxpayers residential status is as follows—

- Individuals/Hindu undivided family—
  - Resident in India → Ordinarily resident / Not-ordinarily resident
  - Non-resident in India
- Others
  - Resident in India
  - Non-resident in India

Significance of residential status

In the case of non-resident, Indian income is taxable but foreign income is not chargeable to tax. In the case of resident but not ordinarily resident, Indian income is taxable but foreign income is taxable only in two cases. In the case of resident (or resident and ordinarily resident) Indian income as well as foreign income are chargeable to tax.

Residential status of an individual

The tables given below summarize the rule of residence for the assessment year 2019-20 :

Resident and ordinarily resident (1)	*Resident but not ordinarily resident (2)*	*Non-resident (3)*
Must satisfy at least one of the basic conditions and both of the additional conditions	Must satisfy at least one of the basic conditions and one or none of the additional conditions	Must satisfy none of the basic conditions.

BASIC CONDITIONS AT A GLANCE

In the case of an Indian citizen who leaves India during the previous year for the purpose of employment (or as a member of the crew of an Indian ship) (1)	*In the case of an Indian citizen or a person of Indian origin (who is aboard) who comes on a visit to India during the previous year (2)*	*In the case of an individual [other than that mentioned in columns (1) and (2)] (3)*
a. Presence of at least 182 days in India during the previous year 2018-19 *b.* *Non-functional.*	*a.* Presence of at least 182 days in India during the previous year 2018-19 *b.* *Non-functional.*	*a.* Presence of at least 182 days in India during the previous year 2018-19. *b.* Presence of at least 60 days in India during the previous year 2018-19 and 365 days during 4 years immediately preceding the relevant previous year (*i.e.*, during April 1, 2014 and March 31, 2018).

ADDITIONAL CONDITIONS AT A GLANCE

i. Resident in India in at least 2 out of 10 years immediately preceding the relevant previous year [or must satisfy at least one of the basic conditions, in 2 out of 10 immediately preceding previous years (*i.e.*, 2008-09 to 2017-18)].

ii. Presence of at least 730 days in India during 7 years immediately preceding the relevant previous year (*i.e.*, during April 1, 2011 and March 31, 2018).

Residential status of a person other than an individual

Taxpayers other than an individual	*Control and management of the affairs of the taxpayer are*		
	Wholly in India	*Wholly outside India*	*Partly in India and partly outside India*
Hindu undivided family	Resident[1]	Non-resident	Resident[1]
Firm	Resident	Non-resident	Resident
Association of persons	Resident	Non-resident	Resident
Indian company	Resident	Resident	Resident

Taxpayers other than an individual	*Control and management of the affairs of the taxpayer are*		
	Wholly in India	*Wholly outside India*	*Partly in India and partly outside India*
Non-Indian company†	Resident	Non-resident	Non-resident
Any other person except an individual	Resident	Non-resident	Resident

Notes :

1. A resident Hindu undivided family is either ordinarily resident or not ordinarily resident. A resident Hindu undivided family is ordinarily resident in India if karta or manager of the family (including successive kartas) satisfies the following two additional conditions as laid down by section 6(6)(*b*) :

a. he has been resident in India in at least 2 out of 10 previous years immediately preceding the relevant previous year; and

b. he has been present in India for a period of 730 days or more during 7 years immediately preceding the previous year.

If karta or manager of resident Hindu undivided family does not satisfy the two additional conditions, the family is treated as resident but not ordinarily resident in India.

2. In order to determine the residential status of the aforesaid taxpayers, the residential status of the karta of the family (except as stated in 1 *supra*), partners of the firm, members of the association, directors of the company, etc., is not relevant. For instance, it is possible that partners of a firm are resident in India but the firm is controlled from a place outside India and, consequently, the firm is a non-resident in India.

Indian income and foreign income — When taxable/not taxable

In order to understand the relationship between residential status and tax liability, one must understand the meaning of "Indian income" and "foreign income".

Indian income - Any of the following three is an Indian income—

1. If income is received (or deemed to be received) in India during the previous year and at the same time it accrues (or arises or is deemed to accrue or arise) in India during the previous year.

2. If income is received (or deemed to be received) in India during the previous year but it accrues (or arises) outside India during the previous year.

3. If income is received outside India during the previous year but it accrues (or arises or is deemed to accrue or arise) in India during the previous year.

Foreign income - If the following two conditions are satisfied, then such income is "foreign income"—

a. Income is not received (or not deemed to be received) in India; and

b. Income does not accrue or arise (or does not deemed to accrue or arise) in India.

Broad conclusions

Indian income - Indian income is always taxable in India irrespective of the residential status of the taxpayer.

Foreign income - Foreign income is taxable in the hands of resident (in case of a firm, an association of persons, a joint stock company and every other person) or resident and ordinarily resident (in case of an individual and a Hindu undivided family) in India. Foreign income is not taxable in the hands of non-resident in India.

† A non-Indian company will be resident in India (from the assessment year 2017-18) if its place of effective management (POEM), at any time during the relevant 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 made. However, a foreign company (whose annual turnover/gross receipts is Rs. 50 crore or less) cannot be resident in India from the assessment year 2017-18 onwards – Circular No. 8/2017, dated February 23, 2017.

In the hands of resident but not ordinarily resident taxpayer, foreign income is taxable only if it is (*a*) business income and business is controlled wholly or partly from India, or (*b*) professional income from a profession which is set up in India. In any other case, foreign income is not taxable in the hands of resident but not ordinarily resident taxpayers.

Receipt of income in India

If income is received in India, it is always chargeable to tax. The "receipt" of income refers to the first occasion when the recipient gets the money under his control. Once an amount is received as income, any remittance or transmission of the amount to another place does not result in "receipt" at the other place.

Income deemed to be received in India

The Act enumerates the following as income deemed to be received in India:

- Interest credited to recognized provident fund account of an employee in excess of 9.5 per cent.
- Excess contribution of employer in the case of recognized provident fund (*i.e.*, the amount contributed in excess of 12 per cent of salary).
- Transfer balance.
- Contribution by the Central Government or any other employer to the account of an employee under a notified pension scheme referred to in section 80CCD.
- Tax deducted at source.
- Deemed profit under section 41.

Accrual of income

Income accrued in India is chargeable to tax in all cases irrespective of residential status of an assessee. The words "accrue" and "arise" are used in contradistinction to the word "receive". Income is said to be received when it reaches the assessee when the right to receive the income becomes vested in the assessee, it is said to accrue or arise.

Income deemed to accrue or arise in India

In some cases, income is deemed to accrue or arise in India under section 9 even though it may actually accrue or arise outside India. The cases enumerated by section 9 are given below —

- Income from business connection in India.
- Income from any property, asset or source of income in India.
- Capital gain on transfer of a capital asset situated in India.*
- Income from salary if service is rendered in India.
- Income from salary (not being perquisite/allowance) if service is rendered outside India (provided the employer is Government of India and the employee is a citizen of India).
- Dividend paid by the Indian company.
- Interest, royalty or technical fees received from the Government of India.
- Interest, royalty or technical fees received from a resident (except when the payment pertains to business carried on by the payer outside India).
- Interest, royalty or technical fees received from a non-resident if the payment pertains to business carried on by the payer in India.
- Income arising outside India [being any sum of money referred to in section 2(*24*)(*xviia*)] paid on or after July 5, 2019, by a person resident in India to a non-resident/foreign company.

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*An asset or a capital asset (being any share or interest in a company or entity registered or incorporated outside India) shall be deemed to be situated in India if the share or interest derives, directly or indirectly, its value substantially† from the assets located in India.

† "Substantially" means not less than 50 per cent – *DIT* v. *Copal Research Ltd.* [2014] 49 taxmann.com 125 (Delhi). The Finance Act, 2015 has amended the law with effect from assessment year 2016-17. Under the amended version, the share or interest of a foreign company or entity shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if on the specified date, the value of Indian assets,–

a. exceeds the amount of Rs. 10 crore; and

b. represents at least 50 per cent of the value of all the assets owned by the company or entity.

If a foreign company declares dividend outside India, it cannot be deemed to accrue or arise in India even if the foreign company declaring dividend have substantial assets (held by it directly or indirectly) located in India. This rule is applicable even if the foreign company satisfies the conditions given above – Circular No. 4 /2015, dated March 26, 2015.

INCOME THAT IS EXEMPT FROM TAX

Income that is exempt from tax

In the following cases, income is exempt from tax, as it does not form part of total income. The burden of proving that a particular item of income falls within this section is on the assessee.

■ Agriculture income	10(*1*)
■ Payments received from family income by a member of a HUF	10(*2*)
■ Share of profit from a firm	10(*2A*)
■ Interest received by a non-resident from prescribed securities	10(*4*)
■ Interest received by a person who is resident outside India on amounts credited in the "Non-resident (External) Account"	10(*4B*)
■ Interest payable to a non-resident/foreign company by an Indian company/ business trust pertaining to money borrowed from a source outside India by way of issue of rupee denominated bond [as referred to in section 194LC(2)(*ia*)] during September 17, 2018 and March 31, 2019	10(*4C*)
■ Leave travel concession provided by an employer to his Indian citizen employee	10(*5*)
■ Remuneration received by foreign diplomats of all categories	10(*6*)
■ Salary received by a foreign citizen as an employee of a foreign enterprise provided his stay in India does not exceed 90 days	10(*6*)(*vi*)
■ Salary received by a non-resident foreign citizen as a member of ship's crew provided his does not total stay in India does not exceed 90 days	10(*6*)(*viii*)
■ Remuneration received by an employee, being a foreign national, of a foreign Government deputed in India for training in a Government establishment or public sector undertaking	10(*6*)(*xi*)
■ Tax paid on behalf of foreign companies	10(*6A*)
■ Tax paid by Government or an Indian concern in the case of a non-resident/ foreign company	10(*6B*)
■ Income arising to notified foreign companies from services provided in or outside India in project connected with the security of India	10(*6C*)
■ Any income arising to a non-resident/foreign company by way of royalty from (or fees for technical services rendered in or outside India to) the National Technical Research Organisation	10(*6D*)
■ Foreign allowance granted by the Government of India to its employees posted abroad	10(*7*)
■ Remuneration received from a foreign Government by an individual who is in India in connection with any sponsored co-operative technical assistance programme with a foreign Government	10(*8*)
■ Income of the family members of such employee	10(*9*)
■ Remuneration/fees received by non-resident consultants and their foreign employees	10(*8A*), (*8B*) and (*9*)
■ Death-*cum*-retirement gratuity	10(*10*)
■ Commuted value of pension and any payment received by way of commutation of pension by an individual out of annuity plan of LIC or any other insurer from a fund set up by that corporation or insurer	10(*10A*)
■ Leave salary	10(*10AA*)
■ Retrenchment compensation	10(*10B*)
■ Compensation received by victims of Bhopal gas leak disaster	10(*10BB*)
■ Compensation from the Central Government or a State Government or a local Authority received by an individual or his legal heir on account of any disaster	10(*10BC*)
■ Compensation received from a public sector company at the time of voluntary retirement or separation	10(*10C*)

■ Tax on non-monetary perquisite paid by employer	10(*10CC*)
■ Any sum (including bonus) on life insurance policy (not being a Keyman insurance policy)	10(*10D*)
■ Any amount from provident fund paid to retiring employee	10(*11*)
■ Any payment from Sukanya Samriddhi Account	10(*11A*)
■ Amount from an approved superannuation fund to legal heirs of the employee	10(*13*)
■ House rent allowance subject to certain limits	10(*13A*)
■ Special allowance granted to an employee	10(*14*)
■ Income received by a public financial institution as exchange risk premium in certain cases	10(*14A*)
■ Interest from certain exempted securities	10(*15*)
■ Payment made by an Indian company, engaged in the business of operation of an aircraft, to acquire an aircraft on lease from a foreign Government or foreign enterprise if a few condition are satisfied	10(*15A*)
■ Scholarship granted to meet the cost of education	10(*16*)
■ Daily allowance of a Member of Parliament or State Legislature (entire amount is exempt), and any other allowance subject to certain conditions	10(*17*)
■ Rewards given by the Central or State Government for literary, scientific or artistic work or attainment or for service for alleviating the distress of the poor, the weak and the ailing, or for proficiency in sports and games or gallantry awards approved by the Government	10(*17A*)
■ Pension and family pension of gallantry award winners	10(*18*)
■ *Ex gratia* payments made by the Central Government consequent on the abolition of privy purse	10(*18A*)
■ Family pension received by family members of armed forces	10(*19*)
■ Notional property income of any one palace occupied by a former ruler	10(*19A*)
■ Income of local authorities	10(*20*)
■ Any income of housing boards constituted in India for planning, development or improvement of cities, towns or villages	10(*20A*)
■ Any income of an approved research association	10(*21*)
■ Income of specified non-agencies (*i.e.*, PTI and UNI)	10(*22B*)
■ Any income (other than interest on securities, income from property, income received for rendering any specific services and income by way of interest or dividends) of approved professional bodies	10(*23A*)
■ Any income received by any person on behalf of any Regimental Fund or non-public fund established by the armed forces of the Union for the welfare of the past and present members of such forces or their dependents	10(*23AA*)
■ Income of funds established for the welfare of employees	10(*23AAA*)
■ Any income of the pension fund set up by LIC or any other insurer approved by the Controller of Insurance or Insurance Regulatory and Development Authority	10(*23AAB*)
■ Any income (other than business income) of a trust or a society approved by Khadi and Village Industries Commission	10(*23B*)
■ Income of an authority whether known as Khadi and Village Industries Board or by any other name for the development of Khadi and Village Industries	10(*23BB*)
■ Income arising to any body or authority established, constituted or appointed under any enactment for the administration of public, religious or charitable trusts or endowments or societies for religious or charitable purposes	10(*23BBA*)
■ Income of the European Economic Community derived in India by way of interest, dividends or capital gains in certain cases under the European Community International Institutional Partners Scheme, 1993	10(*23BBB*)

■ Any income of SAARC Fund for Regional Projects	10(*23BBC*)
■ Any income of Secretariat of Asian Organisation of Supreme Audit Institutions	10(*23BBD*)
■ Income of Insurance Regulatory Authority	10(*23BBE*)
■ Income of North Eastern Development Financial Corporation to the extent of 60 per cent for assessment year 2007-08	10(*23BBF*)
■ Income of the Central Electricity Regulatory Commission	10(*23BBG*)
■ Income of Prasar Bharti (Broadcasting Corporation of India)	10(*23BBH*)
■ Income received by any person on behalf of specified national funds, approved public charitable institutions, educational institute and hospital	10(*23C*)
■ Income of a Mutual Fund set up by a public sector bank or public financial institution or authorised by RBI	10(*23D*)
■ Any income of a securitisation trust from the activity of Securitisation	10(*23DA*)
■ Income of investor protection fund	10(*23EA*)
■ Income of Credit Guarantee Funds Trust for Small Industries	10(*23EB*)
■ Income of Investor Protection Fund by way of contributions from commodity exchange and the members thereof	10(*23EC*)
■ Any income of Investor Protection Fund by way of contributions received from a depository	10(*23ED*)
■ Specified income of Core Settlement Guarantee Fund	10(*23EE*)
■ Income by way of dividend and long-term capital gain of venture capital fund/undertaking	10(*23FA*)
■ Income of venture capital fund/venture capital company	10(*23FB*)
■ Any income of an investment fund other than business income	10(*23FBA*)
■ Any income referred to in section 115UB, accruing/arising to a unitholder of an investment fund, being that proportion of income which is of the same nature as business income	10(*23FBB*)
■ Any income of a business trust by way of interest received from a special purpose vehicle	10(*23FC*)
■ Any income of a business trust, being a real estate investment trust, by way of renting or leasing or letting out any real estate asset owned directly by such business trust.	10(*23FCA*)
■ Any distributed income (referred to in section 115UA), received by a unitholder from the business trust, not being that proportion of the income which is of the same nature as the income referred to in clause (*23FC*)(*a*) or clause (*23FCA*)	10(*23FD*)
■ Income by way of interest on securities, property income and income from other sources of a registered trade union or an association of registered trade unions	10(*24*)
■ Any income received by a person on behalf of statutory provident fund, recognised provident fund, approved superannuation fund, approved gratuity fund and approved coal-mines provident fund	10(*25*)
■ Income of Employees' State Insurance Fund	10(*25A*)
■ Income of a member of a scheduled tribe, residing in Nagaland, Manipur, Tripura, Arunachal Pradesh, Mizoram and Ladakh from any source arising by reason of his employment therein and income by way of dividend and interest on securities	10(*26*)
■ Income of a Sikkimese individual which accrues or arise to him/her from any source in the State of Sikkim or income from dividend/interest on securities from anywhere in the world (exemption not available to a Sikkimese woman who, on or after April 1, 2008, marries a non-Sikkimese individual)	10(*26AAA*)
■ Income of an agricultural produce market committee or board constituted for the purpose of regulating the marketing of agricultural produce	10(*26AAB*)

■ Any income of a statutory corporation or of a body/institution, financed by the Government formed for promoting the interest of scheduled castes/tribes	10(*26B*)
■ Income of National Minorities Development and Finance Corporation	10(*26BB*)
■ Income of ex-serviceman corporations	10(*26BBB*)
■ Income of a co-operative society formed for promoting interest of members of scheduled castes/tribes	10(*27*)
■ Income of marketing authority from letting of godowns and warehouses	10(*29*)
■ Income of certain Commodity Boards/Authorities	10(*29A*)
■ Subsidy from the Tea Board for replanting or replacement of tea bushes or for rejuvenation or consolidation of areas used for cultivation of tea in India	10(*30*)
■ Subsidy received by planters	10(*31*)
■ Income of a minor child up to Rs. 1,500 in respect of each minor child whose income is includible under section 64(1A)	10(*32*)
■ Capital gains on transfer of US 64	10(*33*)
■ Dividend from domestic companies†	10(*34*)
■ Any income arising to a shareholder on account of buy-back of (*a*) unlisted shares (during June 1, 2013 and July 4, 2019), or (*b*) listed/unlisted shares (on or after July 5, 2019) by the company as referred to in section 115QA	10(*34A*)
■ Interest on units of a Mutual Fund	10(*35*)
■ Any income by way of distributed income referred to in section 115TA received from a securitisation trust by any person being an investor of the said trust	10(*35A*)
■ Capital gains on transfer of listed equity shares	10(*36*)
■ Capital gains on compensation received on compulsory acquisition of urban agricultural land	10(*37*)
■ Capital gain arising to an individual/HUF under Andhra Pradesh Capital City Land Pooling Scheme, 2015	10(*37A*)
■ Long-term capital gains on transfer of securities not chargeable to tax in cases covered by securities transaction tax (applicable up to the assessment year 2018-19).	10(*38*)
■ Income of an international sporting event	10(*39*)
■ Grant received by subsidiary company from holding company	10(*40*)
■ Capital gain in the above case	10(*41*)
■ Income of notified non-profit body/authority	10(*42*)
■ Any amount received by an individual as a loan (either in lump sum or instalment) in a transaction of reverse mortgage	10(*43*)
■ Any income received by any person for, or on behalf of the New Pension System Trust	10(*44*)
■ Perquisites/allowances to Chairman/members of UPSC	10(*45*)
■ Specified income of notified body or authority or trust or board or commission	10(*46*)
■ Income of infrastructure debt fund	10(*47*)
■ Income received by certain foreign companies in Indian currency for import of crude oil or any other notified goods or notified service to any person in India	10(*48*)

†Dividend income from a domestic company is generally exempt in the hands of recipient shareholders. However, the exemption is not available if aggregate dividend received by a resident shareholder during the previous year from all domestic companies exceeds Rs. 10 lakh. In such a case, the aggregate dividend [not being deemed dividend under section 2(*22*)(*e*)] (in excess of Rs. 10 lakh) is taxable (on gross basis, no deduction is allowed) under section 115BBDA at the rate of 10 per cent [+ SC + HEC]. But nothing is taxable under section 115BBDA (or the entire dividend income from domestic companies is exempt) –

- if the shareholder is a domestic company or a fund/institution [referred to in section 10(*23C*)(*iv*)/(*v*)/(*vi*)/(*via*)], or a trust/institution registered under section 12A/12AA, or
- if dividend is deemed dividend under section 2(*22*)(*e*).

■ Any income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India	10(*48A*)
■ Any income accruing or arising to a foreign company on account of sale of leftover stock of crude oil, if any, from the facility in India after the expiry of the agreement or the arrangement referred to in section 10(*48A*) (or on termination of such agreement/arrangement in accordance with the terms mentioned therein), if a few conditions (as notified by the Central Government) are satisfied	10(*48B*)
■ Any income of the National Financial Holdings Company Ltd.	10(*49*)
■ Any income arising from any specified service provided on or after June 1, 2016 and chargeable to equalisation levy under that Chapter	10(*50*)
■ Any income of a political party by way of interest on securities, property income, income from other sources or income by way of political contributions	13A
■ Voluntary contribution received by an electoral trust if a few conditions are satisfied.	13B

New units in SEZ [Sec. 10AA]

Conditions

■ The assessee is an entrepreneur as defined in section 2(*j*) of SEZ Act, 2005. Entrepreneur is a person who has been granted a letter of approval by the Development Commissioner to set a unit in a Special Economic Zone.

■ The unit in Special Economic Zone begins to manufacture or produce articles or things or provide services on or after April 1, 2005 but before April 1, 2020 (the benefit under section 10AA will not be available to units commencing activities on or after April 1, 2020).

■ It is not formed by the splitting up, or reconstruction, of a business already an existence.

■ It is not formed by the transfer to a new business, of old plant or machinery. However, it can be formed by transfer of old plant or machinery to the extent of 20 per cent.

■ The assessee has exported goods or provided services out of India from the Special Economic Zone by land, sea, air or by any other mode, whether physical or otherwise.

■ Books of account of the taxpayer should be audited.

■ Deduction under section 10AA is not available unless it is claimed in the return of income.

Amount of deduction

Deduction‡ depends upon quantum of profit derived from export of articles or things or services (including computer software). It is calculated as under—

Profits of the business of the undertaking × Export turnover ÷ Total turnover of the business carried on by the assessee (total turnover of the undertaking from the assessment year 2006-07).

■ *Deduction for first five assessment years* - 100 per cent of the profit and gains derived from export of articles or things or from services is deductible for a period of 5 consecutive assessment years. Deduction for the first year is available in the assessment year relevant to the previous year in which the unit begins to manufacture or produce articles or things or provide services.

■ *Deduction for sixth assessment year to tenth assessment year* - 50 per cent of the profit and gains derived from export of articles or things or from services is deductible for the next 5 years.

■ *Deduction for eleventh assessment year to fifteenth assessment year* - For the next 5 years, a further deduction would be available to the extent of 50 per cent of the profit provided an equivalent amount is debited to the profit and loss account of the previous year and credited to Special Economic Zone Re-investment Allowance Reserve Account (hereinafter referred to as Special Reserve Account). The following conditions should be satisfied—

1. The Special Reserve Account should be utilized for the purpose of acquiring new plant and machinery.

‡The amount of deduction under section 10AA shall be allowed from the total income of the assessee computed in accordance with the provisions of the Act (before giving effect to the provisions of section 10AA) and the deduction under this section shall not exceed such total income of the assessee.

2. The new plant and machinery should be first put to use before the expiry of 3 years from the end of the year in which the Special Reserve Account was created.

3. Until the acquisition of new plant and machinery the Special Reserve Account can be utilized for the business purposes of the undertaking but it cannot be utilized for distribution of dividends/profits or for remittance outside India as profits or for creating an asset outside India.

4. The taxpayer should electronically submit a report from a chartered accountant in Form No. 56FF in respect of new plant and machinery for the previous year in which such plant and machinery was first put to use.

5. If the Special Reserve Account is misutilized, then the deduction would be taken back in the year in which the Special Reserve Account is misutilized. If the Special Reserve Account is not utilized for acquiring new plant and machinery within three years as stated above then the deduction would be taken back in the year immediately following the period of three years.

Consequences for merger and demerger

Where an undertaking is transferred to another company under a scheme of amalgamation or demerger, the deduction under section 10AA shall be allowable in the hands of the amalgamated or the resulting company for the unexpired period. However, no deduction shall be admissible under this section to the amalgamating company or the demerged company for the previous year in which amalgamation or demerger takes place.

Recompute profit

The Assessing Officer has power to recompute profit in some cases.

Exemption to EOU [Sec. 10B]

Deduction under section 10B is not available from the assessment year 2012-13.

SALARY

Basis of charge

Salary is taxable on due or receipt basis whichever is earlier as per section 15.

Computation of income under the head "Salaries"

Salary	xxxxx
Allowances	xxxxx
Perquisites	xxxxx
Gross salary	xxxxx
Less : Deduction under section 16—	
Standard deduction [Sec. 16(*ia*)]	xxxxx
Entertainment allowance deduction [Sec. 16(*ii*)]	xxxxx
Professional tax [Sec. 16(*iii*)]	xxxxx
Income under the head "Salaries"	xxxxx

Notes –

1. Standard deduction is as follows –

- Rs. 50,000 or gross salary, whichever is lower (from the assessment year 2020-21).
- Rs. 40,000 or gross salary, whichever is lower (for the assessment year 2019-20).

2. Professional tax is deductible on "payment basis". If it is paid by the employer on behalf of the employee, it is first included in gross salary as perquisite and then deduction is allowed under section 16(*iii*).

Different forms of salary

Taxable.

Taxable.

Basic salary

Taxable in the year of receipt.

Dearness allowance/pay

Taxable in the year of receipt, if not taxed on due basis earlier.

Advance salary

Taxable.

Arrears of salary

Leave encashment while in service

1. In case of Government employees, it is fully exempt from tax.

2. In case of non-Government employees, it is exempt from tax to the extent of the least of the following :

Leave encashment at the time of retirement or at the time of leaving the job

a. Cash equivalent of leave salary in respect of the period of earned leave at the credit of employee at the time of retirement (which cannot exceed 30 days' "average salary" for every completed year of service); or

b. 10 months "average salary"; or

c. Amount specified by the Government, *i.e.*, Rs. 3,00,000; or

d. Leave encashment actually received at the time of retirement.

Notes—

1. Government employee for this purpose is a Central Government employee or a State Government employee.

2. "Average salary" for this purpose is to be calculated on the basis of average salary drawn during the period of 10 months immediately preceding the retirement.

Salary in lieu of notice

Taxable.

Salary to partner

Not chargeable under the head "Salaries" but taxable under the head "Profits and gains of business or profession".

Fees and commission

Taxable.

Bonus

Taxable on receipt basis if not taxed earlier on due basis.

Gratuity

1. In case of Government employee it is fully exempt from tax.

2. In case of non-Government employee covered by the Payment of Gratuity Act, 1972 it is exempt from tax to the extent of the least of the following :

a. 15 days' salary for each year of service;

b. Rs. 20,00,000; or

c. Gratuity actually received.

3. In case of non-Government employee (not covered by the Payment of Gratuity Act) it is exempt from tax to the extent of the least of the following :

a. Rs. 20,00,000;

b. Half month's salary for each completed year of service; or

c. Gratuity actually received.

Note - "Average salary" for this purpose is to be calculated on the basis of average salary drawn during the period of 10 months immediately preceding the month in which the employee has retired.

Pension

Uncommuted pension is taxable in all cases. Commuted pension is fully exempt from tax in the case of a Government employee (*i.e.*, an employee of the Central Government, State Government, local authority and statutory corporation). In the case of non-Government employee, commuted pension is exempt to the extent given below—

a. one-third of normal pension is exempt if the employee receives gratuity; or

b. one-half of normal pension is exempt from tax if the employee does not receive gratuity.

Pension under new pension scheme in the case of an employee

1. Employer's contribution is first included in salary and then a deduction is available (to the extent of 10 per cent of salary) under section 80CCD.

2. Employee's contribution is deductible under section 80CCD to the extent of 10 per cent of salary.

joining on or after January 1, 2004

3. When pension is received out of the aforesaid amount, it will be taxable in the year of receipt.

Annuity from employer

Taxable as salary.

Annual accretion to the credit balance in recognized provident fund

1. Excess of employer's contribution over 12% of salary is taxable.

2. Excess of interest over notified interest is taxable (notified rate of interest is 9.5 per cent)

Retrenchment compensation

Exempt from tax to the extent of least‡ of the following :

a. Amount calculated under section 25F(*b*) of the Industrial Disputes Act; or

b. An amount specified by the Government (*i.e.*, Rs. 5,00,000).

Remuneration for extra duties

Fully taxable under section 15.

Compensation received under voluntary retirement scheme (VRS)

Exempt up to Rs. 5 lakh, if a few conditions are satisfied. One of the conditions is the amount payable on account of voluntary retirement or voluntary separation of the employees does not exceed (*a*) the amount equivalent to three months' salary for each completed year of service, or (*b*) salary at the time of retirement multiplied by the balance months of service left before the date of his retirement on superannuation. Relief under section 89 is not available.

Salary from UNO

Not chargeable to tax.

Salary received by a teacher/ researcher from a SAARC member State

Not chargeable up to 2 years.

Different allowances

City compensatory allowance

Fully taxable under section 15.

House rent allowance

Exempt from tax to the extent of the least of the following :

a. 50% of salary in Delhi, Bombay, Calcutta, Madras or 40% of salary in other cases;

b. house rent allowance; or

c. the excess of rent paid over 10% of salary.

Entertainment allowance

This allowance is first included in salary and thereafter a deduction is allowed. In the case of Government employees, least of the following is exempt from tax :

a. Rs. 5,000;

b. 20% of salary; or

c. entertainment allowance.

Children education allowance

It is exempt from tax to the extent it does not exceed Rs. 100 per month per child for a maximum of two children (actual expenditure is not taken into consideration).

Hostel expenditure allowance

It is exempt from tax to the extent it does not exceed Rs. 300 per month per child for a maximum of two children (actual expenditure is not taken into consideration). Exemption is in addition to the exemption available in the case of children education allowance.

‡ When compensation is paid under any scheme approved by the Central Government, these limits are not applicable and the entire amount is exempt.

Transport allowance

It is given to an employee to meet his expenditure for the purpose of commuting between office and residence. The exemption is Rs. 3,200 per month in the case of an employee who is blind or dumb and deaf or orthopaedically handicapped. In the case of serving chairman and member of UPSC, transport allowance is exempt from tax without any monetary ceiling. In the case of any other employee, transport allowance is not exempt and fully chargeable to tax.

Allowance for transport employees

It is given to employees of transport undertaking to meet their personal expenditure during duty performed in the course of running of such transport from one place to another place. The amount is exempt to the extent it does not exceed (*a*) 70 per cent of the allowance or (*b*) Rs. 10,000 per month, whichever is lower (actual expenditure is not taken into consideration).

Tribal area allowance

Exempt up to Rs. 200 per month in some cases.

Travelling allowance, conveyance allowance, helper/research/uniform allowance

These allowances are given to meet specific expenditure in performance of duties of an office. Exemption is available to the extent the amount is utilized for the specific purpose for which the allowance is given.

Transfer allowance

It is exempt from tax to the extent expenditure is incurred in connection with transfer, packing and transportation of personal effects on transfer from one place to another place.

Foreign allowance

Exempt from tax if paid outside India by the Government to an Indian citizen for rendering service outside India.

Tiffin allowance

Taxable.

Fixed medical allowance

Taxable.

Allowance received by a teacher/researcher from a SAARC member State

Not taxable up to 2 years.

Sumptuary allowance to serving Chairman/members of UPSC

Not chargeable to tax.

Allowance to retired Chairman and retired members of UPSC

An allowance (subject to a maximum of Rs. 14,000 per month) for defraying the service of an orderly and for meeting expenses incurred towards secretarial assistance on contract basis, is not chargeable to tax.

Perquisites

Rent-free unfurnished house

■ In the case of Government employee (*i.e.*, Central Government employee, State Government employee or a Government employee on deputation to a public sector undertaking if house is allotted by the Government) : Taxable value is the license fees of the house as per house allotment scheme of the Government.

■ In the case of non-Government employees :

- *If the house is owned by employer:* Taxable value is 15 per cent of salary of employee of the relevant period (7.5 per cent if population is 10 lakh or less or 10 per cent if population is above 10 lakh but not more than 25 lakh).

- *If house is taken on lease by employer:* Taxable value is either 15 per cent of the salary or lease rent, whichever is lower.

Rent-free furnished house

Value of "furniture" will be added to the value of rent-free unfurnished house as computed above. Value of furniture is 10 per cent per annum of cost of furniture to the employer or rent paid/payable of the furnishing by the employer, as the case may be.

Concession in rent

Value of the perquisite in respect of rent-free furnished/unfurnished house will be calculated as given above. From the amount so calculated, rent charged by employer shall be deducted. The balance (if it is positive) is taxable value of the perquisite in respect of concession in rent.

Rent-free/concessional furnished/unfurnished house in special cases

Not chargeable to tax if provided in a "remote area". Hotel accommodation/guest house accommodation provided to an employee is taxable at the rate of 24 per cent of salary of the relevant period or hotel tariff, whichever is lower. Hotel accommodation for 15 days (in aggregate in a previous year) can be provided immediately after transfer at the new location as a tax-free perquisite. Further, if an employee is transferred and housing facility is provided to him at the new location (he has yet to vacate a house given at the old location), for a period of 90 days immediately after transferred only one house (at the option of the employee at the old location or new location) is chargeable to tax. Perquisite in respect of rent-free furnished/unfurnished house is not taxable if provided to a High Court Judge, Supreme Court Judge, Union Minister, leader of opposition in Parliament, an official in Parliament and serving Chairman/members of UPSC.

Free domestic servants

Actual expenditure of the employer as reduced by any amount paid by the employee is a taxable perquisite in the hands of an employee.

Gas, electricity or water

Actual amount spent by the employer as reduced by any amount recovered from the employee is a taxable perquisite in the hands of an employee.

Free education facility

Expenditure relating to providing training to employees is not taxable. If education facility is provided to the family members of employee, expenditure incurred by the employer is the taxable value of perquisite. If education facility is provided to the family members in an educational institute owned or maintained by the employer, then reasonable cost of education in a similar institute in or near the locality is taxable. Up to Rs. 1,000 per month per child is not taxable if the employer provides education facility to the children of an employee in an educational institution owned/maintained by the employer.

Leave travel concession (LTC)

Only 2 journeys in a block of 4 years is exempt (however, carry over concession is available). Exemption is based upon actual expenditure relating to travel fare only in respect of the shortest route from the place of origin to farthest point.

Employee's obligation met by employer

Taxable in all cases.

Interest-free/concessional loan

Find out the maximum outstanding balance on the last day of each month. It shall be multiplied by SBI landing rate on the first day of the previous year. Amount recovered from the employee on account of interest is deductible. Perquisite is not taxable if the aggregate amount of original loan does not exceed Rs. 20,000. Moreover, if loan is given by employer for medical treatment (given in rule 3A) of the employee or his family members, it is not chargeable to tax.

Use of employer's movable asset

10 per cent per annum of actual cost of asset to the employer or hire charges as reduced by any amount recovered from the employee is a taxable perquisite in the hands of an employee. Nothing is, however, taxable in the case of computer/laptop.

Sale of movable assets

Actual cost to the employer *minus* normal wear and tear *minus* sale consideration paid by the employee is taxable (normal wear and tear for each year of use is calculated as follows—computer/electronic items: 50 per cent by reducing instalment method; car: 20 per cent by reducing instalment method; any other asset: 10 per cent of cost).

Medical facilities in India

1. Medical facility provided in a hospital owned or maintained by the employer is not chargeable to tax.

2. Medical facility provided by an employer in a Government hospital, approved hospital (if a few conditions are satisfied) or a private hospital (if such private hospital is recommended by the Government for the medical treatment of Government employees) is not chargeable to tax.

3. Medical insurance premium paid or reimbursed by the employer is not chargeable to tax.

4. Any other expenditure incurred or reimbursed by the employer for providing medical facility in India, is chargeable to tax.

Medical facility outside India

Expenditure on medical treatment (including boarding and lodging) incurred by an employer is not chargeable to tax in the hands of employee if it does not exceed the amount permitted by RBI under foreign exchange regulations. Travelling expenditure for going outside India for medical treatment purposes is generally chargeable to tax.

Motor car

Car owned or hired by employer, expenses incurred by employer and used for partly official and partly personal purposes - Rs. 1,800 per month (1600 cc or less)/Rs. 2,400 per month (above 1600 cc) for car and Rs. 900 per month for driver. Expenditure recovered from employee is not deductible.

Car owned or hired by employer, expenses incurred by employer and used wholly for personal purposes - Entire expenditure incurred by employer including depreciation at the rate of 10 per cent per annum of actual cost of the car, is taxable in the hands of employee. Expenses recovered from employee are deductible.

Car owned or hired by employer, used for partly official and partly personal purposes, expenses for private purposes incurred by employee - Rs. 600 per month (1600 cc or less)/Rs. 900 per month (above 1600 cc) for car and Rs. 900 per month for driver. Expenditure recovered from employee is not deductible.

Car owned by employee, expenses incurred by employer and used for partly official and partly personal purposes - Actual expenditure incurred by employer *minus* expenditure pertaining to official use *minus* anything recovered from employee, is taxable in the hands of employee. Expenditure pertaining to official use can be calculated as per logbook of the car. Alternatively, expenditure pertaining to official use can be calculated at the rate of Rs. 1,800 per month (1600 cc or less)/Rs. 2,400 per month (above 1600 cc) for car and Rs. 900 per month for driver.

Conveyance facility when not taxable - Conveyance facility between office and residence is not chargeable to tax in the case of any employee of any organization. Moreover, conveyance facility to a High Court Judge, Supreme Court Judge and serving Chairman/members of UPSC, is not chargeable to tax.

Free transport

Taxable as a perquisite in the hands of an employee on the basis of value at which the employer offers such benefit to the public as reduced by any amount recovered from the employee (tax free perquisite in the hands of employees of railways/airlines).

Lunch, refreshment, etc.

- Food and non-alcoholic beverages are provided in working hours in remote area or in an off shore installation: Fully exempt from tax.
- Lunch/refreshment is provided in working hours at any other place: Cost to the employer in excess of Rs. 50 per meal (as reduced by the amount recovered from the employee) is the taxable value of perquisite in the hands of the employee (tea and snacks in working hours is tax-free perquisite).

Travelling, touring, accommodation

- *When such facility is available uniformly to all employees* : Taxable as a perquisite in the hands of an employee on the basis of actual expenditure of the employer as reduced by any amount recovered from the employee.
- *When such facility is not available uniformly to all employees*: Taxable as a perquisite in the hands of an employee on the basis of value at which such facilities are offered by other agencies to the public as reduced by any amount recovered from the employee.

Gift, voucher or token

Taxable as a perquisite in the hands of an employee on the basis of actual expenditure of the employer (gift may be made either to employee or any member of his household. Gift-in-kind up to Rs. 5,000 per annum is exempt).

Credit card

Expenditure incurred by the employer *minus* expenditure pertaining to official use *minus* anything recovered from the employee, is taxable.

Club

Expenditure incurred (including annual or periodical fees) by the employer *minus* expenditure pertaining to official use *minus* anything recovered from the employee, is taxable. Health club/ sports club facility given uniformly to all employees in employer's premises, is not taxable. The initial one time deposits or fees for corporate or institutional membership, where benefit does not remain with particular employee after cessation of employment, are exempt.

Specified security or sweat equity shares	Amount taxable is the fair market value of shares/securities on the date on which option is exercised by the employee, if shares are allotted on or after April 1, 2009. Amount, if any, recovered from the employee is deductible.
Approved superannuation fund	Employer's contribution in excess of Rs. 1.5 lakh per assessment year is taxable in the hands of employee.
Perquisite received by a teacher/ researcher from a SAARC member State	Not taxable up to 2 years.
Telephone/ mobile phone	Not taxable
Residential telephone to retired Chairman/members of UPSC	Value of a residential telephone free of cost and the number of free calls to the extent of 1,500 per month (over and above the number of free calls per month allowed by the telephone authorities), is not taxable.
Any other facility (not being telephone/mobile phone)	Taxable as a perquisite in the hands of an employee on the basis of actual expenditure of the employer as reduced by any amount paid by the employee.

Employee's provident fund

Statutory provident fund - Deduction under section 80C on employee's contribution is available. All other contributions/interest/lump sum payment exempt from tax.

Recognized provident fund - Deduction under section 80C on employee's contribution is available. Excess of employer's contribution over 12% of salary is taxable (Exempt up to 12% of salary). Excess of interest over 9.5% is taxable. Lump sum payment at the time of retirement is exempt in certain cases.

Unrecognized provident fund - Deduction under section 80C on employee's contribution is not available. Employer's contribution and interest are exempt from tax. Lump sum payment (expect employee's contribution) at the time of retirement is taxable.

Deduction under section 80C

Up to Rs. 1,50,000.

Meaning of "salary" for different calculations

- *For the purpose of calculating (*a*) house rent allowance, (*b*) gratuity (not being gratuity under the payment of Gratuity Act), (*c*) leave encashment at the time of retirement, and (*d*) employer's contribution towards recognized provident fund, not chargeable to tax* - For these purposes, "salary" means basic salary, dearness allowance*/pay if part of salary for computing retirement benefits and commission (if paid as a percentage of turnover achieved by an employee).
- *For the purpose of calculating gratuity received under the Payment of Gratuity Act, 1972, not chargeable to tax* - For this purpose, "salary" means basic salary and dearness allowance, whenever dearness allowance is paid.

*Dearness allowance/pay shall be considered only when it is part of salary for computing all retirement benefits (like pension, leave encashment, gratuity, profit and loss account, etc.). If dearness allowance/pay is part of salary for computing only some (not all) of the retirement benefits, then it is not taken into consideration for this purpose.

■ *For the purpose of calculating perquisite value of rent-free/concessional house* - For this purpose, "salary" means basic salary, dearness allowance/pay if part of salary for computing retirement benefits, bonus, commission, fees, taxable allowances and any monetary benefit otherwise chargeable to tax. However, "salary" does not include tax-free allowances, value of a perquisite and employer's contribution towards provident fund and lump-sum payments received at the time of termination of service or superannuation or voluntary retirement, like gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and similar payments.

■ *For the purpose of entertainment allowance, not chargeable to tax* - For this purpose, "salary" means basic salary.

Meaning of "Government employee" for different purposes

The following are treated as Government employees (Govt.) or non-Government employees (N Govt.) –

For the purpose of computation of taxable amount	*Central/State Government employees*	*Employees of local authorities*	*Employees of statutory corporations*	*Other employees*
Leave encashment	Govt.	N Govt.	N Govt.	N Govt.
Gratuity	Govt.	Govt.	N Govt.	N Govt.
Commuted pension	Govt.	Govt.	Govt.	N Govt.
Rent-free house	Govt.[1]	N Govt.	N Govt.	N Govt.

1. For valuation of perquisite in respect of rent-free house, a Central/State Government employee who is on deputation to a public sector undertaking, is treated as a Government employee if house is allotted by the Central/State Government.

PROFITS AND GAINS OF BUSINESS OR PROFESSION

Significance of method of accounting

Income from a business or profession is calculated on the basis of method of accounting regularly employed by the assessee.†

■ If the assessee has adopted mercantile system of accounting, then income is calculated on accrual basis as well as admissible expenses are deducted on accrual basis.

■ If the assessee has adopted cash system of accounting, income is calculated on receipt basis. Admissible expenses will be deducted only on payment basis.

Specific deductions

Sections 30 to 37 cover expenses, which are expressly allowed as deduction while computing business income.

Specific disallowances

Sections 40, 40A and 43B cover expenses which are not deductible.

Rent, rates, taxes, repairs and insurance for building [Sec. 30]

Deduction is allowed in respect of rent, rates, taxes, land revenue, repairs and insurance for premises used for the purpose of business or profession is deductible. Rent of building is not deductible if building is owned by the assessee. Capital expenditure on repair is not deductible.

Repairs and insurance of

The expenditure incurred on current repairs (not being capital expenditure) and insurance in respect of plant, machinery and furniture used for business purposes is allowable as deduction.

†However, interest received by an assessee on compensation (or on enhanced compensation), shall be deemed to be the income of the year in which it is received and it is chargeable to tax under the head "Income from other sources" (50 per cent of such interest is deductible and effectively 50 per cent is chargeable to tax).

machinery, plant and furniture [Sec. 31]

Depreciation [Sec. 32]

Conditions

1. Asset must be owned by the assessee.

2. It must be used for the purpose of business or profession.

3. It should be used during the relevant previous year.

4. Depreciation is available on tangible as well as intangible assets.

If the above conditions are satisfied, depreciation is available whether (or not) the assessee has claimed the deduction for depreciation in computing his total income.

Computation of normal depreciation

Written down value of the block of assets on the last day of the previous year × rate of depreciation.

■ *Block of assets* - A group of assets falling within a class of assets comprising —

a. tangible assets, being buildings, machinery, plant or furniture;

b. intangible assets, being know-how, patents, copyrights, trade marks, licenses, franchises or any other business or commercial rights of similar nature,

in respect of which the same percentage of depreciation is prescribed.

■ *Written down value of the block of assets* - Written down value for the assessment year 2019-20 will be determined as under:

1. Find out the depreciated value of the block April 1, 2018.

2. To this value, add "actual cost"† of the asset (falling in the block) acquired during the previous year 2018-19.

3. From the resultant figure, deduct money received/receivable (together with scrap value) in respect of that asset (falling within the block of assets) which is sold, discarded, demolished or destroyed during previous year 2018-19.

The resulting figure (if positive) is written down value of the block of assets on the March 31, 2019.

■ *Rate of depreciation* - There were 13 different blocks* of assets (up to the assessment year 2018-19). From the assessment year 2019-20, the maximum rate of depreciation has been reduced to 40 per cent. Consequently, from the assessment year 2019-20, number of blocks of assets is reduced to 9 as given below –

Nature of asset (brief summary)	*Rate*
1. Buildings - Residential buildings.	5%
2. Buildings - Office, factory, godowns or buildings which are not mainly used for residential purpose.	10%
3. Buildings - Buildings for installing machinery and plant forming part of water supply project or water treatment system; and temporary erections such as wooden structures.	40%
4. Furniture - Any furniture/fittings including electrical fittings.	10%
5. Plant and machinery - Any plant or machinery [not covered by block 6, 7 or 8] and motor cars (other than those used in a business of running them on hire).	15%

† Where an assessee incurs any expenditure for acquisition of a depreciable asset in respect of which a payment (or aggregate of payments made to a person in a day), otherwise than by an account payee cheque/draft or use of electronic clearing system through a bank account (or through prescribed electronic mode), exceeds Rs. 10,000, such payment shall not be eligible for depreciation.

*It may be noted that "block of assets" means assets of all units of the assessee having the same rate of depreciation and not assets of only one unit.

Nature of asset (brief summary)	*Rate*
6. Plant and machinery - Ocean - going ships, vessels ordinarily operating on inland waters including speed boats.	20%
7. Plant and machinery - Buses, lorries and taxies used in the business of running them on hire.	30%
8. Plant and machinery –	
- Aeroplanes, commercial vehicle (certain specified) and life saving medical equipment	
- Containers made of glass or plastic used as refills new commercial vehicle (certain specified)	
- Computers including computer software and new commercial vehicle (certain specified)	
- Energy saving devices; renewal energy devices; rollers in flour mills, sugar works and steel industry (however, it does not include windmills or any special device, which run on windmills installed after March 31, 2012 but before April 1, 2014)	
- Air pollution control equipments; water pollution control equipments; solid waste control equipments, recycling and resource recovery systems, etc.	40%
9. Intangible assets (acquired after march 31, 1998) - Know-how, patents, copyrights, trade marks, licenses, franchises and any other business or commercial rights of similar nature.	25%

Exceptions

■ *Exception one* - No depreciation is admissible where written down value has been reduced to zero, though the block of assets does not cease to exist on the last day of the previous year.

■ *Exception two* - If a block of assets ceases to exist or if all assets of the block have been transferred and the block of assets is empty on the last day of the previous year, no depreciation is admissible in such case.

■ *Exception three* - If any asset falling within a block of assets is acquired by the assessee during the previous year and it is put to use for the purposes of business or profession for a period of less than 180 days in that previous year, the deduction in respect of such asset shall be restricted to 50 per cent of the amount calculated at the percentage prescribed in the case of block of asset comprising such asset.

■ *Exception four* - In the case of transfer of depreciable assets because of succession, amalgamation, business reorganization or demerger in the previous year, depreciation is first calculated as if there is no transfer of depreciable assets and the quantum of depreciation so calculated shall be apportioned between the predecessor and successor in the ratio of number of days for which the assets are used by them during the previous year.

■ *Exception five* - If an imported car was acquired during March 1, 1975 and March 31, 2001, depreciation is not admissible. If, however, such imported car is used in the business of running it on hire for tourist or for the purpose of business or profession outside India, then depreciation is admissible at the usual rate.

Additional depreciation (general)

To claim additional depreciation, the following conditions should be satisfied—

1. The assessee must be engaged in manufacture/production of any article or thing or generation or generation and distribution of power.

2. New plant and machinery should be acquired and installed after March 31, 2005.

3. It should be an eligible plant and machinery. Additional depreciation is not available in the case of ships, aircrafts, second hand assets, assets installed in office/residence/guest house, office appliances*, road transport vehicles and those assets which are qualified by 100 per cent deduction in the first year itself under any provision of the Act.

*Computer (installed in supervisory offices in factory compound) for supervision of manufacturing activity and which constitutes integral part of a factory, is eligible for additional depreciation.

■ *Amount of additional depreciation allowance* - In case the above three conditions are satisfied, additional depreciation shall be available @ 20 per cent of the actual cost# of new plant and machinery. If, however, the asset is put to use for less than 180 days in the year in which it is acquired, the rate of additional depreciation will be 10 per cent. (the remaining 10 per cent shall be allowed as deduction in the next year†).

Additional depreciation (in Andhra Pradesh or Bihar or West Bengal or Telangana)

If new plant and machinery is acquired for setting up an undertaking/enterprise (during April 1, 2015 and March 31, 2020) in a notified backward area in Andhra Pradesh or Telangana or Bihar or West Bengal, the above scheme of additional depreciation has been modified. Investment in new plant and machinery (on or after April 1, 2015) will be qualified for additional depreciation at the rate of 35 per cent (instead of 20 per cent) of "actual cost"*. If, however, the new plant and machinery is put to use for less than 180 days in the year of acquisition, then additional depreciation will be limited to 17.5 per cent of actual cost in that year. The balance 17.5 per cent will be allowed in the immediately succeeding previous year.

Unabsorbed depreciation

1. Depreciation allowance of the previous year is first deductible from the income chargeable under the head "Profits and gains of business or profession".

2. If depreciation allowance is not fully deductible under the head "Profits and gains of business or profession" because of absence or inadequacy of profits, it is deductible from income chargeable under other heads of income [except income under the head "Salaries"] for the same assessment year.

3. If depreciation allowance is still unabsorbed, it can be carried forward to the subsequent assessment year(s) by the same assessee. No time-limit is fixed for the purpose of carrying forward of unabsorbed depreciation.

Investment allowance in notified backward area in Telangana or Andhra Pradesh or Bihar or West Bengal [Sec. 32AD]

This investment allowance (available from the assessment year 2016-17) is over and above the deduction available under section 32AC. Accordingly, if an undertaking is set up in the notified backward areas in Andhra Pradesh or Bihar or West Bengal or Telangana by a company, it shall be eligible to claim deduction under the existing provisions of section 32AC as well as under section 32AD if it fulfils the conditions (such as investment above a specified threshold) specified in the said section 32AC and conditions specified under section 32AD.

■ *Conditions for claiming deduction under section 32AD* - The following conditions should be satisfied in order to avail tax incentive of additional investment allowance under section 32AD –

1. The assessee may be a company or any other person.

2. He/it sets up an undertaking/enterprise for manufacture or production of any article or thing on or after April 1, 2015.

3. Such undertaking must be set up in any backward area (notified by the Central Government) in Andhra Pradesh or Telangana or Bihar or West Bengal.

4. He/it acquires and installs (for the purposes said undertaking) a new plant and machinery (subject to a few exceptions‡).

5. The new plant and machinery should be acquired and installed after March 31, 2015 but before April 1, 2020.

■ *Quantum of investment allowance* - 15 per cent of actual cost* of new plant and machinery (available in the year in which the new asset is installed).

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†The Finance Act, 2015 has amended section 32 for this purpose from the assessment year 2016-17. For earlier assessment years, one can take the shelter of the judicial rulings given in *Apollo Tyres Ltd.* v. *ACIT* [2014] 45 taxmann.com 337 (Cochin).

* Where an assessee incurs any expenditure for acquisition of a depreciable asset in respect of which a payment (or aggregate of payments made to a person in a day), otherwise than by an account payee cheque/draft or use of electronic clearing system through a bank account (or through prescribed electronic mode), exceeds Rs. 10,000, such payment shall not be eligible for depreciation.

‡ Same exceptions are applicable in the case of additional depreciation.

Expenditure on scientific research [Sec. 35]

1. Revenue expenditure on scientific research is deductible in the year in which the expenditure is incurred, if such research relates to the business. Revenue expenses (other than expenditure on providing perquisites to employees) incurred before the commencement of business (but within three years immediately before commencement of business) on scientific research related to the business are deductible (to the extent approved by prescribed authority) in the previous year in which the business is commenced.

2. Capital expenditure (not being cost of land) on scientific research related to the business of taxpayer is fully deductible in the year in which the expenditure is incurred. In such case, depreciation is not deductible.

3. Contribution to approved research association, approved university/college/other institutions is deductible at the rate of 175 per cent‡ of actual contribution.

4. Contribution to approved university, college, or other institution for the purpose of research in social science or statistical research, is deductible at the rate of 125[*] per cent of actual contribution.

5. Contribution to an approved national lab, university, IIT, specified person is deductible at the rate of 200 per cent‡ of the contribution if such contribution is given for an approved research programme.

6. Expenditure on approved in-house research and development facilities of a company is qualified for deduction at the rate of 200 per cent of the expenditure, if a few conditions are satisfied. One of the conditions is that the company should be engaged in the business of bio-technology or in any business of the manufacture or production of any article or thing except those specified in the Eleventh Schedule. Moreover, no deduction is available in the case of cost of land and building. Cost of building can be claimed as deduction under point 2 given above.

Expenditure for obtaining right to use spectrum for telecommunication services [Sec. 35ABA]

Any capital expenditure incurred and "actually paid"[$] by an assessee on the acquisition of any right to use spectrum for telecommunication services by paying spectrum fee is allowed as a deduction (from the assessment year 2017-18) in equal instalments over the period for which the right to use spectrum remains in force. Deduction is available starting from the year in which actual payment is made (or the year of commencement of business, whichever is later) and ending with the year when spectrum comes to an end, irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee or payable in such manner as may be prescribed.

Amortization of telecom license fees [Sec. 35ABB]

The following conditions should be satisfied—

1. The expenditure is capital in nature.

2. It is incurred for acquiring any right to operate telecommunication services.

3. The expenditure is incurred either before the commencement of business or thereafter at any time during any previous year.

4. The payment for the above has been actually made to obtain licence.

■ *Amount of deduction* - The payment will be allowed as deduction in equal instalments over the period starting from the year in which such payment has been made and ending in the year in which the licence comes to an end. It may be noted that the deduction starts from the year in which actual payment of expenditure is made irrespective of the previous year in which the liability for the expenditure is incurred according to the method of accounting regularly employed by the assessee.

Where deduction is claimed and allowed under section 35ABB, no deduction will be available in respect of the same expenditure under section 32.

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‡ 150% of actual expenditure (for the assessment years 2018-19 to 2020-21) and 100% of actual expenditure (from the assessment year 2021-22 onwards).

*100% of actual expenditure (from the assessment year 2018-19 onwards).

$ For this purpose, rule 6A has been inserted. It provides that where an assessee has opted for and has been allowed by the Department of Telecommunications, Government of India (DOT) to make deferred payment, the amount which would have been payable by the assessee had he opted for full upfront payment of spectrum fee, will be considered as amount "actually paid".

Investment linked tax incentive [Sec. 35AD]

The following conditions should be satisfied—

1. The taxpayer should be in the business of (*1*) setting up and operating a cold chain facility, (*2*) setting up and operating a warehousing facility for storage of agricultural produce, (3) approved laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network, (*4*) building and operating anywhere in India, a new hotel of two star or above category as classified by the Central Government, (*5*) building and operating, anywhere in India, a new hospital with at least 100 beds for patients, (*6*) developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Government/State Government and notified by the Board in accordance with prescribed guidelines, (*7*) developing and building a notified affordable housing project, (*8*) production of fertilizers in India, (*9*) setting up and operating an inland container depot or a container freight station, (*10*) bee-keeping and production of honey and beeswax, (*11*) setting up and operating a warehousing facility for storage of sugar, (*12*) laying and operating a slurry pipeline for the transportation of iron ore, (*13*) setting up and operating a semi-conductor wafer fabrication manufacturing unit, (*14*) developing or maintaining and operating or developing, maintaining and operating a new infrastructure facility.

2. The aforesaid activities should commence on or after April 1, 2009. However, this date is April 1, 2007 in the case of lying and operating a cross-country natural gas pipeline network for distribution or storage, April 1, 2010 in the case of hotel, hospital and housing project, April 1, 2011 in the case of housing project for affordable housing and production of fertilizer, April 1, 2012 if the specified business is of the nature referred to in Point Nos. (*9*), (*10*) and (*11*), April 1, 2014, if specified business is of the nature referred to in Point Nos. (*12*) and (*13*) and April 1, 2017 if the specified business is of the nature referred to in Point No. 14.

3. The aforesaid business should be a new business (*i.e.*, not set up by splitting up, or reconstruction of, of an existing business).

If the aforesaid conditions are satisfied, 100 per cent of the capital expenditure# is deductible in the year in which the expenditure is incurred. However, expenditure incurred on the acquisition of any land or goodwill or financial instrument is not eligible for any deduction under section 35AD.

Expenditure incurred prior to the commencement of operation, wholly and exclusively, for the purpose of any specified business, shall be allowed as deduction during the previous year in which the assessee commences the operation of his specified business, if the amount is capitalized in the books of account of the assessee on the date of commencement of operation.

Where an assessee builds a two-star (or above category) hotel and, subsequently, while continuing to own the hotel, transfers the operation thereof to another person, the assessee shall be deemed to be carrying on the specified business of building and operating hotel for the purpose of section 35AD.

Moreover, no deduction shall be allowed under the provisions of section 10AA in respect of a specified business when deduction is claimed under section 35AD.

Any asset in respect of which a deduction is claimed and allowed under section 35AD, shall be used only for the specified business for a period of 8 years beginning with the previous year in which such asset is acquired or constructed. If such asset is used for any purpose other than the specified business, the total amount of deduction so claimed and allowed in any previous year in respect of such asset, as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction had been allowed under section 35AD, shall be deemed to be business income of the assessee of the previous year in which the asset is so used.

Weighted deduction for expenditure incurred on agricultural

Where an assessee incurs any expenditure on notified agricultural extension project, then he will be eligible to claim weighted deduction of 150 per cent of such expenditure for the assessment years 2013-14 to 2020-21 [from the assessment year 2021-22, an assessee can claim 100 per cent of expenditure as deduction (but not weighted deduction)].

Where an assessee incurs any expenditure for acquisition of a depreciable asset in respect of which a payment (or aggregate of payments made to a person in a day), otherwise than by an account payee cheque/draft or use of electronic clearing system through a bank account (or through prescribed electronic mode), exceeds Rs. 10,000, such payment shall not be eligible for depreciation.

extension project [Sec. 35CCC]

Weighted deduction for expenditure for skill development [Sec. 35CCD]

Where a company incurs any expenditure (not being expenditure in the nature of cost of any land or building) on any notified skill development project, then such company can claim weighted deduction of 150 per cent of such expenditure for the assessment years 2013-14 to 2020-21 [from the assessment year 2021-22, an assessee can claim 100 per cent of expenditure as deduction (but not weighted deduction)].

Amortization of preliminary expenses [Sec. 35D]

Certain preliminary expenses are deductible under section 35D. Deduction under section 35D is available in case of an Indian company or a resident non-corporate assessee. One-fifth of the qualifying expenditure is allowable as deduction in each of the five successive years beginning with the year in which the business commences, or as the case may be, the previous year in which extension of the undertaking is completed or the new unit commences production or operation.

Amalgamation demerger expenses [Sec. 35DD]

The expenditure is allowed as deduction in five successive years in five equal instalments. The first instalment is deductible in the previous year in which amalgamation or demerger takes place. No deduction shall be allowed in respect of the above expenditure under any other provision of the Act.

Voluntary retirement scheme expenditure [Sec. 35DDA]

One fifth of the amount so paid shall be deducted in computing the profits and gains of the business for that previous year, and the balance shall be deducted in equal instalments for each of the four immediately succeeding previous years. This rule is applicable even if the scheme of voluntary retirement has not been framed in accordance with guidelines prescribed under section 10(*10C*).

Deduction under section 36

The following expenses are deductible under section 36

Insurance premium

Premium paid in respect of insurance against risk of damage or destruction of stocks or stores, used for the purposes of business or profession, is allowable as deduction.

Premia for insurance on health of employees

Premia paid by employer (by any mode other than cash) for insurance on the health of his employees in accordance with the scheme framed by the General Insurance Corporation and approved by the Central Government or any other insurer and approved by IRDA, is deductible.

Bonus or commission to employees

Allowable as deduction if not otherwise payable as profit or dividend. Deduction is available on payment basis. Where, however, payment is made after the end of the previous year but on or before the due date of furnishing return of income, deduction is available on accrual basis.

Interest on borrowed capital

Allowable as deduction subject to fulfilment of three conditions:

1. The assessee must have borrowed money.

2. The money so borrowed must have been used for the purpose of business.

3. Interest is paid or payable on such borrowing.

Discount on zero coupon bonds

Discount is the difference between amount received and the amount payable on redemption/ maturity by the issuing company. It is allowed as deduction on *pro rata* basis having regard to the period of life of such bond. "Period of life of the bond" means the period commencing from the date of issue of the bond and ending on the date of the maturity or redemption of such bond.

Employer's contribution to

Allowable as deduction subject to the limits laid down for the purpose of recognized provident fund [RPF] or approving superannuation fund. Contribution towards NPS deductible up to 10%

recognized PF and approved superannuation fund/NPS

of salary of employees. Meaning of "Salary" for this purpose and for the purpose of calculating house rent allowance exemption is the same.

Contribution towards approved gratuity fund

Employer's contribution towards an approved gratuity fund created by him exclusively for the benefit of his employees under an irrevocable trust is allowable as deduction.

Employees' contribution towards staff welfare schemes

Any sum received by the taxpayer as contribution from his employees towards provident fund or any welfare fund of such employees shall be allowed as deduction only if such sum is credited by the taxpayer to the employee's account in the relevant fund on or before the due date. For this purpose, "due date" means the date by which the employer is required to credit such contribution to the employee's account in the relevant fund under the provisions of any law or term of contract of service or otherwise.

Bad debts

Bad debt written off in the books of account is deductible. However, the following conditions should be satisfied—

1. Debt must be incidental to the business or profession of the assessee.

2. Debt must have been taken into account in computing assessable income.

Adjustment at the time of recovery - Where debt ultimately recovered is less than the difference between the amount of debt and bad debt allowed as deduction, such deficiency will be deductible in the previous year in which the ultimate recovery is made provided such deficiencies is written off in the books of account. Conversely, where the debt ultimately recovered is more than the difference between the debt and the amount of bad debt deducted, such excess amount will be chargeable to tax in the year of recovery.

Provision for bad and doubtful debts relating to rural branches of scheduled commercial banks

Amount deductible in respect of provision for bad and doubtful debts

	Scheduled bank [other than a foreign bank] and a non-scheduled bank	*Public Financial institution, State financial corporation, State industrial investment corporation*	*Foreign bank or non-banking financial company*
■ Total income (computed before this deduction and amount deductible under sections 80C to 80U)	8.5 per cent of such income	5 per cent of such income	5 per cent of such income
■ Aggregate average advances made by rural branches	10 per cent of such advances	—	—

Family planning expenditure

Revenue expenditure is fully allowable as deduction. If, however, such expenditure is of capital nature, one-fifth of such expenditure is allowable as deduction for the previous year in which it was incurred and the balance is deductible in equal instalments in the next four years.

Non-corporate assessee cannot claim this deduction [deduction may be claimed by a non-corporate assessee under sections 32 and 37(1) if the relevant conditions are satisfied].

Any family planning expenditure which is not allowed as deduction due to inadequacy of profit, shall be set off and carried forward as if it is unabsorbed depreciation.

Securities transaction tax

It is deductible only if the assessee is a dealer in securities.

Commodities transaction tax

It is deductible if income from such commodities transactions is taxable as business income

Expenditure by co- operative society for purchase of sugarcane

Deductible if co-operative society is engaged in the business of manufacture of sugar and amount deductible is purchase price of sugarcane or the price fixed or approved by the Government, whichever is lower.

Marked to market loss

Deduction in respect of any marked to market loss (or other expected loss) is allowed, if such loss is computed in accordance with notified Income Computation and Disclosure Standards (ICDS).

General deduction [Sec. 37(1)]

Section 37(1) is a residuary section. To avail deduction, the following conditions should be satisfied—

1. The expenditure should not be of the nature described under sections 30 to 36.

2. It should not be in the nature of capital expenditure.

3. It should not be personal expenditure of the assessee.

4. It should have been incurred in the previous year.

5. It should be in respect of business carried on by the assessee.

6. It should have been expended wholly and exclusively for the purpose of such business.

7. It should not have been incurred for any purpose, which is an offence or is prohibited by any law.

Any expenditure incurred by an assessee on the activities relating to corporate social responsibility (CSR) referred to in section 135 of the Companies Act, 2013 is not deductible under section 37(1). However, the CSR expenditure which is of the nature described in sections 30 to 36 or section 80G shall be allowed deduction under those sections subject to fulfilment of conditions, if any, specified therein.

Disallowance under section 37(2B)

No deduction is available in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, etc., published by a political party.

Disallowances under section 40

Interest, royalty, fees for technical services payable outside India or payable to a non-resident [Sec. 40(a)(i)]

If the following three conditions are satisfied, the assessee (*i.e.*, the payer) is supposed to deduct tax at source (TDS) under section 195 —

1. The amount paid is interest, royalty, fees for technical services or other sum.

2. The aforesaid amount is chargeable to tax under the Act in the hands of the recipient.

3. The aforesaid amount is paid/payable (*a*) outside India to any person; or (*b*) in India to a non-resident.

If the above three conditions are satisfied, the assessee (the payer) is supposed to deduct tax at source and deposit the same with the Government within the time-limit specified by section 200(1) [generally this time-limit is seven days from the end of the month in which tax is deducted. In some cases, time limit is different].

■ *Disallowance* - If tax is deductible but not deducted, expenditure is not allowed as deduction. If tax is deductible (and it is so deducted) during the current year but TDS is not deposited till the due date of submission of return of income under section 139(1), the entire expenditure will be disallowed for the current previous year. If tax is deposited in a subsequent year, expenditure will be deductible in the year in which TDS is deposited.

■ *When recipient has paid tax* - The above provisions have been amended with effect from the assessment year 2020-21. Under the amended provisions, a relief is available if the following conditions are satisfied –

1. Tax is deductible on the aforesaid payments but it is not deducted (wholly or partly) by the payer.

2. The payer is not deemed to be an assessee-in-default under the first proviso to section 201(1). Under the first proviso to section 201(1), the payer is not deemed to be an assessee-in-default if –

a. the recipient has furnished his return of income under section 139;

b. the recipient has taken into account the above income in such return of income;

c. the recipient has paid the tax due on the income declared in such return of income, and

d. the payer uploads a certificate to this effect from a chartered accountant in Form No. 26A.

If the above conditions are satisfied, then for the purpose of section 40(*a*)(*i*) it shall be deemed that the payer has deducted and paid the tax on such amount on the date of the furnishing of return of income by the recipient.

*Payment to a resident [Sec. 40(*a*)(*ia*)]*

Tax is deductible in respect of any payment or credit to a resident which is subject to the provisions of tax deduction.

Case 1 - If tax is deductible but not actually deducted (from the assessment year 2015-16, only 30 per cent of such payment will be disallowed).

Case 2 - If tax is deductible (and it is so deducted) during the current financial year but it is not deposited on or before the due date of submission of return of income, (from the assessment year 2015-16, only 30 per cent of such payment will be disallowed in the current previous year).

■ *When amount is deductible in Case 1 and Case 2* - The amount which is disallowed in *Case 1* or *Case 2* during the current year, will be allowed as deduction in the year in which tax is deposited by the person incurring expenditure.

■ *Relaxation given by the Finance Act, 2012* - The above provisions have been amended by the Finance Act, 2012 with effect from the assessment year 2013-14. Under the amended provisions, a relief is given in *Case 1* (and not in *Case 2*), if the payer is not deemed to be an assessee-in-default under the first proviso to section 201(1). Under the first proviso to section 201(1), the payer is not deemed to be an assessee-in-default if –

a. the recipient has furnished his return of income under section 139;

b. the recipient has taken into account the above income in such return of income;

c. the recipient has paid the tax due on the income declared in such return of income, and

d. the payer electronically furnishes a certificate to this effect from a chartered accountant in Form No. 26A.

If the above conditions are satisfied, then for the purpose of section 40(*a*)(*ia*) it shall be deemed that the payer has deducted and paid the tax on such amount on the date of the furnishing of return of income by the resident recipient.

Royalty, licence fees, etc., in case of State Government Undertakings

Any amount paid by way of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge, which is levied exclusively on a State Government undertaking by the State Government, or any amount which is appropriated (directly or indirectly) from a State Government Undertaking by the State Government, is not deductible.

Default pertaining to non-deduction/non-deposit of equalisation levy

■ *When disallowance is applicable* - Any consideration paid or payable (to a non-resident for a specified service on which equalisation levy is applicable) will be disallowed from the assessment year 2017-18 in the following cases—

1. Equalisation levy is deductible and such levy has not been deducted.

2. Equalisation levy is deductible (and it is so deducted) but it is not deposited [on or before the due date of submission of return of income under section 139(1)].

■ *Reversal of disallowance* - If equalisation levy is deducted/deposited in a subsequent year, the aforesaid consideration shall be allowed as a deduction in computing the income of the previous year in which such levy has been paid.

Fringe benefit tax, income-tax and wealth-tax

These are not deductible. Any fine, interest, penalty, etc., in respect of these taxes are also not deductible.

Salary payable to a non-resident or payable outside India

It is not deductible if tax is not deducted at source and it is not paid to the Government.

Tax on perquisite paid by the employer

The employer provides non-monetary perquisites to employees. Tax on non-monetary perquisites is paid by the employer. The tax so paid by the employer is not taxable in the hands of employees by virtue of section 10(*10CC*). While calculating income of the employer, the tax paid by the employer on non-monetary perquisites is not deductible.

Salary and interest to partners

Salary and interest paid/payable by a firm to its partners are deductible only if conditions of sections 184 and 40(*b*) are satisfied. One of the conditions is that these payments should be permitted by the partnership deed. Rate of interest cannot be more than 12 per cent (excess interest will be disallowed in the hands of firm). Salary and remuneration to partners cannot exceed a specified percentage of book profit if the aggregate payment exceeds Rs. 1,50,000 (excess payment if any shall be disallowed). Maximum remuneration to partners which is deductible is as follows —

On the first Rs. 3 lakh of book profit (or in the case of loss): Rs. 1,50,000 or 90 per cent of book profit whichever is more.

On the balance of book profit: 60 per cent of book profit.

Salary and interest by an AOP/BOI to its members

Not deductible.

Disallowance under section 40A

Amounts paid or payable to a relative/inter-connected concern

Any expenditure incurred by an assessee in respect of which payment has been made to specified persons (*e.g.*, relatives, inter-connected concerns) is liable to be disallowed in computing business profit to the extent such expenditure is considered to be excessive or unreasonable, having regard to the fair market value of goods or services or facilities, etc. For the assessment years 2013-14 to 2016-17, this disallowance shall not be made if the aggregate value of such transactions is more than Rs. 5 crore (assessment year 2016-17, Rs. 20 crore) and these transactions at arm's length price [as defined in section 92F(*ii*)].

Expenditure exceeding Rs. 10,000 paid by a mode other than account payee cheque/ draft [Sec. 40A(3)]

If the following conditions are satisfied, payment is not deductible—

1. The assessee incurs any expenditure, which is otherwise deductible under the other provisions of the Act for computing business/profession income (*e.g.*, expenditure for purchase of raw material, trading goods, expenditure on salary, etc.). The amount of expenditure exceeds Rs. 10,000†.

2. A payment (or aggregate of payments made to a person in a day) in respect of the above expenditure exceeds Rs. 10,000†.

3. The payment mentioned above is made otherwise than by an account payee cheque or an account payee demand draft (it is made in cash or by a bearer cheque or by a crossed cheque or by a crossed demand draft) or use of electronic clearing system through a bank account (or through prescribed electronic mode).

If all the above conditions are satisfied, 100 per cent of such payment will be disallowed.

Contribution towards unapproved gratuity fund

Not deductible.

Employer's contribution towards non-statutory funds

Employer's contribution towards non-statutory fund (like unrecognized provident fund) is not deductible.

† Rs. 35,000 if an assessee makes payment for plying, hiring or leasing goods carriages.

Marked to market loss

If such loss is not computed in accordance with notified Income Computation and Disclosure Standards (ICDS), deduction is not available.

Amount not deductible in respect of certain unpaid liabilities [Sec. 43B]

Disallowance under section 43B is applicable only if the taxpayer maintains books of account on the basis of mercantile system of accounting. The provisions of section 43B are given below—

General rule - Certain expenses are deductible on payment basis - The following expenses (which are otherwise deductible under the other provisions of the Income-tax Act) are deductible on payment basis—

a. any sum payable by way of tax, duty, cess or fee (by whatever name called under any law for the time being in force);

b. any sum payable by an employer by way of contribution to provident fund or superannuation fund or any other fund for the welfare of employees;

c. any sum payable as bonus or commission to employees for service rendered;

d. any sum payable as interest on any loan or borrowing from a public financial institution (*i.e.*, ICICI, IFCI, IDBI, LIC and UTI) or a state financial corporation or a state industrial investment corporation;

e. any sum payable as interest on any loan or borrowing from a deposit-taking non-banking finance company (NBFC) and systematically important non deposit-taking NBFC (applicable from the assessment year 2020-21);

f. interest on any loan or advance taken from a scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank];

g. any sum payable by an employer in lieu of leave at the credit of his employee; and

h. any sum payable to the Indian Railways for the use of railway assets.

The above expenses are deductible in the year in which payment is actually made. There is, however, one exception, which is given below:

Exception - When deductible on accrual basis - The above payments are deductible on accrual basis if the payment is actually made on or before the due date of submission of return of income.

Recovery against any deduction [Sec. 41(1)]

1. In any of the earlier years a deduction was allowed to the taxpayer in respect of loss, expenditure (revenue or capital expenditure) or trading liability incurred by the assessee.

2. During the current previous year, the taxpayer—

a. has obtained a refund of such loss or expenditure (it may be in cash or any other manner); or

b. has obtained some benefit in respect of such trading liability by way of remission or cessation thereof ("remission or cessation" for this purpose includes unilateral act of the assessee by way of writing-off of such liability in his books of account).

If the above two conditions are satisfied, the amount obtained by such person (or the value of benefit accruing to the taxpayer) shall be deemed to be profits and gains of business or profession and, accordingly, chargeable to tax as the income of that previous year.

Compulsory audit of books of account [Sec. 44AB]

Different taxpayers	*When they are covered by the provisions of compulsory audit under section 44AB (audit report should be obtained on or before the due date of submission of return of income)*
A person carrying on business	If the total sales, turnover or gross receipt in business for the previous year(s) relevant to the assessment year exceed or exceeds Rs. 1 crore.[#]
A person carrying on profession	If his gross receipts in profession for the previous year(s) relevant to the assessment year exceeds Rs. 50 lakh.

Rs. 2 crore in the case of a person, who declares business profit in accordance with the provisions of section 44AD(1).

Different taxpayers	*When they are covered by the provisions of compulsory audit under section 44AB (audit report should be obtained on or before the due date of submission of return of income)*
A person covered under section 44AE, 44BB or 44BBB	If such person claims that the profits and gains from the business are lower than the profits and gains computed under these sections (irrespective of his turnover).
A person covered under section 44ADA	If such person claims that the profits and gains from the business/ profession are lower than the profits and gains computed under these sections and if his income exceeds the maximum amount which is not chargeable to tax
A person covered under section 44AD(4)	If a person carrying on business is covered by the provisions of section 44AD(4) and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year.

Presumptive taxation [Sec. 44AD]†

Section 44AD is applicable if the taxpayer is a resident individual, resident Hindu undivided family or a resident partnership firm (not being a limited liability partnership). The taxpayer is engaged in any business [but not (*a*) carries on profession as referred to in section 44AA(1), (*b*) earn income in the nature of commission or brokerage, (*c*) carries on any agency business, or (*d*) one who is in the business of plying, hiring or leasing goods carriages]. The turnover does not exceed Rs. 2 crore. Income is computed on estimated basis at the rate of 8 per cent of turnover.‡ The rate of 8 per cent is comprehensive [*i.e.*, no further deduction is allowed under any other section].

Presumptive taxation [Sec. 44ADA]†

Section 44ADA is applicable if a resident assessee is engaged in a profession referred to in section 44AA(1) (*i.e.*, such as legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board) and gross receipts from the profession has not exceed Rs. 50 lakh. In such case, income is computed on estimated basis at the rate of 50 per cent of total gross receipt. The rate of 50 per cent is comprehensive (no further deduction is available).

Presumptive taxation [Sec. 44AE]†

Section 44AE is applicable, if the taxpayer is engaged in the business of plying, hiring and leasing goods carriages and he/it does not own more than 10 goods carriages at time during the previous year. In such a case, income would be calculated on estimated basis at the rate given below. No further deduction is allowed under any other section except remuneration and interest to partners.

Heavy goods vehicle - For a heavy goods vehicle, the profits and gains shall be an amount equal to Rs. 1,000 per ton of gross vehicle weight (or unladen weight) for every month (or part of a month) during which the heavy goods vehicle is owned by the assessee in the previous year or an amount claimed to have been actually earned from such vehicle, whichever is higher.

Other than heavy goods vehicle - In the case of a goods carriage other than heavy vehicle, the profits and gains shall be an amount equal to Rs. 7,500 for every month (or part of a month) during which the goods carriage is owned by the assessee in the previous year or an amount claimed to have been actually earned from such goods carriage, whichever is higher.

For this purpose, "heavy goods vehicle" means any goods carriage the gross vehicle weight of which exceeds 12,000 kilograms.

CAPITAL GAINS

Basis of charge

Income under the head "Capital gains" is chargeable to tax if the following conditions are satisfied—

1. There is a capital asset.

†A taxpayer, opting from the above scheme, can submit return of income in ITR-4 (ITR-4 is a simplified form as compared to other forms).

‡6 per cent in respect of total turnover or gross receipts received by an account payee cheque/draft or use of electronic clearing system through a bank account (or through prescribed electronic mode) during the previous year or before the due date of submission of return of income under section 139(1).

2. It is transferred during the previous year.

3. Capital gain is generated because of transfer.

4. Capital gain is not exempt from tax.

Meaning of "capital asset"

"Capital asset" is defined by section 2(*14*).

■ *Positive list* - "Capital asset" means property of any kind, whether fixed or circulating, movable or immovable, tangible or intangible. Besides, it includes the following –

1. Any rights in, or in relation to, an Indian company, including rights of management or control or any other rights whatsoever.

2. Property of any kind held by an assessee (whether or not connected with his business or profession).

3. Any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the SEBI Act.

■ *Negative list* - The following assets are excluded from the definition of "capital assets" –

1. Stock-in-trade (other than securities referred to in *point 3* above).

2. Personal effects.

3. Agricultural land in a rural area in India.

4. A few gold bonds and special bearer bonds (this point does not have any practical utility).

5. Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015.

Personal effects — Any movable property (including wearing apparel and furniture) held for personal use of the owner or for the use of any member of his family dependent upon him, is not a "capital asset" for the purpose of income under the head "Capital gains". However, the following are not "personal effects" (in other words, the following are "capital assets") even if these are for personal use—jewellery, archaeological collections, drawings, paintings, sculptures, or any work of art.

Agricultural land in a rural area in India — It should not be situated in (*i*) any area within the jurisdiction of a municipality or a cantonment board having a population of 10,000 or more; or (*ii*) area within 8 kilometers from the local limit of such municipality/cantonment (this limit is 2 kilometers if the population of the municipality/cantonment is more than 10,000 but more than 1 lakh or 6 kilometers if the population of the municipality/cantonment is more than 1 lakh but more than 10 lakh).

Types of capital assets — There are two types of capital assets – Short-term and long-term. If period of holding is more than 36 months, the capital asset is long-term, otherwise it is short-term.

■ However, in the following cases, the capital asset held for more than 12 months is treated as long-term capital assets—Listed shares in any company, Government securities, listed debentures, units of equity oriented mutual fund and zero coupon bonds.

■ Moreover, equity/preference unlisted shares (from the assessment year 2017-18) and immovable property (being land/building) (from the assessment year 2018-19) held for more than 24 months are treated as long-term capital assets.

Transfer

Capital gains arises on transfer of a capital asset. If the asset transferred is not a capital asset, no capital gains will arise. Transfer includes sale, exchange or relinquishment of the asset; or the extinguishment of any rights therein; or the compulsory acquisition thereof under any law. However, the following are not treated as "transfer" (in other words, in the following cases, there is no capital gain)—

1. Distribution of assets in kind by a company to its shareholders on its liquidation.

2. Any distribution of capital assets in kind by a Hindu undivided family to its members at the time of total or partial partition.

3. Any transfer of capital asset under a gift or a will or an irrevocable trust (exception — gift of ESOP shares is chargeable to tax and fair market value of the share on the date of gift is taken as sale consideration).

4. Transfer of capital asset between holding company and its 100 per cent subsidiary company, if the transferee-company is an Indian company.

5. Transfer of capital asset in the scheme of amalgamation/demerger, if the transferee-company is an Indian company.

6. Transfer of shares in amalgamating company/demerged company in lieu of allotment of shares in amalgamated company/resulting company in the above case.

7. Transfer of capital asset in a scheme of amalgamation of a banking company with a banking institution.

8. Transfer of shares in an Indian company held by a foreign company to another foreign company in a scheme of amalgamation/demerger of the two foreign companies, if a few conditions are satisfied.

9. Transfer of a capital asset by a non-resident of foreign currency convertible bonds or Global Depository Receipts to another non-resident if the transfer is made outside India and if a few conditions are satisfied.

10. Transfer by an individual of Sovereign Gold Bond (issued by RBI under the Sovereign Gold Bond Scheme, 2015) by way of redemption.

11. Any transfer of a capital asset, being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident.

12. Transfer of any work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print, to the Government or a University or the National Museum, National Art Gallery, National Archives or any other notified public museum or institution.

13. Transfer by way of conversion of preference shares of a company into equity shares of that company.

14. Any transfer by way of conversion of bonds or debentures, debenture-stock or deposit certificate in any form, of a company into shares or debentures of that company.

15. Land transferred by a sick industrial company, if a few conditions are satisfied.

16. Transfer of a capital asset by a private company/unlisted public company to a limited liability partnership in the case of conversion of company into LLP.

17. Transfer of capital assets at the time of conversion of a firm/sole proprietary concern in a company, if a few conditions are satisfied.

18. Any transfer involved in a scheme for lending of any securities, if a few conditions are satisfied.

19. Any transfer of capital asset in a reverse mortgage.

20. Any transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferor.

21. Any transfer by a unitholder of units held by him in the consolidating scheme of a mutual fund, made in consideration of the allotment to him of units in the consolidated scheme of the mutual fund, if the consolidation is of two or more schemes of equity oriented fund or of two or more schemes of a fund other than equity oriented fund.

22. Transfer by a unitholder of units held by him in the consolidating plan of a mutual fund scheme, made in consideration of the allotment to him of units, in the consolidated plan of that scheme of the mutual fund

23. Transfer, made outside India, of a capital asset being rupee denominated bond of an Indian company issued outside India, by a non-resident to another non-resident.

24. Transfer of capital asset [being bonds/GDR referred to in section 115AC(1) or rupee denominated bond of an Indian company or derivative] made by a non-resident on a recognised stock exchange located in any international financial services centre and where the consideration is paid/payable in foreign currency.

Computation of capital gain

Short-term capital gain

It arises on transfer of short-term capital asset and it is calculated as follows—

Full value of consideration *minus* cost of acquisition *minus* cost of improvement *minus* expenditure pertaining to transfer incurred by the transferor.

Long-term capital gain

It arises on transfer of long-term capital asset and it is calculated as follows—

Full value of consideration *minus* indexed cost of acquisition *minus* indexed cost of improvement *minus* expenditure pertaining to transfer incurred by the transferor.

■ However, in the following cases the benefit of indexation is not available ever if the capital asset is long-term capital asset—

1. Bonds or debentures [other than (*a*) capital indexed bonds issued by the Government or (*b*) Sovereign Gold Bond issued by RBI under the Sovereign Gold Bond Scheme, 2015].

2. Depreciable assets.

3. Slump sale.

4. Units/GDR/securities given in sections 115AB, 115AC, 115ACA and 115AD.

5. Shares and debentures in Indian company acquired by a non-resident in foreign currency, if a few conditions are satisfied.

Cost of improvement

It does not include any expenditure on improvement incurred before April 1, 2001.

How to convert cost of acquisition into indexed cost of acquisition

Cost of acquisition × Cost inflation index (CII) of the year in which the capital asset is transferred ÷ CII of the year in which the asset was first held by the assessee [or previous owner, in cases covered by section 49(1)]. However, indexation benefit is available from 2001-02.

Cost inflation index for different previous years—

2001-02	100	2006-07	122	2011-12	184	2016-17	264
2002-03	105	2007-08	129	2012-13	200	2017-18	272
2003-04	109	2008-09	137	2013-14	220	2018-19	280
2004-05	113	2009-10	148	2014-15	240	2019-20	NA
2005-06	117	2010-11	167	2015-16	254	2020-21	NA

Indexed cost of improvement

Cost of improvement × Cost inflation index (CII) of the year in which the capital asset is transferred ÷ CII of the year in which improvement took place.

Exempt capital gains

In the following cases, capital gain is exempt under section 10–

■ Transfer of units of US64.

■ Compulsory acquisition of urban agricultural land in India owned by an individual or HUF, if the land was used for agricultural purposes by the owner (or any of his parents) during 2 years immediately prior to acquisition.

■ Capital gains which arise on conversion of an Indian branch of a foreign bank into an Indian subsidiary, if the conversion takes place in accordance with the scheme framed by RBI and subject to the conditions notified by the Central Government.

■ Capital gains which arise to a shareholder on account of buy-back of (*a*) unlisted shares (during June 1, 2013 and July 4, 2019), or (*b*) listed/unlisted shares (on or after July 5, 2019).

■ Capital gain arising out of any award/agreement under Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

■ Capital gain arising under Land Pooling Scheme of Andhra Pradesh Government pertaining to the following transactions –

- Transfer of capital asset (being land or building or both) under land pooling scheme.
- Sale of land pooling ownership certificate issued under the above land pooling scheme (such certificate is given to the land owner in lieu of land transferred under the scheme).
- Sale of reconstituted plot or land by said persons within 2 years from the end of the financial year in which the possession of such plot or land was handed over to the said persons.

Special mode of computation

When cost of asset to the previous owner is taken into consideration

When an assessee acquired capital asset by any mode given in section 49, then at the time of its transfer, cost of acquisition to the previous owner is taken as cost of acquisition.

■ *Acquisition mode given under section 49* - In the following cases, cost of acquisition of asset to the previous owner is considered—

1. Acquisition of a property by a member at the time of partition of Hindu undivided family.

2. Acquisition of a property by gift/Will or by succession, inheritance, etc.

3. Acquiring a capital asset by a holding company from its 100 per cent subsidiary company or *vice versa*, if the transferee-company is an Indian company.

4. Acquisition of a property in a scheme of amalgamation, if the transferee-company is an Indian company.

5. Acquisition of property under a scheme of conversion of private company/unlisted company into LLP.

6. Acquisition of property under a scheme of conversion of firm/sole-proprietary concern into company.

■ *Special points* - The following are special points—

1. The benefit of indexation is available from the year in which the previous owner acquired the property.*

2. To determine whether the asset is short-term or long-term, the period of holding by the previous owner is also considered.

Fair market value on April 1, 2001

If the capital asset was acquired by the assessee (or by the previous owner in the cases given above) before April 1, 2001, the fair market value of the capital asset on April 1, 2001 can be taken (at the option of the assessee) as cost of acquisition.

■ *Special points* - The following are special points—

1. This rule is optional. The assessee may or may not adopt the fair market value on April 1, 2001 as cost of acquisition.

2. The option is not available in the case of transfer of following capital assets-depreciable assets, goodwill of a business, trade-mark/brand name associated with a business, right to manufacture/produce an article, right to carry on business, route permits and loom hours.

Depreciable assets

If a depreciable assets is transferred, capital gain (loss) shall be calculated only in two cases—

a. when the written down value of the block of assets on the last day of the previous year becomes *zero*.

b. when the block of assets becomes empty on the last day of the previous year.

Only in these two cases, capital gain (loss) arises on the transfer of a depreciable asset. Cost of acquisition in such case will be the depreciated value of the block of assets on the first day of the previous year *plus* actual cost of assets (falling in the same block of assets) acquired at any time during the previous year.

Other points - Capital gain or loss, which arises on transfer of depreciable assets, is always taken as short-term capital gain or loss.

Forfeiture of advance money

At the time of negotiating transfer of a capital asset, the transferor has forfeited any advance money. It is forfeited because the purchaser could not pay the balance consideration within the stipulated period (or it may be forfeited because of any other non-performance). The advance money so forfeited is deductible from cost of acquisition for calculating capital gain when the asset is ultimately transferred. However, from the assessment year 2015-16, such advance money (which is forfeited by the recipient) is taxable in the hands of recipient under the head "Income from other sources". In such a case, it will not be deducted from cost of acquisition.

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*The Bombay High Court in *CIT* v. *Manjula J. Shah* [2012] 204 Taxman 691 held that indexed cost of acquisition has to be computed with reference to the year in which the previous owner first held the asset and not the year in which the current assessee became the owner of asset. Practical problems are solved in the book on the basis of this ruling of Bombay High Court.

Conversion of capital asset into stock-in-trade

If capital asset is converted into stock-in-trade during a previous year relevant to the assessment year 1985-86 (or any subsequent year), the following special rules are applicable—

1. It will be assumed that capital asset is transferred in the year in which conversion takes place.

2. Fair market value of the asset on the date of conversion will be taken as full value of consideration.

3. However, capital gain will not be taxable in the year of conversion. It will be taxable in the year in which stock-in-trade is transferred.

Transfer of capital assets to a firm by way of capital contribution by a partner

It is treated as transfer. The amount recorded in the books of account is taken as full value of consideration.

Distribution of a capital asset by a firm to partners at the time of dissolution

It is treated as transfer. Capital gain is taxable in the hands of the firm. Fair market value of the asset on the date of distribution is taken as full value of consideration.

Compulsory acquisition of a capital asset

Initial compensation is taken as full value of consideration. Capital gain is chargeable to tax in the year in which the initial compensation (or part thereof) is first received. However, the amount of compensation received in pursuance of an interim order of the court, Tribunal or other authority shall be chargeable to tax in the previous year in which the final order of such court, Tribunal or other authority is made.

Indexation benefit is available up to the year in which the asset was compulsory acquired.

■ *When additional compensation is received* - If a Court/Tribunal/authority enhances compensation, it will be taxable in the year in which enhanced compensation or additional compensation is received. For this purpose cost of acquisition and cost of improvement are taken as *nil*. However, litigation expenses or incidental expenditure for obtaining additional compensation are deductible.

Capital gain on transfer of shares/debentures in the hands of non-residents

If a non-resident acquires shares in, or debentures of, an Indian company by utilizing foreign currency, the gain will be calculated in the same foreign currency, which was initially utilized in acquiring shares/debentures. After calculating capital gain in foreign currency, it will be converted into Indian currency. This rule is not optional, it is compulsory. The benefit of indexation is not available.

Self-generated assets

In the case of transfer of self-generated goodwill of a business, right to manufacture/produce an article/thing or right to carry on business, the cost of acquisition and cost of improvement are taken as *nil*. In the case of transfer of self-generated assets being tenancy right, route permit, loom hours, trade name or brand name, cost of acquisition is taken as *nil*. In these cases, the option of adopting fair market value on April 1, 2001 is not available. On transfer of any other self-generated asset, capital gain is always *zero*.

If capital asset being goodwill of a business, right to manufacture/produce an article/thing or right to carry on business, is purchased, then at the time of its transfer, cost of improvement is taken as *nil*.

Bonus shares

If bonus shares were allotted before April 1, 2001, cost of acquisition is the fair market value on April 1, 2001. If bonus shares are allotted after April 1, 2001, cost of acquisition is taken as *zero*.

Transfer of rights entitlement

Amount realized by an existing shareholder by selling rights entitlement (*i.e.*, right to acquire additional shares in the company at a pre-determined price) is taxable in the year of transfer of the right entitlement. Cost of acquisition of right entitlement is always taken as *zero* and the capital gain is deemed as short-term capital gain.

Conversion of debentures/bonds into shares

Conversion is not taken as transfer. Cost of acquisition of debentures/bonds will become cost of acquisition of shares. To find out whether shares are short-term or long-term capital asset, the period of holding shall be counted from the date of allotment of debenture. The benefit of indexation is available from the date of allotment of debentures.

Securities in demat form

The cost of acquisition and period of holding any security in demat form shall be determined on the basis of first-in-first-out (FIFO) method.

Conversion of firm into company

See para 216.

Shares in amalgamated company

See para 198.

Shares in resulting company

See para 206.

Insurance compensation

It is taxable on the year in which compensation is received. The amount of compensation will be taken as full value of consideration. However, this rule is applicable only when insurance compensation is received because of damage to or destruction of, any capital asset because of—

a. flood typhoon, hurricane, cyclone, earthquake or other convulsion of nature;

b. riot or civil disturbance;

c. accidental fire explosion; or

d. action by an enemy or action taken in combating an enemy.

If insurance compensation is received in respect of a capital asset because of any other reason, it is not chargeable to tax.

Transfer of sweat equity shares

If sweat equity shares are allotted during 1999-2000 or on or after April 1, 2009, cost of acquisition is fair market value on the date of exercise of option. If shares are allotted during April 1, 2007 and March 31, 2009, the fair market value on the date of vesting of option, will be cost of acquisition. If shares are allotted before April 1, 2007 (not being during 1999-2000), cost of acquisition will be the amount actually paid by the employee.

Slump sale

See para 222.

Transfer under scheme of buy-back of shares

- *If such shares are listed and buy-back takes place prior to July 5, 2019* - Capital gain (short-term or long-term) is calculated in the hands of shareholder and the shareholder is liable to pay tax.
- *If such shares are unlisted shares and buy-back takes place on or after June 1, 2013 or shares are listed shares and buy-back takes place on or after July 5, 2019* - Capital gain is exempt in the hands of shareholder. However, the company (which buy-backs its own shares) is liable to pay tax at the rate of 20 per cent [+ SC + HEC] on "distributed income" under section 115QA. "Distributed income" for this purpose is amount paid by the company at the time of buy-back *minus* amount received by the company at the time of allotment of shares.

Conversion of stock-in-trade into capital asset and computation of capital gain

The fair market value of the inventory as on the date of its conversion into capital asset, shall be chargeable to tax under the head "Profit and gains of business and profession".

When such capital asset is transferred, cost of acquisition of such capital asset shall be deemed to be the fair market value on the date of conversion. The period of holding of such capital asset shall be reckoned from the date of its conversion. Indexation benefit will be available from the year in which conversion takes place.

Computation of capital gain when tax is payable under section 112A

Indexation benefit is not available. Cost of acquisition shall be computed in the manner provided by section 55(2)(*ac*)

Transfer of land and building [Sec. 50C]

Stamp duty value adopted (or assessed or assessable) shall be taken as full value of consideration, if such stamp duty is more than 105 per cent of sale consideration.

The transferor before the stamp duty authorities can challenge stamp duty valuation. Alternatively, it can be challenged before the Assessing Officer.

If consideration received or accruing as a result of

Fair market value of asset on the date of transfer is taken as "full value of consideration" *transfer of a capital asset is not ascertainable or cannot be determined*

Transfer of land/building under joint development agreement [Sec. 45(5A)]

■ If the land/building owner is an individual/HUF and land/building is transferred to a developer under a joint development agreement, capital gain shall be taxable in the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority. The stamp duty value of the share of owner of land/building in the developed property on the date of issuing of said certificate of completion (as increased by any monetary consideration received, if any), shall be deemed to be the full value of the consideration.

Transfer of unlisted shares in a company [Sec. 50CA]

If unlisted shares are transferred at less than the fair market value (FMV), the FMV of such shares shall be deemed to be the full value of consideration.

Exemption under sections 54 to 54GB

Aggregate amount of exemption cannot exceed the quantum of capital gain.

Exemption under section 54

Who can claim exemption	An individual or a Hindu undivided family
Which specific asset is eligible for exemption	A residential house property (long-term)
Which asset the taxpayer should acquire to get the benefit of exemption	Only one† residential house property situated in India.
What is time limit for acquiring the new asset	Purchase: 1 year backward or 2 years forward Construction: 3 years forward
How much is exempt	Investment in the new asset or capital gain, whichever is lower. The new asset should not be transferred within 3 years from the date of acquisition of the new asset.

Exemption under section 54B

Who can claim exemption	Individual or Hindu undivided family
Which specific asset is eligible for exemption	Agricultural land if it was used by the individual or his parents [or by the Hindu undivided family] for agricultural purpose during at least 2 years immediately prior to transfer `
Which asset the taxpayer should acquire to get the benefit of exemption	Agricultural land (maybe in rural area or urban area)
What is time limit for acquiring the new asset	2 years forward
How much is exempt	Investment in the new asset or capital gain, whichever is lower. The new asset should not be transferred within 3 years from the date of acquisition of the new asset.

Exemption under section 54D

Who can claim exemption	Any taxpayer
Which specific asset is eligible for exemption	Land or building forming part of an industrial undertaking which is compulsorily acquired by the Government and which is used during 2 years for industrial purposes prior to its acquisition
Which asset the taxpayer should acquire to get the benefit of exemption	Land or building for industrial purposes

† If the amount of capital gain does not exceed Rs. 2 crore, the assessee can purchase/construct two residential house properties (from the assessment year 2020-21). However, this concession is available only once in lifetime.

What is time limit for acquiring the new asset	3 years forward
How much is exempt	Investment in the new asset or capital gain, whichever is lower. The new asset should not be transferred within 3 years from the date of acquisition of the new asset.

Exemption under section 54EC

Who can claim exemption	Any taxpayer
Which specific asset is eligible for exemption	Any long-term capital asset transferred (being land or building or both)
Which asset the taxpayer should acquire to get the benefit of exemption	Bonds of National Highways Authority of India (NHAI) or Rural Electrification Corporation (REC) or notified bonds. Maximum investment in one financial year is Rs. 50 lakh However, from the assessment year 2015-16, investment made by an assessee in the NHAI/REC bonds/ notified bonds, out of capital gains arising from transfer of one or more original asset, during the financial year in which the original asset or assets are transferred and in the subsequent financial year should not exceed Rs. 50 lakh.
What is time limit for acquiring the new asset	6 months forward
How much is exempt	Investment in the new asset or capital gain, whichever is lower. The new asset should not be transferred within 5 years. Moreover, the new asset should not be converted into money or any loan or advance should not be taken on the security of the new asset within 5 years from the date of acquisition of the new asset.

Exemption under section 54EE

Who can claim exemption	Any taxpayer
Which specific asset is eligible for exemption	Any long-term capital asset
Which asset the taxpayer should acquire to get the benefit of exemption	Long-term specified assets (to be notified by the Central Government to finance start-ups). Maximum investment in one financial year is Rs. 50 lakh. Moreover, investment made by an assessee in these assets, out of capital gains arising from transfer of one (or more) original asset, during the financial year in which the original asset or assets are transferred and in the subsequent financial year should not exceed Rs. 50 lakh.
What is time limit for acquiring the new asset	6 months forward
How much is exempt	Investment in the new asset or capital gain, whichever is lower. The new asset should not be transferred within 3 years. Moreover, the new asset should not be converted into money or any loan or advance should not be taken on the security of the new asset within 3 years from the date of acquisition of the new asset.

Exemption under section 54F

Who can claim exemption	An individual or a HUF
Which specific asset is eligible for exemption	Any long-term capital asset (other than a residential house property) provided on the date of transfer, the taxpayer does not own more than one residential house property (except the new house property given below)
Which asset the taxpayer should acquire to get the benefit of exemption	Only one residential house property situated in India.
What is time limit for acquiring the new asset	Purchase: 1 year backward or 2 years forward Construction: 3 years forward
How much is exempt	Investment in the new asset ÷ (Net sale consideration × capital gain. The new asset should not be transferred within 3 years from the date of its acquisition. Moreover, within 3 years from the date of transfer of original

	assets, the taxpayer should not complete construction of another residential house property and within 2 years from the date of transfer of the original assets, the taxpayer should not purchased another residential house property.

Exemption under section 54G

Who can claim exemption	Any taxpayer
Which specific asset is eligible for exemption	Land, building, plant or machinery in order to shift an industrial undertaking from urban area to rural area
Which asset the taxpayer should acquire to get the benefit of exemption	Land, building plant or machinery in order to shift undertaking to rural area
What is time limit for acquiring the new asset	1 year backward or 3 years forward
How much is exempt	Investment in the new asset or capital gain whichever is lower. The new asset should not be transferred within 3 years from the date of its acquisition.

Exemption under section 54GA

Who can claim exemption	Any taxpayer
Which specific asset is eligible for exemption	Land, building, plant or machinery in order to shift an industrial undertaking from urban area to any special economic zone
Which asset the taxpayer should acquire to get the benefit of exemption	Land, building plant or machinery in order to shift undertaking to any special economic zone
What is time limit for acquiring the new asset	1 year backward or 3 years forward
How much is exempt	Investment in the new asset or capital gain, whichever is lower. The new asset should not be transferred within 3 years from the date of its acquisition.

Exemption under section 54GB

Who can claim exemption	An individual or a Hindu undivided family
Which specified asset is eligible for exemption	Long-term residential property (a house or a plot of land) if transfer takes place during April 1, 2012 and March 31, 2017 (in case of an investment in eligible start-up, the residential property can be transferred up to March 31, 2021)
Which asset the taxpayer should acquire to get the benefit of exemption	Equity shares in an "eligible company"
What is the time-limit for acquiring the new asset How much is exempt	Equity shares in an "eligible company" should be acquired on or before the due date of furnishing of return of income under section 139(1) The "eligible company" should utilize this amount for the purchase of a "new asset" within one year from the date of subscription in equity shares Investment in "new asset" by the eligible company ÷ Net sale consideration × Capital gain. Exemption cannot exceed capital gain
Is it possible to revoke the exemption	In the following cases, exemption will be taken back and the amount of exemption (or proportionate exemption) given earlier under section 54GB will become long-term capital gain of the assessee (*i.e.*, transferor of residential property). It shall be taxable in the year in which the assessee or the eligible company commits the following defaults – *1.* If the equity shares in the eligible company are sold or otherwise transferred by the assessee within 5 years from the date of acquisition. *2.* If the "new asset" is sold or otherwise transferred by the eligible company within the period given below – - In the case of a "new asset" being computer or computer software acquired by an eligible start-up : Within 3 years from the date of acquisition (applicable from the assessment year 2020-21).

	- In the case of any other "new asset": Within 5 years from the date of acquisition.
Eligible company	It is a manufacturing company (*i.e.*, where the investment in plant and machinery is more than Rs. 25 lakh but not more than Rs. 10 crore). Alternatively, the company is an eligible start-up. It is incorporated on or after April 1 (of the previous year in which residential property is transferred) but on or before the due date of submission of return of income under section 139(1) by the assessee (*i.e.*, transferor of residential property).

Tax on capital gains

Long-term capital gains under section 112

Long-term capital gains are taxable under section 112 at the rate of 20 per cent. The following points should be noted—

1. No deduction is available from long-term capital gains under sections 80C to 80U.

2. The benefit of exemption limit is available only in the case of a resident individual or a resident Hindu undivided family.

3. In the case of listed security, any unit of UTI/mutual fund or zero coupon bonds, if indexation benefit is not taken, capital gains will be taxable at the option of the taxpayer at the rate of 10 per cent. However, this concessional tax rate of 10 per cent is not available if units of UTI/mutual fund are transferred after July 10, 2014.

4. In the case of long-term capital gain covered by section 115AB, 115AC, 115AD or 115E, tax rate is 10 per cent.

5. Long-term capital gain in the hands of a non-resident/foreign company is taxable at the rate of 10 per cent, if such gain arises on transfer of unlisted securities or unlisted shares in a company in which the public are not substantially interested. However, this rule is applicable only if the indexation benefit is not claimed and capital gain is calculated in foreign currency.

Long-term capital gain under section 112A

Long-term capital gains are taxable under section 112A at the rate of 10 per cent.

The following points should be noted –

1. The capital gains arise from the transfer of a long-term capital asset (being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust) on or after April 1, 2018.

2. At the time of transfer, securities transaction tax is paid (or the transfer is recorded at a recognised stock exchange located in any International Financial Service Centre and consideration is received. However, this concession is available only when the consideration for such transfer is received or receivable in foreign currency).

3. In a case where the long-term capital asset is equity share in a company, securities transaction tax (STT) has been paid on acquisition of such capital asset (however, this condition is not applicable if equity shares were acquired prior to October 1, 2004 or equity shares were acquired under the circumstances notified by the Board†).

†Condition 4 is not applicable in a few notified cases given below (in these cases the requirement of payment of STT at the time of acquisition of equity shares is not applicable) –

- Acquisition which has been approved by the Supreme Court, High Court, National Company Law Tribunal, SEBI or RBI.
- Acquisition by any non-resident in accordance with FDI guidelines of the Indian Government.
- Acquisition by an investment fund [referred to in sec. 115UB].
- Acquisition through preferential issue to which Chapter VII of SEBI (Issue of Capital and Disclosure) Regulations does not apply.
- Acquisition through an issue of share by a company.
- Acquisition by scheduled banks, reconstruction or securitisation companies or public financial institutions during their ordinary course of business.
- Acquisition under ESOP.
- Acquisition under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations.
- Acquisition from the Government.
- Acquisition by mode of transfer [as per sections 45(3)/(4), 47, 50B] if previous owner has acquired shares by any of the modes given in this list.

4. Cost of acquisition of equity shares/units shall be calculated according to the provisions given under section 55(2)(*ac*). This provision is applicable only in respect of equity shares/units acquired by the assessee before February 1, 2018. Cost of acquisition shall be calculated as follows –

Step 1 - Find out actual cost of acquisition of equity shares/units.

Step 2 - Find out fair market value of equity shares/units on January 31, 2018 (but it cannot be more than sale consideration of equity shares/units).

Cost of acquisition shall be deemed to be amount computed in *Step 1* or *Step 2*, whichever is higher.

5. For the aforesaid purpose, the highest price of share/unit quoted on a recognised stock exchange in India on January 31, 2018 is taken as fair market value on that date.

6. Where a unit is not listed on a recognised stock exchange, the net asset value (NAV) of such unit as on January 31, 2018 is taken as fair market value. In a case, where equity share is listed on a recognised stock exchange at the time of transfer (but not listed on January 31, 2018), fair market value on January 31, 2018 will be calculated (after giving indexation benefit in a limited mode up to the previous year 2017-18) as follows –

$$\text{Cost of acquisition} \times \frac{\text{Cost inflation index (CII) of 2017-18 (\textit{i.e.}, 272)}}{\text{CII for the year in which the shares were first held by the assessee (or previous owner in a few cases) or 2001-02, whichever is later}}$$

7. If long-term capital gain does not exceed Rs. 1 lakh, it is not chargeable to tax. If such gain exceeds Rs. 1 lakh, the amount in excess of Rs. 1 lakh will be taxable at the rate of 10 per cent (+ surcharge + 4 per cent health and education cess).

8. Basic exemption limit is available in some cases under section 112A. When tax is calculated under section 112A, indexation benefit is not available (except in a limited mode given below). Moreover, first proviso to section 48 is not applicable. Deduction under sections 80C to 80U is not available. In respect of tax calculated under section 112A, rebate under section 87A is not available.

Short-term capital gains

If securities transaction tax is applicable - Short-term capital gain is taxable at the rate of 15 per cent, if the transaction is chargeable to securities transaction tax (or if transaction is undertaken in foreign currency on a recognised stock exchange located in an International Financial Services Centre). No deduction is available from such short-term capital gains under sections 80C to 80U. The benefit of exemption limit is available only in the case of a resident individual or a resident Hindu undivided family.

Other short-term capital gains - Taxable like revenue income.

SET OFF AND CARRY FORWARD OF LOSSES

Intra-head adjustment

A loss can be set off within the same head of income in the same financial year subject to the following exceptions—

1. Speculative business losses can be set off only against speculative business income.

2. Any loss, computed in respect of any specified business referred to in section 35AD shall not be set off except against profits and gains, if any, of any other specified business.

3. Long-term capital loss can be set off only against long-term capital gains.

4. Loss from the activity of owning and maintaining race horses can be set off only against any other income from the activity of owning and maintaining race horses.

5. A loss cannot be set off against winnings from lotteries, betting, gambling, etc.

Inter-head adjustment

Loss under one head of income can be set off against income under any other head of income in the same financial year subject to the following exceptions—

1. Speculative business losses cannot be set off against any other income.

2. Loss computed in respect of any specified business referred to in section 35AD cannot be set off against any other income.

3. Losses under the head "Capital gain" cannot be set off against income under other heads of income.

4. Loss from the activity of owning and maintaining race horses against any other income.

5. Loss from a business/profession cannot be set off against salary income.

6. A loss cannot be set off against winnings from lotteries, betting, gambling, etc.

7. House property loss (in excess of Rs. 2 lakh) cannot be set off against income under other heads of income.

Carry forward losses

Only the following losses can be carried forward to subsequent years by the person who has incurred loss—

1. House property loss.

2. Loss from business/profession.

3. Loss under the head "Capital gains".

4. Loss from the activity of owning and maintaining race horses.

House property loss

In the subsequent year, brought forward house property loss can be set off only against income under the head "Income from house property". Carry forward is possible only for 8 years.

Speculative business loss

In the subsequent year, brought forward speculative business loss can be set off only against speculative business income. Carry forward is possible only for 4 years. Moreover, income-tax return of the year in which loss is incurred should be submitted on or before the due date of submission of return of income.

Loss from a business specified under section 35AD

Such brought forward loss can be set off in the subsequent year only against income from such business. Carry forward is possible without any time-limit. Moreover, income-tax return of the year in which loss is incurred should be submitted on or before the due date of submission of return of income.

Unabsorbed depreciation

In the subsequent year, it can be set off against any income except income from salary. Carry forward is possible without any time-limit.

Other non-speculative business loss

In the subsequent year, it can be set off only against business income. Carry forward is possible only for 8 years. Moreover, income-tax return of the year in which loss is incurred should be submitted on or before the due date of submission of return of income.

Capital losses

Brought forward long-term capital loss can be set off only against long-term capital gains in the subsequent years. Brought forward short-term capital loss can be set off against any capital gain - short-term or long-term. Carry forward is possible only for 8 years. Moreover, income-tax return of the year in which loss is incurred should be submitted on or before the due date of submission of return of income.

Loss from the activity of owning and maintaining race horses

In the subsequent year, it can be set off only against income from the activity of owning and maintaining race horses. Loss of a discontinued business cannot be carried forward. Carry forward is possible only for 4 years. Moreover, income-tax return of the year in which loss is incurred should be submitted on or before the due date of submission of return of income.

Loss on sale of shares, securities or units [Sec. 94(7)]

Section 94(7) is applicable if all the three conditions given below, are satisfied—

1. Any person buys or acquires any securities/shares/units within a period of 3 months before the record date.

2. Such a person sells or transfers such securities/shares/units within a period of 3 months (9 months in the case of units) after the record date.

3. The dividend or income on such securities/shares/units received (or receivable) by such person is exempt from tax.

■ *Consequences if the above conditions are satisfied* - If the above conditions are satisfied, then the provisions of section 94(7) shall be applicable as follows—

a. find out the amount of loss from a transaction which satisfies the above conditions;

b. find out the amount of dividend/income received or receivable on the record date which is exempt from tax.

If (*a*) is less than or equal to (*b*), then loss cannot be adjusted. Conversely, if (*a*) is more than (*b*), then (*a*) *minus* (*b*) can be set off against income under the head "Capital gains".

To prevent the practice of bonus stripping, section 94(8) has been inserted.

Loss arising in the case of bonus stripping [Sec. 94(8)]

It is applicable only in the case of units of a mutual fund (and not in the case of shares). It is applicable if the following conditions are satisfied—

1. The taxpayer buys or acquires any unit (hereinafter referred to as "original unit") within a period of 3 months prior to the record date.

2. Such person is allotted additional units without any payment on the basis of holding of such units (hereinafter referred to as "bonus units") on such record date.

3. Such person sells or transfers all (or any) of the original units within a period of 9 months after such record date.

4. But he continues to hold all (or any) of the bonus units.

Consequences if the above conditions are satisfied—

1. The loss (if any) arising to the taxpayer on account of purchase and sale of all (or any) of the aforesaid original units shall be ignored for the purposes of computing his income chargeable to tax.

2. The amount of loss so ignored shall be deemed to be the cost of purchase or acquisition of bonus units as are held by him on the date of such sale or transfer.

Special provision under section 72A

See para 200.

PERMISSIBLE DEDUCTIONS FROM GROSS TOTAL INCOME AND TAX LIABILITY

Basic rules governing deductions under sections 80C to 80U

■ These deductions are available from gross total income.

■ Aggregate amount of deductions under sections 80C to 80U cannot exceed (gross total income *minus* short-term capital gain under section 111A *minus* any long-term capital gain).

■ Deduction under sections 80-IA to 80U is admissible in respect of "net income" computed under the provisions of the Act (*i.e.*, income arrived at after deducting permissible deductions and adjusting current or brought forward losses).

■ Deduction under sections 80HH to 80RRB is not available, if return of income is not submitted on or before due date under section 139(1).

■ Deduction in respect of profits and gains shall not be allowed under any provisions of section 10A or section 10AA or section 10B or section 10BA or under sections 80H to 80RRB, if a deduction in respect of same amount under any of the aforesaid sections has been allowed in the same assessment year. The aggregate deductions under these provisions shall not exceed the profits and gains of the undertaking or unit or enterprise or eligible business, as the case may be. No deductions under the above provisions shall be allowed if the deduction has not been claimed in the return of income.

■ For the purpose of claiming deduction under section 35AD or under Chapter VI-A (*i.e.*, sections 80C to 80U), the transfer price of goods and services between the undertaking (*i.e.*, unit or enterprise eligible for these deductions) and any other undertaking or unit or enterprise or business of the assessee shall be determined at the market value (or arm's length price, of such goods or services as on the date of transfer.

Deduction in respect of life insurance premia, contributions to provident fund, etc. [Sec. 80C]

■ Deduction under section 80C is available only to an individual or a Hindu undivided family.

■ Deduction is available on the basis of specified qualifying investments/contributions/deposits/payments (hereinafter referred to as "gross qualifying amount") made by the taxpayer during the previous year. Such investment, deposit, etc., can be made out of taxable income or otherwise.

■ Amount deductible under section 80C cannot be more than Rs. 1,50,000.

■ The maximum amount deductible under sections 80C, 80CCC and 80CCD(1) cannot exceed Rs. 1,50,000*.

Qualifying investment

1. Life insurance premium [subject to a maximum of 20 per cent of sum assured (if policy is issued before April 1, 2012) or 10 per cent of sum assured (if policy is issued on or after April 1, 2012)**]

2. Payment in respect of non-commutable deferred annuity

3. Any sum deducted from salary payable to a Government employee for the purpose of securing him a deferred annuity (subject to a maximum of 20% of salary)

4. Contribution (not being repayment of loan) towards statutory provident fund and recognized provident fund

5. Contribution (not being repayment of loan) towards 15-year public provident fund [under the public provident fund scheme, the maximum contribution is Rs. 1,50,000.

6. Contribution towards an approved superannuation fund

7. Subscription to National Savings Certificates (VIII Issue and IX Issue) and deposit in Sukanya Samriddhi Account.

8. Contribution for participating in the Unit-Linked Insurance Plan (ULIP) of Unit Trust of India

9. Contribution for participating in Unit-Linked Insurance Plan (ULIP) of LIC Mutual Fund

10. Payment for notified annuity plan of LIC or any other insurer.

11. Subscription towards notified units of Mutual Fund or UTI

12. Contribution to notified pension fund set up by Mutual Fund or UTI (*i.e.*, Retirement Benefit Pension Fund of UTI)

13. Any sum paid (including accrued interest) as subscription to Home Loan Account Scheme of the National Housing Bank or contribution to any notified pension fund set up by the National Housing Bank.

14. Any sum paid as subscription to any scheme of—

a. public sector company engaged in providing long-term finance for purchase/construction of residential houses in India (*i.e.*, public deposit scheme of HUDCO)

b. housing board constituted in India for the purpose of planning, development or improvement of cities/towns

15. Any sum paid as tuition fees (not including any payment towards development fees/donation/payment of similar nature) whether at the time of admission or otherwise to any university/college/educational institution in India for full time education of any two children of an individual.

16. Any instalment or part payment towards the cost of purchase/construction of a residential property to a housing board or co-operative society (or repayment of housing loan taken from Government, bank, cooperative bank, LIC, National Housing Bank, assessee's employer where such employer is public company/public sector company/university/co-operative society).

17. Amount invested in approved debentures of, and equity shares in, a public company engaged in infrastructure including power sector or units of a mutual fund proceeds of which are utilized for the developing, maintaining, etc., of a new infrastructure facility.

18. Amount deposited as term deposit for a period of 5 years or more in accordance with a scheme framed by the Government.

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*However employer's contribution towards NPS (up to 10 per cent of salary) is outside the maximum ceiling of Rs. 1,50,000.

**15 per cent of sum assured [if a policy is issued on or after April 1, 2013 on the life of a person with disability (or severe disability) or on the life of a person suffering from disease or ailment as given in section 80DDB].

19. Subscription to any notified bonds of National Bank for Agriculture and Rural Development (NABARD).

20. Amount deposited under Senior Citizens Saving Scheme.

21. Amount deposited in five-year time deposit scheme in post office.

22. Amount contributed (for a fixed period of not less than 3 years) by a Central Government employee to his NPS (Tier-II) account (applicable from the assessment year 2020-21).

Notes—

I. Interest on NSC will be chargeable to tax on the basis of annual accrual. Moreover, the accrued interest for any year (except last year) is deemed as re-investment and the same is entitled for deduction under section 80C.

II. Investment/deposits are qualified on payment basis.

Deduction in respect of pension fund [Sec. 80CCC]

Amount paid or deposited under an annuity plan of the LIC of India or any other insurer for receiving pension, is deductible in the hands of an individual. Amount should be paid or deposited out of income chargeable to tax. Deduction cannot exceed Rs. 1.5 lakh. Moreover, the aggregate deduction under sections 80C, 80CCC and 80CCD(1) cannot exceed Rs. 1,50,000

Amount of deduction under section 80CCD

■ *Under section 80CCD(1)* - Employee's contribution to National Pension System (NPS) (*i.e.*, New Pension Scheme and Atal Pension Yojana) or 10 per cent of salary, whichever is lower, is deductible under section 80CCD(1). In case of a person other than employee, amount deductible under section 80CCD(1) is contribution by such person or 10 per cent (20 per cent from the assessment year 2018-19) of gross total income, whichever is lower.

■ *Under section 80CCD(2)* - Contribution by the employer to NPS is deductible under section 80CCD(2) in the hands of the concerned employee in the year in which contribution is made. However, no deduction is available in respect of employer's contribution which is in excess of 10 per cent [or (with effect from the assessment year 2020-21) 14 per cent, if employer is the Central Government] of the salary of the employee.

■ *Under section 80CCD(1B)* - An employee (or any other person) can contribute to NPS and claim (up to Rs. 50,000) additional deduction under section 80CCD(1B).

■ *Cumulative ceiling under section 80CCE* - The aggregate amount of deduction under sections 80C, 80CCC and 80CCD(1) cannot exceed Rs. 1,50,000. This ceiling is not applicable on amount deductible under section 80CCD(1B) and 80CCD(2).

■ *Amount taxable at the time of receipt* - Taxable as follows –

1. Partial withdrawal from NPS (to the extent it does not exceed 25% of an employee's contribution)	Exempt
2. Amount received by an employee or a non-employee on closure of his account or on his opting out of the NPS	60% exempt
3. In (*2*), amount is received by a nominee on the death of the assessee	Exempt
4. Pension received out of NPS	Taxable
5. Amount received in (*2*), (*3*), (*4*) is utilized for purchasing an annuity plan in the same previous year	Exempt
6. Pension received out of annuity plan purchased in (*5*)	Taxable

■ *Meaning of salary* - "Salary" includes dearness allowance, if the terms of employment so provide. It also includes commission if commission is payable at a percentage of turnover achieved by him. But it excludes all other allowances and perquisites.

Deduction in respect of investment made under

A resident individual (not having gross total income exceeding Rs. 12 lakh) can claim deduction under section 80CCG if he is a new retail investor as specified in a scheme notified by the Government and has acquired shares in accordance with the notified scheme. Such investment is locked-in for a period of 3 years.

any equity saving scheme [Sec. 80CCG]

Amount of deduction is 50 per cent of investment or Rs. 25,000, whichever is less (available up to the assessment year 2017-18, subject to a few exceptions).

Deduction in respect of medical insurance premia [Sec. 80D]

An individual/HUF can claim deduction under section 80D if payment is made out of income chargeable to tax. The table given below highlights provisions of section 80D –

		Deduction in the case of individual		*Deduction in the case of HUF*
For whose benefit payment can be made		Family	Parents	Any member of HUF
A.	*a.* Medi-claim insurance premium	Eligible	Eligible	Eligible
	b. Contribution to CGHS/notified scheme	Eligible	–	–
	c. Preventive health check-up payment	Eligible	Eligible	–
	Maximum deduction –			
	- General deduction [applicable in respect of (*a*), (*b*) and (*c*)]	Rs. 25,000	Rs. 25,000	Rs. 25,000
	- Additional deduction [applicable only in case of (*a*) when medi-claim policy is taken on the life of a senior citizen]	Rs. 25,000	Rs. 25,000	Rs. 25,000
B.	Medical expenditure on the health of a person who is a super senior citizen (senior citizen from the assessment year 2019-20) if medi-claim insurance is not paid on the health of such person	Eligible	Eligible	Eligible
	Maximum deduction in respect of (*B*)	Rs. 50,000	Rs. 50,000	Rs. 50,000
C.	Maximum deduction in respect of (*A*) and (*B*)	Rs. 50,000	Rs. 50,000	Rs. 50,000

Notes –

1. Family includes individual, spouse of the individual and dependent children of the individual.

2. Parents include father and mother (dependent or otherwise). Father-in-law and mother-in-law are not included.

3. The aggregate payment on account of preventive health check-up of self, spouse, dependent children, father and mother cannot exceed Rs. 5,000.

4. The above payments [given under (*A*) and (*B*)] should be made by any mode other than cash. However, payment on account of preventive health check-up can be made by any mode (including cash).

5. "Senior citizen" is a resident individual who is at least 60 years of age at any time during the previous year.

6. "Super senior citizen" is a resident individual who is at least 80 years of age at any time during the previous year.

7. In case of single premium health insurance policies having cover of more than one year, the aforesaid deduction shall be allowed (from the assessment year 2019-20) on proportionate basis for the number of years for which health insurance cover is provided.

Maintenance including medical treatment of

A resident taxpayer (being an individual/Hindu undivided family) can claim deduction under section 80DD if he/it has incurred an expenditure for the medical treatment (including nursing), training and rehabilitation of a dependent related (being a person with a disability). Deduction can also be claimed if the taxpayer has paid or deposited under any approved scheme of LIC (or any other insurer) or UTI for the maintenance of such dependent relative. A fixed deduction of

a dependent being a person with disability [Sec. 80DD]	Rs. 75,000 is available. A higher deduction of Rs. 1,25,000 is available if such dependent relative is suffering from a severe disability. Deduction under this section is available regardless of actual expenditure.
Deduction in respect of medical treatment, etc. [Sec. 80DDB]	*1.* A resident taxpayer (being an individual/HUF) can claim deduction under section 80DDB if he/it has actually incurred expenditure for the medical treatment of a specified disease or ailment as prescribed by the Board. *2.* Expenditure should be incurred for medical treatment of the assessee himself or wholly/mainly dependent husband/wife, children, parents, brothers and sisters of the individual (any member of the family in the case of HUF). *3.* The assessee shall have to submit a certificate in the prescribed form from a specialist, working in a Government hospital. From the assessment year 2016-17, the assessee is required to obtain a prescription from a specialist doctor for the purpose of availing this deduction.
Amount of deduction	If the above conditions are satisfied, actual expenditure on medical treatment is deductible under section 80DDB. Deduction cannot exceed Rs. 40,000. However, in the case of a senior citizen, the maximum deduction is Rs. 1,00,000. ■ Deduction under this section shall be reduced by the amount received, if any, under insurance from an insurer, or reimbursed by an employer, for the medical treatment of the person referred to above.
Repayment of loan taken for higher education [Sec. 80E]	If loan is taken by an individual for any study (*i.e.*, any study after passing senior secondary examination or its equivalent) from a bank, financial institution or an approved charitable institution, interest is deductible. Interest is deductible (no monetary ceiling) for the year in which the assessee starts paying interest on loan and subsequent 7 years or until interest is paid in full. Interest is deductible if loan is taken for pursuing his own higher education or for the higher education of his relatives (*i.e.*, spouse, children or any student for whom the individual is the legal guardian). However, interest is deductible only if interest is paid out of his income chargeable to tax.
Interest on loan taken for residential house property [Sec. 80EE]	If an individual has taken a loan (not exceeding Rs. 35 lakh) from a bank/finance company for acquisition of a residential house property (value being Rs. 50 lakh or less), interest payable on such loan is deductible (subject to a maximum of Rs. 50,000). Deduction is available for the assessment year 2017-18 and subsequent assessment years. Deduction is available only if loan is sanctioned during the financial year 2016-17, the assessee does not own a residential property on the date of sanction of loan and deduction is not claimed under any other provision of the Act.
Interest on loan taken for certain house property [Sec. 80EEA]	If an individual takes a loan from a bank/finance company for acquisition of a residential house property (stamp duty value being Rs. 45 lakh or less), interest payable on such loan is deductible (from the assessment year 2020-21) up to a maximum of Rs. 1.5 lakh. Deduction is available if the individual is not eligible to claim any deduction under section 80EE, loan is sanctioned during April 1, 2019 and March 31, 2020 and he does not own any residential house property on the date of sanction of loan. If interest is claimed as deduction under section 80EEA, such interest (or such portion of interest) is not again deductible under section 24*(b)* or under any other provision of the Act for the same or any other assessment year.
Interest on loan taken for purchase of electric vehicle [Sec. 80EEB]	If an individual takes a loan from a bank/finance company for the purpose of purchase of an electric vehicle, interest payable on such loan is deductible (from the assessment year 2020-21) up to a maximum of Rs. 1.5 lakh. Deduction is available if loan is sanctioned during April 1, 2019 and March 31, 2023. If interest is claimed as deduction under section 80EEB, such interest (or such portion of interest) is not again deductible under any other provision of the Act for the same or any other assessment year.

Donations to certain funds, charitable institutions, etc. [Sec. 80G]

Any taxpayer can claim this deduction. Donation to the following is deductible from gross total income (the amount of deduction is given in the last column)—

Donee	*Maximum limit*	*Deduction (as a % of net qualifying amount)*
(1)	*(2)*	*(3)*
a. National Defence Fund	NA	100
b. Jawaharlal Nehru Memorial Fund	NA	50
c. Prime Minister's Drought Relief Fund	NA	50
d. Prime Minister's National Relief Fund	NA	100
e. Prime Minister's Armenia Earthquake Relief Fund	NA	100
f. Africa (Public Contributions - India) Fund	NA	100
g. National Children's Fund	NA	100
h. Indira Gandhi Memorial Trust	NA	50
i. Rajiv Gandhi Foundation	NA	50
j. National Foundation for Communal Harmony	NA	100
k. An approved university/educational institution	NA	100
l. Maharashtra Chief Minister's Relief Fund	NA	100
m. Any fund set up by the Government of Gujarat for providing relief to victims of earthquake in Gujarat	NA	100
n. Zila Saksharta Samiti	NA	100
o. National Blood Transfusion Council and State Council for Blood Transfusion	NA	100
p. Fund set up by a State Government for the medical relief to the poor	NA	100
q. Central Welfare Fund of the Army and Air Force and the Indian Naval Benevolent Fund	NA	100
r. Andhra Pradesh Chief Minister's Cyclone Relief Fund	NA	100
s. National Illness Assistance Fund	NA	100
t. Chief Minister's Relief Fund or Lieutenant Governor's Relief Fund	NA	100
u. National Sports Fund or National Cultural Fund or Fund for Technology Development and Application	NA	100
v. Any other fund or any institution which satisfies conditions mentioned in section 80G(5)	As given below	50
w. Government or any local authority to be utilised for any charitable purpose other than the purpose of promoting family planning	As given below	50
x. Any authority constituted in India by (or under) any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both	As given below	50
y. Any corporation specified in section 10(*26BB*) for promoting interest of minority community	As given below	50

Donee	*Maximum limit*	*Deduction (as a % of net qualifying amount)*
(1)	*(2)*	*(3)*
z. Government or any approved local authority, institution or association to be utilised for the purpose of promoting family planning	As given below	100
za. Any notified temple, mosque, gurdwara, church or other place (for renovation or repair)	As given below	50
zb. Indian Olympic Association or to an institute notified by the Central Government for the development of infrastructure for sports and games in India; or the sponsorship of sports and games in India (only donation by a company)	As given below	100
zc. Any trust, institution or fund to which section 80G(5C) applies for providing relief for victims of earthquake in Gujarat	NA	100
zd. National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities	NA	100
ze. Swachh Bharat Kosh†	NA	100
zf. Clean Ganga Fund (amount donated by residents only)†	NA	100
zg. National Fund for Control of Drug Abuse (from the assessment year 2016-17)	NA	100

Maximum amount - Where the aggregate of the sums mentioned in (*v*), (*w*), (*x*), (*y*), (*z*), (*za*), or (*zb*) *supra* exceeds 10 per cent of the adjusted gross total income, then the amount in excess of 10 per cent of the adjusted gross total income will be ignored while computing the aggregate of the sums in respect of which deduction is to be allowed.

Mode of payment - Donation can be given in cash or by cheque or draft. However, no deduction shall be allowed under section 80G in respect of donation in cash of an amount exceeding Rs. 2,000.

Adjusted gross total income

Gross total income *minus* the following is adjusted gross total income—

a. amount deductible under sections 80C to 80U (but not section 80G);

b. such incomes on which income-tax is not payable;

c. long-term capital gains;

d. short-term capital gain which is taxable under section 111A at the rate of 15 per cent; and

e. incomes referred to in section 115A, 115AB, 115AC or 115AD.

Deduction in respect of rent paid [Sec. 80GG]

1. The taxpayer is an individual.

2. The taxpayer is a self-employed person. Alternatively, the taxpayer is an employee but he does not get house rent allowance from the employer at any time during the previous year.

3. The following persons should not own any residential accommodation at the place where the taxpayer resides, performs the duties of his office, or employment or carries on his business or profession—

a. the taxpayer;

b. his/her spouse;

† Donations to Swachh Bharat Kosh and Clean Ganga Fund is eligible for deduction under section 80G only if the amount is not spent by the assessee in pursuance of Corporate Social Responsibility (CSR) under section 135(5) of the Companies Act, 2013.

c. his/her minor child (including minor step child and minor adopted child); and

d. the Hindu undivided family of which the taxpayer is a member.

4. If the taxpayer owns a residential accommodation at a place other than the place noted above, then in respect of that house the concession in respect of self-occupied property is not claimed by him.

5. The taxpayer files online declaration in Form No. 10BA regarding the expenditure incurred by him towards payment of rent.

Amount of deduction

The amount deductible under section 80GG is the least of the following—

a. Rs. 5,000 per month;

b. 25 per cent of "total income"; or

c. the excess of actual rent paid over 10 per cent of "total income".

"Total income" for this purpose is gross total income *minus* long-term capital gains, short-term capital gains under section 111A, deductions under sections 80C to 80U (not being section 80GG) and income under section 115A.

Donations for scientific research [Sec. 80GGA]

An assessee (other than an assessee whose gross total income includes income chargeable under the head "Profits and gains of business or profession") is entitled to deduction in the computation of his total income in respect of payments/donations for scientific research or rural development

Mode of payment - Donation can be given in cash or by cheque or draft. However, no deduction shall be allowed under section 80GGA in respect of a cash contribution (exceeding Rs. 10,000).

Contributions given to political parties [Secs. 80GGB and 80GGC]

Contribution to a political party is deductible under section 80GGB (if a contribution is made by an Indian company) or under section 80GGC (if a contribution is made by a person other than an Indian company). Expenditure by way of advertisement to a magazine owned by a political party is treated as "contribution" to a political party for the purpose of section 80GGB, but not for the purpose of section 80GGC. In other words, advertisement expenditure (in a magazine owned by a political party) is deductible under section 80GGB if the taxpayer is an Indian company but the same is not deductible under section 80GGC if the taxpayer is a person other than an Indian company.

Deduction under sections 80GGB and 80GGC is not available to a local authority and any artificial juridical person wholly or partly funded by the Government. From the assessment year 2014-15, no deduction shall be allowed in respect of any contribution (which is given in cash) to a political party.

Profits and gains from industrial undertaking or enterprises engaged in infrastructure development, etc. [Sec. 80-IA]

Section 80-IA covers the following cases—

Case 1 - Provision of infrastructure facility.

Case 2 - Telecommunication services.

Case 3 - Industrial parks.

Case 4 - Power generation, transmission and distribution or substantial renovation and modernization of existing distribution lines.

Case 5 - Undertaking set up for reconstruction of a power unit.

Case 1: Infrastructure facility

An Indian company can claim this deduction if the following conditions are satisfied—

1. It should provide infrastructure facility. The enterprise must carry on the business of (*a*) developing, or (*b*) maintaining and operating, or (*c*) developing, maintaining and operating any infrastructure facility.

2. There should be an agreement with the Central Government.

3. It should start operation on or after April 1, 1995 (however, no deduction if operation are started on or after April 1, 2017).

4. Deduction should be claimed in the return of income. Return of income should be submitted on or before the due date of submission of return of income. Books of account should be audited†.

Amount of deduction - 100 per cent of the profit is deductible for 10 years. The deduction commences from the initial assessment year.

What is initial assessment year - Initial assessment year, for this purpose, means the assessment year specified by the assessee at his option to be the initial year. But it should not fall beyond the fifteenth* of assessment year starting from the previous year in which the enterprise begins operating and maintaining the infrastructure facility.

However, the benefit of deduction is available only for 10 consecutive assessment years falling within a period of fifteenth* assessment years beginning with the assessment year in which an assessee begins operating and maintaining infrastructure facility.

Infrastructure facility - It means—

a. a road including toll road, a bridge or a rail system;

b. a highway project including housing or other activities being an integral part of the highway project;

c. a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system; and

d. a port, airport, inland waterway or inland port or navigational channel in the sea.

Case 2: Telecommunication services

The following conditions should be satisfied—

1. It should be a new undertaking.

2. It should not be formed by transfer of old plant and machinery.

3. The undertaking should be engaged in providing telecommunication services. It should start providing telecommunication services (whether basic or cellular including radio paging, domestic satellite service or network of trunking broadband network and internet services and electronic data inter-change service) at any time after March 31, 1995 but before March 31, 2005. "Domestic satellite" for this purpose means a satellite owned and operated by an Indian company for providing telecommunication service.

4. Deduction should be claimed in the return of income. Return of income should be submitted on or before the due date of submission of return of income. Books of account should be audited.

Amount of deduction - 100 per cent of the profit is deductible in the first 5 years and 30 per cent of the profit is deductible in the next 5 years. Deduction starts from the initial assessment year. Initial assessment year means the assessment year specified by the assessee at his option to be the initial year not falling beyond the fifteenth assessment year starting from the previous year in which the undertaking begins providing telecommunication services.

Case 3: Industrial park or special economic zone

The following conditions should be satisfied —

1. It develops, develops and operates or maintains and operates an industrial park or a special economic zone.

2. The industrial park must start operating during April 1, 2007 and March 31, 2011 or the special economic zone must start operating during April 1, 1997 and March 31, 2005.

3. Deduction should be claimed in the return of income. Return of income should be submitted on or before the due date of submission of return of income. Books of account should be audited†.

Amount of deduction - If all the aforesaid conditions are satisfied 100 per cent of profit is deductible for 10 years commencing from the initial assessment year. Initial assessment year means the assessment year specified by the assessee at his option to be the initial year not falling beyond the fifteenth assessment year starting from the previous year in which the undertaking begins operating/developing an industrial park.

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*Twentieth if the "infrastructure facility" is a highway project including housing or other activities being an integral part of the highway project and road including tool road, a bridge or a rail system, a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system.

†From April 1, 2014, audit report should be submitted electronically. Provisions pertaining to electronic submission of audit report were not applicable prior to April 1, 2014 (for period prior to April 1, 2014, audit report and other statements/agreement/approval may be retained by the assessee and these may be furnished in original whenever the Assessing Officer wants in assessment proceedings or otherwise).

Case 4: Power generation/ distribution

The following conditions should be satisfied—

1. It should be a new undertaking. It should not be formed by transfer of old plant and machinery.

2. The undertaking must be set up in any part of India for the generation or generation and distribution of power during April 1, 1993 and March 31, 2017. Alternatively, the undertaking should start transmission or distribution at any time between April 1, 1999 and March 31, 2017. Alternatively, it undertakes substantial renovation and modernization of the existing transmission/distribution lines between April 1, 2004 and March 31, 2017.

3. Deduction should be claimed in the return of income. Return of income should be submitted on or before the due date of submission of return of income. Books of account should be audited†.

Amount of deduction - If all the aforesaid conditions are satisfied, 100 per cent of the profit is deductible for 10 years commencing from the initial assessment year. Initial assessment year means the assessment year specified by the assessee at his option to be the initial year not falling beyond the fifteenth assessment year starting from the previous year in which the undertaking generates power or commences transmission or distribution of power.

Case 5: Reconstruction of power unit

The following conditions should be satisfied—

1. It should be owned by an Indian company and set up for reconstruction or revival of a power generating plant.

2. It should be formed before November 30, 2005 with majority equity participation by public sector companies for the purposes of enforcing the security interest of the lenders to the company owning the power generating plant and such Indian company is notified before December 31, 2005 by the Central Government.

3. Such undertaking begins to generate or transmit or distribute power before March 31, 2011.

4. Deduction should be claimed in the return of income. Return of income should be submitted on or before the due date of submission of return of income. Books of account should be audited†.

Amount of deduction - See Case 1.

Profits and gains by an undertaking or enterprise engaged in development of Special Economic Zone [Sec. 80-IAB]

The following conditions should be satisfied—

1. The taxpayer is a developer of a special economic zone.

2. The gross total income of the taxpayer includes profits and gains derived by an undertaking from any business of developing a special economic zone.

3. Such special economic zone is notified on or after April 1, 2005 and the development of special economic zone should begin on or before March 31, 2017.

4. Deduction should be claimed in the return of income. Return of income should be submitted on or before the due date of submission of return of income. Books of account should be audited†.

Amount of deduction - 100 per cent deduction is available in respect of the aforesaid profit. Deduction is available for 10 consecutive assessment years. The deduction may be claimed, at the option of the taxpayer, for any 10 consecutive assessment years out of 15 years beginning from the year in which the special economic zone has been notified by the Central Government.

Profits and gains from eligible start-up [Sec. 80-IAC]

The following conditions should be satisfied to claim deduction from the assessment year 2017-18 onwards –

1. The assessee is a company/LLP (not formed by splitting up, or the reconstruction, of a business already in existence and not formed by using old plant and machinery) and engaged in an eligible business ("eligible business" means a business which involves innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property).

2. The above company or LLP is incorporated after March 31, 2016 but before April 1, 2019.

3. Annual business turnover of the company or LLP does not exceed Rs. 25 crore in any of the five previous years beginning April 1, 2016 (*i.e.*, during the previous years 2016-17 to 2020-21).

†From April 1, 2014, audit report should be submitted electronically. Provisions pertaining to electronic submission of audit report were not applicable prior to April 1, 2014 (for period prior to April 1, 2014, audit report and other statements/agreement/approval may be retained by the assessee and these may be furnished in original whenever the Assessing Officer wants in assessment proceedings or otherwise).

4. It holds a certificate of eligible business from the Inter-Ministerial Board of Certification as notified in the Official Gazette by the Central Government.

Amount of deduction - 100 per cent of the profits and gains derived from eligible business is deductible for 3 consecutive assessment years [available at the option of assessee for any 3 consecutive assessment years out of 5 years (7 years, from the assessment year 2018-19) beginning from the year in which the eligible start-up is incorporated]. Deduction should be claimed in the return of income. Books of account should be audited and audit report should be uploaded with the return of income.

Profits and gains from certain industrial undertakings other than infrastructure development undertakings [Sec. 80-IB]

Section 80-IB covers the following cases—

Case 1 - Business of an industrial undertaking.

Case 2 - Operation of ship.

Case 3 - Hotels.

Case 4 - Industrial research.

Case 5 - Production of mineral oil.

Case 6 - Developing and building housing projects.

Case 7 - The business of processing, preservation and packaging of fruits or vegetables or integrated, handling, storage and transportation of foodgrain units.

Case 8 - Multiplex theatres.

Case 9 - Convention centre.

Case 10 - Operating and maintaining a hospital in rural area.

Case 11 - Hospital located in certain areas.

Case 1: Business of an industrial undertaking

The following conditions should be satisfied—

1. It should be a new undertaking. It should not be formed by transfer of old plant and machinery.

2. It should manufacture or produce articles other than non-priority sector items given in the Eleventh Schedule. This condition is, however, not applicable in the case of small scale industrial undertaking or an undertaking in a backward State.

3. Manufacture or production should be started within a stipulated time-limit - small scale industrial undertaking during April 1, 1991 and March 31, 2002, industrial undertaking in a backward State during April 1, 1993 and March 31, 2004, in the case of State of Jammu & Kashmir during April 1, 1993 and March 31, 2012, industrial undertaking in a backward State during October 1, 1994 and March 31, 2004, cold chain facility during April 1, 1999 and March 31, 2004.

4. It should employ 10 workers (where manufacturing process is carried on with the aid of power) or 20 workers (where manufacturing process is carried on without the aid of power).

5. Deduction should be claimed in the return of income. Return of income should be submitted on or before the due date of submission of return of income. Books of account should be audited†.

Amount of deduction - If the above conditions are satisfied, 100 per cent of the profit is deductible for the first 5 years and 30 per cent (25 per cent in the case of non-corporate assessee) is deductible for the next 5 years. In the case of a small scale industrial undertaking, deduction is available at the rate of 30 per cent (25 per cent in the case of non-corporate assessee) for first 10 years. Tax holiday period is 10 years (12 years in the case of a co-operative society). However, in the case of an industrial undertaking in a Category B backward district, 100 per cent tax holiday is available for first 3 years and for remaining period of tax holiday the partial deduction of 25 or 30 per cent is available. Deduction commences from the previous year in which the industrial undertaking begins to manufacture or produce articles or things, or to operate its cold storage plant or plants.

Case 2 - Operation of a ship

Now-a-days this deduction is not available.

Case 3 - Hotel industry

Certain hotels (which started functioning before April 1, 2001) were qualified for deduction under section 80-IB for 10 years. 10-year limit expired with the assessment year 2010-11. No deduction is, therefore, available for the assessment year 2011-12 onwards.

†From April 1, 2014, audit report should be submitted electronically. Provisions pertaining to electronic submission of audit report were not applicable prior to April 1, 2014 (for period prior to April 1, 2014, audit report and other statements/agreement/approval may be retained by the assessee and these may be furnished in original whenever the Assessing Officer wants in assessment proceedings or otherwise).

Case 4 - Companies engaged in industrial research

The following conditions should be satisfied—

1. The taxpayer is a company registered in India.

2. Such company has scientific and industrial research and development as its main object.

3. It is for the time being approved by the prescribed authority (*i.e.*, Secretary, Department of Scientific and Industrial Research).

4. Deduction should be claimed in the return of income. Return of income should be submitted on or before the due date of submission of return of income. Books of account should be audited†.

Amount of deduction - 100 per cent of profit is deductible. Deduction is available for a period of first 5 years if the prescribed authority approves the company at any time before April 1, 1999. However, if the prescribed authority approves the company after March 31, 2000 but before April 1, 2007, deduction is available for a period of first 10 years.

Case 5 - Mineral oils

The following conditions should be satisfied—

1. It should be a new undertaking. It should not be formed by transfer of machinery or plant previously used for any purpose.

2. The undertaking should be located anywhere in India.

3. It should commence production of mineral oil after March 31, 1997 but before April 1, 2017, or refining of mineral oil during October 1, 1998 and March 31, 2012 or production of natural gas (in a specified blocks) on or after April 1, 2009 but before April 1, 2017.

4. Deduction should be claimed in the return of income. Return of income should be submitted on or before the due date of submission of return of income. Books of account should be audited†.

Amount of deduction - 100 per cent profit is deductible for the first 7 years.

Case 6 - Developing and building housing projects

The following conditions should be satisfied—

1. The project should be approved by a local authority before March 31, 2008.

2. The size of the plot of land is a minimum of one acre.

3. The undertaking commences development and construction of the housing project after September 30, 1998 and it should complete construction within 4 years from the end of the financial year in which the housing project is first approved or before April 1, 2008, whichever is later. If, however, the housing project is approved on or after April 1, 2005, the project should be completed within 5 years from the end of the financial year in which the project is approved by the local authority.

4. The built-up area of the shops and other commercial establishments included in the housing project should not exceed 3 per cent of the total built-up area of the housing project or 5,000 sq.ft., whichever is more.

5. The built-up area of each residential unit should not be more than 1,500 sq. ft. (1,000 sq. ft. in the cities of Delhi and Mumbai and any area within 25 kilometres).

6. Not more than 1 residential unit should be allotted to the same person. If allottee is an individual, no other residential unit in the housing project should be allotted to the individual, his/her spouse, minor children, Hindu undivided family, etc.

7. Deduction should be claimed in the return of income. Return of income should be submitted on or before the due date of submission of return of income. Books of account should be audited†.

Amount of deduction - 100 per cent of the profit of the housing project is deductible.

Case 7 - Business of processing, preservation and packaging of fruits or vegetables, etc.

An undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables or meat or meat products or poultry/marine/dairy products or from the integrated business of handling, storage and transportation of foodgrains is qualified for deduction at the rate of 100 per cent of the profit for the first 5 years and 30 per cent (25 per cent in the case of non-corporate assessee) for the next 5 years. Deduction should be claimed in the return of income. Return of income should be submitted on or before the due date of submission of return of income. Books of account should be audited.

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†From April 1, 2014, audit report should be submitted electronically. Provisions pertaining to electronic submission of audit report were not applicable prior to April 1, 2014 (for period prior to April 1, 2014, audit report and other statements/agreement/approval may be retained by the assessee and these may be furnished in original whenever the Assessing Officer wants in assessment proceedings or otherwise).

Case 8 - Multiplex theatres

Now-a-days no deduction is available.

Case 9 - Convention Centre

Now-a-days no deduction is available.

Case 10 - Operating and maintaining a hospital in rural area

The following conditions should be satisfied—

1. The assessee owns an undertaking deriving profits from the business of operating and maintaining a hospital in a rural area.

2. Such hospital is constructed at any time during October 1, 2004 and ending on March 31, 2008. For this purpose a hospital shall be deemed to have been constructed on the date on which a completion certificate in respect of such construction is issued by the concerned local authority.

3. The hospital has at least 100 beds for patients.

4. The construction of the hospital is in accordance with the regulations, for the time being in force, of the local authority.

5. Deduction should be claimed in the return of income. Return of income should be submitted on or before the due date of submission of return of income. Books of account should be audited†.

Amount of deduction - 100 per cent profit is deductible for the first 5 years.

Case 11 - Hospitals located in certain areas

If a few conditions are satisfied, 100 per cent profit is deductible for the first 5 years, if hospital is situated anywhere in India (but other than excluded area, *i.e.*, Delhi, Mumbai, Kolkata, Chennai, Hyderabad, Bangalore, Ahmedabad, Faridabad, Gurgaon, Ghaziabad, Gautam Budh Nagar, Gandhi Nagar or Sikandrabad. The hospital should start functioning during April 1, 2008 and March 31, 2013. Deduction should be claimed in the return of income. Return of income should be submitted on or before the due date of submission of return of income. Books of account should be audited.

Profits and gains from housing projects [Sec. 80-IBA]

The following conditions should be satisfied to claim deduction from the assessment year 2017-18 onwards –

1. Housing project (*i.e.*, a project consisting predominantly of residential units) should be approved by competent authority after June 1, 2016, but on or before March 31, 2020.

2. It should be completed within 5 years from the date of first approval.

3. The carpet area‡ of the shops and other commercial establishments included in the housing project does not exceed 3 per cent of the aggregate carpet area‡.

4. The project should satisfy the criteria given below –

A - IF THE PROJECT IS APPROVED PRIOR TO SEPTEMBER 1, 2019

Location of project	*Area of plot of land on which project is situated*	*Carpet area‡ of residential units comprised in the housing project*	*Utilisation of permissible FAR*
Project is located within the cities of Chennai, Delhi, Kolkata or Mumbai	Not less than 1,000 square metres	Not to exceed 30 square metres	Not less than 90%
Project is located in any other place	Not less than 2,000 square metres	Not to exceed 60 square metres	Not less than 80%

†From April 1, 2014, audit report should be submitted electronically. Provisions pertaining to electronic submission of audit report were not applicable prior to April 1, 2014 (for period prior to April 1, 2014, audit report and other statements/agreement/approval may be retained by the assessee and these may be furnished in original whenever the Assessing Officer wants in assessment proceedings or otherwise).

‡ "Carpet area" means the net usable floor area of an apartment [excluding (*a*) the area covered by the external walls, (*b*) areas under services shafts/exclusive balcony or verandah area/exclusive open terrace area, but including the area covered by the internal partition walls of the apartment].

B - IF THE PROJECT IS APPROVED ON OR AFTER SEPTEMBER 1, 2019

Location of project	*Area of plot of land on which project is situated*	*Carpet area of residential units comprised in the housing project*	*Utilisation of permissible FAR*
Project is located within the metropolitan cities given in Note (*infra*)	Not less than 1,000 square metres	Not to exceed 60 square metres	Not less than 90%
Project is located in any other place	Not less than 2,000 square metres	Not to exceed 90 square metres	Not less than 80%

Note - It covers the metropolitan cities of Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurugram, Faridabad), Hyderabad, Kolkata and Mumbai (whole of Mumbai Metropolitan Region).

5. The project is the only housing project on such plot of land as specified in *Column 2* of the above table.

6. Where a residential unit in the housing project is allotted to an individual, no other residential unit in the housing project shall be allotted to the individual or the spouse or the minor children of such individual.

7. The stamp duty value of a residential unit in the housing project does not exceed Rs. 45 lakh (this condition is applicable if only if the housing project is approved on or after September 1, 2019).

8. The assessee should maintain separate books of account in respect of the housing project.

Amount of deduction - 100 per cent of the profit derived from the aforesaid business is deductible (deduction not available to a works contractor). Double deduction is not available. Deduction should be claimed in the return of income.

Profits and gains of certain undertaking in certain special category of States [Sec. 80-IC]

The following conditions should be satisfied to claim deduction –

1. The assessee is a company or a limited liability partnership (LLP) and engaged in an eligible business ("eligible business" means a business carried out by an eligible start up engaged in innovation, development or improvement of products or processes or services or a scalable business model with a high potential of employment generation or wealth creation).

2. The above company or LLP is incorporated after March 31, 2016 but before April 1, 2021.

3. Annual business turnover of the company or LLP does not exceed Rs. 25 crore in the previous year relevant to the assessment year for which deduction is claimed under section 80-IAC.

4. It holds a certificate of eligible business from the Inter-Ministerial Board of Certification as notified in the Official Gazette by the Central Government.

Amount of deduction - 100 per cent of the profits and gains derived from eligible business is deductible for 3 consecutive assessment years [available at the option of assessee for any 3 consecutive assessment years out of 5 years (7 years, from the assessment year 2018-19) beginning from the year in which the eligible start-up is incorporated]. Deduction should be claimed in the return of income. Books of account should be audited and audit report should be uploaded with the return of income.

Profit and gains from business of hotel/ convention centre in NCR [Sec. 80-ID]

The following conditions should be satisfied—

1. The taxpayer is engaged in the business of hotel located in a specified area. Alternatively, the taxpayer is engaged in the business of building, owning and operating a convention centre located in specified area—

2. The aforesaid business is a new business. It is not formed by the splitting up, or the reconstruction, of a business already in existence. It should not be formed by the transfer to a new business of machinery or plant previously used for any purpose.

3. Deduction should be claimed in the return of income. Return of income should be submitted on or before the due date of submission of return of income. Books of account should be audited and audit report should be submitted electronically.

Amount of deduction - 100 per cent profit is deductible for the first 5 years.

Specified area - 2/3/4 star hotel or convention centre* in NCR (*i.e.*, Delhi, Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad). Construction should be completed and hotel or convention centre should start functioning during April 1, 2007 and July 31, 2010. Deduction is also available in the case of 2/3/4 star hotel at a World heritage site (*i.e.*, districts of Agra, Jalgaon, Aurangabad, Kancheepuram, Puri, Bharatpur, Chhatarpur, Thanjavur, Bellary, South 24 Parganas (excluding areas falling within the Kolkata Urban Agglomeration), Chamoli, Raisen, Gaya, Bhopal, Panchmahal, Kamrup, Goalpara, Nagaon, North Goa, South Goa, Darjeeling and Nilgiri). In the case of World heritage site, the hotel should be constructed and started functioning during April 1, 2008 and March 31, 2013.

Certain undertakings in North-Eastern States [Sec. 80-IE]

The following conditions should be satisfied—

1. The taxpayer begins manufacture or production of goods or undertakes substantial expansion during April 1, 2007 and March 31, 2017. Alternatively, the taxpayer has begun to provide eligible services during April 1, 2007 and March 31, 2017.

2. Deduction under this section is not available in respect of manufacture or production of tobacco, pan masala, plastic carry bags or less than 20 microns or goods produced by petroleum oil and gas refineries. Eligible services for this purpose are hotel (2 star or above), nursing home (25 beds or more), old age homes, vocational training institutes (such as hotel management, catering, entrepreneurship development, nursing and paramedical, civil aviation related training, fashion designing and industrial training), IT related training centres, IT hardware units and bio-technology.

3. The aforesaid activity takes place in any North-Eastern States.

4. The aforesaid business is not formed by the splitting up, or the reconstruction, of a business already in existence. It is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

5. Deduction should be claimed in the return of income. Return of income should be submitted on or before the due date of submission of return of income. Books of account should be audited and audit report should be submitted electronically.

Amount of deduction - 100 per cent profit is deductible for first 10 years.

Business of processing of bio-degradable waste [Sec. 80JJA]

The following conditions should be satisfied—

1. The taxpayer is in the business of collecting, processing or treating of bio-degradable waste for generating power or producing bio-fertilizers, bio-pesticides or other biological agents or for producing bio-gas or making pellets or briquettes for fuel or organic manure.

2. Deduction should be claimed in the return of income.

Amount of deduction - 100 per cent profit from the above activity is deductible for first 5 years.

Deduction in respect of employment of new employees [Sec. 80JJAA]

The following conditions should be satisfied to claim deduction from the assessment year 2017-18 onwards –

1. Assessee is covered by section 44AB and its/his business is not formed by splitting up, or the reconstruction, of an existing business.

2. Business is not acquired by the assessee by way of transfer from any other person or as a result of any business reorganisation.

■ *Amount of deduction* - 30 per cent of additional employee cost (incurred in the course of such business in the previous year) is deductible for 3 assessment years including the assessment year relevant to the previous year in which such employment is provided. Books of account

*Convention centre means a completely centrally air-conditioned building of a minimum 25,000 square metre covered plinth area (minimum seating capacity 2000), comprising at least 10 convention halls (each hall should be equipped with modern public address system and LCD projector or video screening facility) to be used for the purpose of holding conferences and seminars.

should be audited and report of audit should be uploaded in Form No. 10DA along with the return of income. Deduction should be claimed in the return of income. The following points should be noted –

1. In the case of an existing business, the additional employee cost shall be *nil*, if—

a. there is no increase in the number of employees from the total number of employees employed as on the last day of the preceding year;

b. emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system.

2. In the first year of a new business, emoluments paid or payable to employees employed during that previous year shall be deemed to be the additional employee cost.

3. "Additional employee" means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year, but does not include,—

a. an employee whose total emoluments are more than Rs. 25,000 per month; or

b. an employee for whom the entire contribution is paid by the Government under provident fund regulations;

c. an employee employed for a period of less than 240 days [150 days, if the assessee is engaged in the business of manufacturing of apparel (or footwear or leather products from the assessment year 2019-20)] during the previous year†; or

d. an employee who does not participate in the recognised provident fund.

Offshore banking units [Sec. 80LA]

A scheduled bank/foreign bank having an offshore banking unit in a special economic zone; or a unit of International Financial Services Centre can claim deduction under section 80LA if a few conditions are satisfied. Amount of deduction is 100 per cent of the aforesaid income for first 5 years and 50 per cent of income for the next 5 years. However, in the case of a unit of International Financial Services Centre, the above deduction has been increased (from the assessment year 2020-21) to 100 per cent for any 10 consecutive years. The assessee, at his option, may claim the said deduction for any 10 consecutive assessment years out of 15 years beginning with the year in which the necessary permission is obtained.

Co-operative society [Sec. 80P]

The whole of the amount of the profits attributable to specified activities in the case of a co-operative society is allowable as deduction

Income of producer companies [Sec. 80PA]

Deduction under section 80PA is available if the following conditions are satisfied –

1. Assessee is a producer company as defined in section 581A(*i*) of the Companies Act, 1956 (*i.e.*, a body corporate which deals primarily with the produce of its active members. The objects of the producer company shall relate to all or any of the matters specified in section 581B of the Companies Act, 1956).

2. Total turnover of the company is less than 100 crore in any previous year.

3. Income of the company includes any profit and gains derived from the eligible business. Eligible business for this purpose is –

a. the marketing of agricultural produce grown by the members; or

b. the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to the members; or

c. the processing of the agricultural produce of the members.

† If a new employee is employed during the previous year for a period of less than 240 days or 150 days but is employed for a period of 240 days or 150 days, as the case may be, in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year and the benefit of section 80JJAA will apply accordingly (applicable from the assessment year 2019-20).

■ *Amount of deduction* - If the above conditions are satisfied, the producer company can claim 100 per cent deduction in respect of profits and gains of eligible business (deduction is available only in respect of eligible business given above and not in respect of all businesses specified in section 581B of the Companies Act, 1956).

Royalty income of authors [Sec. 80QQB]

The following conditions should be satisfied—

1. The taxpayer is an individual resident in India.

2. He is an author or joint author.

3. The book authored by him is work of literary, artistic or scientific nature. However, the "books" shall not include brochures, commentaries, diaries, guides, journals, magazines, newspapers, pamphlets, text-books for schools, tracts and other publications of similar nature, by whatever name called.

4. The gross total income of the taxpayer includes the following—

a. royalty or copyright fees (payable in lump sum or otherwise) in respect of aforesaid book (it also includes advance payment which is not returnable); and

b. lump sum consideration for transfer (or grant) of any interest in the copyright of the book.

5. The taxpayer shall have to obtain a certificate in Form No. 10CCD† from the person responsible for paying the income.

6. Where the eligible income is earned outside India, deduction is not available unless such income is brought into India in convertible foreign exchange on or before September 30 of the assessment year. A certificate of foreign inward remittance should be taken in Form No. 10H† from a prescribed authority (*i.e.*, RBI or an authorized bank).

7. Deduction should be claimed in the return of income.

Amount of deduction - The amount of royalty is deductible up to Rs. 3 lakh. Moreover, for calculating deduction under section 80QQB, if rate of royalty is more than 15 per cent, the excess amount shall be ignored.

Royalty on patents [Sec. 80RRB]

The following conditions should be satisfied—

1. The taxpayer is an individual and resident in India.

2. He is a patentee (he may be a co-owner of patent).

3. He is in receipt of any income by way of royalty in respect of patent, which is registered.

4. The taxpayer shall have to obtain a certificate in Form No. 10CCE† from the person responsible for paying the income.

5. Where the eligible income is earned outside India, deduction is not available unless such income is brought into India in convertible foreign exchange on or before September 30 of the assessment year. A certificate of foreign inward remittance should be taken in Form No. 10H† from a prescribed authority (*i.e.*, RBI or an authorized bank).

6. Deduction should be claimed in the return of income.

Amount of deduction - The amount of royalty is deductible up to Rs. 3 lakh.

Interest on deposits in savings accounts [Sec. 80TTA]

An individual/HUF can claim a deduction up to Rs. 10,000 in aggregate in respect of saving account interest with a bank/co-operative bank/Post Office.

The above deduction of section 80TTA is in addition to the exemption available under section 10(*15*)(*i*). Under section 10(*15*)(*i*), Post Office savings bank interest is exempt up to Rs. 3,500 (in an individual account) and Rs. 7,000 (in a joint account).

Deduction under section 80TTA is not available to a senior citizen.

† To be submitted electronically.

Interest on deposits in case of senior citizens [Sec. 80TTB]

Deduction under section 80TTB is available, in the case of a senior citizen if his income includes interest on deposits with a bank/co-operative bank/Post Office (it may be interest on fixed deposits, interest on savings account or any other interest).

Amount of deduction is Rs. 50,000 or the amount of aforesaid interest, whichever is lower.

Deduction in the case of a person with disability [Sec. 80U]

The following conditions should be satisfied—

1. The taxpayer is an individual.

2. He is resident in India.

3. The taxpayer suffers 40 per cent or more than 40 per cent of any disability (*i.e.*, blindness, low vision, leprosy-cured, hearing impairment, locomotor disability, mental retardation, mental illness).

4. The taxpayer shall have to furnish a copy of the certificate issued by the medical authority.

Amount of deduction - Fixed deduction of Rs. 75,000 is available. A higher deduction of Rs. 1,25,000 is allowed in respect of a person with severe disability (*i.e.*, having disability of 80 per cent or above).

Rebate under section 87A

A resident individual can claim a rebate from income-tax. The amount of rebate is income-tax on total income or Rs. 12,500†, whichever is less. However, rebate is available only if total income of the resident individual does not exceed Rs. 5 lakh‡.

† Rs. 12,500 is applicable from the assessment year 2019-20 (it was Rs. 2,500 for the assessment years 2018-19 and 2019-20).

‡ Rs. 5 lakh is applicable from the assessment year 2019-20 (it was Rs. 3.5 lakh for the assessment years 2018-19 and 2019-20).

CORPORATE TAX PLANNING

2 BOOK

UNIT I

TAX PLANNING, TAX MANAGEMENT, TAX AVOIDANCE, TAX EVASION

TAX PLANNING, TAX MANAGEMENT, TAX AVOIDANCE AND TAX EVASION

2

CHAPTER

Introduction

1. Over the last eight decades, since the introduction of income-tax, it has been observed that there is a constant struggle between taxpayers and tax collectors, the former trying to reduce (if not negate) their tax liability, and the latter seriously struggling to plug in the loopholes in the statute.

Tax planning/ avoidance/ evasion - Concept in brief

2. To understand the meaning of tax planning, tax avoidance and tax evasion, one can go through the following cases—

Case 1 - X is an individual. For the assessment year 2019-20, his gross total income is Rs. 12,90,000. Tax on Rs. 12,90,000 is Rs. 2,07,480. To reduce his tax liability, he deposits Rs. 1,50,000 in public provident fund account. Consequently, his taxable income and tax liability thereof will be reduced to Rs. 11,40,000 and Rs. 1,60,680 respectively.

As the tax liability has been reduced within the legal framework, it is tax planning.

Case 2 - X Ltd. is a chemical manufacturing company. It has a factory in Haryana near Delhi border. Within the factory campus a piece of land of 2000 square metre is lying unutilized. The company wants to start a new unit to manufacture computer components. If this manufacturing unit is started in the existing factory campus, deduction under section 80-IB is not available. However, if the new unit is started in Jammu & Kashmir, the company can claim deduction under section 80-IB. To get the benefit of deduction under section 80-IB, the company starts the new unit in a village near Jammu.

The company has two options. Under one of the options, deduction under section 80-IB is not available. However, this deduction is available under the other option. To get the benefit of deduction under section 80-IB, the new unit has been started in Jammu & Kashmir. As the tax liability has been reduced to get the benefit of deduction available under the income-tax, it is tax planning.

Case 3 - Suppose in *Case 2*, the process of manufacturing actually takes place in Haryana. To get the benefit of deduction under section 80-IB, the company takes a factory building on rent in a village in Jammu and only on paper it is shown that the new manufacturing unit is situated in a village near Jammu.

As the company wants to reduce the tax liability by making incorrect statement about the location of manufacturing process, it is tax evasion.

Case 4 - If Rs. 50,000 is gifted by a husband to his wife, income generated therefrom is taxable in the hands of husband under the clubbing provisions of section 64(1). Section 64(1) is not applicable if gift is made by the same person out of the funds of his Hindu undivided family in capacity as karta of the family.

If gift is made by karta of the family to his wife, clubbing provisions can be avoided and ultimate tax liability will be reduced. However, the tax liability will be reduced by taking the help of a loophole in the law but within the legal framework. It is tax avoidance.

What is tax planning

3. Tax planning can be defined as an arrangement of one's financial and economic affairs by taking complete legitimate benefit of all deductions, exemptions, allowances and rebates so that tax liability reduces to minimum. Essential features of tax planning are as under —

- It comprises arrangements by which tax laws are fully complied.
- All legal obligations and transactions (both individually and as a whole) are met.
- Transactions do not take the form of colourable devices (*i.e.*, those devices where statute is followed in strict words but actually spirit behind the statute is marred would be termed as colourable devices).
- There is no intention to deceit the legal spirit behind the tax law.

What is tax avoidance

4. The line of demarcation between tax planning and tax avoidance is very thin and blurred. The English courts about eight decades ago recognized the right of a taxpayer to resort to the legal method of tax avoidance. It is well settled that it is unconstitutional for the Government to attempt tax collection without the authority of law or legal basis. Similarly, a taxpayer cannot escape tax payment outside the legal framework, as he renders himself liable for prosecution as a tax evader.

Tax avoidance is reducing or negating tax liability in legally permissible ways and has legal sanction. Essential features of tax avoidance are as under —

- Legitimate arrangement of affairs in such a way so as to minimize tax liability.
- Avoidance of tax is not tax evasion and carries no public disgrace with it.
- An act valid in law cannot be treated as fictitious merely on the basis of some underlying motive supposedly resulting in lower payment of tax to authorities.
- There is no element of *mala fide* motive involved in tax avoidance.

Over and over again, the courts have said that there is nothing sinister in so arranging one's affairs as to keep taxes as low as possible. Tax avoidance is sound law and certainly not bad morality for any body to so arrange his affairs in such a way that the brunt of taxation is the minimum. This can be done within the legal framework even by taking help of loopholes in the law. If on account of a lacuna in the law or otherwise, the assessee is able to avoid payment of tax within the letter of law, it cannot be said that the action is void because it is intended to save payment of tax. So long as the law exists in its present form, the taxpayer is entitled to take its advantage.

The above meaning of tax avoidance has also now acquired the judicial blessings of the Supreme Court of India in *Union of India* v. *Azadi Bachao Andolan* [2003] 263 ITR 706/132 Taxman 373, which reversed the findings in its earlier judgment in *McDowell & Co. Ltd.* v. *CTO* [1985] 154 ITR 148/122 Taxman 11 as legally incorrect.

If the Court finds that notwithstanding a series of legal steps taken by an assessee, in case the intended legal result has not been achieved, the court might be justified in overlooking the intermediate steps. But it would not be permissible for the court to treat the intervening legal steps as fictitious based upon some hypothetical assessment of the 'real motive' of the assessee. The Court must deal with what is tangible in an objective manner. In other words, an act which is otherwise valid in law cannot be treated as fictitious merely on the basis of some underlying motive supposedly resulting in some economic detriment or prejudice to the national interests. A transaction or arrangement which is perfectly permissible under law and has the effect of reducing the tax burden of the assessee, should not be looked upon with disfavour.

What is tax evasion

5. All methods by which tax liability is illegally avoided are termed as tax evasion. An assessee guilty of tax evasion may be punished under the relevant laws. Tax evasion may involve stating an untrue statement knowingly, submitting misleading documents, suppression of facts, not maintaining proper accounts of income earned (if required under law), omission of material facts on assessment. All such procedures and methods are required by the statute to be abided with but the assessee who dishonestly claims the benefit under the statute before complying with the said abidance by making false statements, would be within the ambit of tax evasion.

A person may plan his finances in such a manner, strictly within the four corners of the taxing statute that his tax liability is minimised or made *nil*. If this is done and as observed strictly in accordance with and taking advantage of the provisions contained in the Act, by no stretch of imagination can it be said that payment of tax has been evaded for. In the context of payment of tax, 'evasion' necessarily means, 'to try illegally to avoid paying tax'—*CIT* v. *Sri Abhayananda Rath Family Benefit Trust* [2002] 123 Taxman 81 (Ori.).

Tax avoidance v. Tax evasion

6. The following are the broad areas of distinction between the two :

Tax avoidance	*Tax evasion*
1. Any planning of tax which aims at reducing or negating tax liability in legally recognised permissible ways, can be termed as an instance of tax avoidance.	*1.* All methods by which tax liability is illegally avoided is termed as tax evasion.
2. Tax avoidance takes into account the loop-holes of law.	*2.* Tax evasion is an attempt to evade tax liability with the help of unfair means/methods.
3. Tax avoidance is tax hedging within the framework of law.	*3.* Tax evasion is tax omission.
4. Tax avoidance has legal sanction.	*4.* Tax evasion is unlawful and an assessee guilty of tax evasion may be punished under the relevant laws.
5. Tax avoidance is intentional tax planning before the actual tax liability arises.	*5.* Tax evasion is intentional attempt to avoid payment of tax after the liability to tax has arisen.

Tax planning v. Tax management

7. Tax management involves the procedures of compliance with the statutory provisions of law. The following are the broad areas of distinction between tax planning and tax management.

Tax planning	*Tax management*
1. The objective of tax planning is to reduce the tax liability to the minimum.	*1.* The objective of tax management is to comply with the provisions of law.
2. Tax planning is futuristic in its approach.	*2.* Tax management relates to past (*i.e.* assessment proceedings, rectification, revision, appeals etc.), present (filing of return of income on time on the basis of updated records) and future (corrective action).
3. Tax planning is very wide in its coverage and includes tax management.	*3.* Tax management has a limited scope, *i.e.*, it deals with specific activities such as filing of returns of income on time, drafting appeals, deduction of tax at source on time, updating records from time to time, etc.
4. The benefits arising from tax planning are substantial particularly in the long run.	*4.* As a result of effective tax management, penalty, penal interest, prosecution, etc., can be avoided.

UNIT II

CORPORATE TAX IN INDIA

DEFINITIONS

3

CHAPTER

Company [Sec. 2(*17*)]

16. Under section 2(*17*), the expression "company" is defined to mean the following :

a. any Indian company ; or

b. any body corporate incorporated under the laws of a foreign country ; or

c. any institution, association or a body which is assessed or was assessable/assessed as a company for any assessment year commencing on or before April 1, 1970 ; or

d. any institution, association or a body, whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of the Central Board of Direct Taxes to be a company.

Indian company [Sec. 2(*26*)]

17. An Indian company means a company formed and registered under the Companies Act, 1956. Besides, it includes the following :

a. a company formed and registered under any law relating to companies formerly in force in any part of India other than the State of Jammu and Kashmir and the Union territories specified in (*e*) *infra* ;

b. a corporation established by or under a Central, State or Provincial Act ;

c. any institution, association or body which is declared by the Board to be a company under section 2(*17*) ;

d. a company formed and registered under any law in force in the State of Jammu and Kashmir ;

e. a company formed and registered under any law for the time being in force in the Union territories of Dadra and Nagar Haveli, Goa*, Daman and Diu and Pondicherry.

In the aforesaid cases, a company, corporation, institution, association or body will be treated as an Indian company only if its registered office is in India.

Domestic company

18. "Domestic company" means an Indian company or any other company which, in respect of its income liable to tax under the Act, has made prescribed arrangements for the declaration and payment of dividends within India in accordance with section 194. In other words, the definition of domestic company is made of two limbs, *viz.*, (*1*) it is an Indian company, and (*2*) it is any other company which in respect of its income liable to tax under the Income-tax Act, has made the prescribed arrangement for declaration and payments within India, of dividends payable out of such income. In other words, if a company is an Indian company it will automatically be considered as a domestic company. In case of any other company, in order to become the domestic company, it is essential that the said other company may have made the prescribed arrangement for declaration and payments within India of dividends out of such income. The second limb of the definition of the domestic company may even apply to the foreign companies.

*Now State of Goa.

The condition regarding the arrangements to be made for declaration and payment of dividend in India is required to be fulfilled by companies other than the Indian companies.

Arrangement for declaration and payment of dividend - Meaning of

18.1 Three requirements are to be satisfied cumulatively by a company before it can be said to be a company which has made the necessary "arrangements for declaration and payment of dividends in India", within the meaning of section 194 :

1. The share register of the company for all shareholders should be regularly maintained at its principal place of business in India, in respect of any assessment year, at least from April 1 of the relevant assessment year.

2. The general meeting for passing of accounts of the relevant previous year and for declaring dividends in respect thereof should be held only at a place within India.

3. The dividends declared, if any, should be payable only within India to all shareholders.

Foreign company

19. Foreign company means a company which is not a domestic company.

Industrial company

20. Industrial company means a company which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining. A company is deemed to be mainly engaged in the business of generation or distribution of electricity or any other form of power or in construction of ships or in the manufacture or processing of goods or in mining, if the income attributable to any one or more of the aforesaid activities, included in its total income of the previous year (before allowing deduction under sections 80C and 80U) is not less than 51 per cent of such total income. However, the Board, defines industrial company as :

a. a company which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining, even if its total income from such activities is less than 51 per cent of its total income ; and

b. a company which even though not mainly so engaged, derives in any year 51 per cent or more of its income from such activities.

Other points

20.1 The following activities are held as "manufacture" or "processing" of goods on the basis of judicial pronouncements :

- Book publishing.
- Mixing different types of tea to arrive at a desired blend.
- Manufacture and selling of carpets but having major source of income from sale of import entitlement (generated by export of carpets).
- Production of cinematographic films.
- Tailoring clothes.
- Conversion of computer cash vouchers, invoices, etc., into balance sheet, stock account, etc.
- Sorting out, washing, drying and blending wool.
- Undergoing a change in a commodity as a result of some operation (maybe manual or mechanical) and as a result a new and distinct commodity emerges.

Company in which the public are substantially interested [Sec. 2(*18*)]

21. A company is regarded as a company in which the public are substantially interested in the following cases where :

1. Owned by Government/RBI - A company owned by the Government or the Reserve Bank or in which not less than 40 per cent shares (in terms of value) are held by the Government or the Reserve Bank or a corporation owned by the Reserve Bank.

2. Section 25 companies - A company registered under section 25 of the Companies Act, 1956, namely, companies for promotion of commerce, art, science, religion, charity and prohibiting the payment of any dividends to its members.

3. A company without share capital - A company having no share capital and declared by the Central Board of Direct Taxes to be a company in which the public are substantially interested.

4. Nidhi or Mutual Benefit Society - 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 620A of the Companies Act to be a *Nidhi* or Mutual Benefit Society.

5. Company owned by a co-operative society - A company in which shares carrying not less than 50 per cent of the voting power having been allotted unconditionally to or acquired unconditionally by, and are throughout the relevant previous year held by one or more co-operative societies.

6. Listed companies - A company which is not a private company and its equity shares are, as on the last day of the previous year, listed in a recognised stock exchange in India.

7. Public limited company owned by Government and/or a widely-held company - A company which is not a private company [as defined in section 3(1)(*iii*) of the Companies Act, 1956] and its shares carrying 50 per cent of voting power (40 per cent in the case of industrial companies, for meaning of industrial company, *see* para 20) have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant previous year beneficially held by —

i. the Government ; or

ii. a statutory corporation ; or

iii. a company in which the public are substantially interested or any wholly-owned subsidiary company.

The second subsidiary company of first subsidiary company (parent company listed in the recognised stock exchange of India) falls within the term "wholly owned subsidiary company", notwithstanding the fact that neither the parent company is holding any shares (or requisite shares) in the second subsidiary company nor is the first subsidiary company holding 100 per cent shares in the second subsidiary company.

21.1 If company is composed mostly of family members owning lion's share in share capital, the onus to prove that it is a company in which public are substantially interested will be on the assessee. *Onus to prove*

22. Investment company means a company whose gross total income consists mainly of income which is chargeable under the heads "Income from house property", "Capital gains" and "Income from other sources". Investment company

23. A company in which the public are substantially interested [*see* para 21] is known as widely-held company. Widely-held company

24. A company in which the public are not substantially interested is known as a closely-held company. Closely-held company

Case study

25-P1 *The shareholding of XYZ Ltd., a public limited trading company is as follows : (*i*) Government of India : 16 per cent ; (*ii*) Reserve Bank of India : 15 per cent ; (*iii*) a corporation wholly owned by the Reserve Bank of India : 5 per cent ; (*iv*) public : 64 per cent (none holds more than half per cent). Advise whether the company is one in which the public are substantially interested within the meaning of the Income-tax Act for the previous year ending March 31, 2019, if (*a*) its shares are listed on a recognised stock exchange throughout the previous year, or (*b*) its shares are listed on the Delhi Stock Exchange with effect from December 23, 2018, or (*c*) its shares are not listed on any recognised stock exchange in India throughout the previous year 2018-19.*

■

In the case of public limited company, if equity shares are listed in a recognised stock exchange in India on the last day of the previous year, the company is treated as a company in which the public are substantially interested. Therefore, in situations (*a*) and (*b*) XYZ Ltd. will be a company in which the public are substantially interested. In situation (*c*), however, the shares of the company are not listed in a recognised stock exchange throughout the previous year. One has, therefore, to test conditions mentioned in section 2*(18)(b)(B)* to decide whether (or not) it is a company in which the public are substantially interested [*see* para 21(7)]. Since in situation (*c*) 50% equity shares of XYZ Ltd. are not held by the Government, widely-held companies and statutory corporations, the company is one in which the public are not substantially interested.

MULTIPLE CHOICE QUESTIONS

Q1. The following are Indian companies—

a. An institution declared by the Board to be a company under section 2(*17*);

b. A company established under an Act passed by Parliament;

c. Both of above;

d. None of above.

Q2. An Indian company can never be a non-domestic company—

a. True;

b. False.

Q3. A company registered in the UK and makes arrangement for payment of dividend in India is not a domestic company—

a. True;

b. False.

Q4. A private limited company can never be a company in which the public are substantially interested—

a. True;

b. False.

Q5. The following are companies in which the public are substantially interested—

a. A private limited company in which the President of India has 99 per cent shares;

b. A public limited Indian company whose shares are listed only in the Hong Kong Stock Exchange and all its shareholders are 150 resident Indians;

c. A private limited company controlled by 50 resident Indians and none of them holds more than 3 per cent shares;

d. A public limited company in which 38 per cent shares are held by the Central Government, remaining shareholders are resident Indians and none of them holds more than 1 per cent shares.

Q6. A private limited company can never be a company in which the public are substantially interested—

a. True;

b. False.

Q7. A domestic company is always a company in which the public are substantially interested—

a. True;

b. False.

Q8. A Ltd. is a private limited industrial company in which 40 per cent shares are held by LIC of India. The company is actually controlled by X and his family members who hold 60 per cent shares. A Ltd. is not a company in which the public are substantially interested—

a. True;

b. False.

RESIDENTIAL STATUS AND TAX INCIDENCE

4

CHAPTER

Residential status of a company [Sec. 6(*3*)]

28. Residential status of a company is determined as follows –

Section	*Company*	*Residential status*
6(*3*)(*i*)	Indian company	Always resident in India [Note 1]
6(*3*)(*ii*)	A foreign company (whose turnover/gross receipt in the previous year is more than Rs. 50 crore)	It will be resident in India if its place of effective management (POEM), during the relevant previous year, is in India [Note 2]
6(*3*)(*ii*)	A foreign company (whose turnover/gross receipt in the previous year is Rs. 50 crore or less)	Always non-resident in India [Note 3]

Notes –

1. An Indian company is always resident in India. Even if an Indian company is controlled from a place located outside India (or even if shareholders of an Indian company controlling more than 51 per cent voting power are non-resident and/or located outside India), the Indian company is resident in India. An Indian company can never be non-resident.

2. A foreign company is resident in India if its place of effective management (POEM), during the relevant 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 made. For this purpose, a set of guiding principles (to be followed in determination of POEM) have been issued by the Board in Circular No. 6/2017, dated January 24, 2017. These guiding principles are briefly explained in para 28.1.

3. Provisions of section 6(*3*)(*ii*) shall not apply to a foreign company having turnover or gross receipts of Rs. 50 crore or less in a financial year – Circular No. 8/2017, dated February 23, 2017. In other words, a foreign company (whose annual turnover/gross receipts is Rs. 50 crore or less) cannot be resident in India from the assessment year 2017-18 onwards.

Place of effective management (POEM) as per Circular No. 6/2017

28.1 "Place of effective management" (POEM) is an internationally recognised test for determination of residence of a company incorporated in a foreign jurisdiction. Any determination of the POEM will depend upon the facts and circumstances of a given case. The POEM concept is one of substance over form. An entity may have more than one place of management, but it can have only one place of effective management at any point of time. Since "residence" is to be determined for each year, POEM will also be required to be determined on year to year basis. The process of determination of POEM would be primarily based on the fact as to whether or not the company is engaged in active business outside India.

COMPANY ENGAGED IN ACTIVE BUSINESS OUTSIDE INDIA

28.1-1 The place of effective management in case of a company engaged in active business outside India shall be presumed to be outside India if the majority meetings of the board of directors of the company are held outside India.

■ *Active business outside India* - A company shall be said to be engaged in "active business outside India" if –

a. the passive income is not more than 50 per cent of its total income;

b. less than 50 per cent of its total assets are situated in India;

c. less than 50 per cent of total number of employees are situated in India or are resident in India; and

d. the payroll expenses incurred on such employees is less than 50 per cent of its total payroll expenditure.

■ *Passive income* - "Passive income" of a company shall be aggregate of, —

a. income from the transactions where both the purchase and sale of goods is from/to its associated enterprises; and

b. income by way of royalty, dividend, capital gains, interest or rental income;

However, any income by way of interest shall not be considered to be passive income in case of a company which is engaged in the business of banking or is a public financial institution, and its activities are regulated as such under the applicable laws of the country of incorporation.

MANAGEMENT POWER EXERCISED IN INDIA

28.1-2 If on the basis of facts and circumstances it is established that the Board of directors of the company are standing aside and not exercising their powers of management and such powers are being exercised by either the holding company or any other person(s) resident in India, then the place of effective management shall be considered to be in India. For this purpose, merely because the Board of Directors follows general and objective principles of global policy of the group laid down by the parent entity which may be in the field of Pay roll functions, Accounting, Human resource (HR) functions, IT infrastructure and network platforms, Supply chain functions, Routine banking operational procedures, and not being specific to any entity or group of entities *per se*; would not constitute a case of Board of Directors of companies standing aside.

OTHER CASES

28.1-3 In cases of companies other than those discussed above, the determination of POEM would be a two stage process, namely –

- First stage would be identification or ascertaining the person or persons who actually make the key management and commercial decision for conduct of the company's business as a whole.
- Second stage would be determination of place where these decisions are in fact being made.

The place where these management decisions are taken would be more important than the place where such decisions are implemented. For the purpose of determination of POEM it is the substance which would be conclusive rather than the form.

■ *Guiding principles* - Some of the guiding principles which may be taken into account for determining the POEM are as follows –

1. The location where a company's Board regularly meets and makes decisions may be the company's place of effective management provided, the Board –

a. retains and exercises its authority to govern the company; and

b. does, in substance, make the key management and commercial decisions necessary for the conduct of the company's business as a whole.

2. If a board has *de facto* delegated the authority to make the key management and commercial decisions for the company to the senior management or any other person including a shareholder, promoter, strategic or legal or financial advisor, etc., and does nothing more than routinely ratifying the decisions that have been made, the company's place of effective management will ordinarily be the place where these senior managers or the other person make those decisions.

3. A company's board may delegate some or all of its authority to one or more committees such as an executive committee consisting of key members of senior management. In these situations, the location where the members of the executive committee are based and where that committee develops and formulates the key strategies and policies for mere formal approval by the full board will often be considered to be the company's place of effective management.

4. The location of a company's head office will be a very important factor in the determination of the company's place of effective management because it often represents the place where key company decisions are made.

5. The use of modern technology impacts the place of effective management in many ways. It is no longer necessary for the persons taking decision to be physically present at a particular location. Therefore, physical location of board meeting or executive committee meeting or meeting of senior management may not be where the key decisions are in substance being made.

In such cases the place where the directors or the persons taking the decisions or majority of them usually reside may also be a relevant factor.

6. The decisions made by shareholder on matters which are reserved for shareholder decision under the company laws are not relevant for determination of a company's place of effective management. Such decisions may include sale of all or substantially all of the company's assets, the dissolution, liquidation or deregistration of the company, the modification of the rights attaching to various classes of shares or the issue of a new class of shares etc. These decisions typically affect the existence of the company itself or the rights of the shareholders as such, rather than the conduct of the company's business from a management or commercial perspective and are therefore, generally not relevant for the determination of a company's place of effective management.

7. Day to day routine operational decisions undertaken by junior and middle management shall not be relevant for the purpose of determination of POEM.

8. The determination of POEM is to be based on all relevant facts related to the management and control of the company, and is not to be determined on the basis of isolated facts that by itself do not establish effective management, as illustrated by the following examples –

- The fact that a foreign company is completely owned by an Indian company will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.
- The fact that there exists a Permanent Establishment of a foreign entity in India would itself not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.
- The fact that one or some of the directors of a foreign company reside in India will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.
- The fact of, local management being situated in India in respect of activities carried out by a foreign company in India will not, by itself, be conclusive evidence that the conditions for establishing POEM have been satisfied.
- The existence in India of support functions that are preparatory and auxiliary in character will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

PRIOR APPROVAL OF PRINCIPAL CIT/ CIT REQUIRED

28.1-4 In case the Assessing Officer proposes to hold a foreign company, on the basis of its POEM, as being resident in India then any such finding shall be given by the Assessing Officer after seeking prior approval of the collegium of three members consisting of the Principal CITs or CITs, as the case may be, to be constituted by the Principal Chief Commissioner of the region concerned, in this regard. The collegium so constituted shall provide an opportunity of being heard to the foreign company before issuing any directions in the matter.

Case studies

28-P1 *X Ltd. is an Indian company. It has 10 shareholders who are foreign citizens and non-resident in India. The business of the company is fully controlled from outside India. Find out the residential status of X Ltd. for the assessment year 2019-20.*

■

X Ltd. is an Indian company. An Indian company is always resident in India. This rule is equally applicable even if shareholders are foreign citizens as well as non-resident or even if business is controlled from outside India.

28-P2 *Y Ltd. is a company incorporated in Mauritius (turnover more than Rs. 50 crore). It has 10 shareholders who are Indian citizens and resident in India. The company has active business outside India and is controlled wholly from outside India by a team of professionals. What is the residential status of Y Ltd. for the assessment year 2019-20.*

■

Y Ltd. is a foreign company. It is controlled wholly from outside India (POEM is outside India). It is, therefore, non-resident in India for the assessment year 2019-20. Residential status of shareholders is irrelevant. Likewise, the nationality of shareholders is not taken into consideration.

28-P3 *Z Ltd. is incorporated in Japan. It has 15 shareholders (10 are Indian citizens and resident in India). The company has no active business in Japan. Gross annual turnover of the company for the previous year 2018-19 is Rs. 48 crore mainly from operations conducted from Korea, Sri Lanka and India. The company is managed by a team of professionals from India. Find out the residential status of Z Ltd. for the assessment year 2019-20.*

■

Z Ltd. is a foreign company. Gross turnover of the company for the relevant previous year is Rs. 48 crore. A foreign company (whose turnover/gross receipts is not more than Rs. 50 crore) is treated as non-resident in India. This rule is applicable from the assessment year 2019-20.

28-P4 *B Ltd. is an Indian company. A Ltd. is a Mauritius company and it is 100 per cent subsidiary of B Ltd. The assets of A Ltd. are situated in Mauritius. All employees of A Ltd. are also located in Mauritius. The average income wise break-up of total income of A Ltd. for the current year and last 2 years is as follows –*

- *32 per cent of income is from transaction where purchases are made from parties which are non-associated enterprises and sold to associated enterprises;*
- *34 per cent of income is from transaction where purchases are made from associated enterprises and sold to associated enterprises;*
- *27 per cent of income is from transaction where purchases are made from associated enterprises and sold to non-associated enterprises; and*
- *7 per cent of the income is by way of interest, royalty, dividend, capital gain and rent.*

Find out the residential status of A Ltd. for the assessment year 2019-20 (turnover of A Ltd. is more than Rs. 100 crore).

■

Passive income of A Ltd. is 41% (*i.e.*, 34% + 7%). Passive income of A Ltd. is not more than 50% of its total income. Besides, A Ltd. satisfies the following condition –

a. less than 50 per cent of its total assets are situated in India;

b. less than 50 per cent of total number of employees are situated in India or are resident in India; and

c. the payroll expenses incurred on such employees is less than 50 per cent of its total payroll expenditure.

A Ltd. is engaged in active business outside India. POEM of A Ltd. is outside India. Consequently, A Ltd. is non-resident in India.

28-P5 *Make the following changes in Problem 28-P4 and determine the residential status of A Ltd. –*

1. *A Ltd. has 90 employees. 87 employees manage accounts, store and warehouse in Mauritius. Managing director, Chief Executive Officer and Sales Head are posted in Mumbai. Total payroll expenditure of 87 employees is Rs. 3.3 crore. Annual payroll expenditure of managing director, Chief Executive Officer and Sales Head is Rs. 3.8 crore.*
2. *Tax is deducted under section 192 out of salary of Rs. 3.8 crore.*

■

Only 41% of total income of A Ltd. is passive in nature. Further, more than 50% of the employees are also situated outside India. All the assets are situated outside India. However, the payroll expenditure in respect of the managing director, Chief Executive Officer and Sales Head (being employees resident in India) exceeds 50% of the total payroll expenditure. Therefore, A Co. is not engaged in active business outside India. The Assessing Officer may conclude that POEM of A Ltd. is situated in India and, consequently, A Ltd. is resident in India. However, before recording this finding the Assessing Officer will have to take prior approval of the collegium of three members consisting of the Principal CITs or CITs, as the case may be, to be constituted by the Principal Chief Commissioner of the region concerned, in this regard. The collegium so constituted shall provide an opportunity of being heard to A Ltd. before issuing any directions in the matter.

28-P6 *In Problem 28-P4, assume that A Ltd. has 5 directors. These directors are Indian citizens and resident in India. During the relevant previous year, 2 meetings of board of directors are held in India, 3 meetings are held in Mauritius and 1 meeting is held in Maldives. Determine the residential status of A Ltd.*

■

A Ltd. is engaged in active business outside India (as discussed in Problem 28-P4). The majority of board meetings have been held outside India. Therefore, the POEM of A Ltd. is situated outside India. A Ltd. is non-resident in India.

28-P7 *The facts are same as in Problem 28-P6. However, it is noted by the Assessing Officer that A Ltd.'s senior management team signs all the contracts up to Rs. 15 lakh. For all the contracts above Rs. 15 lakh, A Ltd. must submit its recommendation to its Indian holding company B Ltd. In such cases, B Ltd. takes the final decision from India. It is also noted from the records that during the current previous year more than 98 per cent of the contracts are above Rs. 15 lakh (over past 2 years this percentage is 99 per cent). Find out the residential status of A Ltd.*

■

These facts suggest that the effective management of the A Ltd. may have been usurped by the holding company B Ltd. Therefore, POEM of A Ltd. cannot be presumed to be outside India, even though A Ltd. is engaged in active business outside India and majority of board meeting are held outside India. Therefore, A Ltd. is resident in India. However, before recording this finding the Assessing Officer will have to take prior approval of the collegium of three members consisting of the Principal CITs or CITs, as the case may be, to be constituted by the Principal Chief Commissioner of the region concerned, in this regard. The collegium so constituted shall provide an opportunity of being heard to A Ltd. before issuing any directions in the matter.

28-P8 *An Indian multinational group has a local holding company A Ltd. in Singapore. A Ltd. also has 100 per cent downstream subsidiaries B Ltd. and C Ltd. in Hong Kong and D Ltd. in Cyprus. A Ltd. has income only by way of dividend and interest from investments made in its subsidiaries. The POEM of A Ltd. is in India and is exercised by ultimate parent company of the group. B Ltd., C Ltd. and D Ltd. are engaged in active business outside India. The meetings of Board of Director of these companies are held in Hong Kong and Cyprus. Find out the residential status of B Ltd., C Ltd. and D Ltd.*

■

Merely because POEM of A Ltd. (*i.e.*, intermediate holding company) is in India, the POEM of its subsidiaries shall not be taken to be in India. Each subsidiary has to be examined separately. B Ltd., C Ltd. and D Ltd. are independently engaged in active business outside India and majority of board meetings of these companies are also held outside India. The POEM of these companies shall be presumed to be outside India.

Incidence of tax [Sec. 5]

29. Under the Act, incidence of tax on a taxpayer depends on his residential status and also on the place and time of accrual or receipt of income.

Indian income and foreign income

29.1 In order to understand the relationship between residential status and tax liability, one must understand the meaning of "Indian income" and "foreign income".

■ *"Indian income"* - Any of the following three is an Indian income —

1. If income is received (or deemed to be received) in India during the previous year and at the same time it accrues (or arises or is deemed to accrue or arise) in India during the previous year.

2. If income is received (or deemed to be received) in India during the previous year but it accrues (or arises) outside India during the previous year.

3. If income is received outside India during the previous year but it accrues (or arises or is deemed to accrue or arise) in India during the previous year.

■ *Foreign income* - If the following two conditions are satisfied, then such income is "foreign income" —

a. income is not received (or not deemed to be received) in India; and

b. income does not accrue or arise (or does not deemed to accrue or arise) in India.

Incidence of tax

29.2 Tax incidence is as follows—

	Resident in India	*Non-resident in India*
Indian income†	Taxable in India	Taxable in India
Foreign income†	Taxable in India	Not taxable in India

Conclusions

29.3 The following broad conclusions can be drawn —

1. Indian income - Indian income is always taxable in India irrespective of the residential status of the taxpayer.

2. Foreign income - Foreign income is taxable in the hands of resident in India. Foreign income is not taxable in the hands of non-resident in India.

Receipt of income

30. Income received in India is taxable in all cases irrespective of residential status of the assessee. The following points are worth mentioning in this respect :

Receipt v. *Remittance*

30.1 The "receipt" of income refers to the first occasion when the recipient gets the money under his control. Once an amount is received as income, any remittance or transmission of the amount to another place does not result in "receipt" at the other place—*Keshav Mills Ltd.* v. *CIT* [1953] 23 ITR 230 (SC). For instance, an assessee, after receiving an income outside India, cannot be said to have received the same again when he brings or remits the same to India. The position will remain the same if income is received outside India by an agent of the assessee (maybe a bank or some other person) who later on remits the same to India. Income after the first receipt merely moves as a remittance of money. The same income cannot be received by the same person twice, once outside India and once within India.

† For meaning of "Indian income" and "foreign income", *see* para 29.1.

Actual receipt v. *Deemed receipt*

30.2 It is not necessary that an income should be actually received in India in order to attract tax liability. An income deemed to be received in India, in the previous year, is also included in the taxable income of the assessee.

The Act enumerates the following as income deemed to be received in India :

- Annual accretion (*i.e.*, interest in excess of 9.5 per cent) to the credit balance of an employee in the case of recognised provident fund.
- Excess contribution of employer (*i.e.*, in excess of 12 per cent of salary) in the case of recognised provident fund.
- Contribution made by the Central Government or any other employer in the previous year, to the account of an employee under a notified pension scheme referred to in section 80CCD.
- Transfer balance.
- Tax deducted at source.
- Deemed profit under section 41.

Cash v. *Kind*

30.3 It is not necessary that income should be received in cash. Income may be received in cash or kind. For instance, value of a free residential house provided to an employee is taxable as salary in the hands of the employee though the income is not received in cash.

Receipt v. *Accrual*

30.4 Receipt is not the sole test of chargeability to tax. If an income is not taxable on receipt basis, it may be taxable on accrual basis.

Accrual of income

31. Income accruing in India is chargeable to tax in all cases irrespective of the residential status of the assessee. The words "accrues" and "arises" are used in contradistinction to the word "receive". Income is said to be received when it reaches the assessee ; when the right to receive the income become vested in the assessee, it is said to accrue or arise.

MULTIPLE CHOICE QUESTIONS

Q1. An Indian company is said to be resident in India if—

a. Control and management of the affairs of a company is situated wholly in India;

b. Control and management of the affairs of a company is situated outside India;

c. Control and management of the affairs of a company is situated partly in India and partly outside India;

d. All of the above.

Q2. X Ltd., a foreign company manages its affairs partly from India and partly outside India. X Ltd. is said to be—

a. Resident in India;

b. Non-resident in India;

c. Resident and ordinarily resident;

d. Resident but not ordinarily resident.

Q3. In the case of an Indian company, the following incomes are chargeable to tax—

a. Income earned outside India and received outside India;

b. Income earned in India and received in India;

c. Income earned in India but received outside India;

d. Income earned outside India and received in India;

e. All of above.

Q4. A Ltd. is a foreign company. It is wholly controlled from UK. It generates income in the UK. However, income is deposited by it in the London Branch of State Bank of India. Out of which, generally 40 per cent is remitted to India for the purpose of meeting out operating expenses of its branch situated in Bangalore. Income of A Ltd. deposited in the London branch of State Bank of India and later on remitted to India is chargeable to tax in India—

a. True;

b. False.

TAXATION OF COMPANIES

5

CHAPTER

Carry forward and set-off of losses in the cases of certain companies [Sec. 79]

40. Section 79 is applicable if a closely held company (*i.e.*, a company in which the public are not substantially interested) wants to carry forward and set off of losses. Restrictions provided by section 79 may be grouped under the following categories –

Category 1 - Normal provisions.

Category 2 - Special provisions.

These provisions are applicable as follows –

Closely held companies (but other than an eligible start-up covered by section 80-IAC)	*An eligible start-up covered by section 80-IAC*	
	For assessment years 2018-19 and 2019-20	*From the assessment year 2020-21*
Normal provisions are applicable	Special provisions are applicable	Normal provisions or special provisions, at the option of taxpayer

Normal provisions

40.1 Normal provisions are applicable if the following conditions are satisfied –

Condition 1 - The taxpayer is a company in which the public are not substantially interested.

Condition 2 - The persons beneficially holding 51 per cent of the voting power on the following two dates are different :

a. on the last day of the previous year in which the loss was incurred;

b. on the last day of the previous year in which the company wants to set off the brought forward loss.

If the above two conditions are satisfied, brought forward loss cannot be set off.

Special provisions

40.2 Special provisions are applicable if the following conditions are satisfied –

1. The assessee is a company in which public are not substantially interested.

2. It is an eligible start-up as referred to section 80-IAC.

3. Loss is incurred by the assessee-company during the period of 7 years (beginning from the year in which the company is incorporated).

If the above conditions are satisfied, brought forward loss can be set off against current year's income only if all the shareholders of the company (who held shares carrying voting power) on the last day of the previous year in which the loss was incurred, continue to hold shares on the last day of the current year.

Exceptions

40.3 Normal provisions or special provisions are not applicable in the following cases –

■ *Change in voting power because of death or gift* - Where a change in voting power takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making the gift, the aforesaid restriction contained under section 79 will not apply.

■ *Unabsorbed depreciation* - Provisions of section 79 are applicable only in the case of carry forward of losses. As carry forward of unabsorbed depreciation allowance, capital expenditure on scientific research or family planning stands on altogether different footings, their carry forward and set off are not governed by section 79—*CIT* v. *Concord Industries Ltd.* [1979] 119 ITR 458 (Mad.), *CIT* v. *Shri Subhulaxmi Mills Ltd.* [2001] 119 Taxman 281 (SC).

■ *Amalgamation/merger of foreign holding company* - If the following conditions are satisfied, provisions of section 79 are not applicable—

Condition 1 - The taxpayer (*i.e.*, the company in which loss is incurred) is an Indian company in which public are not substantially interested.

Condition 2 - It is subsidiary of a foreign company.

Condition 3 - The foreign company is amalgamated/demerged with another foreign company.

Condition 4 - Persons holding 51 per cent or more shares in the amalgamating/demerged foreign company become shareholders in the amalgamated/resulting foreign company.

If all the conditions are satisfied, the provisions of section 79 shall be ignored and brought forward loss can be set off and carry forward.

■ *Company seeking insolvency resolution under Insolvency and Bankruptcy Code* - The above provisions of section 79 are not applicable to a company where a change in the shareholding takes place in a previous year pursuant to approved resolution plan under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal CIT/CIT.

■ *Distressed companies* - The provisions of section 79 are not applicable to such companies, and their subsidiary and the subsidiary of such subsidiary, where –

- the National Company Law Tribunal (NCLT) on a petition moved by the Central Government under section 241 of the Companies Act 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 Companies Act; and
- a change in shareholding of such company, and its subsidiaries and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by NCLT under section 242 of the Companies Act, after affording a reasonable opportunity of being heard to the jurisdictional PCIT/CIT.

Case studies

40-P1 *X and Y are two shareholders of Z Ltd., a closely held company. X holds 55 per cent share capital. On January 30, 2019, X transfers his shares to A. Z Ltd. wants to set off brought forward loss of Rs. 4,00,000 (business loss : Rs. 1,00,000; unadjusted depreciation : Rs. 3,00,000) of the previous year 2017-18 against the income of the previous year 2018-19 (*i.e., *Rs. 9 lakh). Can it do so?*

■

Z Ltd. is a company in which the public are not substantially interested and in which shareholders having 51 per cent voting right on March 31, 2018 and March 31, 2019 are not the same. Consequently, section 79 is applicable. Unadjusted depreciation can be set off but not brought forward loss. Income of the previous year 2018-19 will be Rs. 6 lakh (*i.e.*, Rs. 9 lakh—Rs. 3 lakh).

40-P2 *XYZ (P.) Ltd. is a company which was started on April 1, 1999 and in which there are only equity shares. The shares are held throughout by X, Y and Z equally. The company has made losses/profits in the past as under and the same have been accepted in the income-tax assessments:*

Assessment year	Business loss *Rs.*	Unabsorbed depreciation *Rs.*	Total *Rs.*
2015-16	*Nil*	*30,00,000*	*30,00,000*
2016-17	*Nil*	*18,00,000*	*18,00,000*
2017-18	*9,50,000*	*8,70,000*	*18,20,000*
Total	*9,50,000*	*56,70,000*	*66,20,000*

During the previous year ending March 31, 2018, X transferred his shares to P and during the previous year ended March 31, 2019, Y transferred his shares to Q. During the previous year ended March 31, 2018, the company made a profit of Rs. 12,00,000 (before debiting Rs. 6,00,000 for depreciation) and during the previous year ended March 31, 2019, the company made a profit of Rs. 80,00,000 (before debiting Rs. 5,00,000 for depreciation).

Compute the taxable income of the company for the assessment year 2019-20. Workings should form part of your answer.

■

X, Y and Z are three shareholders in XYZ (P.) Ltd. The shareholding pattern of the company on March 31, 2017, March 31, 2018 and March 31, 2019 are as follows :

	X	*Y*	*Z*	*P*	*Q*
March 31, 2017	33.33%	33.33%	33.33%	—	—
March 31, 2018	—	33.33%	33.33%	33.33%	—
March 31, 2019	—	—	33.33%	33.33%	33.33%

As is evident from the data given above, shareholders having at least 51% of voting power on March 31, 2017 and March 31, 2018 are the same. Consequently, the restriction imposed by section 79 is not applicable. Income for the assessment year 2018-19 will be determined as under :

	Rs.
Business profit	12,00,000
Less : Current depreciation	6,00,000
Balance	6,00,000
Less : Brought forward business loss of the assessment year 2017-18	6,00,000
Net income	*Nil*

The assessee can carry forward the unabsorbed depreciation (*i.e.*, Rs. 56,70,000) and business loss of Rs. 3,50,000 of earlier years.

Shareholders holding 51 per cent of the voting right on March 31, 2017 and March 31, 2019 are not the same. Consequently, the restriction imposed by section 79 is applicable and business loss of the assessment year 2017-18 cannot be set off against profit of the assessment year 2019-20. However, in the given problem unabsorbed depreciation of Rs. 56,70,000 pertaining to the assessment year 2017-18 and earlier years can be set off against the income of the assessment year 2019-20, as section 79 is not applicable in the case of carry forward of unabsorbed depreciation. Consequently, income of the assessment year 2019-20 will be determined as under :

	Rs.
Business profit	80,00,000
Less : Current depreciation	5,00,000
	75,00,000
Less : Unabsorbed depreciation	56,70,000
Net income	18,30,000

Note : The unadjusted business loss of Rs. 3,50,000 cannot be set off against the above income, as section 79 provisions are applicable.

40-P3 *Suppose in problem 40-P2, Y and Q are relatives and shares are transferred by Y to Q by way of gift during the previous year ending March 31, 2019.*

■

Section 79 is not applicable if shareholding changes due to death of a shareholder or gift of shares to a relative. Consequently, brought forward business loss of Rs. 3,50,000 can be set off against the income of Rs. 18,30,000 [net income of the assessment year 2019-20 : Rs. 14,80,000 (*i.e.*, Rs. 18,30,000—Rs. 3,50,000)].

Taxable income - How computed

41. It is determined as follows —

1. First ascertain income under the different heads of income.

2. Income of other persons may be included in the income of the company under sections 60 and 61.

3. Current and brought forward losses should be adjusted according to the provisions of sections 70 to 80. Provisions of section 79 regarding set off and carry forward of losses of closely held companies are given in para 40.

4. The total of income computed under different heads is gross total income.

5. From the gross total income so computed, the following deductions are permissible under sections 80C to 80U —

Section	*Nature of deduction*
80G	Donations to charitable institutions and funds
80GGA	Donations for scientific research or rural development
80GGB	Contribution to political parties
80-IA	Profits and gains from industrial undertakings engaged in infrastructure, etc.
80-IAB	Profits and gains by an undertaking or enterprise engaged in development of Special Economic Zone
80-IAC	Profits and gains derived from eligible start-up
80-IB	Profits and gains from certain industrial undertakings other than infrastructure development undertakings

Section	*Nature of deduction*
80-IBA	Profits and gains from housing projects
80-IC	Profits and gains of certain undertakings in certain States
80-ID	Profits of hotels and convention centres
80-IE	Profits of undertakings in North Eastern States
80JJA	Profits from the business of collecting and processing of bio-degradable waste
80JJAA	Employment of new employees
80LA	Income of Offshore Banking Units

6. The resulting sum is net income.

Tax liability - How computed

42. Tax liability of a company is calculated as follows —

Computation 1 - Under normal provisions	*Computation 2 - Under minimum alternate tax*
Step 1 - Find out taxable income under normal provisions	*Step 8* - Find out book profit [*see* para 336.2]
Step 2 - Find out income-tax at the rate of 30 per cent (40 per cent in the case of a foreign company) of income computed under (1) *supra* [*see* para 334.2]. There is no exemption limit	*Step 9* - Find out 18.5 per cent† of book profit
Step 3 - Add: Surcharge†	*Step 10 - Add:* Surcharge‡
Step 4 - Find out (*2*) + (*3*)	*Step 11* - Find out (*9*) + (*10*)
Step 5 - Add HEC at the rate of 4 per cent of (*4*)	*Step 12 - Add* HEC at the rate of 4 per cent of (*11*)
Step 6 - Deduct tax rebate or tax credit under sections 86, 90, 90A and 91	*Step 13* - Find out (*11*) + (*12*)
Step 7 - Find out (*4*) + (5) — (*6*) [it cannot be less than zero]	

Tax liability of a company is (*7*) or (*13*), whichever is more.

Income taxable at special rate

42.1 There are a few cases where income is taxable at special rates given under different provisions of the Act. For instance, long-term capital gains are taxable at the rate of 20 per cent by virtue of section 112. Short-term capital gains (if securities transaction tax is applicable) is taxable at the rate of 15 per cent under section 111A. Royalty income in certain cases is taxable in the hands of a foreign company at the rate of 10 per cent. Complete list of such cases is narrated in para 0.1-6 of Annex 1. However, a few cases are given below –

DIVIDEND RECEIVED FROM A FOREIGN SPECIFIED COMPANY

42.1-1 By virtue of section 115BBD, where total income of an Indian company includes any income by way of dividends declared, distributed or paid by a foreign specified company, then such dividends shall be taxable at the rate of 15 per cent (+SC+ HEC) on the gross amount of dividends from the assessment year 2012-13 onwards. No expenditure in respect of such dividends shall be allowed. Foreign specified company means a foreign company in which the Indian company holds 26 per cent or more in nominal value of the equity share capital of the company.

† Surcharge is as follows –

	Net income range	*Assessment year 2019-20*	*Assessment year 2020-21*
Individuals/HUF/AOP/BOI/artificial juridical person	0 – Rs. 50 lakh Rs. 50 lakh – Rs. 1 crore Rs. 1 crore – Rs. 2 crore Rs. 2 crore – Rs. 5 crore Above Rs. 5 crore	*Nil* 10% 15% 15% 15%	*Nil* 10% 15% 25% 37%
Firm/co-operative society/local authority	0 – Rs. 1 crore Above Rs. 1 crore	*Nil* 12%	*Nil* 12%
Domestic company	0 – Rs. 1 crore Rs. 1 crore – Rs. 10 crore Above Rs. 10 crore	*Nil* 7% 12%	*Nil* 7% 12%
Foreign company	0 – Rs. 1 crore Rs. 1 crore – Rs. 10 crore Above Rs. 10 crore	*Nil* 2% 5%	*Nil* 2% 5%

‡ 9 per cent, if the assessee is a unit located in an International Financial Services Centre and derives its income solely in convertible foreign exchange.

TAX AT THE RATE OF 25 PER CENT ON INCOME OF CERTAIN DOMESTIC COMPANIES [SEC. 115BA] -

42.1-2 Section 115BA has been inserted with effect from the assessment year 2017-18. The following conditions should be satisfied in order to avail the benefit of lower tax rate under section 115BA –

1. The assessee is a domestic company.

2. The company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to (or distribution of) such article or thing manufactured or produced by it.

3. The company has been set-up and registered on or after March 1, 2016.

4. Total income of the company is computed without claiming additional depreciation and deduction under sections 10AA, 32AC, 32AD, 33AB, 33ABA, 35(1)(*ii*)/(*iia*)/(*iii*)/35(2AA)/(2AB), 35AC, 35AD, 35CCC, 35CCD, sections 80H to 80TT (not being section 80JJAA).

5. Total income of the company is calculated after claiming depreciation (rate cannot be more than 40 per cent) and without adjusting brought forward loss from any earlier year (if such loss pertains to any deduction under the aforesaid sections). Moreover, such loss will not be carried forward.

■ *Option* - If the above conditions are satisfied, the company has an option to pay tax at the rate of 25 per cent [+ SC + HEC] [if such company has other incomes which are taxable under other provisions of Chapter XII (*i.e.*, sections 110 to 115BBG), then tax on such other incomes will be calculated as per the rate(s) specified by these sections and balance amount of income will be taxable under section 115BA at the rate of 25 per cent]. This option shall be exercised on or before the due date for furnishing the first of the returns of income, which the company is required to furnish under the Act. This option should be exercised by electronically furnishing Form No. 10-IB (under digital signature or electronic verification code). Once the company has exercised the option for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

Minimum alternate tax [Sec. 115JB]

43. These provisions are as follows —

■ Find out the normal tax liability ignoring provisions of minimum alternate tax [*i.e.*, *Step 7* in the table given under para 42].

■ Find out book profit [*see* para 43.2].

■ Find out minimum alternate tax [*i.e.*, *Step 13* in the table given under para 42].

■ If tax computed at the *Step 7* is more than (or equal to) tax computed at *Step 13*, the provisions of minimum alternate tax are not applicable.

When applicable

43.1 If tax computed at the *Step 7* is less than tax computed at *Step 13*, the provisions of minimum alternate tax are applicable as follows—

1. It will be assumed that "book profit" of the company is taxable income.

2. 18.5 per cent‡ of book profit [+ SC + HEC] is tax liability of the company [*i.e.*, *Step13* in the table given under para 42].

3. Tax computed at *Step 13* is the minimum alternate tax which the company is liable to pay.

4. The extra tax which the company has to pay because of minimum alternate tax [*i.e.*, *Step 13 minus Step 7*] will be available for "tax credit" under section 115JAA. Tax credit (*i.e.*, *Step 13 minus Step 7*) can be set off against future tax liability of the company subject to a few conditions. However, the tax credit is available only in that year in which tax computed at *Step 7* is more than tax computed at *Step 13* [for provisions of tax credit, *see* para 43.5].

■ *Exceptions* - The provisions of minimum alternate tax are not applicable in the following cases –

Nature of income	*Time frame when MAT provisions are not applicable*
1. Income from any business/services in the hands of entrepreneur/developer in a special economic zone	Income arising after March 31, 2005 but before April 1, 2011

‡ 9 per cent, if the assessee is a unit located in an International Financial Services Centre and derives its income solely in convertible foreign exchange.

Nature of income	*Time frame when MAT provisions are not applicable*
2. Income of a shipping company which is subject to the provisions of "tonnage income" of Chapter XII-G (*i.e.*, sections 115V to 115VZC)	Income arising after March 31, 2004 (*i.e.*, assessment year 2005-06 onwards)
3. Income which accrues and arises to a company from life insurance business referred to in section 115B	Income arising after March 31, 2000 (*i.e.*, assessment year 2001-02 onwards)
4. In the case of a foreign company where its total income comprises solely of profits and gains referred to in sections 44B, 44BB, 44BBA and 44BBB	Income arising after March 31, 2000 (*i.e.*, assessment year 2001-02 onwards)

■ *Foreign company* - The provisions of minimum alternate tax are not applicable to a foreign company in the following two cases –

a. the assessee is a resident of a country/specified territory with which India has an agreement under section 90/90A and the assessee does not have a permanent establishment in India in accordance with the provisions of such agreement;

b. the assessee is a resident of a country with which India does not have an agreement referred to above and the assessee is not required to seek registration under any law for the time being in force relating to companies.

Book profit - How to determine [Sec. 115JB]

43.2 Net profit as per statement of profit and loss (after a few adjustments) is book profit. For this purpose, statement of profit and loss shall be prepared within the parameters of Schedule III to the Companies Act, 2013. However, in the case of an insurance company/banking company/ company engaged in the generation or supply of electricity/any other class of company (for which a form of financial statement has been specified in or under the Act governing such class of company), statement of profit and loss shall be prepared in accordance with the provisions governing such company. For computation of book profit, one may proceed as follows –

■ *Step 1* - Find out net profit [before other comprehensive income (OCI)] as per statement of profit and loss of the company [*see* para 43.2-1].

■ *Step 2* - Make adjustments which are given under *Explanation 1* to section 115JB(2) [*see* paras 43.2-2 to 43.2-2e].

■ *Step 3* - Make specific adjustments in the case of demerger as given by new sub-section (2B) to section 115JB [*see* para 43.2-3].

■ *Step 4* - Make further adjustment pertaining to OCI items that will be permanently recorded in reserves (*i.e.*, never to be reclassified to the statement of profit and loss) [*see* para 43.2-3].

ASSESSING OFFICER'S POWER TO ALTER NET PROFIT

43.2-1 Only in the following two cases, the Assessing Officer can rewrite the statement of profit and loss —

■ *If statement of profit and loss is not prepared according to the Companies Act* - If it is discovered that the statement of profit and loss is not drawn up in accordance with the provisions of the Companies Act, the Assessing Officer can recalculate the net profit. If there is no allegation of fraud or misrepresentation but only a difference of opinion as to the question whether a particular amount should be properly shown in the statement of profit and loss or in the balance sheet, the provisions of section 115JB do not empower the Assessing Officer to disturb the profit as shown by the assessee.

■ *If accounting policies, accounting standards or rates or method of depreciation are different* - The accounting policies, the accounting standards adopted for preparing such accounts, the method and rates of depreciation which have been adopted for preparation of the statement of profit and loss laid before the annual general meeting, should be followed while preparing statement of profit and loss for the purpose of computing book profit under section 115JB.

Some companies follow an accounting year under the Companies Act which is different from financial year (*i.e.*, previous year ending March 31) under the Income-tax Act. These companies generally prepare two sets of accounts—one for the Companies Act and another for the Income-tax Act. Different accounting policies/standards, and method or rate of depreciation are adopted in two sets of account so that higher profits is reported to shareholders and lower profit is disclosed to tax authorities.

To curb the aforesaid practice, it has been provided that accounting policies, accounting standards, depreciation method and rates of depreciation for two sets of account shall be the same. In case it is not so, the Assessing Officer can recalculate net profit after adopting the same accounting policies, accounting standards and depreciation method and rates which have been adopted for reporting profit to shareholders.

ADJUSTMENTS TO NET PROFIT TO CONVERT IT INTO BOOK PROFIT

43.2-2 Net profit as shown in statement of profit and loss shall be adjusted as follows :

Barring the adjustment given below, no other adjustment is permitted by law. None of the adjustment given below provides for the increase or decrease of the book profits by extraordinary items—*Gulf Oil Corpn. Ltd.* v. *CIT* [2008] 111 ITD 124 (Hyd.).

Likewise, none of the adjustments given below provides for adjustment in respect of expenses on prior period/extraordinary items, which are business expenditure, but have been shown separately in statement of profit and loss due to specific requirement of Accounting Standards prescribed by the Institute of Chartered Accountants of India—*CIT* v. *Khaitan Chemicals & Fertilizers Ltd.* [2008] 175 Taxman 195 (Delhi).

■ *Positive adjustments* - Net profit as shown in statement of profit and loss (prepared in accordance with the provisions of the Companies Act) is to be increased by the following amounts if debited to the statement of profit and loss—

Amount to be added back if debited to statement of profit and loss	*Comments*
1. Income-tax paid or payable and the provisions therefor	Income-tax, interest under the Income-tax Act, dividend tax under section 115-O, distribution tax under section 115R including surcharge, education cess, secondary and higher education cess and health and education cess if debited to statement of profit and loss shall be added back. No adjustment is required in respect of the following taxes (including interest, penalty, fine, surcharge, education cess, etc.)—Securities transaction tax, banking cash transaction tax, wealth-tax, gift-tax, fringe benefit tax, indirect taxes. Moreover, no adjustment is required in respect of penalty/fine under the Income-tax Act.
2. Amounts carried to any reserves, by whatever name called	No adjustment is required in respect of reserve created under section 35AC.
3. Amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities	
4. Amount by way of provision for losses of subsidiary companies	
5. Amount or amounts of dividends paid or proposed	
6. Amount of expenditure relatable certain incomes (if such income is not subject to minimum alternate tax)	Expenses pertaining to income given under *point10* below, if debited to statement of profit and loss, shall be added back.
7. The amount of depreciation	*See* para 43.2-2d.
8. Amount of deferred tax and the provisions therefor and the amount set aside as provision for diminution in the value of any asset	
8A. Amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset	
8B. Amount of income/loss in the case of units referred to in section 47(*xvii*)	*See* para 43.2-2e.

■ *Negative adjustments* - Net profit as shown in the statement of profit and loss is to be reduced by the following amounts :

Amount to be deducted from net profit	*Comments*
9. Amount withdrawn from reserves or provisions, if any such amount is credited to the statement of profit and loss	*See* para 43.2-2a
10. Income exempt from tax	The following income, if credited to statement of profit and loss, shall be deducted — *a.* long-term capital gain exempt under section 10(*38*) for the assessment years 2005-06 and 2006-07; *b.* income exempt under section 10(*23G*) up to the assessment year 2004-05; *c.* income exempt under other clauses of section 10; *d.* income exempt under sections 10A and 10B up to the assessment year 2007-08; *e.* income exempt under sections 11 and 12. *f.* share of profit from an AOP on which no income-tax is payable in accordance with the provisions of section 86. *g.* (in the case of a foreign company) interest, royalty or technical fees chargeable to tax under sections 115A to 115BBE, or capital gain arising on transactions in securities, if income-tax payable in respect of these incomes under normal provisions (other than provisions governing MAT) is less than the rate of MAT; and *h.* royalty in respect of patent chargeable to tax under section 115BBF. The above incomes are not subject to minimum alternate tax. Moreover, there is no minimum alternate tax (*a*) in respect of income arising after March 31, 2005 but before April 1, 2011 from special economic zone to a developer or entrepreneur, (*b*) income of shipping companies subject to the provisions of "tonnage income" and (*c*) income from life insurance business of a company (arising after March 31, 2000).
11. Depreciation (other than because of revaluation of assets) debited to statement of profit and loss	*See* para 43.2-2d
12. Amount withdrawn from revaluation reserve credited to statement of profit and loss to the extent it does not exceed the amount of depreciation on account of revaluation of assets.	*See* para 43.2-2d
12A. Aggregate amount of unabsorbed depreciation and loss brought forward if corporate insolvency resolution process has been started	*See* para 43.2-2f
13. Amount of loss brought forward or unabsorbed depreciation, whichever is less, as per books of account	*See* para 43.2-2b
14. Profit of sick industrial unit	*See* para 43.2-2c
15. The amount of deferred tax, if any such amount is credited to the statement of profit and loss.	
15A. Amount of income/loss in the case of units referred to in section 47(*xvii*)	*See* para 43.2-2e.

RESERVES CREDITED TO STATEMENT OF PROFIT AND LOSS

43.2-2a The amount withdrawn from reserves and credited to statement of profit and loss shall be reduced as follows—

a. the amount withdrawn from any reserve created before April 1, 1997 otherwise than by way of a debit to the statement of profit and loss, shall not be reduced from the book profits; and

b. the amount withdrawn from any reserves or provisions created on or after April 1, 1997, which are credited to the statement of profit and loss, shall not be reduced from the book profits, unless the book profits were increased by the amount transferred to such reserves or provisions in the year of creation of such reserves (out of which the said amount was withdrawn).

43.2-2b Section 115JB provides that in computing book profit, the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account, shall be reduced from net profit. BROUGHT FORWARD LOSS/ DEPRECIATION

■ *Adjustment only when there is unadjusted "loss" before depreciation as well as unabsorbed depreciation pertaining to earlier years* - For this purpose, "loss" does not include depreciation and, therefore, in a case where an assessee has shown profit in a year, but after adjustment of depreciation, it results in loss, no adjustment in book profit is allowed. In other words, where a company does not have both brought forward losses (before depreciation) and unabsorbed depreciation but has only one of them, nothing is deductible, since one of the two figures is *nil*. Loss (before depreciation) as per the books of account of the assessee, has to be considered, irrespective of the fact whether the same is allowable (or not) under section 79.

The table below highlights the above provisions —

(Rs. in thousand)

	Brought forward loss before depreciation as per books of account	*Brought forward depreciation as per books of account*	*Brought forward loss after depreciation as per books of account*	*Amount to be deducted from net profit to convert it into book profit*
Case 1	–40	–10	–50	10
Case 2	–30	–40	–70	30
Case 3	–25	0	–25	0
Case 4	0	–10	–10	0
Case 5	+5	–70	–65	0

■ *Consolidated loss and depreciation for earlier years in totality to be considered* - The reference to the "amount of brought forward loss or unabsorbed depreciation, whichever is less" shows the intention of the legislature for considering one consolidated figure of brought forward loss or unabsorbed depreciation for the earlier years in totality and not on year to year basis—*Amline Textiles Pvt. Ltd.* v. *ITO* [2009] 27 SOT 155 (Mum.).

■ *Adjustment is required even if deduction is not permissible under the Income-tax Act* - In arriving at book profit, lower of amount of brought forward loss or unabsorbed depreciation which is appearing in books of account of assessee has to be allowed, irrespective of the fact whether or not the same is allowable under other provisions of the Income-tax Act—*Fascel Ltd.* v. *ITO* [2008] 117 TTJ (Ahd.) 891.

43.2-2c Profit of sick industrial undertaking is not subject to the provisions of minimum alternate tax. Consequently if such profit appears in the statement of profit and loss, it shall be deducted from net profit to find out book profit. PROFIT OF SICK INDUSTRIAL UNDERTAKING

This adjustment is required only in respect of the amount of profits of sick industrial company for the assessment year —

a. commencing from the assessment year relevant to the previous year in which the said company has become a sick industrial company under section 17(1) of the Sick Industrial Companies (Special Provisions) Act, 1985; and

b. ending with the assessment year during which the entire net worth (*i.e.*, paid-up capital plus free reserves) of such company becomes equal to or exceeds the accumulated losses.

"Free reserves" for this purpose means all reserves created out of the profits and share premium account but does not include reserves credited out of revaluation of assets, write back of depreciation provisions and amalgamation.

43.2-2d Depreciation debited to statement of profit and loss shall be added back. However, depreciation (not being depreciation which arises because of revaluation of assets) shall be deducted. DEPRECIATION

The cumulative impact of the addition and deduction is that book profit will be increased by depreciation (pertaining to revaluation of assets). Some relief is available if there is a withdrawal from the revaluation reserve account and it appears on the credit side of the statement of profit and loss.

Provisions illustrated - Statement of profit and loss of 5 companies are given below —

(Rs. in lakhs)

Debit side						*Credit side*					
	A	*B*	*C*	*D*	*E*		*A*	*B*	*C*	*D*	*E*
Purchase	37	37	37	37	37	Sales	90	90	90	90	90
Depreciation (normal)	6	6	6	6	6	Withdrawal from reserve (1)	10	10	10	10	10
Depreciation (because of revaluation)	4	4	4	4	0	Withdrawal from reserve (2)	9	9	9	9	9
Other expenses	5	5	5	5	5	Withdrawal from revaluation reserve	0	4	1	11	11
Net profit	57	61	58	68	72						
	109	113	110	120	120		109	113	110	120	120

Reserve (1) was initially created on January 3,1998 by debiting statement of profit and loss. However, reserve (2) was initially created on April 2, 1990 without debiting statement of profit and loss.

Computation of book profit —

	Adjustment No.	*A*	*B*	*C*	*D*	*E*
Net profit as per statement of profit and loss		57	61	58	68	72
Add: Depreciation debited to statement of profit and loss (total—normal as well as extra because of revaluation) (Rs. 6 lakh + Rs. 4 lakh)	(7)	10	10	10	10	6
Less: Withdrawal from reserve which was initially created by debiting statement of profit and loss	(9)	10	10	10	10	10
Less: Depreciation (normal)	(11)	6	6	6	6	6
Less: Withdrawal from revaluation reserve to the extent it does not exceed revaluation depreciation	(12)	0	4	1	4	0
Book profit		51	51	51	58	62

GAIN/LOSS ON TRANSFER OF SHARES IN SPV TO BUSINESS TRUST

43.2-2e The following income will not be subject to MAT –

a. notional capital gain on transfer of a share in a special purpose vehicle (SPV) to a business trust in exchange of units allotted by that trust referred to in section 47(*xvii*); or

b. notional gain resulting from any change in carrying amount of said units.

The above incomes shall be excluded while computing book profit (if these are credited to statement of profit and loss). Any notional loss [pertaining to (*a*) or (*b*) (*supra*)] shall be added back to convert net profit into book profit (whether or not such notional losses are debited to statement of profit and loss).

■ *Gain or loss on transfer of units referred to in section 47(*xvii*)* - In respect of transfer of units referred to in section 47(*xvii*) the following adjustments will be made –

1. Gain on transfer of units referred to in section 47(*xvii*) shall be deducted from net profit (if it is credited to statement of profit and loss).

2. Loss on transfer of units referred to in section 47(*xvii*) shall be added to net profit (whether or not it appears in statement of profit and loss).

3. The amount of loss on transfer of units referred to in section 47(*xvii*) 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 profit or loss account, as the case may be, shall be deducted from net profit to convert it into book profit.

4. Amount of gain [if any, pertaining to transaction mentioned in (*3*) (*supra*)] shall be added to net profit to convert it into book profit as per statement of profit and loss.

Provisions illustrated

A Ltd. holds 100 shares in B Ltd. [*i.e.*, a Special Purpose Vehicle (SPV)]. In the books of A Ltd., these shares are recorded at Rs. 2,000 per share as on April 1, 2016. During the financial year 2016-17, these 100 shares are exchanged with the 100 units of DEF Trust (*i.e.*, a business trust) and the exchange transaction is recorded (as per Accounting Standard 13) at the fair value of Rs. 3,000 per share. Consequently, it results into a notional gain of Rs. 1,000 per share. At the end of financial year 2017-18, the carrying amount of the units of business trust has been recorded at Rs. 2,500 per unit (which results into a notional loss of Rs. 500 per unit). During the financial year 2018-19, these units are transferred for Rs. 4,000 per unit.

In this case, the notional gain of Rs. 1,000 per share shall be excluded from the book profit of the financial year 2016-17. Similarly, the notional loss of Rs. 500 per unit shall be excluded from the book profit of the financial year 2017-18. For computation of book profit for the financial year 2018-19, the actual gain of Rs. 2,000 per share [*i.e.*, actual sale price : Rs. 4,000 per unit *minus* cost of share : Rs. 2,000 per share] shall be included in section 115JB.

IN CASE OF CORPORATE INSOLVENCY/ SUSPENSION OF BOARD OF DIRECTORS

43.2-2f The aggregate amount of unabsorbed depreciation and loss brought forward (before depreciation) shall be excluded in the following cases –

- 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 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) (applicable with effect from the assessment year 2020-21).
- Company against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7/9/10 of the Insolvency and Bankruptcy Code (applicable from the assessment year 2018-19).

MAT ON IND AS COMPLIANT FINANCIAL STATEMENT

43.2-3 These provisions are briefly given below –

■ No further adjustments to the net profit (before other comprehensive income of an Ind AS compliant company), other than those already specified under section 115JB, shall be made.

■ The other comprehensive income includes certain items that will permanently be recorded in reserves and hence shall never be reclassified to the statement of profit and loss included in the computation of book profit. These items shall be included in book profit for MAT purposes at the point of time as specified in the table (*infra*) —

Different items	*Point of time*
Changes in revaluation surplus of PPE (property, plant or equipment) and intangible assets (Ind AS 16 and Ind AS 38)	• Revaluation reserve credited/debited to other comprehensive income shall not be adjusted in the book profit in which it is debited or credited [first proviso to section 115JB(2A)] • It shall be included in book profit of the year in which the asset/ investment is retired, disposed, realised or otherwise transferred [second proviso to section 115JB(2A)]
Gains and losses from investments in equity instruments designated at fair value through other comprehensive income (Ind AS 109)	• Gain or loss from such investments debited/credited to other comprehensive income shall not be adjusted in the book profit in the year in which it is credited/debited [first proviso to section 115JB(2A)] • It shall be added in book profit in the year in which the investment is retired/disposed/realised [second proviso to section 115JB(2A)]
Remeasurements of defined benefit plans (Ind AS 19)	To be included in book profits every year as the remeasurements gains and losses arise
Any other item	To be included in book profits every year as the gains and losses arise

■ Appendix A of Ind AS 10 provides that any distributions of non-cash assets to shareholders (for example, in a demerger) shall be accounted for at fair value. The difference between the carrying value of the assets and the fair value is recorded in the profit and loss account. Correspondingly, the reserves are debited at fair value to record the distribution as a "deemed dividend" to the shareholders. As there is a corresponding adjustment in retained earnings, this difference arising on demerger shall be excluded from the book profits. However, in the case of a resulting company, where the property and the 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 the demerger, any change in such value shall be ignored for the purpose of computing of book profit of the resulting company.

MAT ON FIRST TIME ADOPTION

43.2-3a The adjustments arising on account of transition to Ind AS from existing Indian GAAP are required to be recorded directly in Other Equity at the date of transition to Ind AS. Several of these items would subsequently never be reclassified to the statement of profit and loss or included in the computation of book profits. Accordingly, the following adjustments will be made –

■ Those adjustments recorded in OCI and which would subsequently be reclassified to the profit and loss, shall be included in book profits in the year in which these are reclassified to the profit and loss;

■ Those adjustments recorded in OCI and which would never be subsequently reclassified to the profit and loss shall be included in book profits as given in the Table (*infra*) –

Different items	*Point of time*
Changes in revaluation surplus of PPE and intangible assets (Ind AS 16 and Ind AS 38)	To be included in book profits at the time of realisation/disposal/ retirement or otherwise transferred
Gains and losses from investments in equity instruments designated at fair value through OCI (Ind AS 109)	To be included in book profits at the time of realisation/disposal/ retirement or otherwise transferred
Remeasurements of defined benefit plans (Ind AS 19)	To be included in book profits equally over a period of 5 years starting from the year of first time adoption of Ind AS
Any other item	To be included in book profits equally over a period of five years starting from the year of first time adoption of Ind AS

■ All other adjustments recorded in Reserves and Surplus (excluding Capital Reserve and Securities Premium Reserve) as referred to in Division II of Schedule III of Companies Act, 2013 and which would otherwise never subsequently be reclassified to the profit and loss account, shall be included in the book profits, equally over a period of 5 years starting from the year of first time adoption of Ind AS subject to the following—

PPE AND INTANGIBLE ASSETS AT FAIR VALUE AS DEEMED COST

43.2-3a[1] An entity may use fair value in its opening Ind AS Balance Sheet as deemed cost for an item of PPE or an intangible asset as mentioned in paragraphs D5 and D7 of Ind AS 101. In such cases the treatment shall be as under—

■ The existing provisions for computation of book profits under section 115JB provide that in case of revaluation of assets, any impact on account of such revaluation shall be ignored for the purposes of computation of book profit. Further, the adjustments in retained earnings on first time adoption with respect to items of PPE and intangible assets shall be ignored for the purposes of computation of book profits.

■ Depreciation shall be computed ignoring the amount of aforesaid retained earnings adjustment.

■ Similarly, gain/loss on realisation/disposal/retirement of such assets shall be computed ignoring the aforesaid retained earnings adjustment.

INVESTMENTS IN SUBSIDIARIES, JOINT VENTURES AND ASSOCIATES AT FAIR VALUE AS DEEMED COST

43.2-3a[2] An entity may use fair value in its opening Ind AS Balance Sheet as deemed cost for investment in a subsidiary, joint venture or associate in its separate financial statements as mentioned in paragraph D15 of Ind AS 101. In such cases, retained earnings adjustment shall be included in the book profit at the time of realisation of such investment.

CUMULATIVE TRANSLATION DIFFERENCES

43.2-3a[3] An entity may opt for a choice whereby the cumulative translation differences for all foreign operations are deemed to be *zero* at the date of transition to Ind AS. Further, the gain or loss on a subsequent disposal of any foreign operation shall exclude translation differences that arose before the date of transition to Ind AS and shall include only the translation differences after the date of transition.

■ In such cases, to ensure that such cumulative translation differences on the date of transition which have been transferred to retained earnings, are taken into account, these shall be included in the book profits at the time of disposal of foreign operations as mentioned in paragraph 48 of Ind AS 21.

■ All other adjustments to retained earnings at the time of transition (for example, decommissioning liability, asset retirement obligations, foreign exchange capitalisation/decapitalization, borrowing costs adjustments, etc.) shall be included in book profits, equally over a period of 5 years starting from the year of first time adoption of Ind AS.

■ Section 115JB already provides for adjustments on account of deferred tax and its provision. Any deferred tax adjustments recorded in reserves and surplus on account of transition to Ind AS shall also be ignored.

REFERENCE YEAR FOR FIRST TIME ADOPTION ADJUSTMENTS

43.2-3b In the first year of adoption of Ind AS, the companies would prepare Ind AS financial statement for reporting year with a comparative financial statement for immediately preceding year. As per Ind AS 101, a company would make all Ind AS adjustments on the opening date of the comparative financial year. The entity is also required to present an equity reconciliation between previous Indian GAAP and Ind AS amounts, both on the opening date of preceding year as well as on the closing date of the preceding year. For the purposes of computation of book profits of the year of adoption and the adjustments, the amounts adjusted as of the opening date of the first year of adoption shall be considered. For example, companies which adopt Ind AS with effect from April 1, 2016 are required to prepare their financial statements for the year 2016-17 as per requirements of Ind AS. Such companies are also required to prepare an opening balance sheet as of April 1, 2015 and restate the financial statements for the comparative period 2015-16. In such a case, the first time adoption adjustments as of March 31, 2016 shall be considered for computation of MAT liability for previous year 2016-17 (assessment year 2017-18) and thereafter. Further, in this case, the period of 5 years (as stated in some of the adjustments given above) shall be previous years 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21.

OTHER POINTS

43.2-4 One should also keep in view the following points—

1. The Assessing Officer while computing the income under section 115JB has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer thereafter has the limited power of making increases and reductions as provided in para 43.2-2. To put it differently, the Assessing Officer does not have the jurisdiction to go behind the net profit shown in the statement of profit and loss except to the extent given in paras 43.2-1 and 43.2-2.

2. Provision for gratuity on the basis of actuarial calculations is an ascertained liability.

3. If a sum is debited to statement of profit and loss under the provisions of the Companies Act, it will not be added to compute book profit, even if the same is disallowed under section 37 or under any other provision of the Income-tax Act.

4. Amount (debenture redemption reserve) set apart to redeem debentures cannot be added to net profit of assessee to compute book profits.

5. Capital profit credited to statement of profit and loss is part of book profit, even if it is exempt under section 54EC.

6. Provision for liability to pay wealth-tax cannot be added back to net profit for computing book profit.

7. For purpose of computing book profits no adjustment can be made by way of reduction of interest on borrowed capital, which is not debited in statement of profit and loss.

8. No addition for the purpose of computation of total income of the assessee under section 115JB can be made with regard to share of loss from a firm which is debited to statement of profit and loss.

9. Where entire income by way of interest on zero coupon bonds has not accrued to the assessee during relevant previous year, notional income by way of interest on zero coupon bonds is not liable to be included while computing book profits as per section 115JB.

10. Loss on sale of car/trucks debited to statement of profit and loss cannot be added back.

11. Provision made by an assessee-leasing company for lease equalization charges in its books of account as per guidance note issued by ICAI cannot be regarded as an amount transferred to 'reserves'—*GE Capital Transportation Financial Services Ltd.* v. *CIT* [2007] 17 SOT 173 (Delhi), *Goodwill India Ltd.* v. *CIT* [2008] 114 ITD 665 (Delhi).

12. Provisions of section 115JB cannot be applied to a banking company. The provisions of section 115JB can only come into play when the assessee is required to prepare its statement of profit and loss in accordance with the provisions of the Companies Act. However, accounts of a banking company are required to be prepared in accordance with the provisions of the Banking Regulation Act. Consequently, the provisions of section 115JB cannot be applied to the case of a banking company.

13. Provision for reduction in ship repair bills, provision for obsolescence of materials, provision for future losses, provision for liquidated damages payable for delay in handing over of ship and provision for leave encashment are ascertained liabilities and hence fall outside the purview of *Explanation* to section 115JA. However, provision for guaranteed repairs falls in category of unascertained liability and will be includible in book profit.

14. Current year's depreciation, which has not been charged to statement of profit and loss but has been disclosed in notes appended to accounts, would be deducted from net profit in determining book profit for purpose of section 115JB.

15. The assessee-company made 5 per cent provision towards performance warranty and as regards computation of book profit, whether such liability is to be added to the net profit, became an issue. The Tribunal held that the amount set aside towards warranty provision was an ascertained liability and, hence, the Assessing Officer was precluded from making any addition thereof to the net profit while computing book profit—*Indian Oiltanking Ltd.* v. *ITO* [2009] 120 ITD 237 (Mum.).

16. Once income is found to be covered by principle of mutuality, the same cannot be brought to tax even under provisions of section 115JB—*Delhi Gymkhana Club Ltd.* v. *CIT* [2010] 35 SOT 335 (Delhi).

Minimum income and tax

43.3 In the case of a company if tax payable as computed under other provisions (*i.e.*, all provisions ignoring section 115JB) is lower than the amount given below, then book profit is taken as taxable income and the amount given below is taken as tax payable by the company for the assessment years 2019-20 and 2020-21—

	If book profit does not exceed Rs. 1 crore				*If book profit is in the range of Rs. 1 crore – Rs. 10 crore*				*If book profit exceeds Rs. 10 crore*			
	IT	*SC*	*HEC*	*Total*	*IT*	*SC*	*HEC*	*Total*	*IT*	*SC*	*HEC*	*Total*
Domestic company	18.5†	–	0.74	19.24	18.5†	1.295	0.7918	20.5868	18.5†	2.22	0.8288	21.5488
Foreign company	18.5†	–	0.74	19.24	18.5†	0.37	0.7548	19.6248	18.5†	0.925	0.777	20.202

Note - If book profit of a company exceeds Rs. 1 crore but does not exceed Rs. 10 crore, the minimum alternate tax cannot exceed the following : (Rs. 18.5 lakh + book profit – Rs. 1 crore) + HEC. If, however, book profit exceeds Rs. 10 crore, the minimum alternate tax cannot exceed the following –

a. in the case of domestic company, (Rs. 197.95 lakh + book profit – Rs. 10 crore) + HEC; or

b. in the case of a foreign company, (Rs. 188.7 lakh + book profit – Rs. 10 crore) + HEC.

Report from a chartered accountant

43.4 Every company to which section 115JB applies, shall furnish a report (in Form No. 29B) from a chartered accountant certifying that the book profit has been computed in accordance with the provisions of section 115JB.

Carry forward and set-off of tax credit

43.5 The amount of tax credit under section 115JAA shall be carried forward and set off subject to the following propositions—

1. No interest is payable in respect of tax credit.

2. Tax credit shall be allowed to set off in a future year in which tax becomes payable on the total income computed in accordance with the provisions other than section 115JB. In other words, it can be set off in that year when tax computed under normal provisions (*i.e.*, *Step 7*, para 42) is more than minimum alternate tax (*i.e.*, *Step 13*, para 42).

3. Set off in respect of brought forward tax credit will be allowed for any assessment year to the extent of—

a. tax computed on total income under normal provision (*i.e.*, *Step 7*); *minus*

b. 18.5 per cent† [+ SC + HEC] of book profit (*i.e.*, *Step 13*).

It may be noted that set off is not allowed in the year in which tax computed under (*a*) *supra* is lower than (*b*) *supra*.

4. Carry forward shall not be allowed beyond the period given below:

Section	*Minimum alternate tax paid in the following assessment year -*	*Time-limit for carry forward of MAT credit*	*Last assessment year for adjustment of MAT credit*
115JA	1997-98	5 years	2002-03
115JA	1998-99	5 years	2003-04
115JA	1999-00	5 years	2004-05
115JA	2000-01	5 years	2005-06
115JB	2001-02 to 2005-06	*Nil*	No carry forward

† 9 per cent, if the assessee is a unit located in an International Financial Services Centre and derives its income solely in convertible foreign exchange.

Section	*Minimum alternate tax paid in the following assessment year -*	*Time-limit for carry forward of MAT credit*	*Last assessment year for adjustment of MAT credit*
115JB	2006-07	10 years	2016-17
115JB	2007-08	10 years	2017-18
115JB	2008-09	10 years	2018-19
115JB	2009-10	10 years	2019-20
115JB	2010-11	10 years	2020-21
115JB	2011-12	10 years	2021-22
115JB	2012-13	10 years	2022-23
115JB	2013-14	10 years	2023-24
115JB	2014-15	10 years	2024-25
115JB	2015-16	10 years	2025-26
115JB	2016-17	10 years	2026-27
115JB	2017-18	10 years	2027-28
115JB	2018-19	15 years	2033-34
115JB	2019-20	15 years	2034-35

5. There is no other condition to claim the benefit of set-off of tax credit. For instance, there is no provision for submission of return of income within the time-limit prescribed by section 139, or for payment of tax in time. Tax credit is allowed even if tax was paid late. Moreover, there is no provision that the Assessing Officer should determine the tax credit which shall be carried forward.

6. Carry forward and set off of MAT credit shall not apply to a limited liability partnership which has been converted from a private company or unlisted public company. This rule will be applicable whether or not conversion takes place by satisfying the requirement of section 47(*xiiib*).

43.5-1 The following case study is given to have a better understanding of the provisions of the minimum alternate tax discussed above.

Case study

Assessment years *(Rs. in thousand)*

	2006-07	*2007-08*	*2008-09*	*2009-10*	*2010-11*	*2011-12*	*2012-13*
1. Book profit	670	750	1200.97	171.55	925.95	296.82	750.78
2. Taxable income (ignoring section 115JB)	120	150	420.46	(-)40	435.73	186.28	648.16
3. Tax on (*1*) @ 7.5%[1]/10%[2]/15%[3]/18%[4]/18.5%[5] (+SC+EC+SHEC)	56.38	84.15	123.70	17.67	143.06	55.03	143.06
4. Tax on (*2*) @ 30% (+SC+EC+SHEC)	40.39	50.49	129.93	*Nil*	134.64	57.56	200.28
5. Whether tax credit is available (up to which year)	*Yes* (2016-17)	*Yes* (2017-18)	*No*	*Yes* (2019-20)	*Yes*	*No*	*No*
6. Amount of credit which is available [*i.e.*, (*3*)—(*4*)]	15.99	33.66	*Nil*	17.67	8.42	*NA*	*NA*
7. Cumulative credit for being set off	15.99	49.65	49.65	61.09	69.51	69.51	66.98
8. Whether brought forward tax credit can be set off during the current year [only if (*4*) is more than (*3*)]	*NA*	*NA*	*Yes*	*NA*	*NA*	*Yes*	*Yes*
9. Maximum amount which can be set off during the current year [*i.e.*, the excess of (*4*) over (*3*), subject to maximum of (*7*)]	*NA*	*NA*	6.23	*NA*	*NA*	2.53	57.22
10. Credit which is lapsed	*NA*	*NA*	*Nil*	*NA*	*NA*	*Nil*	*Nil*
11. How much can be carried forward [*i.e.*, (*7*)—(*9*)—(*10*)]	15.99	49.65	43.42	61.09	69.51	66.98	9.76
12. Tax payable for the current year	56.38	84.15	123.7	17.67	143.06	55.03	143.06

43.5-2 The amount of tax credit in respect of MAT shall not be allowed to be carried forward to 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 Act (other than the provisions relating to MAT). This amendment is applicable from the assessment year 2018-19. Similar provisions are given in rule 128(7).

QUANTIFICATION OF MAT CREDIT WHEN FOREIGN TAX CREDIT IS CLAIMED

1. 7.5% for the assessment year 2006-07.
2. 10% for the assessment years 2007-08 to 2009-10.
3. 15% for the assessment year 2010-11.
4. 18% for the assessment year 2011-12.
5. 18.5% for the assessment year 2012-13.

Case study

43.5-2P1 *X Ltd., an Indian company, gives following data. Find out tax payable for the assessment year 2019-20 and amount of MAT credit.*

		Rs. in crore
Tax payable under normal provisions (ignoring section 115JAA)	*(a)*	*1*
Tax payable under section 115JAA	*(b)*	*50*
Tax paid in a foreign country (which is otherwise eligible for claiming as tax credit under section 90/90A/91)	*(c)*	*45*

■

Tax payable before foreign tax credit [(*a*) or (*b*), whichever is higher]	(*d*)	50
Less: Foreign tax credit (*c*)	(*e*)	45
Tax payable for the assessment year 2019-20 [(*d*) – (*c*)]	(*f*)	5
MAT credit (before amendment) [excess of (*b*) over (*a*)]	(*g*)	49
Recalculation of MAT credit (after amendment) (*i.e.*, ignore MAT provisions and find out how much foreign tax credit is available) –		
- Tax payable under normal provisions (*a*)	(*h*)	1
- Foreign tax credit which can be utilised to pay normal tax [(*a*) or (*c*), whichever is lower]	(*i*)	1
- How much foreign tax credit is utilized to pay MAT (*e*)	(*j*)	45
- Extra foreign tax credit utilized only because of MAT provisions [(*j*) – (*i*)]	(*k*)	44
MAT credit (after amendment) to be carried forward to next 15 years [(*g*) –(*k*)]	(*l*)	5

Note - After amendment, MAT credit (to be carried forward) will always be MAT credit (which was available before amendment) or tax actually paid, whichever is lower [*i.e.*, (*g*) or (*f*), whichever is lower].

VARIATION IN TAX CREDIT IN CERTAIN CASES

43.5-3 Sub-section (6) of section 115JAA discusses the case where one has to adjust tax credit pursuant to certain orders. Adjustment in tax credit has to be made if tax payable is increased or decreased because of any order under the following provisions—

a. order of assessment/intimation under section 143(1) or 143(3) ;

b. reassessment order under section 147 ;

c. rectification order under section 154 or 155 ;

d. order of Settlement Commission under section 245D(4) ;

e. order of Deputy Commissioner (Appeals) or Commissioner (Appeals) under section 250 ;

f. order of Appellate Tribunal under section 254 ;

g. Court's order under section 260 or 262 ; and

h. revisionary order of the Commissioner under section 263 or 264.

If as a result of an order under the above provisions, the amount of tax payable is increased or decreased, as the case may be, the amount of tax credit allowed under section 115JAA shall also be increased or reduced accordingly.

Hints for tax planning

43.6 The following broad propositions should be kept in view in order to minimise tax incidence under section 115JB —

■ At what point of time a revenue is recognised in statement of profit and loss is not free from doubt. Generally, the amount of revenue arising on a transaction is determined by agreement between parties involved in the transaction. In the case of uncertainty, however, the broad propositions mentioned in AS-9 issued by the Institute of Chartered Accountants of India should be followed.

■ As far as possible, depreciation should be calculated on the basis of written down value method for accounting purposes. If, for the purpose of maintaining books of account, depreciation is not charged on the basis of written down value method, depreciation method may be changed.

■ Any profit (or loss) arising on sale of fixed asset is credited (or debited) in statement of profit and loss. Since any surplus/deficiency arising on sale of depreciable asset is not treated as separate income/loss for tax purposes, it is advisable that as far as possible depreciable asset should be sold at profit only in that year in which the company incurs loss on account of sale of another depreciable asset. This will nullify the effect of section 115JB on computation of tax liability.

■ As a measure to reduce book profit, goodwill, appearing in balance sheet, may be written off.

■ As a measure to reduce the impact of section 115JB on computation of tax incidence, expenditure on acquisition of patent rights or copy rights, preliminary expenses and expenditure on prospecting, etc., for certain minerals should be amortised for accounting purposes according to the provisions of sections 32, 35A, 35D and 35E.

■ If income-tax paid/payable is shown on the debit side and income-tax refund appears on the credit side of the statement of profit and loss, then net profit will be increased by the amount of income-tax paid/payable without adjusting income-tax refund. In such a case it is advisable that income-tax refund should be credited to income-tax reserve account. This account can be utilised for payment of income-tax during the year. Any surplus or deficiency at the end of the year may be credited or charged to the statement of profit and loss.

It may be noted that in respect of the following amounts debited to the statement of profit and loss, no adjustment is required under section 115JB :

a. any penalty or fine paid or payable under the Income-tax Act ;

b. any tax, penalty or interest paid or payable under the Wealth-tax Act ;

c. any tax, penalty or interest paid or payable under the Gift-tax Act ; or

d. any tax, penalty, or interest paid or payable under the Companies (Profits) Surtax Act ; and

e. any tax or duty which is not allowed as deduction while calculating taxable income by virtue of section 43B.

f. securities transaction tax;

g. banking cash transaction tax; and

h. fringe benefit tax.

The aforesaid sums are not added to net profit in order to compute book profit for the purpose of section 115JB, though some of these expenses are not allowed as deduction while calculating/determining taxable income.

■ Arrears of depreciation not provided in books in earlier years may be provided in the current year.

Where the assessee has changed method of providing depreciation from straight line to written down value method which resulted in shortfall in depreciation provided and resultant shortfall in depreciation is charged to statement of profit and loss for the current year, the Assessing Officer is not justified in disallowing assessee's claim of such additional depreciation while computing book profit on the ground that such depreciation was not provided for in books of account of the assessee for the earlier years – *CIT* v. *Farmson Pharmaceuticals Gujarat Ltd.* [2011] 241 CTR (Guj.) 568.

■ Depreciation can be provided in books of account at rates higher than those specified in the Companies Act.

■ Extra depreciation (pertaining to earlier years) arising because of a *bona fide* change in depreciation method can be debited to statement of profit and loss for computing book profit.

■ Guidance Note of ICAI indicates that depreciation also includes depletion of natural resources through process of extraction or use. Book profit under section 115JB would be computed after allowing claim of depletion of natural resources.

■ Refund of tax not credited to statement of profit and loss cannot be added to book profit.

■ The Delhi High Court in *CIT* v. *G E Power Services India Ltd.* [2008] 171 Taxman 10 held that software expenditure debited to statement of profit and loss is an allowable deduction in computing book profits. The Court refuted the argument of the revenue that such expenditure would be capital in nature after amendment to section 32. The Court found such argument as unworthy, perhaps for the reason that section 32 has no relevance as far as determination of book profits goes.

This judgment thus provides a good tax planning method and, thus, an assessee can charge off software costs in accounts even while it resorts to depreciation claim in tax computation after taking disallowance first. Before the statutory auditor, the assessee can take the contention that the software in use has a short span of life and further it needs updating from time to time.

43.6-1 The following case studies are given for better understanding of minimum alternate tax. *TAX PLANNING DEVICES THROUGH CASE STUDIES*

GENERAL

43.6-1a X Ltd., a closely-held Indian company, is engaged in the business of manufacture of chemical goods (value of plant and machinery owned by the company is Rs. 55 lakh). The following informations for the financial year 2018-19 are given :

Case studies

43-6-1aP1 *X Ltd. is engaged in the business of manufacture of garments.*

	Rs.
Sale proceeds of goods (domestic sale)	*22,23,900*
Sale proceeds of goods (export sale)	*5,76,100*
Amount withdrawn from general reserve (reserve was created in 1997-98 by debiting statement of profit and loss)	*2,00,000*
Amount withdrawn from revaluation reserve	*1,50,000*
Total	*31,50,000*
Less : Expenses	
Depreciation (normal)	*6,16,000*
Depreciation (extra depreciation because of revaluation)	*2,70,000*
Salary and wages	*2,10,000*
Income-tax	*3,60,000*
Outstanding customs duty (not paid as yet)	*17,500*
Proposed dividend	*60,000*
Consultation fees paid to a tax expert	*21,000*
Other expenses	*1,39,000*
Net profit	*14,56,500*

For tax purposes the company wants to claim the following :
- *Deduction under section 80-IB (30 per cent of Rs. 14,56,500).*
- *Depreciation under section 32 (Rs. 5,36,000)*

The company wants to set off the following losses/allowances :

	For tax purposes	*For accounting purposes*
	Rs.	*Rs.*
Brought forward loss of 2011-12	*14,80,000*	*4,00,000*
Unabsorbed depreciation	—	*70,000*

Compute the net income and tax liability of X Ltd. for the assessment year 2019-20 assuming that X Ltd. gets a deemed long-term capital gain of Rs. 60,000 under section 54D(2) which is not credited in statement of profit and loss.

■

	Rs.
Net profit as per statement of profit and loss	14,56,500
Add :	
Excess depreciation [*i.e.,* Rs. 6,16,000 + Rs. 2,70,000 — Rs. 5,36,000]	3,50,000
Income-tax	3,60,000
Customs duty which is not paid	17,500
Proposed dividend	60,000
Total	22,44,000
Less : Amount withdrawn from reserve (*i.e.,* Rs. 2,00,000 + Rs. 1,50,000)	3,50,000
Business income	18,94,000
Less : Unabsorbed loss	14,80,000
Business income	4,14,000
Long-term capital gain	60,000
Gross total income	4,74,000
Less : Deductions under section 80-IB [30% of Rs. 4,14,000]	1,24,200
Net income (rounded off)	3,49,800
Tax liability (under normal provisions) [20% of Rs. 60,000 + 30% of Rs. 2,89,800, *plus* 4% of tax as cess]	1,02,900
Book profit	
Net profit	14,56,500
Add :	
Depreciation [*i.e.,* Rs. 6,16,000 + Rs. 2,70,000]	8,86,000
Income-tax	3,60,000
Proposed dividend	60,000

	Rs.
Less :	
Amount withdrawn from general reserve	(–) 2,00,000
Unabsorbed depreciation	(–) 70,000
Depreciation (normal)	(-)6,16,000
Amount withdrawn from revaluation reserve to the extent it does not exceed extra depreciation because of revaluation	(-) 1,50,000
Book profit	17,26,500
Tax liability (19.24% of book profit)	3,32,180

X Ltd. will pay Rs. 3,28,985 as tax for the assessment year 2019-20 as per section 115JB. Tax credit is however, available in respect excess tax (*i.e.,* Rs. 2,27,075) under section 115JB.

43.6-1b The projected statement of profit and loss of X Ltd. and Y Ltd. (which are under the same management) for the previous year 2018-19 are given below : SECTIONS 80-IA AND 80-IB, DEDUCTION

X Ltd.

	Rs.		*Rs.*
Cost of goods sold	45,00,000	Sale	65,00,000
Depreciation @ 15.3% on Rs. 10,00,000	1,53,000		
Other expenses	2,00,300		
Net profit	16,46,700		
	65,00,000		65,00,000

The company has set up an industrial undertaking in a notified industrial park and qualified for 100 per cent deduction under section 80-IA. Written down value of plant and machinery for income-tax purpose is Rs. 12,50,000.

Y Ltd.

	Rs.		*Rs.*
Cost of goods sold	61,00,000	Sale	86,00,000
Depreciation @ 13.91% of Rs. 14,30,000	1,98,913	Profit on sale of a plot of land (long-term capital gain determined under section 48)	1,20,000
Net profit	24,21,087		
	87,20,000		87,20,000

Y Ltd. is not entitled to any deduction under section 80-IA. Written down value of assets for income-tax purpose is Rs. 18,76,670.

	X Ltd. *Rs.*	*Y Ltd.* *Rs.*
Net profit	16,46,700	24,21,087
Add : Depreciation	1,53,000	1,98,913
Less : Depreciation under section 32	(-)1,87,500	(-)2,81,500
Less : Long-term capital gain	—	(-)1,20,000
Business income	16,12,200	22,18,500
Long-term capital gain	—	1,20,000
Dividends	—	—
Gross total income	16,12,200	23,38,500
Less : Deduction under section 80-IA	16,12,200	—
Net income	*Nil*	23,38,500
Book profit	16,46,700	24,21,087
Computation of tax under normal provisions		
Tax on net income (30% of Rs. 22,18,500 + 20% of Rs. 1,20,000)	*Nil*	6,89,550
Add : Surcharge	-	—
Tax and surcharge	*Nil*	6,89,550
Add : Health and education cess (4% of tax and surcharge)	—	27,582
Tax (*a*) (rounded off)	*Nil*	7,17,130

	X Ltd. Rs.	Y Ltd. Rs.
Computation of tax under section 115JB		
18.5% of book profit	3,04,640	4,47,901
Add: Surcharge	—	—
Tax and surcharge	3,04,640	4,47,901
Add : Health and education cess (4% of tax and surcharge)	12,186	17,916
Tax (*b*)	3,16,830	4,65,820
Tax liability [(*a*) or (*b*) whichever is more] (rounded off)	3,16,830	7,17,130

Tax planning hints - If the following steps are taken, tax liability can be reduced—

1. X Ltd. should take over the business of Y Ltd.

2. As per Circular No. 2/89, dated March 7, 1989, a company is permitted to charge depreciation at rates higher than the rates contained in the Companies Act, if it is "on the basis of a *bona fide* technological evaluation". X Ltd., after take over of Y Ltd., should provide depreciation in books at the rate of 20 per cent.

After taking these steps, statement of profit and loss of X Ltd. will be as under :

	Rs.		*Rs.*
Cost of goods sold	1,06,00,000	Sale	1,51,00,000
Depreciation		Long-term capital gain	1,20,000
- 20% of Rs. 10,00,000	2,00,000		
- 20% of Rs. 14,30,000	2,86,000		
Other expenses	2,00,300		
Net profit	39,33,700		
	1,52,20,000		1,52,20,000

Tax computation	*Rs.*
Net profit	39,33,700
Less : Long-term capital gain	(-) 1,20,000
Add : Depreciation	4,86,000
Less : Depreciation under section 32	(-)4,69,000
Business income	38,30,700
Long-term capital gain	1,20,000
Gross total income	39,50,700
Less : Deduction under section 80-IA	16,12,200
Net income	23,38,500
Book profit	39,33,700
Computation of tax ignoring provisions of section 115JB	
Tax on net income (30% of Rs. 22,18,500 + 20% of Rs. 1,20,000)	6,89,550
Add : Surcharge	*Nil*
Tax and surcharge	6,89,550
Add : Health and education cess (4% of tax and surcharge)	27,582
Tax liability (rounded off)	7,17,130
Computation of tax under section 115JB	
18.5% of book profit of Rs. 39,33,700	7,27,735
Add: Surcharge	—
Tax and surcharge	7,27,735
Add : Health and education cess (4% of tax and surcharge)	29,109
Tax liability (rounded off)	7,56,840

Chart showing tax liability

	If section 115JB is not applicable Rs.	*If section 115JB is applicable Rs.*
Tax liability X Ltd.	*Nil*	3,16,830
Tax liability Y Ltd.	7,17,130	7,17,130
Total	7,17,130	10,33,960
Tax liability of X Ltd. after it takes over Y Ltd.	7,17,130	7,56,840
Tax savings	*Nil*	2,77,120

Dividend tax

44. The provisions of sections 115-O, 115P and 115Q are given below.

Basis of charge [Sec. 115-O(1)]

44.1 A separate and additional charge has been created by section 115-O(1). It is subject to the following propositions—

1. Tax on distributed profit is in addition to income-tax chargeable in respect of total income.

2. Only a domestic company (not a foreign company) is liable for above tax. However, this tax is not applicable in respect of amount declared, distributed or paid by way of dividend by a developer/enterprise after March 31, 2005 provided such dividend is distributed out of current income from a special economic zone.

3. Any amount declared, distributed or paid by a domestic company by way of dividend shall be charged to dividend tax.

4. It is applicable whether the dividend is interim or otherwise.

5. It is applicable only if such dividend is declared, distributed or paid on or after June 1, 1997 but before April 1, 2002 or after March 31, 2003.

6. It is applicable whether such dividend is paid out of current profit or accumulated profit.

7. Dividend tax is not applicable in the case of—

a. dividend declared, distributed or paid during April 1, 2005 and May 31, 2011 by a developer/ enterprise out of current income from a special economic zone;

b. the amount of dividend paid on or after April 1, 2009 to any person for, or on behalf of, the new pension system trust;

c. any amount declared, distributed or paid by the specified domestic company by way of interim/final dividend to a business trust out of its current income on or after a specified date;

d. any interim/final dividend declared, distributed or paid on or after April 1, 2017 by a company (being a unit established on or after April 1, 2016 in an International Financial Services Centre) deriving income solely in convertible foreign exchange out of its current income (or income accumulated as a unit of International Financial Services Centre after April 1, 2017);

e. any dividend distributed by the recipient out of (*d*) (*supra*); and

f. any loan or advance which is deemed as dividend (before April 1, 2018) under section 2(*22*)(*e*).

What is "dividend"

44.2 Dividend declared, distributed or paid on or after June 1, 1997 but before April 1, 2002 or after March 31, 2003 is subject to dividend tax. For the purpose of section 115-O the expression "dividend" shall have the same meaning as is given to "dividend" under section 2(*22*), but it shall not include (up to March 31, 2018) sub-clause (*e*) of section 2(*22*).

Nature of tax

44.3 The levy of additional tax is in addition to normal tax payable by a company. This additional tax incidence cannot be avoided even if no income-tax is payable by a domestic company on its total income computed under the provisions of the Act. Moreover, brought forward MAT credit under section 115JAA cannot be adjusted against the additional tax on dividend.

Rate of dividend tax

44.4 The amount of dividend tax is as follows—

	Dividend tax (as a % of dividend)	*Surcharge (as a % of dividend tax)*	*EC/SHEC or HEC (as a % of dividend tax and surcharge)*	*Total (as a % of dividend)*
■ From April 1, 2013 to September 30, 2014	15	10	3	16.995
■ From October 1, 2014 to March 31, 2015	17.64706	10	3	19.99412
■ From April 1, 2015 to March 31, 2018	17.64706	12	3	20.357647
■ From April 1, 2018 [not being deemed dividend under section 2(*22*)(*e*)]	17.64706	12	4	20.555294
■ From April 1, 2018 [being deemed dividend under section 2(*22*)(*e*)]	30	12	4	34.944

■ Additional tax under section 115-O *per se* is not violative of the provisions of the Constitution. It is for the Union to impose income-tax upon the assessee. Similarly it has power to impose additional tax too. On a grammatical construction of this section it would appear that the tax is levied on the company and not on the shareholder. A tea company is liable to pay tax at the prescribed rate on 40 per cent of total net income. If there is any additional tax it would pay that in the same manner and in the same proportion—*Jayshree Tea & Industries Ltd.* v. *Union of India* [2006] 285 ITR 506/205 CTR (Cal.) 370.

Mitigating cascading effect of dividend distribution tax

44.5 Section 115-O(1A) provides a relief when a holding company has received dividend from its subsidiary company and in the same financial year the holding company declares dividends to its shareholders. When dividend is declared, distributed or paid by the holding company to its shareholders, dividend tax shall be payable on the following amount –

	Rs.
Dividend declared, distributed or paid by the holding company to its shareholders (*a*)	*xxx*
Less: Dividend received by holding company from its subsidiary company in the same financial year (*b*)	*xxx*
Balance [*i.e.*, (*a*) – (*b*)] on which dividend tax is payable by the holding company	*xxx*

The aforesaid relief is available only in the situations given below –

1. Subsidiary company is a domestic company and it has paid tax under section 115-O when dividend is paid to the holding company and holding company is not subsidiary of any other company (applicable from April 1, 2008 to June 30, 2012).

2. Subsidiary company is a domestic company and it has paid tax under section 115-O when dividend is paid to the holding company (applicable from July 1, 2012).

3. Subsidiary company is a foreign company and dividend received by the holding company from the subsidiary company is taxable in the hands of holding company under section 115BBD (applicable from June 1, 2013).

For the aforesaid purposes, a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company.

Case studies

44-P1 *X Ltd. is a manufacturing company located in India. Business income of the company for the previous year 2018-19 under section 28 is Rs. 40 lakh. X Ltd. holds shares in a few companies. Amount of dividend received from these companies and other related information are given below –*

Investee companies (*i.e.*, companies in which X Ltd. is a shareholder)	Country of incorporation of investee companies	Shareholding of X Ltd. in investee companies (in %)	Dividend received during previous year 2018-19 (Rs.)	Whether investee companies paid tax on such dividend under section 115-O
A Ltd.	*India*	*51%*	*40,000*	*Yes*
B Ltd.	*India*	*26%*	*50,000*	*Yes*
C Ltd.	*Country C*	*51%*	*60,000*	*No*
D Ltd.	*Country C*	*26%*	*70,000*	*No*
E Ltd.	*Country C*	*25%*	*80,000*	*No*

On September 1, 2018, X Ltd. declares a dividend of Rs. 5 lakh for its own shareholders. Find out income-tax and dividend tax liability of X Ltd. for the previous year 2018-19 on the assumption that India has ADT agreement with Country C and as per agreement dividend income is taxable in India and not in Country C.

■

	Rs.
Business income	40,00,000
Dividend income from A Ltd. and B Ltd. [exempt under section 10(*34*)]	–
Dividend income from C Ltd., D Ltd. and E Ltd. (Rs. 60,000 + Rs. 70,000 + Rs. 80,000)	2,10,000
Net income	42,10,000
Tax on net income –	
- on dividend under section 115BBD from C Ltd. and D Ltd. [15% of (Rs. 60,000 + Rs. 70,000)]	19,500
- on balance of Rs. 40,80,000 @ 30%	12,24,000
Total	12,43,500
Add: Health and education cess	49,740
Tax liability	12,93,240

Dividend tax liability

	Rs.
Dividend declared by X Ltd. during 2018-19	5,00,000
Less: Dividend received from A Ltd. (Indian subsidiary company which has paid tax under section 115-O)	40,000
Less: Dividend received from C Ltd. (foreign subsidiary company and tax is payable by X Ltd. under section 115BBD)	60,000
Net dividend distributed (as calculated above)	4,00,000
Dividend tax (15/85 of Rs. 4,00,000 or 17.64706% of Rs. 4,00,000)	70,588
Add: Surcharge @ 12% of dividend tax	8,471
Dividend tax and surcharge	79,059
Add: Health and education cess @ 4% of dividend tax and surcharge	3,162
Dividend tax liability	82,221

44-P2 *Suppose in problem 44-P1, dividend income from Country C is taxable in Country C and not in India as per ADT agreement.*

■

	Rs.
Business income	40,00,000
Dividend income from A Ltd. and B Ltd. [exempt under section 10(*34*)]	–
Dividend income from C Ltd., D Ltd. and E Ltd. (not taxable in India as per ADT agreement)	–
Net income	40,00,000
Tax on net income @ 30%	12,00,000
Add: Health and education cess	48,000
Tax liability	12,48,000

Dividend tax liability will be calculated as follows —

	Rs.
Dividend declared by X Ltd. during 2018-19	5,00,000
Less: Dividend received from A Ltd. (Indian subsidiary company which has paid tax under section 115-O)	40,000
Less: Dividend received from C Ltd. (not to be excluded as tax is not payable by X Ltd. under section 115BBD)	–
Net dividend distributed	4,60,000

	Rs.
Dividend tax (15/85 of Rs. 4,60,000 or 17.64706% of Rs. 4,60,000)	81,176
Add: Surcharge @ 12% of dividend tax	9,741
Dividend tax and surcharge	90,917
Add: Health and education cess @ 4% of dividend tax and surcharge	3,637
Dividend tax liability	94,554

When the additional tax should be paid

44.6 The tax on distributed profit shall be paid within 14 days from the date of—

a. declaration of any dividend ; or

b. distribution of any dividend ; or

c. payment of any dividend,

whichever is the earliest.

Who is liable to pay tax - The principal officer of the domestic company and the company shall be liable to pay the aforesaid tax.

Dividend tax is the final levy

44.7 Tax on dividend paid by a domestic company shall be taken as the final tax payment in respect of the amount declared, distributed or paid as dividend. In respect of tax so paid, no credit is available to the company paying tax, or the recipient of dividend or to any other person. By virtue of section 10(*34*), dividend income (in respect of which dividend tax is applicable under section 115-O) is exempt in the hands of recipient shareholders. However, this rule is subject to an exception given below—

■ *Tax on certain dividends under section 115BBDA in the hands of shareholders* - Exemption under section 10(*34*) pertaining to dividend income from domestic companies is not available from the assessment year 2017-18, if aggregate dividend (received from domestic companies) exceeds Rs. 10 lakh in the previous year. In such a case, the aggregate dividend (in excess of Rs. 10 lakh) is taxable (on gross basis, no deduction is allowed) under section 115BBDA at the rate of 10 per cent (+SC+ HEC) if –

- the recipient shareholder is a resident individual/HUF/firm (for the assessment year 2017-18); or
- the recipient shareholder is any person resident in India [not being a domestic company or a fund/institution referred to in section 10(*23C*)(*iv*)/(*v*)/(*vi*)/(*via*), or a trust/institution registered under section 12A/12AA] (from the assessment year 2018-19).

Dividend tax is not deductible

44.8 The company (or the shareholders) cannot claim any deduction from taxable income in respect of dividend tax levied under section 115-O. Moreover, no deduction is available from the tax on dividend under any provision.

Interest for non-payment of tax [Sec. 115P]

44.9 If the company or the principal officer fails to pay the whole or any part of dividend tax within the specified time-limit, then it or he shall be liable to interest in addition to dividend tax as follows—

Rate of interest	1 per cent per month or part thereof
Amount on which interest chargeable	Amount of tax as reduced by the amount paid within the time-limit
Period for which interest is payable	Interest is chargeable for the period commencing from the next date after the last date of payment and ending on the date of actual payment.

When company is deemed to be in default [Sec. 115Q]

44.10 In case a domestic company or principal officer of a domestic company does not pay tax on distributed profits within the specified time-limit, then he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it. Consequently, all provisions regarding collection and recovery of tax contained in the Act would apply.

Penalty under section 271C

44.11 If any person fails to comply with the provisions of section 115-O, he shall be liable to pay as penalty of a sum equal to the amount of tax which he has failed to pay. The penalty is, however, not applicable, if the assessee proves that there was reasonable cause for failure.

Prosecution

44.12 If a person fails to pay to the credit of the Central Government the tax payable by him, as required by or under the provisions of section 115-O, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.

However, no person will be punishable if he proves that there was a reasonable cause for the default/failure.

Judicial rulings

44.13 The following judicial rulings shall be kept in view—

1. Section 115-O(1) is a specific provision overriding, in case of conflict, general provisions. This provision is applicable whether shares are held as investment or stock-in-trade.

2. Dividend tax paid by company under section 115-O cannot be regarded as tax paid by shareholders.

Tax on income distributed to unitholders [Secs. 115R, 115S and 115T]

45. The provisions of sections 115R, 115S and 115T are given below:

1. The income distributed to a unit holder of the Unit Trust of India or a Mutual Fund shall be charged to tax under section 115R [*see* para 0.9, Annex 1]. It is payable by the Unit Trust of India or the Mutual Fund, as the case may be.

2. The tax under section 115R shall not be chargeable in respect of any income distributed to the unit holders of the Unit Scheme, 1964 of the Unit Trust of India or any other open-ended (and from June 1, 2006, even close ended) equity oriented fund in respect of income distributed under such schemes. For this purpose, "equity oriented fund" is such fund where the investible funds are invested by way of equity shares in domestic companies to the extent of more than 65 per cent of the total proceeds of such fund.

The percentage of equity shareholding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures.

3. With effect from September 1, 2019, provisions of section 115R are not applicable in respect of income distributed by "specified mutual fund". "Specified mutual fund" for this purpose is located in any International Financial Services Centre (IFSC). All the units are held by non-residents. Income is distributed out of its income derived from transactions made on a recognised stock exchange located in any IFSC and where the consideration for such transaction is paid or payable in convertible foreign exchange.

4. The recipient of income will not be chargeable to tax whether the income comes under (*1*) or (*2*) or (*3*) *supra*.

5. The person responsible for making the payment of income distributed by the UTI or a Mutual Fund and the UTI or the Mutual Fund itself, as the case may be, shall be liable to pay the tax to the credit of the Central Government within 14 days from the date of distribution or payment of such income, whichever is earlier.

6. No deduction under any other provision of the Act shall be allowed to the Unit Trust of India or to a Mutual Fund in respect of the income which has been charged to the aforesaid tax.

7. If the person or UTI or Mutual Fund liable to make the payment fails to so pay the tax to the credit of the Central Government, he or it shall be liable to pay simple interest at the rate of 1 per cent every month or part thereof on such amount of tax which has not been paid or was not paid in time.

8. If the person or UTI or Mutual Fund liable to make the payment fails to so pay the tax to the credit of the Central Government, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable and all the provisions of the Act for the collection and recovery of income-tax shall apply.

9. The person responsible for making payment of the income distributed by the Unit Trust of India or the Mutual Fund and the Unit Trust of India or the Mutual Fund, as the case may be, shall be liable to upload a statement of distributed income in Form No. 63 (for UTI) or Form No. 63A (for mutual fund), giving details of income distributed to unit holders, tax paid thereon and other relevant details. The statement should be furnished electronically on or before September 15 giving details of amount distributed during the immediately preceding previous year.

Tax on income received from venture capital companies and venture capital funds [Sec. 115U]

46. The provisions of section 115U are given below —

1. Any income received by a person out of investments made in a venture capital company or venture capital fund shall be chargeable to income-tax in the same manner as if it were the income received by such person had he made investments directly in the venture capital undertaking.

2. The person responsible for making payment of the income on behalf of a venture capital company or a venture capital fund and the venture capital company or venture capital fund shall upload a statement of distribution of income in Form No. 64. The statement of distributed income shall be furnished electronically by November 30 (of the financial year, following the previous year during which such income is distributed). It shall be submitted to the Chief Commissioner or Commissioner of Income-tax, within whose jurisdiction, the principal office of the Venture Capital Company or the Venture Capital Fund, as the case may be is situated.

3. The income paid by the venture capital company and the venture capital fund shall be deemed to be of the same nature and in the same proportion in the hands of the person receiving such income as it had been received by, or had accrued to, the venture capital company or the venture capital fund, as the case may be, during the previous year.

4. The provisions of Chapter XII-D or Chapter XII-E or Chapter XVII-B shall not apply to the income paid by a venture capital company or venture capital fund.

5. The pass through scheme contained in sections 10(*23FB*) and 115U shall not apply to investment funds covered by the provisions of section 115UB.

Case studies

47-P1 *XYZ Ltd., a company in which the public are substantially interested, submits the following particulars for the previous year ending March 31, 2019. Determine its tax liability for the assessment year 2019-20 on the assumption that dividend distributed for the year 2019-20 is Rs. 4,20,000 (date of distribution May 10, 2019).*

	Rs.
Profit from manufacturing activity in India [set up in 1970]	*8,60,000*
Dividends from an Indian company	*3,00,000*
Dividends from a foreign company on shares allotted to it in consideration of transfer of technical know-how	*6,00,000*
Royalty from the Nepal Government for use of its patents	*2,50,000*
Royalty from an Indian company in respect of transfer of technical know-how	*1,50,000*
Short-term gain on sale of unlisted shares	*15,000*
Short-term loss on sale of land	*12,000*
Long-term gain on sale of building (sale proceeds : Rs. 1,50,000, indexed cost of acquisition : Rs. 1,12,400)	*37,600*
Long-term loss on sale of on listed preference shares (sale price : Rs. 28,000, indexed cost : Rs. 58,000)	*30,000*
Short-term gain on sale of machine (sale proceeds : Rs. 2,00,000, cost of acquisition as per section 50 : Rs. 1,40,000)	*60,000*
Brought forward business loss	*5,00,000*
Unabsorbed depreciation	*1,00,000*

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	Rs.	*Rs.*
Business income	8,60,000	
Less : Brought forward business loss and unabsorbed depreciation	6,00,000	2,60,000
Capital gains		
Short-term capital gains on sale of shares	15,000	
Less : Short-term loss on sale of land	12,000	3,000
Long-term capital gains in respect of sale of building	37,600	
Long-term loss on sale of shares	(-)30,000	7,600
Short-term gain on sale of machine [deemed as short-term by virtue of section 50]		60,000
Income from other sources		
Dividend	6,00,000	
Royalty	4,00,000	10,00,000
Gross total income (*a*)		13,30,600
Less : Deduction		*Nil*

	Rs.	Rs.
Net income		13,30,600
Tax on Rs. 13,23,000 @ 30% *plus* tax on Rs. 7,600 @ 20%		3,98,420
Add : Surcharge		*Nil*
Tax and surcharge		3,98,420
Add: Health and education cess @ 4%		15,937
Tax liability		4,14,360

Besides, XYZ Ltd. will pay Rs. 86,332 (*i.e.,* Rs. 4,20,000 × 20.35765) as dividend tax in respect of dividend distributed on May 10, 2019.

47-P2 *XYZ Ltd., a domestic company in which public are substantially interested, manufactures textiles. For the year ending March 31, 2019, statement of profit and loss showed net profit of Rs. 30 lakh on a turnover of Rs. 3 crore. This included the following debits to the statement of profit and loss* :

1. *Dividends amounting to Rs. 4 lakh paid to the shareholders for the accounting year 2018-19.*

2. *Interest amounting to Rs. 18,000, paid on the loan taken for the payment of company's income-tax liability.*

3. *Interest amounting to Rs. 35,000, paid on the loan taken to make donation to an approved charity.*

4. *Rs. 50,000 spent by the managing director on his visit to :*

❑ *Canada to buy machinery and finalise a collaboration agreement of a new independent undertaking proposed to be set up (cement factory) : Rs. 20,000 [machine will be purchased in the next year, approximate cost would be Rs. 8,00,000, expected profit of the next year is Rs. 25,00,000]*

❑ *USA to study market for importing yarn : Rs. 30,000*

5. *Managing director's wife accompanied her husband - Rs. 20,000 was contributed by the company towards her foreign trip expenses and the Canadian collaborator paid Rs. 15,000 to her towards expenses.*

6. *Company incurred Rs. 27,500 as entertainment expenditure.*

7. *Company incurred expenditure of Rs. 4,30,000 as follows :*

❑ *advertisements in newspaper : Rs. 3,50,000*

❑ *advertisements in souvenir of a political party : Rs. 65,000*

❑ *guest house at factory : Rs. 15,000*

8. *Rs. 15,000 paid to legal advisers in respect of proceedings before income-tax authorities.*

9. *Penalty of Rs. 10,000 for importing yarn in contravention of import regulations.*

10. *Bill amounting to Rs. 42,500 for purchase of raw material is paid in cash on April 20, 2018 (being a day when banks were open).*

11. *Another bill of Rs. 46,500 for purchase of raw material is paid in cash on June 10, 2018 (when banks were closed on account of strike).*

Compute the taxable income of the company for the assessment year 2019-20.

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	Rs.
Net profit as per statement of profit and loss	30,00,000
Add : Inadmissible expenses	
Dividends	4,00,000
Interest on loan to pay income-tax [not deductible under section 37(1)]	18,000
Interest on loan to pay donation not allowable—*Madhav Prasad Jatia* v. *CIT* [1979] 118 ITR 200 (SC)	35,000
Travelling expenditure	20,000
Expenditure to study market for importing yarn	—
Wife's expenditure not allowable	20,000
Souvenir advertisement expenditure not allowable under section 37(2B)	65,000
Legal expenses (now fully deductible)	—
Penalty for infraction of law is not allowable	10,000
Payment of Rs. 42,500 in cash [100% of Rs. 42,500 is disallowed]	42,500
Gross total income	36,10,500
Less : Deduction under section 80GGB	65,000
Net income	35,45,500

47-P3 *X (P.) Ltd. is engaged in the manufacture of engineering goods. The statement of profit and loss of the company for the year ending March 31, 2019 shows a net profit of Rs. 30 lakh (before tax). The company gives you the following information* :

1. *Surplus on sale of building Rs. 2 lakh has been credited to statement of profit and loss. This building was purchased on July 1, 2016 for Rs. 4 lakh and was sold on September 30, 2018 for Rs. 6 lakh. No depreciation was provided in the books of the company although the same was claimed and allowed in earlier years in the income-tax assessments of the company @ 5 per cent. The building was let out to employees of the company for their residence.*

2. *The managing director has spent Rs. 36,000 during his visit to UK and USA. This visit was for studying the market for engineering goods in foreign countries but no orders could be booked during his visit.*

3. *The company has given donation of Rs. 2 lakh to scientific research association approved under section 35(1)(*ii*) and Rs. 1,00,000 to an approved charitable trust.*

4. *The company has a guest house at its factory at Nasik. Expenditure on maintenance of guest house : Rs. 5,000 and on messing of customers visiting the factory : Rs. 5,000 have been included in miscellaneous expenses.*

5. *Miscellaneous income includes dividend of Rs. 29,750 from a foreign company. The shares in the foreign company were allotted in consideration of supply of technical know-how under a collaboration agreement approved by the Central Government. Dividend distributed for the financial year 2018-19 is Rs. 40,000.*

6. *The statement of profit and loss has been debited with Rs. 2,00,000 for depreciation which has been worked out on straight line basis. The figures of written down value of assets as per income-tax records and rates of depreciation are given below* :

Assets	WDV April 1, 2018 (Rs. in lakh)	Rate of depreciation (in percentage)
Building (excluding the building let out to employees and sold during the year)	*8*	*5*
Machinery	*10*	*25*
Motor cars	*1*	*25*
Furniture	*1*	*10*

The factory worked for 300 days in first shift and for 200 days in second shift.

7. *The company has set up a new industrial undertaking at Nasik for production of engineering goods. This unit started production on July 1, 2014 and worked on single shift basis. For this purpose, fresh capital of Rs. 10 lakh was called from members and their relatives. The company has spent Rs. 10,000 for the purpose of setting up this new unit (the expenditure was incurred before April 1, 2014). This expenditure has not been debited to statement of profit and loss but appears in the balance sheet under the head "Preliminary expenses". Other particulars about this unit are as under :*

Cost of new building constructed during 2014 : Rs. 2 lakh.

Cost of new machinery installed during 2014 : Rs. 10 lakh.

Capital employed in the unit after adjustment of liabilities : Rs. 12 lakh.

Profit of the unit during 2018-19 : Rs. 2,00,000. This is included in the figure of net profit as per statement of profit and loss.

No separate books are maintained for this unit. Deduction under section 80-IB is available @30 per cent.

8. *The company earns a short-term capital gain of Rs. 4,40,000.*

9. *The company has suffered losses in earlier years. The figures of losses and unabsorbed depreciation of earlier years as per income-tax assessment are as under* :

	Assessment years			
	2015-16 (Rs. lakh)	2016-17 (Rs. lakh)	2017-18 (Rs. lakh)	2018-19 (Rs. lakh)
Long-term capital loss on sale of land	*0.81*	—	*1.665*	—
Short-term capital loss	—	*3.00*	—	—
Business loss	*2.00*	*1.00*	*3.00*	*4.00*
Unabsorbed depreciation (for tax purposes)	*3.50*	*7.50*	—	—
Unabsorbed depreciation (for accounting purposes)	*0.70*	*0.30*	*0.05*	*0.10*

You are required to :

a. *compute the total income of the company,*

b. *state whether any part of the above dividend will be exempt in the hands of the shareholders and, if so, what part,*

c. *give your reasons, in brief, for any adjustments that you may make in your computations.*

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	Rs.	Rs.
Profit as per statement of profit and loss		30,00,000
Add : Inadmissible expenses		
Donation to charitable trust	1,00,000	
Contribution to scientific research association [taken separately]	2,00,000	
Depreciation (taken separately)	2,00,000	5,00,000
		35,00,000
Less : Expenses not already deducted		
Depreciation [*see* Note *1*]	2,03,050	
Contribution to an approved scientific research association [1.50 of Rs. 2 lakh]	3,00,000	
Amortisation of preliminary expenses (*i.e.*, 1/5 of Rs. 10,000)	2,000	5,05,050
		29,94,950
Less : Incomes taxable separately		
Surplus on sale of building	2,00,000	
Dividend from foreign company	29,750	2,29,750
		27,65,200
Less : Brought forward losses		
Business loss of the assessment years 2015-16 to 2018-19	10,00,000	
Unabsorbed depreciation of the assessment years of earlier years	11,00,000	21,00,000
Business income		6,65,200
Short-term capital gains	4,40,000	
Less : Brought forward short-term capital loss	3,00,000	
	1,40,000	
Less : Brought forward long-term capital loss (cannot be set off against short-term capital gains)	—	1,40,000
Income from other sources		
Dividend from foreign company		29,750
Gross total income		8,34,950
Less : Deductions under sections 80C to 80U		
Under section 80-IB [*see* para 254] [*i.e.*, 30% of Rs. 2 lakh]	60,000	
Under section 80G [*see* para 242] in respect of donation		
Amount of donation — Rs. 1,00,000		
Qualifying donation [*i.e.*, 10% of (Rs. 8,34,950— Rs. 60,000)] — Rs. 77,495		
Amount deductible (*i.e.*, 50% of Rs. 77,495)	38,748	98,748
Net income (rounded off)		7,36,200

Notes :

1. Amount of depreciation is computed as under :

Actual cost of building on July 1, 2016	4,00,000
Less : Depreciation of the previous year 2016-17 (*i.e.*, 5% of Rs. 4 lakh)	20,000
WDV on April 1, 2017	3,80,000
Less : Depreciation of the previous year 2017-18 (*i.e.*, 5% of Rs. 3.80 lakh)	19,000
WDV as on April 1, 2018	3,61,000

Computation of depreciation

Block of assets	*Building*	*Plant and machinery*	*Furniture*
Rate of depreciation	*5%* *Rs.*	*15%* *Rs.*	*10%* *Rs.*
Depreciated value on April 1, 2018	11,61,000 (Rs. 8,00,000 + Rs. 3,61,000)	11,00,000	1,00,000
Add : Cost of assets acquired during the previous year	*Nil*	*Nil*	*Nil*
	11,61,000	11,00,000	1,00,000
Less : Sale proceeds of assets sold during the year	6,00,000	*Nil*	*Nil*

Block of assets	*Building*	*Plant and machinery*	*Furniture*
Rate of depreciation	*5%* *Rs.*	*15%* *Rs.*	*10%* *Rs.*
Written down value	5,61,000	11,00,000	1,00,000
Less : Depreciation of 2018-19	28,050	1,65,000	10,000
Depreciated value on April 1, 2019	5,32,950	9,35,000	90,000

47-P4 *Statement of Profit and loss of X Ltd., a public limited company, discloses a net profit of Rs. 6 lakh for the year ending March 31, 2019. From scrutiny of records the following position emerged*:

1. *Workmen and staff welfare expenditure debited in statement of profit and loss includes a sum of Rs. 50,000 being the cost of construction of a primary school exclusively for the benefit of children of employees.*

2. *A sum of Rs. 20,000 was debited in statement of profit and loss, being penalty by way of 1 per cent reduction in selling price imposed by the purchaser for non-fulfilment of delivery conditions of contract of sale due to factors beyond the control of the company.*

3. *General Manager was paid a monthly salary of Rs. 8,500 and was provided with perquisite of the total value of Rs. 20,000 during the previous year.*

4. *Foreign technician (appointment approved by the Central Government) covered under section 10(6)(*viia*) who has come for the first time for production of sophisticated products of the company, was paid salary of Rs. 1.50 lakh and perquisites Rs. 26,000 per annum.*

5. *Guest house expenses of Rs. 40,000 was debited to statement of profit and loss.*

6. *Interest account includes payment of Rs. 25,000 in respect of funds borrowed separately for acquisition of machinery.*

7. *Company received remuneration of Rs. 1 lakh for supply of know-how in the installation of machinery in pursuance of an agreement approved by the Board from a foreign enterprise.*

8. *Managing Director incurred expenses on his foreign tour for promotion of sales outside India Rs. 60,000 debited to statement of profit and loss.*

9. *During the year one machinery (rate of depreciation : 15 per cent) was sold for Rs. 22,000. Its original cost and written down value on income-tax basis as on April 1, 2018 were Rs. 30,000 and Rs. 2,000 respectively and the surplus was credited to capital reserve account.*

Compute the taxable income of the company for the assessment year 2019-20 after taking the following into account:

1. *Depreciation on all assets including all additions made during the year on straight line basis charged to statement of profit and loss amounted to Rs. 2 lakh.*

2. *Depreciated value of assets on April 1, 2018 is as follows : Plant and machinery : Rs. 20,00,000 (rate of depreciation : 15 per cent), building : Rs. 6,05,000 (rate of depreciation : 10 per cent).*

3. *Plant and machinery (new) additions during the year amounted to Rs. 80,000 (assume normal depreciation at 15 per cent on 3 shifts working, date of installation : April 10, 2018).*

4. *Plant and machinery (solar power generating system) additions during the year amounted to Rs. 1.20 lakh (assume normal depreciation at 100 per cent and 3 shifts working, date of installation : April 10, 2018).*

Indicate the reasons for the particular treatment given by you to the different items.

■

	Rs.
Profit as per Profit & Loss account	6,00,000
Add :	
Cost of school building being capital expenditure hence disallowed	50,000
Guest house expenses [now it is deductible under section 37(1)]	*Nil*
Depreciation written off (separately considered)	2,00,000
	8,50,000
Less : Depreciation on all assets [*see* Note 2] [*i.e.*, Rs. 65,500 + Rs. 3,08,700 + Rs. 16,000 + Rs. 48,000 + Rs. 24,000]	4,62,200
Business income	3,87,800
Any other income	*Nil*
Gross total income	3,87,800
Less : Deduction	*Nil*
Net income	3,87,800

Notes :

1. Penalty of Rs. 20,000 is an expenditure incidental to business.

2. Depreciation is calculated as under :

Block of assets	*Building*	*Plant and machinery*	*Plant and machinery*
Rate of depreciation	*10%*	*15%*	*40%*
	Rs.	*Rs.*	*Rs.*
Depreciated value on April 1, 2018	6,05,000	20,00,000	—
Add : Cost of assets acquired during the year	50,000	80,000	1,20,000
	6,55,000	20,80,000	1,20,000
Less : Sale proceeds of assets sold during the year	—	22,000	—
Written down value	6,55,000	20,58,000	1,20,000
Amount of depreciation	65,500	3,08,700	48,000
Additional depreciation	—	16,000	24,000

47-P5 *X Ltd. is a wholly owned subsidiary of a foreign company of the same name. It sets up a new plant for manufacture of drugs in India, for which the machinery and equipment was given free of cost by the foreign company. It incurred a sum of Rs. 2 lakh towards transportation to India and Rs. 1 lakh towards installation of the machinery and equipment. What is the actual cost on which X Ltd. can claim depreciation?*

■

The actual cost for the purpose of depreciation in the hands of the Indian company will be the written down value in the hands of the foreign company adjusted in the manner specified in *Explanation 2* to section 43(*1*). The cost of transportation and installation charges shall be added to the actual cost for purposes of depreciation—*Ciba of India Ltd.* v. *CIT* [1993] 202 ITR 1 (Bom.).

47-P6 *Discuss the following* :

1. *In the course of the assessment of a finance company, newly incorporated, the Assessing Officer found on enquiry that shares of the company had been issued in the names of non-existent persons. He, therefore, proceeded to assess the amounts credited to the accounts of these shareholders as income from undisclosed sources. The company's contention is that the amounts received constituted capital receipts and that it could not have earned any undisclosed income at the inception itself. How far these arguments are valid ?*

2. *X Ltd., a dealer in machinery entered into a contract with A Ltd. to supply a textile machinery for Rs. 13 lakh before December 31, 2018. Since the manufacture of said machinery was stopped, it could not supply the same. Dispute arose between the two parties, and as per arbitration award, X Ltd. paid Rs. 75,000 by way of damages. It claimed it as a business loss. The Assessing Officer proposes to disallow the claim on the ground that the transaction amounted to settlement of a contract otherwise than by actual delivery, according to him it is speculation loss. Examine the rival contentions.*

3. *A Ltd. entered into an agreement with B Ltd. for a lease of the land owned by it at Rs. 100 per sq. yard. The lease was for a period of 15 years. B Ltd. was required, under the terms of the lease, to construct a building on the land at a cost not less than Rs. 10 lakh. At the end of the lease period, the building was to be surrendered to A Ltd. free of cost. In terms of the agreement, B Ltd. constructed a building at a cost of Rs. 10 lakh and used it for the purpose of its business. The written down value of the building at the end of the lease period was Rs. 75,000, which the Assessing Officer assessed as a revenue receipt in the hands of A Ltd. on reversion of the property to it. Is this correct?*

4. *G Ltd., a manufacturing company, was marketing its products through another company M Ltd., which enjoyed the sole distribution rights. It was decided to amalgamate M Ltd. with G Ltd. and to take over its establishment so that the distribution, marketing and selling could be carried on by G Ltd. itself. A sum of Rs. 50,000 was incurred by way of legal expenses in connection with the amalgamation which was claimed by G Ltd. as revenue expenditure for the assessment year 2019-20. Is the claim justified?*

5. *The factory of a company was under lock-out for a period of 200 days during the previous year. The Assessing Officer proposes to disallow 50 per cent of the depreciation on the plant and machinery on the ground that the machinery was used for the purpose of business for less than 182 days. Is the action of the Assessing Officer justified?*

■

Point-wise answer is as follows :

1. Under section 68, it is clear that the Assessing Officer has jurisdiction to make inquiries with regard to the nature and source of a sum credited in the books of account of an assessee and it would be immaterial as to whether the amount so credited is given the colour of a loan or a sum representing the sale proceeds or even receipt of share application money. The use of the words "any sum found credited in the books" in section 68 indicates that the said section is very widely worded and an Assessing Officer is not precluded from making an enquiry as to the true nature and source thereof even if the same is credited as receipt of share application money.

The assessee represents that it has issued shares on the receipt of share application money and the amount so received has been credited in the books of account of the company. The Assessing Officer would be entitled to enquire, and it would indeed be his duty to do so, whether the alleged shareholders do in fact exist or not. If the shareholders exist then, possibly, no further enquiry need be made. But if the Assessing Officer finds that the alleged shareholders do not exist then in effect, it would mean that there is no valid issuance of share capital. Shares cannot be issued in the names of non-existing persons. The use of the words "may be charged" in section 68 clearly indicates that the Assessing Officer would then have the jurisdiction, if the facts so warrant, to treat such a credit to be the income of the assessee. If shareholders are identified and it is established that they have invested money in the purchase of shares then the amount received by the company would be regarded as capital receipt but if, on the other hand, the assessee offers no explanation at all or the explanation offered is not satisfactory, then the provisions of section 68 may be invoked—*CIT* v. *Sophia Finance Ltd.* [1993] 70 Taxman 69 (Delhi).

2. The payment cannot be treated as speculative loss as it is made by way of damages or compensation—*see CIT* v. *Shantilal (P.) Ltd.* [1983] 144 ITR 57 (SC).

3. On the assumptions that the business of the assessee is not to deal in immovable property and rent is not unreasonably low, the value of building cannot be treated as revenue receipt—*CIT* v. *Elphinstone Dye Works (P.) Ltd.* [1971] 82 ITR 634 (Bom.).

4. The expenditure on amalgamation is deductible in 5 years in 5 equal instalments under section 35DD.

5. The limitation of 50 per cent of depreciation for plant and machinery used for a period of less than 180 days applies only in respect of an asset falling within a block which is acquired during the previous year. Assuming that the assets on which depreciation has been claimed are old assets, full depreciation is allowable and, therefore, the action of the Assessing Officer is not justified.

47-P7 *X Textiles (Pvt.) Ltd. furnishes the following information in respect of its business for the period April 1, 2018 to March 31, 2019 and requests your help in computing its total income. Your answer should give detailed workings :*

P & L APPROPRIATION A/C

	Rs.		*Rs.*
General reserves	*8,00,000*	*Net profit carried down from P & L A/c*	*2,00,000*
		Cash assistance received from Government against exports	*3,00,000*
		Duty drawback against exports	*3,00,000*
	8,00,000		*8,00,000*

LAND A/C

Balance b/f (being cost of land purchased in 2003-04)	*10,00,000*	*Sale*	*10,50,000*
Excess carried to capital reserve	*50,000*		
	10,50,000		*10,50,000*

PLANT & MACHINERY A/C

	Rs.		*Rs.*
Balance b/f	*12,00,000*	*Depreciation*	*4,00,000*
Excess carried to capital reserve	*12,00,000*	*Sale*	*20,00,000*
	24,00,000		*24,00,000*

ACQUISITION OF KNOW-HOW A/C

Amount paid to laboratory owned by Government	*3,00,000*	*Balance c/f*	*3,00,000*
	3,00,000		*3,00,000*

INVESTMENT DEPOSIT A/C

Amount paid to IDBI	*3,00,000*	*Balance c/f*	*3,00,000*
	3,00,000		*3,00,000*

Further details are as under which are revealed on your enquiry :

1. *Salaries and wages account include (*i*) a sum of Rs. 1 lakh paid towards the hospitalisation and surgery charges of the managing director, (*ii*) contribution to the recognised provident fund paid by cheque on December 25, 2019 : Rs. 1 lakh.*

2. *Export turnover : Rs. 120 lakh. Total turnover : Rs. 300 lakh.*

3. *Loss from business brought forward from financial year 2017-18 : Rs. 8 lakh.*

■

		Rs.
Net profit as per statement of profit and loss		2,00,000
Add : Cash assistance received from Government against exports [sec. 28(*iiib*)]		3,00,000
Duty drawback against exports		3,00,000
Depreciation [*see* Note *1*]		4,00,000
Contribution to recognised provident fund [*see* Note *2*]		1,00,000
		13,00,000
Less : Depreciation technical know-how [25% of Rs. 3,00,000]		75,000
Profits and gains of business or profession		12,25,000
Capital gain	*Rs.*	
Short-term [*see* Note *3*]	8,00,000	
Long-term [*see* Note *4*]	(–)16,16,667	8,00,000
Total		20,25,000
Less : Brought forward business loss		8,00,000
Gross total income		12,25,000
Less : Deduction		*Nil*
Net income (rounded off)		12,25,000

Notes :

1. Depreciation :

Depreciated value of the block on April 1, 2018	12,00,000
Add : Cost of assets purchased during the previous year	*Nil*
	12,00,000
Less : Sale proceeds of asset sold during the previous year (subject to maximum of Rs. 12,00,000)	12,00,000
Written down value	*Nil*
Depreciation	*Nil*

2. Contribution towards recognised provident fund - By virtue of section 43B, contribution to recognised provident fund should be paid on or before the due date for submission of return of income. Since in this case aforesaid conditions are not satisfied, contribution to recognised provident fund is not deductible.

3. Short-term capital gain		*Rs.*
Sale proceeds of depreciable assets		20,00,000
Less : Cost of acquisition (Sec. 50)	*Rs.*	
- Depreciated value on the first day of the previous year	12,00,000	
- Cost of assets purchased during the year	*Nil*	12,00,000
Short-term capital gain		8,00,000

4. Long-term capital gain

Sale proceeds of land	10,50,000
Less : Indexed cost of acquisition (*i.e.*, Rs. 10,00,000 × 280 ÷ 105)	26,66,667
Capital loss	(–)16,16,667

5. It has been assumed that amount paid towards hospitalisation/surgery charges are not hit by provisions of section 40A(2). Under this section, the Assessing Officer has the discretion to disallow such part of expenses as he considers excessive or unreasonable. The aforesaid expenditure is in the interest of company so that the services of managing director is available to the company.

47-P8 *Your advice is sought on the correctness or otherwise of the following claims for the previous year ending March 31, 2019* :

1. *An assessee-company wrote off an amount of Rs. 1,00,000 to statement of profit and loss, representing the value of plant missing on physical verification and claimed it as a revenue loss.*

2. *A Ltd., a resident company, having a branch in USA, earned profits outside India. When the profits were subsequently remitted into India, it incurred loss due to exchange fluctuations which was claimed as a trading loss.*

3. *The Articles of Association of N Ltd. provided for the payment of commission to its managing director, based on profits of the company, so long as he held that office. The management of the company was taken over by G & Co. who persuaded the managing director to retire on payment of compensation of Rs. 5 lakh, for termination of his right to receive the commission. The Assessing Officer proposes to tax the compensation as salary or alternatively as capital gain.*

4. *A Ltd. is amalgamated with B Ltd. On account of remission of a debt, a surplus of Rs. 2 lakh has arisen in the hands of B Ltd. which has directly been transferred to capital reserve. Is the surplus taxable in the hands of B Ltd. ?*

5. *A Ltd., a non-resident company, was carrying on business in India through a branch which was taken over by an Indian company B Ltd., with effect from July 31, 2018. B Ltd. filed returns of income for the period from April 1, 2018 to July 31, 2018, as well as for the period August 1, 2018 to March 31, 2019. Does the Assessing Officer have jurisdiction to make the assessment of A Ltd. in the hands of B Ltd., the Indian company, for the period ended July 31, 2018 ?*

■

1. As the loss is capital loss, it cannot be claimed as deduction under section 28 under the head "Profits and gains of business or profession". Moreover, the amount cannot be reduced from the block of assets as the plant and machinery were neither discarded, demolished nor destroyed during the previous year.

2. As the revenue profit is held outside India, any loss due to exchange of fluctuation incurred while remitting such profit is deductible as revenue loss.

3. When the management of N Ltd. is taken over by G & Co., the latter company becomes the employer of recipient of compensation. Consequently, compensation for loss of office is taxable in the hands of recipient as profit in lieu of salary under section 17(*3*) read with section 15. Even if it is assumed that G & Co. is not "employer" of the payee, such compensation is taxable as business income under section 28(*ii*).

4. It is chargeable to tax in the hands of B Ltd. by virtue of section 41(1).

5. Section 170(2) can be invoked in the case of successor of the business when the predecessor cannot be found. In this case, it cannot be said that A Ltd. cannot be found and even if B Ltd. had filed the return, the legal position cannot be altered in any way. If an assessment is to be made on the successor company, it must be done in accordance with the provisions of law and when the predecessor company is available and can be assessed for assessment, no proceedings can be taken against the successor company under section 170(2)—*CIT* v. *Tecalemit (I) Ltd.* [1992] 64 Taxman 149 (Cal.).

47-P9 *Developers Ltd. is a company engaged in the development of property. The shares issued by it carry the right of occupancy in buildings constructed by it in proportion to the holding. For construction of the office complex, the company collected new refundable deposits from its shareholders, and leased them floor space proportionately to the shares held. The premises were let out by the shareholders who receive rental income. The company also collected amounts towards maintenance charges from each shareholder in respect of the premises let out by them. On the following issues your advice is sought* :

1. *Are the non-refundable deposits taxable in the company's hands and what is the basis for computing the income of the company ?*

2. *Discuss the taxability or otherwise of the maintenance charges collected ?*

3. *Are the shareholders assessable on the rental income received by them and if so, how ?*

■

Pointwise answer is as follows :

1. The non-refundable receipt is a trading receipt, as it is related to the trading activity of the company. The cost of construction should be deducted from the aforesaid trading receipt. The profits shall accrue in the year in which the transaction regarding completion of building and allotment of space is completed.

2. The lump sum receipts received from shareholders in respect of maintenance of building is taxable under section 28.

3. The shareholders shall be treated as "owners" in respect of the part of the building leased to them by virtue of section 27(*iii*) and, consequently, chargeable to tax in respect of the rental income under section 22.

47-P10 *XYZ Ltd. is a company running a textile mill. During 2018-19, it had made a net loss of Rs. 12,75,000 after providing Rs. 4,50,000 for depreciation which is the same as admissible for income-tax purposes. Scrutiny of its accounts reveals following debits for expenditure under various heads. Compute the company's income giving reasons for allowance or disallowance of each of the items :*

1. The company has taken overdraft facility from a bank for payment of income-tax and surtax. It was found that an interest amount of Rs. 17,000 has been paid to the bank on this overdraft.

2. An amount of Rs. 50,000 described as penalty was paid to Export Promotion Council by the company during the year. It was explained that the payment was on account of shortfall in export performance undertaken at the time of import of Egyptian cotton and that the company found that the penalty was less than the loss which the company would have otherwise incurred if the full export, as undertaken, had been made.

3. The company had paid Rs. 1,00,000 as fine to Customs Department for having imported larger quantity than what was authorised by the import licence by tampering with the licence documents. The assessee was able *to redeem the entire stocks by payment of this fine and was, in fact, able to make a profit even after the payment of fine on these imports.*

4. Managing director of the company was given a salary of Rs. 70,500 per month besides house rent allowance of Rs. 6,000 per month. It was ascertained that he was given medical reimbursement of Rs. 8,000 and free use of company's car for personal purposes evaluated at Rs. 36,000 for the whole year.

5. Gratuity of Rs. 95,000 was paid to the widow of an executive director who died in office after service with the company for 25 years. His last pay was Rs. 3,000 per month. The company had a gratuity scheme for its employees but the executive director was not covered by it. However, the board of directors sanctioned the amount as an ex gratia *payment of the gratuity by calculating the amount in the same manner as for other employees.*

6. The company had raised foreign loans carrying interest and the rupee equivalent of the loan had been brought to India for the use in its business for working capital. A part of the loan was repaid but, during the year, there was a revaluation of the foreign currency. The liability on the outstanding loan, which increased in terms of rupees to the extent of Rs. 1,51,500 was debited to statement of profit and loss.

7. The company had debited Rs. 6,000 in advertisement account. Payment was made after March 1, 2019, to a Bombay representative of Radio Ceylon for advertising the company's products. The payment was made by crossed cheque drawn on a bank at Bombay.

8. The company had debited a sum of Rs. 22,000 as bad debt by writing off this amount due from one C, a cotton merchant to whom this advance was made for purchase of cotton. C was absconding and did not make any delivery against the order. He could not be traced.

■

	Rs.
Net profit as per statement of Profit & Loss	(-)12,75,000
Adjustments	
Add : Interest on overdraft taken to pay income-tax and surtax	(+)17,000
Add : Fine paid to Customs Department for tampering with the licence documents and importing larger quantity than authorised	(+)1,00,000
Gross total income	(-)11,58,000
Less : Deduction	—
Loss to be carried forward	(-)11,58,000

Notes :

1. Penalty of Rs. 50,000 (paid to Export Promotion Council) was not given for infraction of any law but for its failure to export specified quantity as per the licence. The payment is, therefore, made wholly in the course of carrying on business. It is deductible from business income—*CIT* v. *Rajkumar Mills Ltd.* [1982] 135 ITR 811 (MP).

2. Tampering with the licence documents and thereby importing larger quantity than authorised quantity, amounts to an illegal activity. Any fine payable for such illegal activity for infringement of law in course of carrying out a lawful business is not allowable. The fact that it is in lieu of confiscation of goods could not save the disallowance—*Garden Silk Weaving Factory* v. *CIT* [1982] 9 Taxman 179 (Guj.).

3. Ex gratia payment of gratuity to the widow of an executive director is an allowable business expenditure—*Sassoon J. David & Co. Ltd.* v. *CIT* [1979] 118 ITR 261 (SC).

4. The loss of Rs. 1,51,500 on account of increased liability of outstanding foreign loan as a result of revaluation of foreign currency is an allowable business loss, since the amount of loan was brought to India for the purpose of working capital usage—*Davidson of India (P.) Ltd.* v. *CIT* [1982] 9 Taxman 245 (Cal.).

5. Loss due to writing-off of advance of Rs. 22,000 is allowable as a business loss even if it is wrongly described as bad debt—*CIT* v. *Mysore Sugar Co. Ltd.* [1962] 46 ITR 649 (SC).

47-P11 *X Ltd., an Indian company, is engaged in the business of manufacture of goods in India for domestic market. The audited profit and loss account for the year ending March 31, 2019 is as follows :*

	Rs.		Rs.
Cost of goods sold	*14,52,500*	*Sales*	*40,70,500*
Office expenses	*1,30,000*	*Rent of quarters near factory given to workers*	*60,000*
Salary to employees	*12,80,000*		
Expenditure on scientific research	*84,000*	*Rent of a commercial property given on rent to a foreign bank*	*1,30,000*
Bad debts	*10,000*		
Entertainment expenses	*57,000*	*Sale proceeds of gold (not being stock-in-trade)*	*2,60,000*
Advertisement expenditure	*2,27,000*		
Travelling expenses	*3,20,000*	*Amount charged from persons using guest house of company*	*10,000*
Interest	*82,000*		
Income and wealth tax	*1,16,400*		

	Rs.	Rs.
Sales tax, excise duty and customs duty	*1,76,000*	
Municipal tax of quarters given to workers	*16,000*	
Municipal tax of commercial property	*12,000*	
Repairs of workers' quarters	*12,000*	
Repairs of commercial property given on rent	*7,000*	
Repairs of factory	*10,000*	
Insurance	*36,000*	
Land revenue of workers' quarters	*2,000*	
Land revenue of commercial building	*6,000*	
Depreciation	*1,11,600*	
Other expenses	*1,10,710*	
Net profit	*2,72,290*	
	45,30,500	*45,30,500*

Other information :

1. *Cost of goods sold includes the following :*
   a. *goods of Rs. 3,80,000 purchased on May 10, 2018 from B Ltd. in which Mrs. X holds 70 per cent equity capital (Mrs. X does not hold any share in X Ltd., but X is a director and holds 25 per cent share capital in X Ltd., similar goods were purchased on May 11, 2018 from market for Rs. 2,86,000) (out of Rs. 3,80,000, Rs. 3,50,000 is paid by an account payee cheque and Rs. 30,000 is paid in cash) ;*
   b. *goods purchased from Y Ltd. of Rs. 90,000 which is paid by a bearer cheque.*
2. *Out of salary to employees of Rs. 12,80,000 —*
   a. *Rs. 40,000 is employees' contribution to recognised provident fund, Rs. 37,500 of which is credited in the employee's account in the relevant fund before the "due date";*
   b. *Rs. 26,000 is bonus which is paid on September 13, 2019 ;*
   c. *Rs. 46,000 is commission which is paid on December 1, 2019 ;*
   d. *Rs. 10,000 is incentive to workers which is paid on December 10, 2019 ;*
   e. *Rs. 30,000 is paid outside India on which tax is not deducted at source nor paid to the Government;*
   f. *Rs. 5,000 being capital expenditure for promoting family planning amongst employees; and*
   g. *Rs. 30,000 being entertainment allowance given to employees.*
3. *Expenditure on scientific research includes Rs. 40,000 being cost of land and Rs. 10,000 paid to an approved National Laboratory for undertaking scientific research under an approved programme.*
4. *Entertainment expenses include the following :*
   a. *expenses at a five-star hotel : Rs. 14,000 ;*
   b. *expenses on providing food/beverages to employees in office, factory or other place of their work : Rs. 4,000 ;*
   c. *expenses on providing food/beverages to employees during working hours in a place other than place of work : Rs. 8,000 (*i.e., *Rs. 40 for an employee for 60 days* plus *Rs. 25 for an employee for 224 days) ;*
   d. *club bills for entertaining customers : Rs. 9,000 ;*
   e. *entertainment expenditure incurred outside India : Rs. 4,700 (permission of RBI has been taken).*
5. *Advertisement expenditure includes the following :*
   a. *expenditure incurred outside India : Rs. 46,000 (permitted by RBI to the extent of Rs. 41,400) ;*
   b. *articles presented by way of advertisement (60 articles cost of each being Rs. 900, 36 articles cost of each being Rs. 1,700) ;*
   c. *Rs. 16,000 being cost of advertisement which appeared in a newspaper owned by a political party ;*
   d. *Rs. 11,400 being capital expenditure on advertisement ;*
   e. *Rs. 15,000 paid in cash ;*
   f. *Rs. 7,000 paid to a concern in which X has substantial interest (amount is excessive to the extent of Rs. 1,400).*
6. *Travelling expenses include the following :*
   a. *Rs. 1,60,000 being expenditure incurred on a foreign tour, Rs. 9,000 out of which is incurred in Indian currency and Rs. 1,51,000 in foreign currency (Rs. 1,40,000 permitted by RBI under foreign exchange regulations) for a visit of 8 days to Germany, out of 8 days, 2 days are utilised by X for attending personal work ;*
   b. *Rs. 40,000 being expenditure on air fare in India by a sales manager (who is otherwise entitled for a first class rail travel) ;*
   c. *Rs. 6,000 incurred for purchasing a machine for factory which is put to use on March 1, 2019 ;*
   d. *Rs. 54,000 being hotel expenses as follows :*
      i. *4 days' visit to Madras : Rs. 16,000 ;*

ii. *3 days' visit to Bombay : Rs. 6,000 ;*

iii. *17 days' visit to Bangalore : Rs. 32,000.*

7. *Out of Rs. 82,000 (being interest), Rs. 60,000 is paid to an Indian company (no tax is deducted at source during the previous year but it deducted on April 1, 2019 and deposited an April 2, 2019). Rs. 15,000 is payable to IDBI (amount is paid on December 6, 2019).*

8. *Taxes debited to P & L a/c have been paid as follows :*

a. *income-tax and wealth-tax on May 31, 2019 ;*

b. *sales tax, excise duty and customs duty : Rs. 1,70,000 on March 31, 2019 and Rs. 6,000 on December 10, 2019 ;*

c. *municipal tax (workers' quarters) on June 30, 2019 ;*

d. *municipal tax (commercial building) on June 30, 2019.*

9. *Out of insurance of Rs. 36,000, Rs. 6,000 is fire insurance premium of workers' quarters (paid on April 10, 2019) and Rs. 4,000 is fire insurance premium of commercial building (paid on April 10, 2019).*

10. *Land revenue of Rs. 8,000 is paid on September 10, 2019.*

11. *Other expenses include the following :*

a. *repairs of guest house : Rs. 6,000 ;*

b. *cost of facilities provided in the guest house : Rs. 41,200 ;*

c. *cost of maintaining a holiday home for the benefit of 140 employees of the company : Rs. 30,000 ;*

d. *amount not deductible under section 37(1) : Rs. 4,000.*

12. *Depreciation of Rs. 1,11,600 is calculated as follows : 15 per cent of Rs. 4,00,000, being the depreciated value of the block on April 1, 2018 + 15 per cent of Rs. 3,44,000, being cost of a new machine which is put to use on March 1, 2019 ; cost of Rs. 3,44,000 does not include travelling expenditure of Rs. 6,000 which is included in "travelling expenses".*

13. *Other expenses include a sum of Rs. 25,000 paid to the auditor (tax is deducted on January 10, 2019 and it is deposited on September 17, 2019).*

14. *Indexed cost of acquisition of gold : Rs. 2,41,000.*

Determine the amount of net income of X Ltd. for the assessment year 2019-20.

■

	Rs.
Net profit as per P & L a/c	2,72,290
Adjustment	
Income-tax and wealth-tax	(+)1,16,400
Excess cost of purchasing goods from B Ltd. [not allowed under section 40A(2)]	(+)94,000
Payment of Rs. 30,000 to B Ltd. in cash [no adjustment is required as Rs. 94,000 paid to B Ltd. is disallowed under section 40A(2)]	—
Payment of Rs. 90,000 by bearer cheque (100% of Rs. 90,000)	(+)90,000
Employees' contribution to provident fund (treated as income)	(+)40,000
Amount credited to employees' provident fund before "due date"	(–)37,500
Commission paid after September 30, 2019 (not allowed by virtue of section 43B)	(+)46,000
Salary paid outside India on which tax is not deducted at source [not allowed by virtue of section 40(*a*)(*i*)]	(+)30,000
Capital expenditure on family planning (one-fifth of such expenditure is deductible every year in 5 years)	(+)4,000
Cost of land (not deductible under section 35)	(+)40,000
Payment to an approved National Laboratory (amount deductible is 150% of Rs. 10,000)	(–)5,000
Entertainment expenses [it is fully deductible under section 37(1)]	—
Advertisement expenses incurred outside India to the extent not permitted by RBI [deductible under section 37(1)]	—
Articles presented of an amount exceeding Rs. 1,000 per article [it is deductible under section 37(1)]	—
Advertisement appeared in a newspaper owned by a political party [not deductible by virtue of section 37(2A)]	(+)16,000
Advertisement expenses exceeding Rs. 10,000 paid in cash	(+)15,000
Capital expenditure on advertisement [not deductible under section 37(1)]	(+)11,400
Advertisement expenses paid to a relative [to the extent it is excessive]	(+)1,400
Travelling expenses incurred outside India [amount deductible is 6/8 of (Rs. 1,60,000 : Rs. 1,20,000; amount not deductible is Rs. 1,60,000—Rs. 1,20,000)]	(+)40,000

	Rs.
Expenditure on air fare for inland travel (fully deductible)	—
Capital expenditure on travelling [not deductible; it can be capitalised and depreciation can be claimed]	(+)6,000
Hotel expenses [amount is deductible]	—
Interest paid to a resident without deducting tax at source [as tax is deductible but not deducted during the current year, 30% of interest is not deductible. Since tax is deducted in the next year, interest (which is disallowed during the current year) will be allowed as deduction in the next year]	(+)18,000
Interest payable to IDBI paid after the due date of furnishing of return	(+)15,000
Sales tax, etc., paid after the due date of furnishing of return	(+)6,000
Municipal tax of commercial property given on rent	(+)12,000
Repairs of commercial property given on rent	(+)7,000
Fire insurance premium of property given on rent	(+)4,000
Land revenue of workers' quarters paid before the due date of furnishing of return (deductible)	—
Land revenue of property given on rent (not deductible)	(+)6,000
Repairs of guest house (deductible under section 30)	—
Cost of providing different facilities in the guest house [deductible under section 37(1)]	—
Amount not deductible under section 37(1)	(+)4,000
Rent of quarters given to workers (treated as business receipt as quarters are generally given to workers for running the business smoothly)	—
Rent of property given to a foreign bank (it is taxable as house property income)	(–)1,30,000
Sale proceeds of gold (it is taxable under section 45)	(–)2,60,000
Depreciation [*see* note]	(–)9,650
Auditor's fees [it is deductible and no adjustment is required, since tax is deducted during the current year and it is deposited before the due date of submission of return of income: September 30, 2019]	*Nil*
Income under the head "Profits and gains of business or profession" (*a*)	4,52,340
Income from house property	
Gross annual value (being rent of commercial property)	1,30,000
Less : Municipal tax (not deductible as not paid during the previous year)	*Nil*
Net annual value	1,30,000
Less : Standard deduction (30% of Rs. 1,30,000)	39,000
Income from property (*b*)	91,000
Capital gain	
Sale proceeds of gold	2,60,000
Less : Indexed cost of acquisition	2,41,000
Long-term capital gain (*c*)	19,000
Gross total income [(*a*) + (*b*) + (*c*)]	5,62,340
Less : Deduction under section 80GGB (payment of advertisement by an Indian company to a political party is treated as "contribution" to the political party)	16,000
Net income	5,46,340
Note - Depreciation	
Depreciated value of the block on April 1, 2018	4,00,000
Add : Actual cost of asset which is put to use on March 1, 2019 (*i.e.*, Rs. 3,44,000 + Rs. 6,000, being travelling expenses)	3,50,000
Written down value	7,50,000
Amount of depreciation which is deductible under section 32 [*i.e.*, 15% of Rs. 4,00,000 + 50% of 15% of Rs. 3,50,000]	86,250
Additional depreciation [50% of 20% of Rs. 3,50,000]	35,000
Total admissible depreciation	1,21,250
Depreciation debited to P & L a/c	1,11,600
Amount further deductible	9,650

47-P12 *XYZ Ltd., a company mainly engaged in the business of manufacturing, shows a profit of Rs. 7,86,000 after debiting the following :*

	Rs.
1. *Payment of gratuity voluntarily and on account of commercial expediency to an employee who died abroad while on company's business tour*	*27,900*
2. *Fees paid to an architect for valuation of buildings of the assessee*	*12,500*
3. *Compensation paid to a director on termination of his service*	*1,30,000*
4. *Lump sum consideration paid for obtaining a licence in respect of a technical information from a foreign company to improve quality of products*	4,80,000
5. *Payment made to eliminate underbidding for the purpose of keeping up remunerative prices*	*65,000*
6. *Interest on unpaid purchase price of a business asset*	*14,000*
7. *Expenses incurred to eliminate a drain under statutory obligation*	*1,47,000*
8. *Expenses paid to management consultant for preparation and formulation of budgeting formats*	*34,000*
9. *Expenditure incurred on foreign tours to attend business conferences*	*18,700*
10. *Payment of income-tax in foreign countries*	*82,000*
11. *Payment in advance for a new telephone connection under OYT scheme*	*15,000*
12. *Travelling expenses of a director with the object of negotiating a collaboration with foreign manufacturers for initiation of new line of business*	*80,000*
13. *Payment in annual instalment for a period of 20 years under an approved agreement to a foreign collaborator for technical know-how and for right to manufacture and sell products in India*	*1,80,000*
14. *Betterment charges paid under a Town Planning Scheme*	*12,000*
15. *Expenditure incurred for repairing a property taken on lease*	*4,000*
16. *Legal expenses incurred in connection with issue of capital*	*32,750*
17. *Expenses incurred for registration of a trade mark*	*11,150*
18. *Shares issued at par to employees to further its interest (difference between market price and par value is debited to statement of profit and loss, and claimed as revenue expenditure)*	*66,750*
19. *Insurance premium paid against consequential loss policy*	*38,000*
20. *Anticipated loss under forward contract for purchase of raw material as a result of decrease in market price*	*1,20,780*
21. *Loss on account of non-recovery against a bill due to dishonesty and negligence of employees*	*36,000*
22. *Loss caused by depreciation of investment in securities*	*17,210*
23. *Loss caused by non-recovery of tax paid by the assessee as a statutory agent of a non-resident*	*8,300*
24. *Initial expenditure on installation of fluorescent tube lights*	*800*
25. *Payment of salary to a foreign technician approved by Government*	*1,07,000*
26. *Expenditure on accommodation at the place where the factory is situated for directors and officers*	*40,000*
27. *Lunch at five-star hotel where four representatives of suppliers were taken to lunch and purchase manager and secretary of the company accompanied them*	*3,800*
28. *Payment of State Electricity Board for providing service lines*	*19,000*
29. *Payment in respect of income-tax proceedings —*	
a. *payment for preparation of return of income*	*6,000*
b. *payment for filing income-tax appeals/reference (the recipient is not an employee of the company)*	*11,000*
c. *payment of salary @ Rs. 9,000 per month to an employee for dealing with income-tax matters*	*1,08,000*
d. *payment to a tax consultant (not being an employee) @ Rs. 500 per month for advising company in connection with different obligations/liabilities under the Act*	*6,000*
30. *Loss on account of non-recovery of advance given to 100 per cent subsidiary company engaged in business of financing subsidiary companies*	*1,06,000*
31. *Payment of outstanding fringe benefit tax*	*20,000*

Determine the taxable income of the company for the assessment year 2019-20.

■

	Rs.
Net profit as per statement of Profit and loss	7,86,000
Add : Inadmissible expenses	
1. Payment of gratuity on account of commercial expediency is deductible even if there is no express contract or there is no past practice, as it will engender confidence of employees in management—*CIT* v. *Laxmi Cement Distributors (P.) Ltd.* [1976] 104 ITR 711 (Guj.)	—
2. Fee for valuation of buildings is deductible if valuation is required in the course of carrying on business (*i.e.*, for computing insurable value, for ascertaining amount of security offered); if however, valuation is made for the purpose of selling of building it is not deductible	—
3. Compensation paid to a director is deductible if service is terminated in the interest of business of the assessee—*F.E. Dinshaw Ltd.* v. *CIT* [1959] 36 ITR 114 (Bom.)	—
4. Depreciation is deductible @ 25%	3,60,000
5. Payment made to eliminate underbidding to keep remunerative prices is deductible as it is a revenue expenditure	—
6. In the case of existing business interest paid on unpaid purchase price of business asset is deductible as revenue expenditure—*Bombay Steam Navigation Co. (1953) (P.) Ltd.* v. *CIT* [1965] 56 ITR 52 (SC)	—
7. Expenses incurred to eliminate a drain is capital expenditure—*Bean* v. *Doncaster Amalgamated Collieries Ltd.* [1946] 1 All ER 642 (HL)	1,47,000
8. Payment made to a management consultant for devising formats for budgeting is deductible as it is incurred for improvement and rationalisation of administration of assessee's business	—
9. Expenditure incurred for keeping abreast of least techniques and developments in business is deductible—*CIT* v. *S. Krishna Rao* [1970] 76 ITR 664 (AP)	—
10. Income-tax is not deductible ; however, the assessee can claim double taxation relief in respect of doubly taxed income	82,000
11. OYT advance money is allowable as deduction in the year of payment	—
12. Expenditure incurred in connection with initiation of a new venture is a capital expenditure ; it is, therefore, not deductible under section 37(1) [it may be capitalised]	80,000
13. Payment of annual instalment for technical know-how is a revenue expenditure—*ACC Vickers Babcock Ltd.* v. *CIT* [1976] 103 ITR 321 (Bom.)	—
14. Betterment charges are capital expenditure—*CIT* v. *Mihir Textiles Ltd.* [1976] 104 ITR 167 (Guj.)	12,000
15. Expenditure on repairs of leased property is deductible	—
16. Legal expenditure incurred for issue of capital is not deductible—*India Cements Ltd.* v. *CIT* [1966] 60 ITR 52 (SC)	32,750
17. Expenditure on registration of trade mark is a revenue expenditure—*CIT* v. *Finlay Mills* [1951] 20 ITR 475 (SC)	—
18. Premium foregone by a company while issuing shares is not a trading transaction ; hence it is not deductible—*Lowry* v. *Consolidated African Selection Trust Ltd.* [1940] 8 ITR (Supp.) 88 (HL)	66,750
19. Amount paid to insure business against loss of profits is deductible	—
20. Anticipated loss in a forward contract is not deductible	1,20,780
21. Loss on account of negligence or dishonesty of employees is deductible—*Curtis* v. *J. & G. Oldfields Ltd.* [1925] 9 TC 319	—
22. Loss on account of depreciation of investment in securities is a capital loss—*Punjab National Bank Ltd. v. CIT* AIR 1926 Lahore 373	17,210
23. Loss on account of non-recovery of tax paid by the assessee as a statutory agent is not deductible— *CIT* v. *Abdullabhai Abdul Kadar* [1961] 41 ITR 545 (SC)	8,300
24. Expenditure incurred initially on installation of fluorescent tube lights is a capital expenditure	800
25. Payment of salary to a foreign technician is deductible	—
26. Expenditure on accommodation for directors and officers at the place where the factory is situated [it is deductible under section 37(1)]	—
27. Expenditure on lunch for representatives of suppliers, purchase manager and secretary is "entertainment expenditure"; it is, however, fully allowed as deduction under section 37(1)	—

	Rs.
28. Payment to State Electricity Board for providing service lines is a revenue expenditure because it is incurred to increase the income of the company	—
29. Expenditure on income-tax proceedings is not disallowed under section 40A(12)	—
30. Loss on account of non-recovery of advances relates to carrying on business ; as business of the 100 per cent subsidiary company relates to financing of subsidiary companies and is allowable as deduction—*CIT* v. *Gillanders Arbuthnot & Co. Ltd.* [1982] 9 Taxman 76 (Cal.)	—
31. Payment of outstanding fringe benefit tax (not deductible)	20,000
Net income	17,33,590

47-P13 *Statement of Profit and loss of X Ltd. for the year ending March 31, 2019 is given below—*

	Rs.		Rs.
Expenditure for earning agricultural income	*40,000*	*Gross profit*	*71,83,000*
Income-tax, dividend tax and interest pertaining to these taxes	*2,13,000*	*Agricultural income*	*9,00,000*
Penalty and fine under the Income-tax Act	*42,000*	*Dividend for Indian companies*	*4,00,000*
Excise duty	*19,20,000*	*Dividend for foreign companies (share-holding of X Ltd. : 1.5 per cent)*	*3,00,000*
Wealth-tax and fringe benefit tax	*2,90,000*	*Long-term capital gain on transfer of gold*	*72,000*
Depreciation	*7,80,000*	*Long-term capital gain on transfer of equity shares (securities transaction tax is applicable)*	*2,70,000*
Depreciation (pertaining to revaluation of assets)	*70,000*	*Short-term capital gain on transfer of equity shares (securities transaction tax is applicable)*	*92,000*
Statutory reserve (created on the direction of Supreme Court)	*5,00,000*	*Withdrawal from revaluation reserve account*	*72,000*
Provision for bad and doubtful debts	*50,000*	*Withdrawal from general reserve*	*42,000*
Provision for deferred tax	*72,000*	*Withdrawal from capital reserve (which was not created by debiting statement of profit and loss)*	*10,000*
Salary	*11,20,000*	*Interest on units of mutual funds*	*8,000*
Other expenses	*14,20,000*		
Net profit	*28,32,000*		
	93,49,000		*93,49,000*

Other information—

1. *Depreciation under section 32 is Rs. 5,50,000. Besides, the company eligible for an additional depreciation of Rs. 15,000.*
2. *Statutory reserve was created under the direction of Supreme Court given under its judgment dated July 1, 2018.*
3. *Provision for bad and doubtful debts pertains to a debtor who is not traceable. In the accounting year 2019-20, it is written off.*
4. *Salary includes payment of Rs. 4,00,000 to an employee after deducting tax at source. The company does not have any employee who is non-resident. Tax deducted is deposited late but before August 30, 2019.*
5. *Out of excise duty debited to statement of profit and loss, Rs. 50,000 is disputed and not paid so far.*
6. *During the previous year 2018-19, a company paid an outstanding sales tax of Rs. 59,000 for the accounting year 2008-09.*
7. *Other expenses include Rs. 4,00,000 being capital expenditure for acquiring a license.*
8. *X Ltd. is a public limited company and its shares are not quoted in any stock exchange in India. However, shares of X Ltd. are quoted in Hong Kong stock exchange.*
9. *The company is eligible for deduction under section 80-IB at the rate of 30 per cent.*
10. *For income-tax purposes, the company wants to claim brought forward business loss of Rs. 24,00,000 (previous year 2017-18), unadjusted depreciation of Rs. 43,000 (previous year 2009-10), long-term capital loss of Rs. 8,000 (previous year 2016-17).*
11. *For accounting purposes, the company wants to claim deduction of accumulated loss of Rs. 44,000 out of which Rs. 10,000 is on account of depreciation.*
12. *On March 31, 2017, there were four shareholders in the company - A (60%), B (10%), C (8%) and D (22%). On April 1, 2017, A transfers his entire shareholder to his friend E for a consideration of Rs. 40 crore. On March*

10, 2018, E transfers his entire shareholders to Reserve Bank of India. There is no other change in the shareholding pattern.

Find out the taxable income and tax liability thereon for the assessment year 2019-20.

■

Computation of income—

	Rs.
Net profit as per statement of profit and loss	28,32,000
Add: Expenditure for earning agricultural income	40,000
Add: Income-tax, dividend tax and interest pertaining to these taxes	2,13,000
Add: Penalty and fine under the Income-tax Act	42,000
Add: Wealth-tax and fringe benefit tax	2,90,000
Add: Depreciation (Rs. 7,80,000 + Rs. 70,000)	8,50,000
Add: Statutory reserve	5,00,000
Add: Provision for bad and doubtful debts	50,000
Add: Provision for deferred tax	72,000
Less: Agricultural income	(-) 9,00,000
Less: Dividend from Indian companies	(-) 4,00,000
Less: Dividend for foreign companies	(-) 3,00,000
Less: Long-term capital gain on transfer of gold	(-) 72,000
Less: Long-term capital gain on transfer of equity shares	(-) 2,70,000
Less: Short-term capital gain on transfer of equity shares	(-) 92,000
Less: Withdrawal from revaluation reserve account	(-) 72,000
Less: Withdrawal from general reserve	(-) 42,000
Less: Withdrawal from capital reserve	(-) 10,000
Less: Interest on units of mutual funds	(-) 8,000
Less: Depreciation under section 32 (Rs. 5,50,000 + Rs. 15,000)	(-) 5,65,000
Add: Unpaid excise duty	50,000
Less: Sales-tax for the previous year 2008-09 (earlier disallowed under section 43B)	(-) 59,000
Add: Capital expenditure for acquiring a license	4,00,000
Less: Depreciation on license under section 32 (being 25% of Rs. 4,00,000)	(-) 1,00,000
Business income	24,49,000
Capital gains (long-term : Rs. 72,000 + short-term : Rs. 92,000)	1,64,000
Income from other sources (dividend from foreign companies)	3,00,000

Adjustment of losses - Section 79 is not applicable, as X Ltd. is a company in which the public are substantially interested (not less than 40% shares are owned by RBI). Consequently, brought forward losses can be adjusted as follows—

	Income before adjusting brought forward losses	*Brought forward losses*	*Income after adjustment*
	Rs.	*Rs.*	*Rs.*
Business income	24,49,000	24,43,000	6,000
Capital gains	1,64,000	8,000	1,56,000
Income from other sources	3,00,000	—	3,00,000
Gross total income			4,62,000
Less: Deduction under section 80-IB (30% of Rs. 6,000)			1,800
Net income			4,60,200
Tax (20% of Rs. 64,000, 15% of Rs. 92,000, 30% of Rs. 3,04,200)			1,17,860
Add: Health and education cess @ 4%			4,714
Tax liability under normal provision			1,22,570

Computation of book profit—

	Rs.
Net profit as per statement of profit and loss	28,32,000
Add: Income-tax, dividend tax and interest	2,13,000
Add: Transfer to statutory reserve	5,00,000
Add: Expenditure for earning tax-free income	40,000
Add: Entire depreciation (Rs. 7,80,000 + Rs. 70,000)	8,50,000
Add: Provision for deferred tax	72,000
Add: Provision for bad and doubtful debts	50,000
Less: Withdrawal from general reserve	(-) 42,000
Less: Income exempt from tax (Rs. 9,00,000 + Rs. 4,00,000 + Rs. 8,000)	(-) 13,08,000
Less: Depreciation	(-) 7,80,000
Less: Withdrawal from revaluation reserve to the extent it does not exceed depreciation pertaining to revaluation	(-) 70,000
Less: Loss or depreciation brought forward, whichever is lower (*i.e.*, Rs. 34,000 or Rs. 10,000, whichever is lower)	(-) 10,000
Book profit	23,47,000
Minimum alternate tax (*i.e.*, 18.5% of Rs. 23,47,000 + 4% education cess)	4,51,560

The company will have to pay Rs. 4,51,560 as tax for the assessment year 2019-20.

MULTIPLE CHOICE QUESTIONS

Q1. Section 79 is applicable only in the case of non-listed Indian companies—

a. True;

b. False.

Q2. Section 79 is applicable for adjustment of current year losses in the current year—

a. True;

b. False.

Q3. Section 79 is not applicable in the case of adjustment of brought forward capital loss—

a. True;

b. False.

Q4. Section 79 is not applicable in the case of adjustment of unabsorbed depreciation—

a. True;

b. False.

Q5. A Ltd. is a private limited company controlled by X and his family members. It has brought forward business loss pertaining to the previous year ending March 31, 2017. On March 31, 2017 and March 31, 2019, persons holding 51 per cent shares are different. The change takes place because of transfer of shares by way of sale between different members of the family. The loss can be set off during the previous year 2018-19—

a. True;

b. False.

Q6. X Ltd. is a private limited company but it is a subsidiary of Y Ltd. which is a company in which the public are substantially interested. Section 79 is not applicable in the case of X Ltd.—

a. True;

b. False.

Q7. X Ltd. is a private limited company controlled by X, his family members and close friends. It has brought forward business loss pertaining to the previous year ending March 31, 2018. On March 31, 2018 and March 31, 2019, persons holding 51 per cent shares are different. The change takes place because of transfer of shares by Will after the death of one of the family members to a close family friend. The loss can be set off during the previous year 2018-19—

a. True;

b. False.

Q8. Minimum alternate tax is applicable in the following cases—

a. Limited liability partnership;

b. Partnership firm;

c. Co-operative society;

d. All of above;

e. None of above.

Q9. Amount deductible under section 80-IA is not subject to minimum alternate tax—

a. True;

b. False.

Q10. Minimum alternate tax is not applicable in the case of a company which is entirely owned by President of India—

a. True;

b. False.

Q11. A public limited company whose shares are listed in the Mumbai Stock Exchange is not subject to minimum alternate tax—

a. True;

b. False.

Q12. The following amount debited to statement of profit and loss should be added to net profit to convert it into book profit—

a. Penalty under Wealth-tax Act;

b. Fringe benefit tax;

c. Outstanding sales tax, which is not deductible under section 43B;

d. All of above;

e. None of above.

Q13. Short-term capital gain subject to securities transaction tax is outside the purview of minimum alternate tax—

a. True;

b. False.

Q14. If depreciation rate adopted in the books of account is more than the rate given under the Companies Act, the Assessing Officer can re-write statement of profit and loss for the purpose of minimum alternate tax—

a. True;

b. False.

Q15. Income exempt under section 10A or 10B is subject to minimum alternate tax for the assessment year 2018-19—

a. True;

b. False.

Q16. Income exempt under section 10AA is subject to minimum alternate tax for the assessment year 2016-17—

a. True;

b. False.

Q17. Extra tax which a company has to pay because of minimum alternate tax, can be carried forward for—

a. 5 years;

b. 7 years;

c. 10 years;

d. No carry forward.

Q18. Provision for bad and doubtful debts appearing in the statement of profit and loss shall not be added back as it is not a provision for a liability but for an asset—

a. True;

b. False.

Q19. X Ltd. is a Government company. RBI, LIC, State Bank of India and a public sector undertaking are shareholders. On dividend declared by X Ltd., dividend tax under section 115-O is not applicable—

a. True;

b. False.

Q20. X Ltd. is a Government company. 99 per cent shares are held by the President of India and 1 per cent shares are held by a secretary to the Government of India. X Ltd. is not covered by the provisions of dividend tax under section 115-O—

a. True;

b. False.

Q21. It is possible to reduce the impact of minimum alternate tax if two companies are merged—

a. True;

b. False.

Q22. X Ltd. is a private limited company. It gets a dividend of Rs. 30 lakh from its subsidiary company on April 1, 2019. It declares dividend of Rs. 31 lakh to its own shareholders on March 31, 2019. In the hands of X Ltd., dividend tax is applicable on—

a. Rs. 30 lakh;

b. Rs. 31 lakh;

c. Rs. 1 lakh;

d. *Nil.*

Q23. X Ltd. is a public limited company. It gets a dividend of Rs. 50 lakh from its subsidiary company on July 1, 2019, but the subsidiary companies has yet to pay dividend tax. It declares dividend of Rs. 60 lakh to its own shareholders on June 30, 2019. In the hands of X Ltd., dividend tax is applicable on—

a. Rs. 60 lakh;

b. Rs. 10 lakh;

c. Rs. 50 lakh;

d. *Nil.*

UNIT III

TAX PLANNING WITH REFERENCE TO SPECIFIC BUSINESS DECISIONS

TAX PLANNING WITH REFERENCE TO NEW BUSINESS – LOCATION OF A BUSINESS

6
CHAPTER

Location of new business

57. Many factors affect location of a business. The following tax incentives are available under the Act—

1. Under section 10AA in the case of newly established units in Special Economic Zone.

2. Under section 10B in the case of a newly established hundred per cent export-oriented undertakings.

3. Under section 80-IA in respect of profits and gains from industrial undertaking or enterprises engaged in infrastructure development, etc.

4. Under section 80-IAB in respect of profits and gains by an undertaking or enterprise engaged in development of Special Economic Zone.

5. Under section 80-IB in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.

6. Under section 80-IC in respect of profits and gains of certain undertakings in certain special category of states.

7. Under section 80-ID in respect of profits and gains of hotels and convention centre in NCR.

8. Under section 80-IE in respect of profits and gains of certain undertakings in North Eastern States.

These provisions are discussed in Chapter 1 under the headings "Income that is exempt from tax" and "Permissible deductions from gross total income".

MULTIPLE CHOICE QUESTIONS

Q1. Under section 10A, an Indian company having non-resident shareholders cannot claim any deduction—

a. True;

b. False.

Q2. Only a company (not a limited liability partnership) can claim deduction under sections 10A, 10AA and 10B—

a. True;

b. False.

Q3. A Government company cannot claim any deduction under sections 10A, 10AA and 10B—

a. True;

b. False.

Q4. A limited liability partnership owns an infrastructure facility. It can claim deduction under section 80-IA—

a. True;

b. False.

Q5. Only an industrial undertaking can claim deduction under section 80-IB. A company owning a hospital in a rural area cannot claim the same—

a. True;

b. False.

Q6. A company owning the following hotels can claim deduction under section 80-ID—

a. A 5 star hotel in Jaipur;

b. A 4 star hotel in Gurgaon;

c. A 3 star hotel in Mumbai;

d. All of above;

e. None of above.

Q7. For the purpose of section 80-IE, Tripura is a north eastern State—

a. True;

b. False.

Q8. A company is qualified to claim deduction under section 80-IB. By mistake the deduction was not claimed in the return of income. However, the company claims the same before the Assessing Officer at the time of assessment under section 143(3)—

a. Deduction will be allowed by the Assessing Officer;

b. Deduction will not be allowed by the Assessing Officer;

c. Deduction will be allowed by the Assessing Officer, if the Commissioner of Income-tax permits;

d. Deduction will be allowed by the Assessing Officer, if it is permitted by the Chief Commissioner.

TAX PLANNING WITH REFERENCE TO NEW BUSINESS – NATURE OF BUSINESS

7
CHAPTER

Nature of new business

68. Many incentives are available under the Act which are directly co-related in the nature of business. Some of these incentives are as follows :—

1. Exemption in the case of units in Special Economic Zone [Sec. 10AA]*

2. Investment allowance in a notified backward area in Andhra Pradesh, Bihar, Telangana or West Bengal [sec. 32AD]

3. Tea development account [Sec. 33AB].

4. Telecommunication services [Sec. 35ABB].

5. Expenditure on specified business [Sec. 35AD].

6. Weighted deduction for expenditure incurred on agricultural extension project [Sec. 35CCC].

7. Weighted deduction for expenditure for skill development [Sec. 35CCD].

8. Special provision for deduction in the case of business for prospecting for mineral oil [Secs. 42 and 44BB].

9. Special provisions for computing profits and gains for a business [Sec. 44AD].

10. Special provisions in the case of business of plying, hiring or leasing goods carriages [Sec. 44AE].

11. Profits and gains from industrial undertakings engaged in infrastructure, etc. [Sec. 80-IA]*.

12. Profits and gains by an undertaking or enterprise engaged in development of Special Economic Zone [Sec. 80-IAB]*.

13. Profits and gains in respect of eligible start-up [Sec. 80-IAC]*

14. Profits and gains from certain industrial undertakings other than infrastructure development undertakings [Sec. 80-IB]*.

15. Profits and gains in respect of housing projects [Sec. 80-IBA]*

16. Profits and gains of certain undertakings in certain special category of States [Sec. 80-IC]*.

17. Deduction in respect of employment of new workmen [Sec. 80JJAA]

18. Tonnage Tax Scheme [Secs. 115V to 115VZC—*see* para 77].

Investment allowance for acquisition and installation of new plant and machinery [Sec. 32AC]

69. Investment allowance under section 32AC is available only for the assessment years 2014-15 to 2017-18. It is not available for the assessment year 2018-19 (or any subsequent year).

*For these sections, *see* Chapter 1.

Investment allowance in backward area in Andhra Pradesh, Bihar, Telangana or West Bengal [Sec. 32AD]

70. Additional investment allowance will be available under section 32AD. This deduction will be over and above the existing deduction available under section 32AC. Accordingly, if an undertaking is set-up in the notified backward areas in Andhra Pradesh, Bihar, Telangana or West Bengal by a company, it shall be eligible to claim deduction under the existing provisions of section 32AC as well as under the newly inserted section 32AD if it fulfils the conditions (such as investment above a specified threshold) specified in the said section 32AC and conditions specified under section 32AD.

Conditions for claiming deduction under section 32AD

70.1 The following conditions should be satisfied in order to avail tax incentive of additional investment allowance under section 32AD –

1. The assessee may be a company or any other person.

2. He/it sets-up an undertaking/enterprise for manufacture or production of any article or thing on or after April 1, 2015.

3. Such undertaking must be set-up in any backward area (notified by the Central Government) in Andhra Pradesh, Bihar, Telangana or West Bengal.

4. He/it acquires and installs (for the purposes said undertaking) a "new asset" [for "new asset", *see* para 110.1].

5. The new asset should be acquired and installed after March 31, 2015 but before April 1, 2020.

Quantum of investment allowance

70.2 If the above conditions are satisfied, investment allowance is 15 per cent of actual cost† of "new asset". It is available in the year in which the new asset is installed.

Withdrawal of investment allowance

70.3 The new asset should not be sold or otherwise transferred within a period of 5 years from the date of its installation. If the new asset is sold or transferred within 5 years from its installation, the amount of investment allowance allowed to the assessee shall be deemed to be the income of assessee of the previous year in which such asset is sold or otherwise transferred. Such deemed income will be taxable under the head "Profit and gains of business or profession". Such deemed income shall be taxable in addition to taxability of capital gain which arises under section 45, read with section 50.

■ *Above restriction not to apply in case of amalgamation/demerger/business re-organisation* - The above restriction will not apply in a case of amalgamation or demerger or business re-organisation (*i.e.*, conversion of firm/sole proprietary concern into company or conversion of a private company/unlisted public company into LLP). In other words, if the undertaking of the assessee-company is amalgamated or demerged or converted (as given above) within 5 years from the date of installation of new asset, investment allowance allowed to the amalgamating company or demerged company or to the predecessor will not be taken back. However, the amalgamated company or the resulting company or the successor should not transfer the new asset within 5 years (from its installation by the amalgamating company or demerged company or predecessor). If it is sold or otherwise transferred within 5 years by the amalgamated company/resulting company or successor, the notional income stated above will be taxable in the hands of amalgamated company or resulting company or successor.

Tea/coffee/rubber development account [Sec. 33AB]

71. An assessee can claim deduction under section 33AB as follows—

† Where an assessee incurs any expenditure for acquisition of any asset in respect of which a payment (or aggregate of payments made to a person in a day), otherwise than by an account payee cheque/draft or use of electronic clearing system through a bank account (or through prescribed electronic mode), exceeds Rs. 10,000, such payment shall not be eligible for investment allowance under section 32AD.

71.1 The assessee must satisfy the following conditions : *Conditions*

Condition one	The assessee must be engaged in tea, coffee or rubber plantation.
Condition two	It must make a deposit in "special account".
Condition three	The deposit should be made within specified time-limit.
Condition four	The accounts of the assessee should be audited.

■ *Engaged in tea/coffee/rubber plantation* - It must be engaged in the business of growing and manufacturing tea or coffee or rubber in India.

■ *Deposit* - It must make the following deposit (hereinafter referred to as "special account")—

a. deposit with National Bank for Agriculture and Rural Development (hereinafter referred to as "NABARD") any amount (or amounts) in an account maintained by the assessee with that bank in accordance with and for the purpose specified in a scheme approved by the Tea Board or Coffee Board or Rubber Board; or

b. deposit any amount in the Deposit Account opened by the assessee in accordance with, and for the purposes specified in, a scheme framed by the Tea Board or Coffee Board or Rubber Board with the previous approval of the Central Government.

■ *Time limit* - The aforesaid amount shall be deposited within 6 months from the end of the previous year or before the due date of furnishing the return of income, whichever is earlier.

■ *Audit* - The accounts of the taxpayer should be audited by a chartered accountant and the report of the auditor in Form No. 3AC is to be uploaded along with the return of the relevant assessment year. In cases where the accounts of the taxpayer are required to be audited under any other law, *e.g.*, under the Companies Act, it would be sufficient if the accounts are audited under that law and the audit report as per that law is furnished with the return along with a further report in Form No. 3AC for the purposes of this provision.

71.2 Amount of deduction is : *Amount of deduction*

a. a sum equal to amounts deposited in special account as mentioned in para 71.1 ; or

b. 40 per cent of the profit of such business computed under the head "Profits and gains of business or profession" before making any deduction under section 33AB and before adjusting brought forward business loss under section 72,

whichever is less.

■ The following points should also be kept in mind :

1. Where any deduction is claimed under this section, no deduction shall be allowed in respect of such amount in any other previous year.

2. Where a deduction is claimed and allowed under this section to an association of persons or body of individual, no deduction shall be allowed to any member of the association or body in respect of the same deposit.

3. Any excess deposit in special account made during a previous year is not treated as deposit made in the next year or any other year.

71.3 The amount standing to the credit of the "special account" may be withdrawn only for the purpose specified in approved scheme. Except in the circumstances mentioned in para 71.4, if the amount released from the "special account" in a year is not utilised in the same previous year for the purpose for which it is released, the amount not so utilised will be treated as taxable profits of that year and taxed accordingly. *Amount can be withdrawn for the purpose of the scheme*

71.3-P1 *X Ltd. is engaged in the business of growing and manufacturing tea in India. During the previous year 2017-18, it deposits Rs. 100 lakh in the "special account" and claims the same as deduction under section 33AB (*i.e.*, 40 per cent of the business profit : Rs. 250 lakh). During 2018-19, the company withdraws Rs. 35 lakh from the "special account" which is utilised as follows —* Case study

a. *Rs. 25 lakh on December 31, 2018 for the purpose of the scheme framed by the Tea Board ; and*

b. *Rs. 4 lakh for other purpose on January 27, 2019.*

Rs. 6 lakh is not utilised up to March 31, 2019.

Find out the amount chargeable to tax for the assessment year 2019-20.

■

For the assessment year 2019-20, Rs. 10 lakh is treated as business income (*i.e.,* Rs. 4 lakh, being the amount misutilised by the company *plus* Rs. 6 lakh, being the amount which is not utilised by the company during 2018-19). Out of Rs. 10 lakh, 40% (*i.e.,* Rs. 4 lakh) is taken as non-agricultural income and 60% (*i.e.,* Rs. 6 lakh) is deemed as agricultural income.

Consequences in the case of closure of business

71.4 Apart from the purposes specified in the approved scheme, the amount standing to the credit of the "special account" may be allowed to be withdrawn in the following circumstances :

When the amount can be withdrawn and it is treated as taxable profit	*When the amount can be withdrawn and it is not treated as income*
1. Closure of business	*1.* Death of the taxpayer
2. Dissolution of firm	*2.* Partition of Hindu undivided family
	3. Liquidation of company

Where an amount is withdrawn because of closure of business or because of dissolution of firm, the amount withdrawn will be treated as taxable profit and taxed accordingly on the basis as if the business was continuing or the firm had not been dissolved. In all other cases, *viz.,* death of the taxpayer, partition of the Hindu undivided family and liquidation of the company, the amounts withdrawn on closure of account because of the occurrence of any of these events will not be included in the taxable income even though the amounts have not been utilized for any of the purposes specified in scheme.

Withdrawal from the special account cannot be utilised for certain purposes

71.5 The amount withdrawn from the "special account" cannot be utilised for the purpose of purchase of any machinery or plant to be installed in any office premises or residential accommodation including guest houses ; any office appliance (other than computers) ; any other plant or machinery which either is installed in an undertaking producing low priority items specified in the Eleventh Schedule in the Income-tax Act or is an item of plant or machinery entitled to 100 per cent write off by way of depreciation or for any other reason in any one year.

Consequences if the new asset is transferred within 8 years

71.6 The deduction allowed under this section shall be withdrawn if the asset acquired out of the money withdrawn from the special account is sold or otherwise transferred. These provisions are given below—

To whom it is transferred	*Transfer within 8 year from the end of the previous year in which the asset is acquired*	*Transfer after 8 years*
■ Transfer to the Central Government, a State Government, a local authority, a statutory corporation or a Government company	Deduction will not be withdrawn	Deduction will not be withdrawn
■ Transfer in a scheme of succession of a firm by company [*see* Note]	Deduction will not be withdrawn	Deduction will not be withdrawn
■ Transfer in any other case	Deduction will be withdrawn	Deduction will not be withdrawn

Note: Transfer in a scheme of succession of a firm by company should satisfy the following points—

a. the scheme continues to apply to the company in the manner applicable to the firm;

b. the successor company takes over all the properties and liabilities of the firm; and

c. all the shareholders of the company were partners of the firm before the succession.

Case study

71.6-P1 *Find out the tax consequences in the following cases —*

1. *Business profit of X Ltd., a tea growing and manufacturing company, is Rs. 70 lakh for the assessment year 2018-19. It deposits Rs. 25 lakh in the "special account" for claiming deduction under section 33AB. It wants to claim set-off of brought forward business loss of Rs. 12,00,000.*

2. *By withdrawing Rs. 20 lakh on January 20, 2019 from the "special account", X Ltd. purchases a non-depreciable asset for Rs. 18 lakh according to the scheme framed by the Tea Board. The remaining amount of Rs. 2 lakh is not utilised up to March 31, 2019.*

3. *The asset which is purchased for Rs. 18 lakh is sold to Y for Rs. 31 lakh on December 3, 2021.*

■

1. Amount deductible for the assessment year 2018-19 is —

a. Rs. 28 lakh (*i.e.,* 40% of Rs. 70 lakh); or

b. Rs. 25 lakh (being the deposit in the "special account"),

whichever is lower.

Rs. 25 lakh is, therefore, deductible under section 33AB. Taxable income of X Ltd. shall be determined as under —

	(Rs. in lakh)
Business income	70
Less : Deduction under section 33AB	25
Net income	45
As per rule 8, 40% of Rs. 45 lakh is taken as non-agricultural income which is chargeable to tax and the balance 60% is treated as agricultural income which is not taxable	
Non-agricultural income [*i.e.,* 40% of Rs. 45 lakh]	18
Less : Brought forward loss	12
Net income	6

2. Rs. 2 lakh, being the amount not utilised up to March 31, 2019 will be business income (40% of which will be taxable as non-agricultural income) for the assessment year 2019-20.

3. The new asset is transferred within eight years from March 31, 2019. Consequently, the taxable income for the assessment year 2022-23 (*i.e.,* previous year 2021-22 in which the asset is transferred) will be determined as follows —

	Rs.
Business income [40% of which is taxable as non-agricultural income]	18,00,000
Short-term capital gain (*i.e.,* Rs. 31 lakh – Rs. 18 lakh)	13,00,000

Double deduction not permissible

71.7 Where any amount standing to the credit of the assessee in the "special account" is utilised by the assessee for the purpose of any expenditure in accordance with the scheme, such expenditure shall not be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

Telecom licence fees [Sec. 35ABB]

72. The provisions of section 35ABB are given below :

Conditions

72.1 Deduction under section 35ABB is available if the following conditions are satisfied —

Condition one	The expenditure is capital in nature.
Condition two	It is incurred for acquiring any right to operate telecommunication services.
Condition three	The expenditure is incurred either before the commencement of business or thereafter at any time during any previous year.
Condition four	The payment for which has actually been made to obtain licence.

If all the above conditions are satisfied, then one can claim deduction under section 35ABB [*see* para 72.2]. If, however, these conditions are not satisfied, then deduction under section 35ABB is not available [one may claim deduction under section 37(1)].

Amount of deduction

72.2 The payment will be allowed as deduction in equal instalments over the period starting from the year in which such payment has been made* and ending in the year in which the licence comes to an end. It may be noted that the deduction starts from the year in which actual payment of expenditure is made irrespective of the previous year in which the liability for the expenditure is incurred according to the method of accounting regularly employed by the assessee.

Profit or loss on sale of telecom licence

72.3 Any profit or loss on sale of telecom licence is taken into consideration while computing business income. The relevant rules are given below. In the table given below, WDV is the written down of value (*i.e.*, the expenditure incurred remaining unallowed) on the first day of the previous year in which telecom licence is transferred—

Different situations	*Tax treatment*
1. Entire telecom licence is transferred	
1.1 When sale consideration is less than WDV	WDV *minus* sale consideration is allowed as deduction under section 35ABB in the year of sale.
1.2 When sale consideration is more than WDV	The excess of sale consideration over WDV is taxable as business income in the year of sale (subject to rules given in Notes below).
2. When a part of telecom licence is transferred	
2.1 When sale consideration is less than WDV	WDV *minus* sale consideration will be allowed as deduction over the unexpired period.
2.2 When sale consideration is more than WDV	Same tax treatment as is given in 1.2 (*supra*)

Notes -

1. In *Situations 1.2* and *2.2,* the amount taxable as business income cannot exceed deduction allowed under section 35ABB in the earlier years.

2. The aforesaid amount is taxable whether (or not) business is in existence.

3. In respect of the same expenditure, no further deduction will be allowed under section 35ABB.

Consequences in the case of amalgamation or demerger

72.4 Where, under the scheme of amalgamation, a telecom licence is transferred by the amalgamating company to the amalgamated company (being an Indian company) or by a demerged company to a resulting company (being an Indian company), then deduction will not available under section 35ABB to the amalgamating or demerged company. However, the provisions of section 35ABB continue to apply to the amalgamated company or resulting company, as these would have applied to the amalgamating or demerged company if the latter had not transferred the licence.

Depreciation under section 32 not available

72.5 Where a deduction for any previous year is claimed and allowed under section 35ABB, then no deduction of the same expenditure shall be allowed under section 32 for the same previous year or any subsequent previous year.

Case studies

72-P1 *X Ltd., a company providing telecommunication service, obtains a telecom licence on April 20, 2018 for a period of 10 years which ends on March 31, 2028 (licence fee being Rs. 18 lakh). Find out the amount of deduction under section 35ABB if —*

a. *the entire amount is paid on May 6, 2018 ; or*

b. *the entire amount is paid on April 1, 2019 ;*

c. *the entire amount is paid in three equal instalments on April 30, 2018, April 30, 2019 and April 30, 2020.*

■

Situation (a) - The payment of Rs. 18 lakh is deductible in 10 instalments over a period of 10 years from the previous years 2018-19 to 2027-28 (the amount deductible each year being Rs. 1.8 lakh).

Situation (b) - The payment is deductible in 9 years starting from the year of payment, *i.e.*, the previous year 2019-20 and ending with the previous year 2027-28 (the amount deductible each year being Rs. 2 lakh).

Situation (c) - The entire payment is made in three instalments. Deduction under section 35ABB is available as under —

*If the licence fees is actually paid before the commencement of the business to operate telecommunication services, such payment is deductible from the previous year in which the business is commenced.

	First instalment	*Second instalment*	*Third instalment*	*Total*
Date of payment	April 30, 2018	April 30, 2019	April 30, 2020	
Period during which deduction is available	10 years (2018-19 to 2027-28)	9 years (2019-20 to 2027-28)	8 years (2020-21 to 2027-28)	
Amount of payment	Rs. 6 lakh	Rs. 6 lakh	Rs. 6 lakh	
	Rs.	*Rs.*	*Rs.*	*Rs.*
Amount deductible in previous year				
2018-19	60,000	-	-	60,000
2019-20	60,000	66,667	-	1,26,667
2020-21 to 2027-28	60,000	66,667	75,000	2,01,667

72-P2 *X Ltd., a company which provides telecom services, acquires a telecom licence on April 5, 2018 for a period of 15 years which ends on March 31, 2033 (licence fees being Rs. 15 lakh paid on May 6, 2018). The licence is transferred by X Ltd. on December 20, 2020 for (*a*) Rs. 6,92,000, (*b*) Rs. 13,70,000 or (*c*) Rs. 15,60,000. Compute the amount chargeable to tax.*

■

	Rs.
Cost of licence which is paid on May 6, 2018	15,00,000
Less : Amount written off during the previous years 2018-19 and 2019-20	2,00,000
Written down value of telecom licence on April 1, 2020	13,00,000

Tax treatment when telecom licence is transferred on December 20, 2020

Sale consideration

	Rs. 6.92 lakh Rs.	*Rs. 13.70 lakh Rs.*	*Rs. 15.60 lakh Rs.*
Sale proceeds	6,92,000	13,70,000	15,60,000
Less : Written down value on April 1, 2020	13,00,000	13,00,000	13,00,000
Surplus	(-)6,08,000	70,000	2,60,000
Amount deductible during the previous year 2020-21 under section 35ABB(2)	6,08,000	-	-
Amount chargeable to tax during the previous year 2020-21 as notional business income, it cannot exceed the amount of deduction claimed in earlier years under section 35ABB	-	70,000	2,00,000
Short-term capital gains			
Sale proceeds	6,92,000	13,70,000	15,60,000
Less : Cost of acquisition	15,00,000	15,00,000	15,00,000
Short-term capital gain/loss	(-)8,08,000	(-)1,30,000	(+)60,000

Note - It can be seen from the above data that where the telecom licence is transferred for Rs. 6.92 lakh, the taxpayer can claim short-term capital loss of Rs. 8.08 lakh, apart from claiming deduction under section 35ABB. To avoid double deduction, it is suggested to the Government that a suitable amendment should be made in section 35ABB incorporating the following —

"Where a deduction is allowed in respect of capital expenditure under section 35ABB, no deduction shall be allowed in respect of said expenditure under any other provision of the Act in any year".

72-P3 *Suppose in the above problem X Ltd. transfers a part (40 per cent) of telecom licence for (*a*) Rs. 6,80,000 or (*b*) Rs. 18,90,000 on May 6, 2020. Compute the amount chargeable to tax.*

■

	Sale consideration	
	Rs. 6.8 lakh Rs.	*Rs. 18.90 lakh Rs.*
Written down value on April 1, 2020	13,00,000	13,00,000
Less : Sale proceeds on transfer of 40% telecom licence	6,80,000	18,90,000

	Sale consideration	
	Rs. 6.8 lakh Rs.	*Rs. 18.90 lakh Rs.*
Remaining written down value	6,20,000	(-)5,90,000
Deduction under section 35ABB for remaining 13 years [*i.e.*, Rs. 6,20,000/13]	47,692	-
Amount taxable as business income for the previous year 2020-21 (subject to the maximum of deduction allowed earlier)	-	2,00,000
Short-term capital gain		
Sale proceeds	6,80,000	18,90,000
Less : Cost of acquisition of 40% licence [40% of Rs. 15,00,000]	6,00,000	6,00,000
Short-term capital gain	80,000	12,90,000

Expenditure on specified business [Sec. 35AD]

73. Section 35AD provides investment-linked tax incentive.

Conditions

73.1 The following conditions should be satisfied to avail of the benefit of deduction under section 35AD—

SPECIFIED BUSINESS

73.1-1 Deduction under section 35AD is available only in the case of a "specified business" given below—

Specified business	*Who should own the business*	*Approval (if any)*	*Date of commencement of business*
1. Setting up and operating a cold chain facility [*see* Note 1]	Any person	Not required	On or after April 1, 2009
2. Setting up and operating a warehousing facility for storage of agricultural produce	Any person	Not required	On or after April 1, 2009
3. Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network	An Indian company or a consortium of Indian companies or an authority/Board/corporation established under any Central or State Act	Should be approved by Petroleum and Natural Gas Regulatory Board and notified by the Central Government [*see* Note 2]	• On or after April 1, 2007, in the case of laying and operating a cross-country natural gas pipeline network for distribution or storage. • In other cases, on or after April 1, 2009.
4. Building and operating anywhere in India a new hotel of 2 star or above category (*see* Note 3)	Any person	No approval required; however, hotel should be classified by the Central Government as 2 star hotel or above category	On or after April 1, 2010
5. Building and operating, anywhere in India, any hospital with at least 100 beds for patients	Any person	No approval required	On or after April 1, 2010
6. Developing and building a housing project	Any person	Developing and building housing project should be under a scheme for slum redevelopment or rehabilitation framed by the Central Government/State Government and notified by the Board in accordance with prescribed guidelines	On or after April 1, 2010
7. Developing and building a housing project	Any person	Developing and building a housing project should be under a scheme for affordable housing framed by the Central Government or a State Government and notified by the Board [*see* Rule 11-OA]	On or after April 1, 2011

Specified business	*Who should own the business*	*Approval (if any)*	*Date of commencement of business*
8. Production of fertilizer in India	Any person	Not required	On or after April 1, 2011
9. Setting up and operating an inland container depot or a container freight station	Any person	As notified or approved under the Customs Act	On or after April 1, 2012
10. Bee-keeping and production of honey and beeswax	Any person	No approval	On or after April 1, 2012
11. Setting up and operating a ware-housing facility for storage of sugar	Any person	No approval	On or after April 1, 2012
12. Laying and operating a slurry pipeline for the transportation of iron ore	Any person	No approval	On or after April 1, 2014
13. Setting up and operating a semi-conductor wafer fabrication manufacturing unit	Any person	As notified by the Board in accordance with such guidelines as may be prescribed [*see* Notification No. 80/2014 dated December 12, 2014]	On or after April 1, 2014
14. Developing or maintaining and operating or developing, maintaining and operating a new infrastructure facility	An Indian company or a consortium of Indian companies or an authority/ board/corporation/ any other body established or constituted under any Central or State Act	The eligible entity has entered into an agreement with Central/ State Government/ local authority/any other statutory body for developing, maintaining, etc., of new infrastructure facility	On or after April 1, 2017

Note 1 - "Cold chain facility" means a chain of facilities for storage or transportation of agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce.

Note 2 - This business should make not less than one-third (for a natural gas pipeline network) or one-fourth (for petroleum product pipeline network) of its total pipeline capacity available for use on common carrier basis by any person other than the assessee or an associated person. Associated person is a person who participates in the management of the assessee; holds at least 26 per cent voting power in the assessee; appoints more than half of the board of directors or who guarantees not less than 10 per cent of the total borrowing of the assessee.

Note 3 - Where an assessee builds a two-star (or above category) hotel and, subsequently, while continuing to own the hotel, transfers the operation thereof to another person, the assessee shall be deemed to be carrying on the specified business of building and operating hotel for the purpose of section 35AD.

Note 4 - Infrastructure facility means—

a. a road including toll road, a bridge or a rail system;

b. a highway project including housing or other activities being an integral part of the highway project;

c. a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;

d. a port, airport, inland waterway, inland port or navigational channel in the sea.

73.1-2 The specified business should not be set up by splitting up, or the reconstruction, of a business already in existence. Moreover, it should not be set up by the transfer of old plant and machinery. *SPECIFIED BUSINESS SHOULD BE NEW BUSINESS*

20 per cent old machinery is permitted - If the value of the transferred assets does not exceed 20 per cent of the total value of the machinery or plant used in the business, this condition is deemed to have been satisfied.

Second-hand imported machinery is treated as new - Any machinery or plant which was used outside India by any person (other than the assessee) shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled—

1. Such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India.

2. Such machinery or plant is imported into India from any country outside India.

3. No deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.

AUDIT OF BOOKS OF ACCOUNT

73.1-3 Books of account of the assessee should be audited.

Amount of deduction

73.2 100 per cent of capital expenditure incurred wholly and exclusively for the purpose of specified business carried on by an assessee is deductible in the previous year in which the expenditure is incurred. Moreover, deduction under section 35AD is subject to the following propositions—

1. Expenditure incurred on the acquisition of any land or goodwill or financial instrument is not eligible for any deduction under section 35AD.

2. Moreover, deduction under section 35AD is not available (with effect from the assessment year 2018-19) pertaining to any expenditure in respect of which payment (or aggregate of payments) made to a person in a day [otherwise than by an account payee cheque/draft/use of electronic clearing system through a bank account (or through prescribed electronic mode)] exceeds Rs. 10,000.

3. Expenditure incurred prior to the commencement of operation, wholly and exclusively, for the purpose of any specified business, shall be allowed as deduction during the previous year in which the assessee commences the operation of his specified business, if the amount is capitalized in the books of account of the assessee on the date of commencement of operation.

4. If operation of the business of laying and operating a cross-country natural gas distribution network is commenced during April 1, 2007 and March 31, 2009, the capital expenditure (not being for acquiring land or goodwill or financial instrument) incurred before April 1, 2009 (to the extent not allowed as deduction under any section earlier) will be allowed as additional deduction under section 35AD for the assessment year 2010-11.

Consequences of claiming deduction under section 35AD

73.3 The following consequences should be noted—

1. The assessee shall not be allowed any deduction in respect of the specified business under the provisions of Chapter VIA under sections 80HH to 80RRB for the same or any other assessment year. Moreover, no deduction shall be allowed under the provisions of section 10AA in respect of a specified business when deduction is claimed under section 35AD.

2. No deduction in respect of the expenditure in respect of which deduction has been claimed shall be allowed to the assessee under any other provisions of the Income-tax Act.

3. Any sum received or receivable on account of any capital asset, in respect of which deduction has been allowed under section 35AD, being demolished, destroyed, discarded or transferred shall be treated as income of the assessee and chargeable to income-tax under the head "Profits and gains of business or profession".

4. Any loss computed in respect of the specified business shall not be set off except against profits and gains, if any, of any other specified business. To the extent the loss is unabsorbed, the same will be carried forward for set off against profits and gains from any specified business in the following assessment year and so on.

5. If the assessee owns two units one of them qualifies for deduction under section 35AD and the other one is not eligible for the same and there is inter-unit transfer of goods or services between the two units, then for the purpose of section 35AD calculation will be made as if such transactions are made at the market value.

6. Any asset in respect of which a deduction is claimed and allowed under section 35AD, shall be used only for the specified business for a period of 8 years beginning with the previous year in which such asset is acquired or constructed. If such asset is used for any purpose other than the specified business, the total amount of deduction so claimed and allowed in any previous year in respect of such asset, as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction had been allowed under section 35AD, shall be deemed to be business income of the assessee of the previous year in which the asset is so used.

73-P1 *On April 1, 2018, X Ltd. commences the operation of a warehousing facility in Andhra Pradesh for storage of agricultural produce. The following information is available from the records of company—*

Expenses incurred prior to April 1, 2018

	Rs.
Purchase of land for warehouse	*50,00,000*
Construction cost of warehouse	*8,00,000*
Purchase of know-how for warehouse	*10,00,000*
Salary to staff	*78,000*

These expenses are capitalized on March 31, 2018.

Expenses incurred during 2018-19

Construction cost of warehouse	*60,00,000*
Purchase of old plant and machinery (from domestic market)	*2,00,000*
Purchase of old plant and machinery (from Germany)	*4,00,000*
Purchase of new plant and machinery	*9,00,000*
Purchase of goodwill	*3,50,000*

Profit and loss account for the year 2017-18

	Rs.		Rs.
Depreciation of building (@ 5%)	*3,40,000*	*Amount collected from persons using warehouse*	*78,00,000*
Depreciation of machinery (@ 23.333%)	*3,50,000*		
Cost of know-how (amount written off)	*10,00,000*		
Other operating expenses	*7,51,000*		
Donation to a political party	*10,000*		
Net profit	*53,49,000*		
	78,00,000		*78,00,000*

Out of other operating expenses, a payment of Rs. 40,000 is made in cash. Other operating expenses are deductible under section 37. Find out the taxable income of X Ltd. for the assessment year 2019-20 on the assumption that X Ltd. has the following income from other sources - income from the business of commission agency: Rs. 20,15,000 (computed under the provisions of the Income-tax Act) and dividend from a foreign company: Rs. 50,000.

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Amount deductible under section 35AD

	Rs.
Expenditure incurred prior to the commencement of operation (to the extent these are capitalized)	
Purchase of land (not qualified for deduction)	*Nil*
Construction cost of warehouse	8,00,000
Purchase of know-how	10,00,000
Salary to staff	78,000
Expenditure incurred during the previous year	
Construction cost of warehouse	60,00,000
Purchase of machinery (Rs. 2,00,000 + Rs. 4,00,000 + Rs. 9,00,000)	15,00,000
Total	93,78,000
Amount deductible under section 35AD	93,78,000
Computation of income from warehouse	
Net profit as per profit and loss account	53,49,000
Add: Depreciation of building (not deductible as cost of building is eligible for deduction under section 35AD)	3,40,000
Add: Depreciation of machinery (not deductible as cost of machinery is qualified for deduction under section 35AD)	3,50,000
Add: Cost of know-how (not deductible as deduction is available under section 35AD)	10,00,000
Add: Amount paid in cash (operating expenses)	40,000
Add: Donation to political party	10,000
Less: Deduction under section 35AD	(-) 93,78,000
Loss from warehouse	(-) 22,89,000

Computation of income

	Rs.	*Rs.*
Commission agency business	20,15,000	
Warehouse	(-) 22,89,000	
Business income (loss from operating warehouse, being a specified business under section 35AD cannot be set off against any other income except income from a specified business)		20,15,000
Income from other sources (dividend from foreign company)		50,000
Gross total income		20,65,000
Less: Deduction under section 80GGB (donation to a political party)		10,000
Net income		20,55,000

Notes—

1. Second hand imported machinery is taken as new machinery. The business of operating warehouse is formed by using new machinery of Rs. 13,00,000 and old machinery of Rs. 2,00,000. Value of old plant and machinery does not exceed 20 per cent of the total value of plant and machinery. Other conditions of section 35AD are satisfied. X Ltd. is, therefore, eligible for deduction under section 35AD.

2. Loss from operating warehouse (by virtue of section 73A) can be set off only against profit and gains, if any, of any other business specified under section 35AD. In this case, X Ltd. does not have any other specified business. Loss will be carried forward (without any time-limit) for being set off against income from operating warehouse or any other specified business under section 35AD.

3. Minimum alternate tax provisions will be applicable. Tax liability will be 30.9% of Rs. 20,55,000 or 19.055% of book profit (*i.e.* Rs. 53,49,000+Rs. 20,15,000 + Rs. 50,000), whichever is more.

Computing business profits on presumptive basis [Sec. 44AD]

74. The provisions of section 44AD will be applicable only if the following conditions are satisfied—

1. Eligible assessee - The assessee should be an eligible assessee. Eligible assessee for this purpose is a resident individual, a resident Hindu undivided family or a resident partnership firm (not being a limited liability firm).

2. Has not claimed some deductions - The assessee has not claimed any deduction under sections 10A, 10AA, 10B, 10BA, 80HH to 80RRB in the relevant assessment year.

3. Eligible business - The assessee should be engaged in any business (whether it is retail trading or wholesale trading or civil construction or any other business). However, the following persons are not eligible to avail any benefit under section 44AD –

a. a person carrying on profession as referred to in section 44AA(1);

b. a person earning income in the nature of commission or brokerage;

c. a person carrying on any agency business; or

d. a person who is in the business of plying, hiring or leasing goods carriages.

4. Turnover - Total turnover/gross receipt in the previous year of the eligible business should not exceed Rs. 2 crore.

Consequences if the above conditions are satisfied

74.1 If the above conditions are satisfied, the income from the eligible business is estimated at 8 per† cent of the gross receipt or total turnover. The following points should be noted—

1. The assessee can voluntarily declare a higher income in his return.

2. All deductions under sections 30 to 38, including depreciation and unabsorbed depreciation, are deemed to have been already allowed and no further deduction is allowed under these sections (subject to an exception given below).

3. However, in the case of a firm (up to the assessment year 2016-17), the normal deduction in respect of salary and interest to partners under section 40(*b*) shall be allowed (this deduction will not be available from the assessment year 2017-18).

4. The written down value is calculated, where necessary, as if depreciation as applicable has been allowed.

† 6 per cent in respect of total turnover or gross receipts received by an account payee cheque/draft or use of electronic clearing system through a bank account (or through prescribed electronic mode) during the previous year or before the due date of submission of return of income under section 139(1).

5. Further, it will be assumed that disallowance, if any, under sections 40, 40A and 43B has been considered while calculating the estimated income @ 8 per cent†.

6. An assessee,who opts for the above scheme, is exempted (up to the assessment year 2016-17) from payment of advance tax related to such business. From the assessment year 2017-18, an assessee (who opts from the above scheme) is required to pay advance tax related to such business. However, advance tax can be paid during the financial year (immediately prior to the assessment year) on or before March 15 (no need to pay advance tax related to such business on or before June 15, September 15 or December 15).

7. An assessee opting for the above scheme shall be exempted from maintenance of books of account related to such business as required under section 44AA.

8. When income is taxable at the rate of 8 per cent† as stated above, the concerned assessee is not under any obligation to explain individual entry of cash deposit in his bank, unless such entry has no nexus with the gross receipts—*CIT* v. *Surinder Pal Anand* [2010] 192 Taxman 264 (Punj. & Har.).

Is it possible to declare lower income (up to assessment year 2016-17)

74.2 A taxpayer can declare his income to be lower than the deemed profits and gains as stated above. The following consequences are applicable if the taxpayer declares his income which is lower than the deemed profits and gains as stated above—

1. The taxpayer will have to maintain the books of account as per section 44AA (irrespective of income or turnover) if his total income exceeds the exemption limit.

2. The taxpayer will have to get his books of account audited under section 44AB (irrespective of turnover) if his total income exceeds the exemption limit.

Is it possible to declare lower income (from the assessment year 2017-18) [Sec. 44AD(4)]

74.3 Where an eligible assessee declares profit for any previous year at the rate of 8 per cent† of turnover under section 44AD and he declares profit for any of the 5 consecutive subsequent assessment years at lower than 8 per cent†, he shall not be eligible to claim the benefit of the provisions of section 44AD for 5 subsequent assessment years [*i.e.*, subsequent to the assessment year relevant to the previous year in which the profit has not been declared at the rate of 8 per cent†]. For example, an eligible assessee claims to be taxed on presumptive basis of 8 per cent† of turnover under section 44AD for assessment year 2017-18. He offers income of Rs. 8 lakh on the turnover of Rs. 1 crore. For assessment year 2018-19 and assessment year 2019-20 also he offers income in accordance with the provisions of section 44AD. However, for assessment year 2020-21, he offers income of Rs. 4 lakh on turnover of Rs. 1 crore. In this case since he has not offered income in accordance with the provisions of section 44AD for 5 consecutive assessment years, after assessment year 2017-18, he will not be eligible to claim the benefit of section 44AD for next five assessment years (*i.e.*, for assessment years 2021-22 to 2025-26). Consequently, for the assessment years 2020-21 to 2025-26,—

a. he will have to maintain the books of account as per section 44AA (irrespective of income or turnover) if his total income exceeds the exemption limit; and

b. he will have to get his books of account audited under section 44AB (irrespective of turnover) if his total income exceeds the exemption limit.

The above consequences will be applicable even if for the assessment years 2021-22 to 2025-26, he wants to declare 8 per cent† (or higher) of turnover as his business income.

Case study

74-P1 *X & Co. (a firm of X and Y with unlimited liability) is engaged in the business of manufacturing (turnover of 2018-19 being Rs. 88,50,000, out of which Rs. 4,00,000 is received by account payee cheques/ drafts up to July 31, 2019). It wants to claim the following deduction —*

	Rs.
Salary and interest to partners [as permitted by section 40(b)]	*60,000*
Salary to employees	*4,90,000*
Depreciation	*2,70,000*
Cost of material used	*75,90,000*
Other expenses	*3,45,000*
Total	*87,55,000*
Net profit (Rs. 88,50,000 minus *Rs. 87,55,000)*	*95,000*

† 6 per cent in respect of total turnover or gross receipts received by an account payee cheque/draft or use of electronic clearing system through a bank account (or through prescribed electronic mode) during the previous year or before the due date of submission of return of income under section 139(1).

Determine the net income of X & Co. for the assessment year 2019-20 assuming that long-term capital gain is Rs. 40,000 and the firm is eligible for a deduction of Rs. 5,000 under section 80G. The firm has a brought forward loss of Rs. 2,40,000 (previous year 2015-16) of a trading which has been discontinued.

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	Rs.
Income from business (8% of Rs. 84,50,000 + 6% of Rs. 4,00,000)	7,00,000
Less : Expenses	
Salary/interest paid to partners as permitted by section 40(*b*)	*Nil*
Other expenses	*Nil*
Income from business	7,00,000
Less : Brought forward loss	(–)2,40,000
Profits and gains from business or profession	4,60,000
Capital gains	40,000
Gross total income	5,00,000
Less : Deductions under sections 80C to 80U	5,000
Net income	4,95,000

Computation of professional income of estimated basis under section 44ADA

74A. The provisions of section 44ADA are given below -

1. The assessee is resident and engaged in a profession referred to in section 44AA(1) (*i.e.*, such as legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board).

2. Gross receipts of the assessee from the profession does not exceed Rs. 50 lakh.

3. If the above two conditions are satisfied, income of the assessee shall be calculated on estimated basis at a sum equal to 50 per cent of the total gross receipts.

4. The assessee can voluntarily declare a higher income in his return.

5. All deductions under sections 30 to 38, including depreciation and unabsorbed depreciation, are deemed to have been already allowed and no further deduction is allowed under these sections.

6. The written down value is calculated, where necessary, as if depreciation as applicable has been allowed. Moreover, it will be assumed that disallowance, if any, under sections 40, 40A and 43B has been considered while calculating the estimated income @ 50 per cent.

7. An assessee can declare his income to be lower than the deemed profits and gains as stated above. The following consequences are applicable if the taxpayer declares his income which is lower than the deemed profits and gains as stated above -

- The assessee will have to maintain the books of account as per section 44AA, if his total income exceeds the exemption limit.
- The assessee will have to get his books of account audited under section 44AB (irrespective of turnover), if his total income exceeds the exemption limit.

Transport operators [Sec. 44AE]

75. The provisions of section 44AE are given below —

Who is covered by the scheme of section 44AE

75.1 Section 44AE is applicable only if the following conditions are satisfied—

Condition 1	The taxpayer may be an individual, HUF, AOP, BOI, firm, company, co-operative society or any other person. He or it may be a resident or a non-resident.
Condition 2	Taxpayer is engaged in the business of plying, hiring or leasing goods carriages.
Condition 3	The taxpayer owns not more than 10 goods carriages at any time during the previous year. For this purpose, a taxpayer, who is in possession of a goods carriage, whether taken on hire purchase or on instalments and for which the whole or part of the amount payable is still due, shall be deemed to be the owner of such goods carriage.

Consequences if section 44AE is applicable

75.2 If the aforesaid conditions are satisfied then section 44AE is applicable. The following are the consequences if section 44AE is applicable:

INCOME TO BE CALCULATED ON ESTIMATED BASIS

75.2-1 The mode of estimation of income, as revised with effect from the assessment year 2019-20, is as follows –

Heavy goods vehicle (more than 12,000 kg. gross vehicle weight) - For a heavy goods vehicle, the profits and gains shall be an amount equal to Rs. 1,000 per ton of gross vehicle weight (or unladen weight) for every month (or part of a month) during which the heavy goods vehicle is owned by the assessee in the previous year or an amount claimed to have been actually earned from such vehicle, whichever is higher.

Other than heavy goods vehicle - In the case of a goods carriage (other than heavy vehicle), the profits and gains shall be an amount equal to Rs. 7,500 for every month (or part of a month) during which the goods carriage is owned by the assessee in the previous year or an amount claimed to have been actually earned from such goods carriage, whichever is higher.

■ *Goods carriage* - "Goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.

■ *Ownership is the criteria* - Income on the aforesaid basis is calculated for the period during which the goods carriage is owned by the taxpayer (not on the basis of the period during which the goods carriage is put to use). For instance, income of a taxpayer who is engaged in the aforesaid business and who purchases a "light goods vehicle" on May 16, 2018 (the goods carriage is put to use on June 12, 2018) shall be Rs. 82,500 (*i.e.*, Rs. 7,500 for 11 months).

■ *Higher declaration of income possible* - A taxpayer can claim his income from the aforesaid business at a higher amount than that specified in the table above.

ESTIMATED INCOME IS COMPREHENSIVE

75.2-2 All deductions under sections 30 to 38 including depreciation, are deemed to have been already allowed and no further deduction is allowed under these sections. However, in the case of a firm, the normal deduction in respect of salary and interest to partners under section 40(*b*) shall be allowed. The written down value is calculated, where necessary, as if depreciation as applicable has been allowed. These provisions are similar to the provisions of section 44AD.

BOOKS AND AUDIT

75.2-3 The provisions are similar to the provisions contained in section 44AD.

RETURN FORM

75.2-4 An individual/HUF opting for the above scheme can submit his/its return of income in ITR-4* (which is a simplified form).

LOWER INCOME

75.2-5 These provisions are similar to the provisions contained in section 44AD.

Other points

75.3 The following points should be noted—

■ Section 44AE does not permit an assessee to apply provisions of section 44AE in case of some lorries and to go for the regular assessment on the basis of books of account in respect of remaining lorries.

■ Where the Assessing Officer has applied provisions of section 44AE for estimating the assessee's income from truck plying, he is not justified in making addition separately on account of sale proceeds of scrap because the receipt from scrap is not a separate source of income.

Case study

75-P1 *X Ltd. is engaged in the business of carriage of goods. On April 1, 2018, it owns 10 trucks as follows –*

- 7 heaving goods vehicles (weight of each one of them is 14 ton).

- 3 light goods vehicles (weight of each one of them is 5 ton).

On May 6, 2018, one of the heavy goods vehicles is sold by X Ltd. to purchase 1 light goods vehicle on May 10, 2018. The newly purchased light goods vehicle is put to use only from June 17, 2018.

Find out the net income of X Ltd. for the assessment year 2019-20 taking into consideration the following data —

	Rs.
Freight collected	*8,90,000*
Less :	
Operational expenses (a bill of Rs. 30,000 is paid in cash)	*6,40,000*

*It is also known as *Sugam*.

	Rs.
Depreciation as per section 32	*1,90,000*
Other office expenses	*15,000*
Net profit	*45,000*
Other business/non-business income	*6,70,000*

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Income shall be computed under section 44AE as follows —

Type of carriage	*Period during which trucks are owned*	*Number of months (including a part of month)*	*Rate per month*	*Amount (in Rs.) [(1) × (3) × (4)]*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
6 heavy goods vehicles	April 1, 2018 to March 31, 2019	12	Rs. 1,000 × 14 ton	10,08,000
1 heavy goods vehicle	April 1, 2018 to May 6, 2018	2	Rs. 1,000 × 14 ton	28,000
1 light goods vehicle	May 10, 2018 to March 31, 2019	11	Rs. 7,500	82,500
3 light goods vehicles	April 1, 2018 to March 31, 2019	12	Rs. 7,500	2,70,000
Total				13,88,500

Computation of income —	*Rs.*
Income from carriage of goods	13,88,500
Other income	6,70,000
Net income	20,58,500

Employment of new workmen [Sec. 80JJAA]

76. The provisions of section 80JJAA are given below –

Conditions

76.1 One has to satisfy the following conditions –

1. The assessee has income from business and is subject to tax audit under section 44AB.

2. The business of the assessee is not formed by splitting up, or the reconstruction, of an existing business. However, this condition is not applicable in respect of a business which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as referred to in section 33B.

3. Business is not acquired by the assessee by way of transfer from any other person or as a result of any business reorganisation.

Amount of deduction

76.2 If the above conditions are satisfied, an amount equivalent to 30 per cent of additional employee cost (incurred in the course of such business in the previous year) is deductible under section 80JJAA for 3 assessment years including the assessment year relevant to the previous year in which such employment is provided. Books of account should be audited and report of audit should be submitted along with the return of income. Deduction should be claimed in the return of income (otherwise deduction is not available). The following points should be noted –

1. "Additional employee cost" means total emoluments paid or payable to additional employees employed during the previous year.

2. In the case of an existing business, the additional employee cost shall be *nil,* if—

a. there is no increase in the number of employees from the total number of employees employed as on the last day of the preceding year;

b. emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account (or through prescribed electronic mode).

3. In the first year of a new business, emoluments paid or payable to employees employed during that previous year shall be deemed to be the additional employee cost.

4. "Additional employee" means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year, but does not include,—

a. an employee whose total emoluments are more than Rs. 25,000 per month; or

b. an employee for whom the entire contribution is paid by the Government under the Employees' Pension Scheme notified in accordance with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952;

c. an employee employed for a period of less than 240 days (150 days, if the assessee is engaged in the business of manufacture of apparel or footwear or leather products) during the previous year; or

d. an employee who does not participate in the recognised provident fund.

5. "Emoluments" mean any sum paid or payable to an employee *in lieu* of his employment by whatever name called, but does not include employer's contribution to pension fund/provident fund/any other fund for the benefit of employee under any law. Further, it does not include lump sum payment at the time of termination of service, or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension, and the like.

6. The provisions of old section 80JJAA shall apply to an assessee who is eligible to claim any deduction under section 80JJAA for the assessment year 2016-17 (or any earlier assessment year).

Case studies

76-P1 *X & Co. is a limited liability partnership (date of commencement of business June 1, 2018). It owns and operates retail outlets in different parts of North India. During the previous year 2018-19, it appoints the following persons –*

Date of appointment	*No. of employees*	*Designation*	*Salary (in Rs. per person)*
May 1, 2018	*8*	*Storekeeper*	*18,000*
June 1, 2018	*12*	*Salesperson*	*25,000*
July 1, 2018	*4*	*Supervisor*	*28,000*
October 1, 2018	*25*	*Helper*	*11,000*
Total	*49*		

Salary to storekeepers is paid in cash up to December 31, 2018. In other cases, salary is transferred by use of electronic clearing system through SBI, Noida. Determine the amount of deduction available under section 80JJAA for the assessment year 2019-20 under the following two situations –

Situation 1 - *Turnover of X & Co. for the previous year 2018-19 is Rs. 6 crore and tax audit under section 44AB is applicable.*

Situation 2 - *Turnover of X & Co. for the previous year 2018-19 is Rs. 90 lakh and tax audit under section 44AB is not applicable.*

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Deduction under section 80JJAA is not available in *Situation 2* (as tax audit under section 44AB is not applicable). However, in *Situation 1* deduction under section 80JJAA shall be determined as follows –

	Salary [deductible under section 37(1)]	*Deduction under section 80JJAA*
	Rs.	*Rs.*
Storekeepers appointed on May 1, 2018 (Rs. 18,000 × 8 × 11 months)	15,84,000	4,75,200*
Salespersons appointed on June 1, 2018 (Rs. 25,000 × 12 × 10 months)	30,00,000	9,00,000*
Supervisors appointed on July 1, 2018 (Rs. 28,000 × 4 × 9 months)	10,08,000	*Nil***
Helpers appointed on October 1, 2018 (Rs. 11,000 × 25 × 6 months)	16,50,000	*Nil****
Total	72,42,000	13,75,200

*It is 30% of salary. Deduction under section 80JJAA is in addition to deduction available under section 37(1). If salary is not paid by account payee cheque/draft (or not transferred by electronic clearing system through bank), deduction under section 80JJAA is not available. However, this rule is applicable in the case of an existing business (and not in the first year of a new business).

**Deduction under section 80JJAA is not available in respect of employees whose total emoluments are more than Rs. 25,000 per month.

***Helpers are employed for less than 240 days during the previous year 2018-19. No deduction is available under section 80JJAA. If these helpers are employed for at least 240 days in the previous year 2019-20, deduction can be claimed for the assessment year 2020-21.

76-P2 *Taking into consideration the following information pertaining to the previous year 2019-20 in the above problem, find out the amount deductible under section 80JJAA for the assessment year 2020-21 (tax audit is required for the previous year 2019-20, as turnover is more than Rs. 5 crore) –*

	Situation 1	Situation 2
No. of employees as on March 31, 2019	*49*	*49*
Salespersons resigned during April 2019	*6*	Nil
No. of employees as on April 30, 2019	*43*	*49*
8 deputy managers appointed on May 1, 2019 (salary : Rs. 24,000 per month, increased to Rs. 28,000 with effect from February 1, 2020)	*8*	*8*
No. of employees as on May 31, 2019	*51*	*57*
General manager appointed on August 1, 2019 (on part time basis) (salary : Rs. 20,000 per month)	*1*	*1*
No. of employees as on March 31, 2020	*52*	*58*

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	Situation 1	*Situation 2*
No. of employees as on March 31, 2019	49	49
No. of employees immediately after appointment of 8 deputy managers	51	57
Increase in total number of employees as compared to number of employees as on last day of preceding previous year (*a*)	2	8
No. of deputy managers qualified for deduction under section 80JJAA	2	8
	Rs.	*Rs.*
Salary payable to these deputy managers from May 1, 2019 to February 1, 2020 (from February 1, 2020 salary is more than Rs. 25,000, deduction under section 80JJAA is not available) [(*a*) × Rs. 24,000 × 9 months]	4,32,000	17,28,000
Salary to part-time general manager (Rs. 20,000 × 8 months)	1,60,000	1,60,000
Total	5,92,000	18,88,000
Amount deductible under section 80JJAA (30% of total)	1,77,600	5,66,400

Tonnage Tax Scheme [Secs. 115V to 115VZC]

77. To make the Indian shipping industry more competitive, a tonnage tax scheme for taxation of shipping profits has been introduced. Many maritime nations have introduced tonnage based taxation. Some of the basic features of the tonnage tax scheme are as follows :

■ It is a scheme of presumptive taxation whereby the notional income arising from the operation of a ship is determined based on the tonnage of the ship.

■ The notional income is taxed at the normal corporate rate applicable for the year.

■ Tax is payable even if there is a loss in an year.

■ A company may opt for the scheme [Form No. 65] and once such option is exercised, there is a lock-in-period of 10 years. If a company opts out, it is debarred from re-entry for ten years.

■ Since this is a preferential regime of taxation, certain conditions like creation of reserves, training, etc., are required to be met.

■ A company may be expelled in certain circumstances.

Salient features

77.1 The salient features of the scheme are as follows:

■ A company owning at least one qualifying ship may join. A qualifying ship is one with a minimum tonnage of 15 tons and having a valid certificate. The company has to opt for the scheme within 3 months, *i.e.*, any time between October 1, 2004 to December 31, 2004 by making an application in the prescribed form to the concerned Joint Commissioner who may pass an appropriate order. A new company can make application within three months of the date of its incorporation or the date on which it became a qualifying company, as the case may be.

■ Certain types of ships like fishing vessels, pleasure crafts, harbour and river ferries, etc., are excluded in terms of section 115VD which gives details of as to what ships will qualify for the scheme.

■ The business of operating qualifying ships is to be considered a separate business and separate accounts are to be maintained. Section 115VG gives the manner of computation of the daily tonnage income as follows—

Qualifying ship having net tonnage	*Amount of daily tonnage income‡*	
	Up to the assessment year 2012-13	*From the assessment year 2013-14*
Up to 1,000	Rs.46 for each 100 tons	Rs.70 for each 100 tons
Exceeding 1,000 but not more than 10,000	Rs.460 *plus* Rs.35 for each 100 tons exceeding 1,000 tons	Rs.700 *plus* Rs.53 for each 100 tons exceeding 1,000 tons
Exceeding 10,000 but not more than 25,000	Rs.3,610 *plus* Rs.28 for each 100 tons exceeding 10,000 tons	Rs.5,470 *plus* Rs.42 for each 100 tons exceeding 10,000 tons
Exceeding 25,000	Rs.7,810 *plus* Rs.19 for each 100 tons exceeding 25,000 tons	Rs.11,770 *plus* Rs.29 for each 100 tons exceeding 25,000 tons

The daily tonnage income shall be multiplied by the number of days the ship operated. The resulting amount would be the annual tonnage income from the ship. A company owning at least one ship may charter in ships subject to certain limits for the purpose of operation. Relevant shipping income, which replaces the actual income from the operations, is defined in section 115VI. Section 115VJ gives the treatment of common costs.

Provisions illustrated - Suppose a tonnage tax company operates only one qualifying ship throughout the previous year 2018-19. The ship has a net tonnage of 25,000 tons and the corporation tax rate for that year is 30.9 per cent. Tonnage tax liability of such company would be calculated as follow:

Daily profit:	*Rs.*
For the first 1,000 tons	700
For 1,001 to 10,000 tons	4,770
For remaining 15,000 tons	6,300
Total	11,770
Notional annual profit:	
Rs. 11,770 × 365 days	Rs. 42,96,050
Tonnage tax: Rs. 42,96,050 × 31.2%	Rs. 13,40,368

■ A company opting for the scheme is not allowed any set-off of loss nor is any depreciation allowed. However, both loss and depreciation are deemed to have been allowed and notional adjustments are made against the relevant shipping income. Although depreciation is not allowed, it is necessary to bifurcate the qualifying ships and non-qualifying ships at the time a company joins the scheme. Section 115VK lays down the method for allocating the written down value amongst qualifying and non-qualifying ships. Any income from transfer of qualifying assets is treated in the same manner as for any other business asset in terms of section 115VN.

Provisions illustrated - The WDV of the existing block under section 32 is Rs. 70 crore. This comprises three qualifying assets (Q) and two non-qualifying assets (NQ). The book WDV of each of the qualifying and the non-qualifying assets is identified as under as the first step :

(Rs. in crore)

	Assets	*Book WDV*
Q1	30	
Q2	20	
Q3	30	80
NQ1	15	
NQ2	5	20

Book WDV of all the existing qualifying assets is Rs. 80 crores and that for the non-qualifying is Rs. 20 crores. Thus, the ratio of book WDV of qualified assets to that of non-qualifying assets is 4:1. In the final step, the existing WDV of the common block, which is Rs. 70 crore, is to be allocated in this ratio of qualifying block and non-qualifying blocks. Accordingly, WDV of qualifying block would be Rs. 56 crore and that of non-qualifying block would be Rs. 14 crore — Circular No. 5/2005, dated July 15, 2005.

■ The profits from the business of operating qualifying ships will not be taken into consideration for the purpose of MAT as per section 115VO.

■ Section 115VP relates to method and time of opting for tonnage tax scheme. A qualifying company may opt for the tonnage tax scheme by making an application to the Joint Commissioner having jurisdiction over the company in Form No. 65 and manner prescribed in rule 11P. The initial period in which a company will be able to opt for the scheme will be for a period of three months starting from October 1, 2004 and ending on December 31, 2004. After the end of the initial

‡No addition to this income can be made by way of disallowance under section 14A.

period, only those companies which are incorporated after the initial period or which become qualifying companies after the initial period for the first time (in case of existing companies) shall be able to opt for the scheme. In such cases, however, the application for exercising the option will have to be made within three months of the date of the incorporation or, as the case may be, the date on which the company became a qualifying company.

■ Section 115VQ lays down that once a company opts for the scheme, the option remains in force for 10 years except in certain circumstances. Section 115VS provides for the circumstances in which the tonnage tax company is prohibited from opting for the scheme. Such prohibition is for a period of 10 years. Sections 115VT, 115VU, 115VS and 115VW lay down the conditions for the applicability of the scheme. In terms of section 115VT, a tonnage tax company has to create a reserve of at least 20 per cent of its book profits to be utilized for the purpose of acquisition of new ships. As per section 115VU a tonnage tax company has to comply with a minimum training requirement in accordance with the guidelines to be issued by the DG (Shipping). The company will be expelled if the training requirements are not met for 5 consecutive years. Section 115VV lays down that every company which has opted for tonnage tax scheme, not more than 49 per cent of the net tonnage of the qualifying ships operated by it during any previous year shall be chartered in. In terms of section 115VW, maintenance of separate books of account and the audit of the same is compulsory for a company opting for the scheme. Section 115VX lays down the details regarding valid certificate which indicates the net tonnage of ships. Sections 115VY and 115VZ provide for the contingencies of amalgamation and demerger. Section 115VZB enjoins upon a company not to abuse the preferential tax regime and section 115VZC provides for expulsion of a company in case of abuse.

MULTIPLE CHOICE QUESTIONS

Q1. A limited liability partnership cannot claim deduction available under section 33AB—

a. True;

b. False.

Q2. A Ltd. is an Indian company. It is controlled by X and his family members. Shares of the company are not listed. It can claim deduction under section 35ABB—

a. True;

b. False.

Q3. A limited liability partnership cannot avail the benefit of section 44AD for the assessment year 2018-19—

a. True;

b. False.

Q4. A limited liability partnership cannot avail the benefit of section 44AD for the assessment year 2018-19—

a. True;

b. False.

Q5. X Ltd. is a company in which the public are substantially interested. It is in the business of plying, hiring and leasing goods carriages. It does not own more than 10 trucks. Since it is a company, section 44AE is not applicable—

a. True;

b. False.

Q6. Deduction under section 80JJAA is available in the following cases—

a. Indian company;

b. Foreign company;

c. Limited liability partnership;

d. All of above;

e. None of above.

Q7. Tonnage tax scheme is applicable in the following cases—

a. Foreign shipping company;

b. Indian shipping company;

c. Limited liability partnership in shipping industry;

d. All of above;

e. None of above.

Q8. A qualifying ship (net tonnage: 11,000) operates for 366 days during the previous year 2017-18. Its notional annual profit from the ship under the tonnage tax scheme is—

a. Rs. 1,80,665;

b. Rs. 1,84,690;

c. Rs. 1,40,525;

d. None of above.

TAX PLANNING WITH REFERENCE TO NEW BUSINESS – FORM OF ORGANISATION

8
CHAPTER

Form of organisation

86. Among other considerations (like requirement of finance, resources, personal liability of owner, level of operation, quantum of profit, specified requirement of technical expertise), tax incentives play important role while selecting a suitable form of organisation for a new business. One can take a decision while comparing tax liability under different organisation forms.

Whether sole proprietorship is a better alternative

87. Aggregate amount of tax liability on firm and partners is generally higher than that of the case when the same amount of income is generated through sole proprietorship. One should, therefore, consider the possibility of converting firms into sole proprietorships. The same is evident from the case studies given below :

	Case 1	*Case 2*	*Case 3*
Number of partners	3	4	8
Profit-sharing ratio	Equal	Equal	Equal
	Rs.	*Rs.*	*Rs.*
Total capital contribution of partners (each contributing identical amount)	10,00,000	15,00,000	80,00,000
Profit of the previous year 2019-20	6,00,000	12,00,000	60,00,000
Other income of each partner	1,60,000	1,50,000	1,60,000
Life insurance premium paid by each partner	1,60,000	1,50,000	1,90,000
Tax on firm			
Income of firm	6,00,000	12,00,000	60,00,000
Less : Salary			
*Rs. 10,500 per month	3,78,000*	7,02,000**	31,14,000***
**Rs. 14,625 per month			
***Rs. 32,437.5 per month			
Interest	1,20,000	1,80,000	9,60,000
Net income	1,02,000	3,18,000	19,26,000
Tax on firm	31,820	99,220	6,00,910
Tax liability of each partner (*a*)	10,608	24,805	75,114
Tax on partners			
Salary	1,26,000	1,75,500	3,89,250
Interest	40,000	45,000	1,20,000
Income from other sources	1,60,000	1,50,000	1,60,000
Net income (after section 80C deduction)	1,76,000	2,20,500	5,19,250
Tax on net income (*b*)	*Nil*	*Nil*	17,000
Total liability of each partner [(*a*) + (*b*)] (*c*)	10,608	24,805	92,114

Tax liability when the same income is earned as a sole proprietor.

	Case 1 Rs.	Case 2 Rs.	Case 3 Rs.
Total income of the firm	6,00,000	12,00,000	60,00,000
Number of partners	3	4	8
Income earned by each individual	2,00,000	3,00,000	7,50,000
Income from other sources	1,60,000	1,50,000	1,60,000
Net income (after section 80C deduction)	2,10,000	3,00,000	7,60,000
Tax on each individual (if income is earned as a sole proprietor) (*d*)	*Nil*	*Nil*	67,080
Tax saving when income is earned as a sole proprietor [*i.e.*, excess of (*c*) over (*d*)]	10,608	24,805	25,034

To avoid high tax incidence on firms, firms may be converted into sole proprietorship.

Firm *v.* Company

88. A comparative study is made below of tax incidence on firm and private limited company.

Partnership firm - The following basic assumptions have been made :

a. There are two partners X and Y with an equal share of profit.

b. They want to draw the maximum permissible amount as salary. Both the partners will draw equal salary.

c. Income is from business (not from profession).

d. They are entitled to simple interest at the rate of 12 per cent on the capital contribution of Rs. 10,00,000.

e. Partners do not have any income.

On the aforesaid assumptions, the following will be tax incidence on firm/partners at different income structures :

TABLE 1

TAX INCIDENCE ON FIRM AND PARTNERS

Taxable income before deduction of salary and interest	*Interest on capital to partners*	*Salary payable to X and Y*	*Taxable income of firm after salary and interest*	*Tax liability of the firm*	*Tax liability of the partners*	*Total tax as percentage of income (5 + 6) as % of (1)*
(1) *Rs.*	*(2)* *Rs.*	*(3)* *Rs.*	*(4)* *Rs.*	*(5)* *Rs.*	*(6)* *Rs.*	*(7)*
5,00,000	1,20,000	3,18,000	62,000	19,340	0	3.87%
10,00,000	1,20,000	6,18,000	2,62,000	81,740	12,380	9.41%
15,00,000	1,20,000	9,18,000	4,62,000	1,44,140	33,900	11.87%
20,00,000	1,20,000	12,18,000	6,62,000	2,06,540	96,300	15.14%
25,00,000	1,20,000	15,18,000	8,62,000	2,68,940	1,58,700	17.11%
30,00,000	1,20,000	18,18,000	10,62,000	3,31,340	2,21,100	18.42%

Private limited company - On the same data, tax incidence is computed in the case of a private limited company. The following assumptions have been made :

i. X and Y will be the two shareholders and directors of the company.

ii. They will draw salary. As there is no maximum ceilings under the Income-tax Act, they will draw salary @ 90 per cent of profit up to Rs. 3,00,000 of profit and 60 per cent of balance. It is assumed that provisions of section 40A(2) are not attracted.

The results are given in Table 2.

TABLE 2

TAX INCIDENCE ON PRIVATE LIMITED COMPANY AND DIRECTORS

Taxable income (before payment of salary to directors)	*Salary to directors X and Y*	*Taxable income of the company*	*Tax liability of the company*	*Taxable income of X*	*Tax liability of X*	*Total tax of the company X and Y*	*(7) as % of (1)*
(1) *Rs.*	*(2)* *Rs.*	*(3)* *Rs.*	*(4)* *Rs.*	*(5)* *Rs.*	*(6)* *Rs.*	*(7)* *Rs.*	*(8)*
5,00,000	3,90,000	1,10,000	34,320	1,45,000	0	34,320	6.86%
10,00,000	6,90,000	3,10,000	96,720	2,95,000	0	96,720	9.67%
15,00,000	9,90,000	5,10,000	1,59,120	4,45,000	0	1,59,120	10.61%
20,00,000	12,90,000	7,10,000	2,21,520	5,95,000	32,760	2,87,040	14.35%
25,00,000	15,90,000	9,10,000	2,83,920	7,45,000	63,960	4,11,840	16.47%
30,00,000	18,90,000	11,10,000	3,46,320	8,95,000	95,160	5,36,640	17.89%

Analytical study of data - From the data presented in Table 1 and Table 2, tax incidence is lower in the case of small firms.

88.1 The aforesaid results are subject to the following propositions :

How to reduce tax incidence on companies

INCREASE NUMBER OF DIRECTORS AND TOTAL REMUNERATION PAYABLE TO THEM

88.1-1 In all the above cases, a simple model of two partners/directors is taken. Tax incidence of companies would go down if the number of directors (as well as total remuneration to them) is increased. For instance, if in the data presented in Tables 1 and 2, the following modifications are made, then the tax incidence would be lower in the case of a private limited company than that of a firm.

Firm	*Private limited company*
1. Partners are increased to five *2.* Total salary payable to partners remains the same (maximum permissible)	*1.* Directors are increased to five. *2.* Total salary payable to directors is increased to 90 per cent of total income of the company (there is no maximum limit on remuneration payable to directors)

After making the aforesaid modifications, the results are tabulated in Tables 3 and 4.

TABLE 3

TAX INCIDENCE ON FIRM AND FIVE PARTNERS

Taxable income before deduction of salary and interest	*Interest on capital to partners*	*Salary payable to 5 partners*	*Taxable income of firm after salary and interest*	*Tax liability of the firm*	*Tax liability of the partners*	*Total tax as percentage of income (5+6) as % of (1)*
(1) *Rs.*	*(2)* *Rs.*	*(3)* *Rs.*	*(4)* *Rs.*	*(5)* *Rs.*	*(6)* *Rs.*	*(7)*
5,00,000	1,20,000	3,18,000	62,000	19,340	*Nil*	3.87%
10,00,000	1,20,000	6,18,000	2,62,000	81,740	*Nil*	8.17%
15,00,000	1,20,000	9,18,000	4,62,000	144,140	*Nil*	9.61%
20,00,000	1,20,000	12,18,000	6,62,000	206,540	*Nil*	10.33%
25,00,000	1,20,000	15,18,000	8,62,000	268,940	7,200	11.05%
30,00,000	1,20,000	18,18,000	10,62,000	331,340	35,800	12.24%

TABLE 4

TAX INCIDENCE ON COMPANY AND FIVE DIRECTORS

Taxable income (before payment of salary to directors)	*Salary to five directors*	*Taxable income of the company*	*Tax liability of the company*	*Taxable income of one director*	*Tax of one director*	*Total tax of the company and five directors*	*(7) as % of (1)*
(1) Rs.	*(2) Rs.*	*(3) Rs.*	*(4) Rs.*	*(5) Rs.*	*(6) Rs.*	*(7) Rs.*	*(8)*
5,00,000	4,50,000	50,000	15,600	40,000	*Nil*	15,600	3.12%
10,00,000	9,00,000	1,00,000	31,200	1,30,000	*Nil*	31,200	3.12%
15,00,000	13,50,000	1,50,000	46,800	2,20,000	*Nil*	46,800	3.12%
20,00,000	18,00,000	2,00,000	62,400	3,10,000	*Nil*	62,400	3.12%
25,00,000	22,50,000	2,50,000	78,000	4,00,000	*Nil*	78,000	3.12%
30,00,000	27,00,000	3,00,000	93,600	4,90,000	*Nil*	93,600	3.12%

PROVIDE PERQUISITES TO DIRECTORS

88.1-2 As there is no employer-employee relationship in the case of firm and partners, the allowability of expenses incurred in providing perquisites to partners is highly doubtful. Even if such expenses are allowed as deduction, the same will be taxable in the assessment of individual partners (the concessional tax treatment of perquisites given by rule 3 will not be applicable in the absence of employer-employee relationship). In the case of companies, expenses on perquisites extended to directors are allowable as deduction. Moreover, perquisites in the hands of directors are taxable as per section 17 and rule 3.

Case study

The aforesaid proposition is examined in the following case study :

Firm

1. Number of partners : 4
2. Taxable income before interest/remuneration : Rs. 14,00,000.
3. Interest on capital to partners on total capital contribution of Rs. 15,00,000 @ 12% : Rs. 1,80,000
4. Remuneration payable to partners at the maximum level : Rs. 8,22,000 (salary to each partner being Rs. 2,05,500 payable in cash or in cash/kind)

Private company

1. Number of directors : 4
2. Taxable income before payment of salary/perquisites to directors : Rs. 14,00,000
3. Remuneration payable to directors : Rs. 12,00,000 salary to each, being Rs. 3,00,000 payable in cash and kind as follows :

	Rs.
Basic pay :	1,20,000
Education allowance	2,400
Free residential house at Delhi (rent paid by employer is Rs. 1,77,600)	1,77,600

Firm	
Income	14,00,000
Less : Interest on capital	1,80,000
Book profit	12,20,000
Less : Remuneration to partners	8,22,000
Net income of firm	3,98,000
Tax liability of firm (rounded off)	1,24,180
Partner	
Salary	2,05,500
Interest	45,000
Net income	2,50,500
Tax (rounded off)	*Nil*
Tax liability of firm and four partners	1,24,180
Tax incidence as percentage of income	8.87%

Private limited company

	Rs.
Income	14,00,000
Less : Salary and perquisites to four directors	12,00,000
Net income	2,00,000
Tax @ 31.2% (rounded off)	62,400
Director	
Basic salary	1,20,000
Education allowance [not taxable under section 10(*14*)]	*Nil*
Valuation of rent-free house at Delhi (as per rule 3)	18,000
Gross salary	1,38,000
Less : Standard deduction	50,000
Salaries	88,000
Net income	88,000
Tax on net income	*Nil*
Tax liability of company and four directors	62,400
Tax incidence as percentage of income	4.45%

As the tax liability is lower in the case of companies, taxpayers are advised to convert firm into companies to reduce their tax bill.

Limited liability partnership (LLP)

89. A limited liability partnership (LLP) is governed by the Limited Liability Partnership Act, 2008. A LLP is a body corporate formed and incorporated under the Limited Liability Partnership Act, 2008 and it is a legally separate entity from that of its partners. A LLP has perpetual succession. Any change in the partners of a LLP will not have any impact on its existence or rights and liabilities of the LLP. LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership. LLP is liable to the outsiders to the extent of its assets. However, liability of the partners is limited to their agreed contribution in the LLP. Thus, LLP contains elements of both a corporate structure as well as a partnership firm structure. LLP may be called a hybrid between a partnership and a company.

LLP is taxed like traditional partnership firm

89.1 Under the Income-tax Act, a LLP is taxable like traditional partnership firm. LLP pays tax on its taxable income at the rate of 30 per cent [effective maximum rate is 34.944 per cent]. Remuneration and interest to partners are deductible if conditions of sections 40(*b*) and 184 are satisfied. Interest on capital is deductible at the maximum rate of 12 per cent per annum. Remuneration to partners is deductible, if such remuneration is payable to working partners according to the provisions of partnership deed. The aggregate remuneration payable to all working partners cannot exceed 90 per cent of first Rs. 3 lakh of book profit and 60 per cent of the balance of book profit. Share of profit of partners in LLP is not taxable in the hands of partners. However, remuneration and interest are taxable under section 28 under the head "Profits and gains of business or profession" in the hands of partners to the extent these are allowed as deduction in the hands of LLP.

Firm, LLP and company - A comparison of tax benefits

89.2 The table given below compares tax benefits available to a firm, LLP and company—

	Firm	*LLP*	*Company*
Tax rates	34.944%	34.944%	34.944%
Minimum alternate tax	Alternate minimum tax is applicable, if normal tax liability is less than 18.5% (+SC+ HEC) of adjusted total income	Alternate minimum tax is applicable, if normal tax liability is less than 18.5% (+SC+ HEC) of adjusted total income	Applicable if normal tax liability is lower than 18.5% (+ SC + HEC) of book profit
Dividend tax	Not applicable	Not applicable	Dividend declared, distributed or paid is liable for dividend tax

	Firm	*LLP*	*Company*
			at the rate of 20.56%. However, deemed dividend under section 2(*22*)(*e*) is subject to dividend tax @ 34.944%.
Tax treatment in the hands of shareholders or partners	Share of profit in firm is not taxable in the hands of partners	Share of profit in firm is not taxable in the hands of partners	Dividend in the hands of shareholders is not taxable up to Rs. 10,00,000. However, deemed dividend under section 2(*22*)(*e*) is an exception.
Interest on capital to partners or shareholders	Deductible if permitted by the partnership deed and rate of interest does not exceed 12%. Conditions of section 184 should be satisfied.	Deductible if permitted by the partnership deed and rate of interest does not exceed 12%. Conditions of section 184 should be satisfied.	Shareholders cannot be paid interest on share capital. Shareholders get dividend on shares, dividend payment is not a deductible expenditure.
Remuneration to partners or shareholders	Deductible if conditions of sections 40(*b*) and 184 are satisfied. Aggregate amount deductible cannot, however, exceed 90% of first Rs. 3 lakh of book profit and 60% of the balance.	Deductible if conditions of sections 40(*b*) and 184 are satisfied. Aggregate amount deductible cannot, however, exceed 90% of first Rs. 3 lakh of book profit and 60% of the balance.	Shareholders can join the company as employees. Remuneration can be paid. There is no maximum ceiling. However, section 40A(2) is applicable.
Applicability of sections 78 and 79 in case there is a change in constitution of the firm or change in the list of shareholders of a company	Section 78 is applicable	Section 78 is applicable	Section 79 is applicable, if the company is a company in which the public are not substantially interested.
Loan to partners/ shareholders	Not taxable as income	Not taxable as income	Treated as deemed dividend under section 2(*22*)(*e*), if a few conditions are satisfied and the company is a company in which the public are not substantially interested. On such deemed divided, the company will have to pay dividend tax under section 115-O.
Applicability of presumptive tax scheme under section 44AD	Applicable	Not applicable	Not applicable
Whether expenditure for family planning for the benefit of employees is deductible under section 36(1)(*ix*)	Cannot be claimed as deduction under section 36(1)(*ix*). However, deduction can be claimed under sections 32 and 37	Cannot be claimed as deduction under section 36(1)(*ix*). However, deduction can be claimed under sections 32 and 37	Can be claimed as deduction under section 36(1)(*ix*).
Whether weighted deduction under section 35(2AB) is available	Not available	Not available	Available

LLP v. *Company*

89.3 Liability of a partner of LLP is limited to his agreed contribution. There is no personal liability of a partner except in the case of a fraud. Moreover, a partner of LLP is not liable on account of the independent or unauthorized acts of other partners and there is no joint liability created by other partners wrongful acts or misconduct in the case of LLP. Besides, a LLP has following tax advantages as compared to a company.

1. Tax rates - LLP is taxable at the rate of 31.20 per cent (if net income does not exceed Rs. 1 crore) or 34.944 per cent (if net income exceeds Rs. 1 crore). However, a company is taxable at the rate of 31.20 per cent (if net income does not exceed Rs. 1 crore), 33.384 per cent (if net income exceeds Rs. 1 crore but does not exceed Rs. 10 crore) or 34.944 per cent (if net income exceeds Rs. 10 crore).

2. Minimum alternate tax - Minimum alternate tax is applicable in the case of a company. Alternate minimum tax will be applicable in the case of LLP.

3. Tax on distribution of dividend - A company is liable for dividend tax. A LLP is not subject to any such tax.

4. Provisions of section 79 - A LLP is not subject to provisions of section 79.

5. Provisions of section 2(22)(e) - A LLP is not liable for the deeming provisions of section 2(*22*)(*e*).

Moreover, a LLP is liable for audit under the LLP Act, 2008 only if its turnover exceeds Rs. 40 lakh or its capital contribution exceeds Rs. 25 lakh. A LLP can adopt cash system of accounting. A company has to adopt mercantile system of accounting. A private limited company cannot have more than 200 members. There is no such ceiling in the case of LLP. In the case of a company, internal governance structure is regulated by the Companies Act, whereas in the case of LLP, it is regulated by contractual agreement between partners and/or between partners and LLP. Because of these advantages, existing companies may be converted into LLPs. Enabling provisions are given in LLP Act, pursuant to which a private company or unlisted public company (incorporated under Companies Act) would be able to convert themselves into LLPs.

MULTIPLE CHOICE QUESTIONS

Q1. A limited liability partnership is subject to provision of minimum alternate tax—

a. True;

b. False.

Q2. Since dividend tax is not payable by a limited liability partnership, share of profit in the hands of partners is chargeable to tax—

a. True;

b. False.

Q3. Between a limited liability partnership and a private limited company, from tax point of view—

a. Limited liability partnership is better than private limited company;

b. Private limited company is better than limited liability partnership;

c. Tax liability is same;

d. Tax liability is not same, as it depends upon certain factors (like remuneration to directors, how remuneration is paid, etc.).

Q4. A proprietorship is better alternative in small cases—

a. True;

b. False.

Q5. Within legal parameters, in which case it is possible to reduce tax liability to a minimum level (assume income is Rs. 50 lakh)—

a. Partnership firm;

b. Limited liability partnership;

c. Private limited company;

d. Sole proprietorship.

Q6. X and Mrs. X want to start a new business by introducing a capital of Rs. 75 lakh. A bank will finance the remaining project cost. Annual projected income will be Rs. 35 lakh. From the tax point of view, suitable form of organization is—

a. Limited liability partnership;

b. Sole proprietorship;

c. Private limited company;

d. Traditional partnership firm.

TAX PLANNING WITH REFERENCE TO FINANCIAL MANAGEMENT DECISIONS

9
CHAPTER

Capital structure decision

90. Before commencing a new project a vital managerial decision regarding selecting right type of capital structure has to be taken. An optimum capital structure is one which maximises shareholders' return. The advantages of having an optimum capital structure are two-fold. It maximises the value of the assets of the company and wealth of its owner and minimises the cost of capital which, in turn, raises its ability to find inbuilt additional investment opportunities. Problem of planning capital structure is of crucial importance and has long-term implications. The tax planner should properly balance risk, cost, control and tax consideration. In capital structure decisions, the cost of capital is an important consideration along with risk factor. One of the main reasons for raising finance through borrowing (as against issue of equity shares) is to increase earning on equity share capital. But excessive use of debt capital increases the financial risk of the company.

Under the tax laws, dividend on shares is not deductible and distributed profit is subject to dividend tax. On the other hand, interest paid on borrowed capital is allowed as deduction under section 36(1)(*iii*). Cost of raising finance through borrowing is deductible in the year in which it is incurred (if, however, it is incurred during pre-commencement period, it has to be capitalised). Cost of issue of share is allowed as deduction in five years under section 35D. Because of the aforesaid provisions, corporate taxation plays an important role in determining the choice between different sources of financing.

Case studies

90-P1 *X Ltd. is a widely-held company. It is currently considering a major expansion of its production facilities and the following alternatives are available :*

	Alternative one Rs.	Alternative two Rs.	Alternative three Rs.
Share capital	*5,00,00,000*	*2,00,00,000*	*1,00,00,000*
Debentures (14 per cent)	—	*2,00,00,000*	*1,50,00,000*
Loan from financial institution/bank (@ 18 per cent)	—	*1,00,00,000*	*2,50,00,000*

Expected rate of return (before tax) is 25 per cent. The rate of dividend of the company since 1990 is not less than 20 per cent and the date of dividend declaration is June 30 every year.

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Capital structure decision

	Alternative one Rs.	*Alternative two Rs.*	*Alternative three Rs.*
Return on Rs. 5 crore	1,25,00,000	1,25,00,000	1,25,00,000
Less :			
Interest on debenture	—	28,00,000	21,00,000
Interest on loan	—	18,00,000	45,00,000

	Alternative one Rs.	*Alternative two Rs.*	*Alternative three Rs.*
Taxable profit	1,25,00,000	79,00,000	59,00,000
Tax @ 30% (*plus* 7% of tax as surcharge *plus* 4% of tax and surcharge as health and education cess)	41,73,000	24,64,800	18,40,800
Return on equity share capital before dividend tax (*a*)	83,27,000	54,35,200	40,59,200
Rate of return on equity share capital	16.65%	27.18%	40.59%

The company should, therefore, opt for the third alternative.

90-P2 *The directors of a company propose to expand and modernise its business for which an additional investment of Rs. 50 crore would be needed. They feel confident about raising the entire sum of Rs. 50 crore either by making a further issue of equity shares or by borrowings from financial institution at 18 per cent per annum. They decide in favour of raising the additional capital by issue of equity shares. The company's present paid-up equity share capital is Rs. 50 crore and it has been declaring dividend at 20 per cent (ignoring dividend tax) on September 30 every year for the last five years though, considering the proposed expansion, there is desire to raise it to 25 per cent.*

As a tax consultant do you approve of the proposal to raise the entire additional capital through issue of equity shares or would you advise differently ? Answer in detail, giving reasons.

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Rate of return is not given in the problem. The following calculations are given on the assumption that the rate of return is x —

(Rs. in crore)

	If entire Rs. 50 crore is raised through equity	*If Rs. 25 crore is raised through equity and Rs. 25 crore through debt*	*If Rs. 35 crore is raised through equity and Rs. 15 crore through debt*	*If entire Rs. 50 crore is raised through debt*
Return on Rs. 50 crore	$50x$	$50x$	$50x$	$50x$
Less : Interest on debt @ 18 %	-	4.5	2.7	9
Balance	$50x$	$50x$–4.5	$50x$–2.7	$50x$–9
Less : Corporate tax @ 33.384%†	$16.692x$	$16.692x - 1.50$	$16.692x - 0.90$	$16.692x - 3$
Balance	$33.308x$	$33.308x - 3$	$33.308x - 1.80$	$33.308x - 6$
Add : Distributable profit before expansion [*i.e.,* 20% of Rs. 50 crore]	10	10	10	10
Total profit available for distribution (*a*)	$10 + 33.308x$	$7 + 33.308x$	$8.20 + 33.308x$	$4 + 33.308x$
Expected rate of dividend	25%	25%	25%	25%
Expected dividend [*i.e.,* 25% of (Rs. 50 crore + new issue of capital)] (dividend tax is included (*b*)	25 + 5.14	18.75 + 3.85	21.25 + 4.37	12.5 + 2.57
Rate of return (*i.e.,* value of *x*) to pay dividend [*i.e.,* finding out value of x if $(a) = (b)$]	60.47%	46.84%	52.30%	33.24%

Conclusion - If the entire additional finance is raised by issue of capital, the company will be able to raise dividend to 25% only if rate of return on the new project is above 60%. On the other hand, if the entire additional finance is raised by taking a loan @ 18% per annum, then the company will be able to raise dividend rate to 25% if rate of return on the new project is 33%.

†30% tax + 7% of tax as surcharge + 4% tax and surcharge as health and education cess. It comes to 33.384%. It is assumed that income of the company is not more than Rs. 10 crore.

90-P3 *XYZ Ltd. (income above Rs. 100 crore) is contemplating an expansion programme. It has to make a choice between debt issue and equity issue for its expansion programme. Its current position is as under:*

	Rs. in crore
10% Debt	*80*
Equity share capital (Rs. 10 per share)	*200*
Reserves and surplus	*120*
Total capitalisation	*400*
Sales	*1,200*
Less : Total costs	*1,076*
EBIT	*124*
Less: Interest	*8*
EBT	*116*
Less : Tax @ 34.944%	*40.53504*
EAT	*75.46496*

The expansion programme is estimated to cost Rs. 200 crore. If this is financed through debt, the new rate of debt will be 10 per cent and the price-earning ratio will be 6 times. If the expansion programme is financed through equity, new shares can be sold getting Rs. 25 per share; and the price-earnings ratio will be 7 times. The expansion will generate additional sales of Rs. 600 crore with a return of 10 per cent on sales before interest and taxes.

If the company is to follow a policy of maximising the market value of its shares, which form of financing should it choose?

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Determination of market value of a share under different financial alternatives

	(Rs. in crore) Financial plan	
	10% debt issue	*Equity issue*
EBIT (*see* Note 1)	184	184
Less : Interest	28	8
EBT	156	176
Less : Tax @ 34.944%	54.51	61.50
EAT	101.49	114.50
EPS (EAT/N) (*see* Note 2)	5.07	4.09
Price-earnings ratio	6 times	7 times
Market value of share (EPS × P/E ratio)	Rs. 30.45	Rs. 28.62

The company should choose debt form of financing to maximise the market value of its shares.

Working notes:

1. Calculation of EBIT	*Rs. in crore*
Present EBIT	124
Plus: Expected EBIT	60
Total expected EBIT	184

2. *EPS* - In debt financing, the number of ordinary shares outstanding would remain unchanged, *i.e.*, 20 crore (Rs. 200 crore/Rs. 10). However, in the case of equity form of financing this figure will go up by 8 crore (Rs. 200 crore/Rs. 25), *i.e.*, new equity share issued.

90-P4 *"When tax rates are falling, it is better to increase the financial leverage." Explain the truth of this statement using the following model which has three alternatives :*

Equity (20% dividend) : 60% or 50% or 40%

Tax rates are likely to be 35%, 30% and 25% in the next three years.

Average cost of debt is 12%.

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	Gross cost	Alternative I		Alternative II		Alternative III	
		Comp.	Cost	Comp.	Cost	Comp.	Cost
Equity	20%	60%	12	50%	10	40%	8
Debt	12%	40%	4.80	50%	6	60%	7.2
Total cost			16.80		16		15.20
Tax saved at	35% on debt cost		1.68		2.10		2.52
Net cost (*a*)			15.12		13.90		12.68
Tax saved at	30% on debt cost		1.44		1.80		2.16
Net cost (*b*)			15.36		14.20		13.04
Tax saved at	25% on debt cost		1.20		1.50		1.80
Net cost (*c*)			15.60		14.50		13.40

It may be seen from the above table that for each of the three alternatives I, II and III, as tax rates decline, the tax saved falls and the net cost (*a*), (*b*) and (*c*) rises. But, net cost of the mix declines at any given tax rate as the debt component increases. Therefore, there is truth even in the statement 'even when tax rates are constant, it is better to increase the debt equity ratio'. As the net cost of alternatives II and III is lower than for alternative I, the statement in the question is also true.

Dividend policy

91. The following tax consideration one has to keep in mind—

a. meaning of dividend under section 2(*22*) [*see* para 92] ;

b. tax treatment in the hands of shareholders [*see* para 92.7] ;

c. tax deduction at source under section 194 [*see* para 272] ; and

d. tax on dividend [*see* para 44].

Meaning of dividend [Sec. 2(*22*)]

92. Section 2(*22*) gives the definition of "deemed dividend". However, the definition laid down by section 2(*22*) is inclusive and not exhaustive. If, therefore, a particular distribution is not regarded as dividend within the extended meaning of the expression in section 2(*22*), it may still be dividend for the purpose of the Income-tax Act.

Under section 2(*22*), the following payments or distributions by a company to its shareholders are deemed as dividends to the extent of *accumulated profits* [*see* paras 92.1 to 92.1-3] of the company :

a. any distribution entailing the release of company's assets [*see* para 92.2];

b. any distribution of debenture, debenture-stock, deposit certificates and bonus to preference shareholders [*see* para 92.3];

c. distribution on liquidation of company [*see* para 92.4];

d. distribution on reduction of capital [*see* para 92.5];

e. any payment by way of loan or advance by a closely-held company to a shareholder holding substantial interest provided the loan should not have been made in the ordinary course of business and money-lending should not be a substantial part of the company's business [*see* para 92.6].

- The payer-company will pay dividend tax under section 115-O.
- The following shall not be treated as "dividend"—

a. any payment made by a company on purchase of its own shares in accordance with the provisions contained in section 77A of the Companies Act; or

b. any distribution of shares made in accordance with the scheme of demerger by the resulting company to the shareholders of the demerged company whether or not there is a reduction of capital in the demerged company.

Accumulated profits

92.1 Any payment or distribution under the aforesaid clauses is treated as dividend. However, the payment or distribution under the aforesaid clauses can be treated as dividend only to the extent of accumulated profits of the company. Therefore, it is essential to discuss the meaning and scope of the expression "accumulated profits".

■ *Explanations 1* and *2* to section 2(*22*) throw light on the meaning of accumulated profits.

1. It is expressly provided that it does not include capital gains arising before April 1, 1946 and after March 31,1948 but before April 1, 1956.

2. In the case of a company, which is not in liquidation, it includes all profits of a company up to the date of distribution or payment.

3. In the case of a company in liquidation, it includes all profits of the company up to the date of liquidation. Where, however, the liquidation is consequent on the compulsory acquisition of a company's undertaking by the Government or a Government company, accumulated profits do not include any profits of the company prior to the three successive years immediately preceding the previous year in which such acquisition took place. For instance, if accounting year of a company is financial year and compulsory acquisition takes place on March 13, 2019, its accumulated profits will exclude profits accumulated up to March 31, 2015.

WHETHER ACCUMULATED PROFITS INCLUDE CURRENT PROFITS

92.1-1 Accumulated profits include all profits (accumulated or current) up to the date of distribution or payment (or up to the date of liquidation in the case of liquidation).

COMPUTATION OF ACCUMULATED PROFITS

92.1-2 Whether on the basis of commercial profits or assessed profits - In a number of cases it has been held that accumulated profits are computed on the basis of commercial profits.

*Distribution of accumulated profits entailing release of company's assets [Sec. 2(22)(*a*)]*

92.2 Under sub-clause (*a*) of section 2(*22*), any distribution by a company of its accumulated profits (whether capitalised or not) is dividend if it entails the release of company's assets. In other words, there are two conditions prescribed by this clause—first, distribution should be from accumulated profits (not from capital) and secondly, such distribution must result in the release of the assets by the company.

As no specific mode of distribution is prescribed by the clause, distribution may be in the form of payment in cash or kind.

■ *Bonus shares* - One of the conditions laid down in sub-clause (*a*) of section 2(*22*) is that distribution must entail the release of assets by the company to its shareholders. When, therefore, a company distributes ordinary or equity bonus by capitalising its profits, then there is no release of assets and, consequently, bonus shares are not taxable as dividend. If, however, bonus shares are issued to preference shareholders, it amounts to distribution of dividend by virtue of sub-clause (*b*) of section 2(*22*).

*Distribution of accumulated profits in the form of debentures, debenture stock [Sec. 2(22)(*b*)]*

92.3 Under this clause the following two distributions are treated as dividend to the extent of accumulated profits (whether capitalised or not) of the company :

a. distribution by a company to its shareholders (whether equity shareholders or preference shareholders) of debentures, debenture-stock or deposit certificates in any form, whether with or without interest; and

b. distribution by a company to its preference shareholders of bonus shares.

It is worthwhile to note that under the aforesaid circumstances distribution amounts to dividend in the hands of recipient even if there is no release of assets at the time of distribution.

*Distribution of accumulated profits at the time of liquidation [Sec. 2(22)(*c*)]*

92.4 Under sub-clause (*c*), any distribution made by a company to its shareholders on its liquidation is treated as dividend to the extent to which such distribution is attributable to the accumulated profits (whether capitalised or not) of the company immediately before its liquidation.

Under sub-clause (*c*), the following are, however, not treated as dividend :

a. any distribution in respect of preference shares issued for full cash consideration ; and

b. any distribution insofar as such distribution is attributable to the capitalised profits of the company representing bonus shares allotted to its equity shareholders after March 31,1964, but before April 1,1965.

Distribution of accumulated profits on the reduction of its capital [Sec. 2(22)(d)]

92.5 Any distribution by a company to its shareholders on the reduction of capital is treated as dividend to the extent the company possesses accumulated profits (whether capitalised or not). However, the following are not treated as dividend under this clause :

a. any distribution out of accumulated profits which arose up to the previous year 1932-33 or up to the previous year ending during 1932-33 ;

b. any distribution in respect of preference shares issued for full cash consideration ; and

c. any distribution insofar as such distribution is attributable to the capitalised profits of the company representing bonus shares allotted to its equity shareholders after March 31, 1964, but before April 1,1965.

If there is only reorganisation of capital and it, in fact, results in splitting up of capital of the company into two companies, and there is no reduction of capital in the aggregate, section 2(*22*)(*d*) would not apply.

Distribution of accumulated profits by way of advance or loan [Sec. 2(22)(e)]

92.6 Under sub-clause (*e*), any loan or advance to a shareholder or concern is treated as dividend in certain cases.

Case 1	*Case 2*
1. Loan or advance is given by a closely-held company.	*1.* Loan or advance is given by a closely-held company (say X Ltd.).
2. Such loan is given to a registered shareholder.	*2.* Such loan is given to a "concern" (say Y) [*see* Note 3].
3. The shareholder (getting the loan) beneficially holds 10 per cent or more of equity shares in the company (giving the loan).	*3.* One of the shareholders, beneficially holding 10 per cent equity shares capital in X Ltd., has a substantial interest [*see* Note 4] in Y.
4. Such loan or advance is treated as dividend in the hands of shareholder.	*4.* Such loan or advance is treated as dividend in the hands of Y.

Notes :

1. Such loan or advance is treated as dividend to the extent of accumulated profits (excluding capitalized profit).

2. Loan or advance for the above purpose may be given to a shareholder (in *Case 1*) directly or it may be given for the benefit of shareholder or on behalf of shareholder.

3. "Concern" for this purpose may be a HUF, sole proprietor, firm, AOP, BOI or a company.

4. A person shall be deemed to have a substantial interest in a concern, if he is (*at any time during the previous year*), beneficially entitled to at least 20 per cent of income of such concern (if such concern is a company, then he should beneficially hold at least 20 per cent equity share capital of the company). Shares held by a person in two different capacities, *i.e.*, as individual and as HUF, cannot be clubbed for purpose of deciding whether a person has substantial interest in a concern—*CIT* v. *Kunal Organics (P.) Ltd.* [2007] 164 Taxman 169 (Ahd.).

5. Where money-lending is a substantial part of the business of the company (giving loan), the above provisions are not applicable. For this purpose, the factual position as it stands during relevant previous year alone is supposed to be taken into consideration to decide issue whether lending of money is substantial part of business of concerned company—*Rekha Modi* v. *ITO* [2007] 13 SOT 512 (Delhi).

6. If after giving loan or advance to a shareholder, the company declares normal dividend and such dividend is set off against outstanding loan/advance, the amount so set off will not be taken as "dividend".

Tax treatment in the hands of shareholders

92.7 Tax treatment of dividend is as follows—

DIVIDEND RECEIVED FROM A DOMESTIC COMPANY

92.7-1 Dividend from a domestic company is generally not taxable in the hands of shareholders by virtue of exemption given by section 10(*34*). On such dividend, the company,which declares dividend, is required to pay dividend distribution tax under section 115-O. However, the following exceptions should be noted—

■ *Deemed dividend under section 2(22)(e)* - If a loan or advance is given on or after April 1, 2018 [which satisfies the conditions of section 2(*22*)(*e*)], then such loan or advance is deemed as "dividend". In the hands of recipient, such deemed dividend is exempt under section 10(*34*). The company, which gives loan or advance, is liable for dividend tax under section 115-O at the rate of 30 per cent (effective rate 34.944 per cent).

■ *Any other dividend* - Dividend income in the hands of shareholders is exempt under section 10(*34*) [company which pays dividend is subject to dividend tax under section 115-O (effective rate of dividend tax: 20.56 per cent)]. However, exemption pertaining to dividend income from domestic companies is not available, if aggregate dividend (received from domestic companies) exceeds Rs. 10 lakh in the previous year. In such a case, the aggregate dividend (in excess of Rs. 10 lakh) is taxable (on gross basis, no deduction is allowed) under section 115BBDA at the rate of 10 per cent [+ SC + HEC] if the recipient shareholder is any person resident in India [not being a domestic company or a fund/institution referred to in section 10(*23C*)(*iv*)/(*v*)/(*vi*)/(*via*), or a trust/institution registered under section 12A/12AA].

DIVIDEND RECEIVED FROM A NON-DOMESTIC COMPANY

92.7-2 If dividend is received from a company other than a domestic company it is chargeable to tax in the hands of recipient.

Bonus shares

Bonus shares to equity shareholders

93. Tax consideration is given below —

93.1 The table given below highlights the tax consequences —

Situations	*Tax treatment in the hands of company issuing bonus shares*	*Tax treatment in the hands of shareholders*
■ At the time of issue of bonus shares	No tax liability	No tax liability
■ At the time of sale of bonus share by shareholder	No tax liability	*See* para 93.1-1
■ At the time of redemption of bonus share or at the time of liquidation of the company	Under section 2(*22*)(*a*) or 2(*22*)(*c*), it will be treated as dividend distribution to the extent of accumulated profit and, consequently, the payer company will pay dividend tax	Out of the amount received at the time of redemption or liquidation, amount treated as "dividend" under section 2(*22*)(*a*)/(*c*) will be exempt in the hands of shareholders, balance will be sale consideration to compute capital gain

CAPITAL GAIN ON BONUS SHARES

93.1-1 Section 55 specifies that the cost of acquisition of any additional financial asset as bonus shares or security or otherwise which is received without any payment by the assessee on the basis of his holding any financial asset shall be taken to be *nil*.

Moreover, in the case of a capital asset being a share, security or unit which is allotted without any payment on the basis of holding of any other financial asset, the period for treating such share, security or unit as a short-term capital asset shall be calculated from the date of allotment of such share, security or unit, as the case may be.

Effect of the above provision may be summarised as follows :

	Cost of acquisition of original and bonus shares
■ If original shares and bonus shares are acquired before April 1, 2001	Original shares - Actual cost or fair market value on April 1, 2001, whichever is more Bonus shares - Fair market value on April 1, 2001
■ If original shares are acquired before April 1, 2001 but bonus shares are allotted after April 1, 2001	Original shares - Actual cost or fair market value on April 1, 2001, whichever is more Bonus shares - *Nil*
■ If original and bonus shares are acquired after April 1, 2001	Original shares - Actual cost Bonus shares - *Nil*
■ Period of holding bonus shares	The period of holding shall be determined from the date of allotment of bonus shares (and not from the date of acquisition of original shares)

Note : The above rules given in the table are also applicable in respect of shares, securities, debentures, bonds, units allotted without any payment on the basis of holding of any other financial assets.

Case studies

93.1-1P1 *X purchases 1,000 equity shares in A Ltd. at the rate of Rs. 16 per share (brokerage : 1 per cent) on December 10, 1989. He gets 500 bonus shares (by virtue of his holding of 1,000 shares) on January 10, 2004. Fair market value of shares of A Ltd. on April 1, 2001 is Rs. 24. On March 13, 2019, he transfers 1,000 original shares @ Rs. 81 per share (brokerage 1.5 per cent).*

On March 15, 2019, he transfers 500 bonus shares @ Rs. 87 per share (brokerage : 1.5 per cent). Find out the amount of capital gains on the assumption the securities transaction tax is not applicable.

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Assessment year 2019-20	*Rs.*
Sale proceeds of 1,000 original shares (*i.e.,* Rs. 81 × 1,000)	81,000
Less : Indexed cost of acquisition (*i.e.,* Rs. 24,000 × 280 ÷ 100)	(–) 67,200
Less : Brokerage on transfer	(-) 1,215
Long-term capital gain on transfer of 1,000 original shares	12,585
Sale proceeds of 500 bonus shares (*i.e.,* Rs. 87 × 500)	43,500
Less : Cost of acquisition	*Nil*
Less : Brokerage on transfer	(-) 653
Long-term capital gain on transfer of bonus shares	42,847

93.1-1P2 *X purchases 1,100 equity shares in A Ltd. on June 11, 1989 @ Rs. 46 per share (brokerage : 1 per cent). On May 23, 1997, he gets 550 bonus shares. Fair market value of shares in A Ltd. on April 1, 2001 is Rs. 40.*

He sells 1,100 original shares on March 10, 2019 @ Rs. 116 per share (brokerage : 1 per cent). Further on March 29, 2019, he sells 550 bonus shares @ Rs. 131 per share (brokerage : 2 per cent). Find out the amount of capital gains on the assumption that securities transaction tax is not applicable.

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	Rs.
Sale proceeds of 1,100 original shares	1,27,600
Less : Indexed cost of acquisition (*i.e.,* Rs. 46 × 1,100 × 280 ÷ 100)	(–) 1,41,680
Less : Brokerage on sale (1% of Rs. 1,27,600)	(-) 1,276
Long-term capital gain	(-) 15,356
Sale proceeds of 550 bonus shares	72,050
Less : Cost of acquisition (Rs. 40 × 550 × 280 ÷ 100)	61,600
Brokerage on sale (2% of Rs. 72,050)	1,441
Long-term capital gain	9,009
Income under the head "Capital gain"	(-) 6,347

MULTIPLE CHOICE QUESTIONS

Q1. Net cost of mix declines at any given tax rate if the debt component increases—

a. True;

b. False.

Q2. When tax rates are constant it is not better to increase debt-equity ratio—

a. True;

b. False.

Q3. Corporate taxation does not play any significant role in determining the choice between different sources of finance—

a. True;

b. False.

Q4. The following are "dividend" under section 2(*22*)—

a. Bonus shares to preference shareholders;

b. Bonus shares to preference shareholders upto the amount of accumulate profit;

c. Amount distributed to shareholders at the time of reduction of capital (company does not have any accumulated profit);

d. None of above.

Q5. A person getting bonus shares will have to pay tax at the time of allotment of bonus shares—

a. On the market value of bonus shares;

b. On the face value of bonus shares;

c. On the value determined by the Board;

d. On nothing.

Q6. X (24 years) gets bonus shares during 2019-20, on his original shareholding in a company, which were acquired by him when he was 2 years old. Cost of acquisition of bonus shares will be—

a. Face value of shares;

b. Fair market value on April 1, 2001;

c. Fair market value on the date of allotment of bonus shares;

d. None of above.

Q7. A company will pay dividend tax if—

a. Bonus shares are allotted to equity shareholders;

b. Bonus shares are allotted to preference shareholders;

c. Shares are allotted to debenture-holders free of cost;

d. Shares are allotted to employees as ESOP shares free of cost.

10 CHAPTER
TAX PLANNING WITH REFERENCE TO MANAGERIAL DECISIONS

Purchase of asset

100. The factors which determine effective tax savings are :

a. rate of depreciation ; and

b. marginal tax rate.

Case study

An assessee, who carries on a business, acquires a plant and machinery costing Rs. 1,00,000. This plant and machinery is utilised for the business of the company till year ten when it is discarded and sold at the depreciated price. In this case the taxpayer can claim depreciation from year one to year ten under section 32. Effective tax benefits depend upon maximum marginal rate of tax. For this purpose, it is assumed that the maximum marginal rate of tax is 34.944 per cent. Tax savings are discounted at the rate of 10 per cent to find out the present worth/ value. This case study is based on two plans, namely, (*i*) when owned funds are invested, and (*ii*) when 75 per cent cost of plant is financed by deposit taken from public.

When own funds are invested in plant and machinery - Table 1 presents tax savings on account of deductions available under different circumstances, when own funds are invested in plant and machinery. One can finance 22.29 per cent of investment in plant and machinery by tax savings.

When borrowed funds are invested in plant and machinery - Tables 2 and 3 give data regarding the extent of tax savings when Rs. 75,000 is borrowed from public by accepting deposit at the rate of 9 per cent per annum to finance the investment of Rs. 1,00,000 in plant and machinery. While interest is paid annually, principal is repaid in year ten.

One can finance 27.54 per cent of investment by tax savings. Therefore, purchase out of own funds is better.

TABLE 1

Tax savings under the scheme of depreciation at 15 per cent†

(*Tax rate : 34.944 per cent*)

Year	*Amount of depreciation (investment : Rs. 1,00,000)*	*Tax saving on depreciation*	*Present worth of tax savings (discount rate : 10 per cent)*
	Rs.	*Rs.*	*Rs.*
Year one	35,000	12,230	11,117
Year two	9,750	3,407	2,814
Year three	8,288	2,896	2,175
Year four	7,044	2,462	1,681
Year five	5,988	2,092	1,299
Year six	5,090	1,778	1,003

†Assumed that additional depreciation is applicable.

Year	*Amount of depreciation (investment : Rs. 1,00,000)*	*Tax saving on depreciation*	*Present worth of tax savings (discount rate : 10 per cent)*
Year seven	4,326	1,512	776
Year eight	3,677	1,285	600
Year nine	3,126	1,092	463
Year ten	2,657	928	358
			22,287

TABLE 2

Present value of differential outflows on purchase of plant and machinery with borrowed funds (Amount of investment : Rs. 1,00,000, amount borrowed : Rs. 75,000)

Year	*Interest at the rate of 9 per cent*	*Own investment and principal repaid*	*Present value of total outflow on principal and interest (discount rate : 10 per cent)*	*Present value of total outflow on principal and interest net of tax (discount rate : 10 per cent) Tax rate : 34.944 per cent*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
	Rs.	*Rs.*	*Rs.*	*Rs.*
Year zero	—	25,000	25,000	25,000
Year one	6,750	—	6,136	3,992[2]
Year two	6,750	—	5,576	3,627[2]
Year three	6,750	—	5,069	3,298[2]
Year four	6,750	—	4,610	2,999[2]
Year five	6,750	—	4,192	2,727[2]
Year six	6,750	—	3,807	2,477[2]
Year seven	6,750	—	3,463	2,253[2]
Year eight	6,750	—	3,152	2,051[2]
Year nine	6,750	—	2,862	1,862[2]
Year ten	6,750	75,000	31,556[1]	30,645[3]
Total	67,500	1,00,000	95,423	80,930

Notes :

1. Present worth of Rs. 6,750 : Rs. 2,606 + present worth of Rs. 75,000 : Rs. 28,950.

2. 65.056% of column (*4*).

3. 65.056% of Rs. 2,606 + Rs. 28,950.

TABLE 3

Contribution of deduction under section 32 when borrowed funds are invested in plant and machinery (Tax rate : 34.944 per cent)

a.	Present worth of total outflow on principal and interest net of tax (*see* Table 2)	Rs. 80,930
b.	Present worth of tax savings on account of deduction under section 32 (*see* Table 1)	Rs. 22,287
c.	(*b*) as % of (*a*)	27.54%

Lease v. Purchase

101. With the concept of leasing gaining immense popularity in recent times, any business management is faced with the choice to purchase assets or to go in for leasing the asset. One must resolve this issue on economic consideration taking into account the different tax shield effects.

If asset is purchased, the assessee can claim depreciation. Besides, interest on capital borrowed to finance investment in plant and machinery can also be claimed as deduction. If, however, asset is obtained on lease, deduction can be claimed in respect of lease rentals and lease management fees.

Case study

For this purpose a case study on the following data has been made. A plant is to be purchased for Rs. 1,00,000. The depreciation rate is 15 per cent (+ additional depreciation : 20 per cent) and the corporate tax rate 34.944 per cent. The weighted average cost of capital is 10 per cent. The life of the machine is 10 years. A loan of Rs. 75,000 can be had by accepting public deposits at the interest rate of 9 per cent for financing the investment in plant. It is assumed that the public deposits are repaid after 10 years. On the other hand, the asset can be obtained on lease. The lease rentals are at the rate of Rs. 34,000 per annum for the primary lease period of 5 years. Beyond this peppercorn rentals of Rs. 600 per annum are to be paid. A lease management fee of Rs. 1,000 is payable on inception of the lease. In all, three situations have been studied :

Situation 1 - Purchase with own funds - The following results one can obtain on the basis of data presented in Table 1 [para 100].

TABLE 4

Present value of outflow of cash when plant is purchased out of own funds

Rs.

Investment in plant and machinery	1,00,000
Tax savings on account of depreciation	22,287
Outflow of cash	77,713

Situation 2 - Purchase with borrowed funds - To finance purchase of plant and machinery, a loan (by way of public deposits) of Rs. 75,000 is obtained at the rate of 9 per cent. While interest is paid annually, principal is repaid in year ten. The following results one can obtain on the basis of information presented in Table 3 [Para 100].

TABLE 5

Present value of outflow of cash when plant is purchased out of borrowed funds

Rs.

Present worth of total outflow on principal and interest net of tax	80,930
Present worth of tax savings on account of deduction under section 32	22,287
Outflow of cash (net of taxes)	58,643

Situation 3 - Taking asset on lease - Table 6 presents data when plant is obtained on lease from own funds.

TABLE 6

Present value of differential cash outflow on leasing with own funds

Year	*Lease management fee* *Rs.*	*Lease rentals* *Rs.*	*Tax saving on fee and rentals (tax rate : 34.944 per cent)* *Rs.*	*Differential cash outflow* *Rs.*	*Present value of differential cash outflow (discount rate : 10 per cent)* *Rs.*
Year zero	1,000	34,000	12,230	22,770	22,770
Year one	—	34,000	11,881	22,119	20,106
Year two	—	34,000	11,881	22,119	18,270
Year three	—	34,000	11,881	22,119	16,611
Year four	—	34,000	11,881	22,119	15,107
Year five	—	600	210	390	242
Year six	—	600	210	390	220
Year seven	—	600	210	390	200
Year eight	—	600	210	390	182
Year nine	—	600	210	390	166
Year ten	—	—	—	—	—
Total					93,875

Conclusion - From the above it would be evident that purchase of plant out of borrowed fund is the best alternative.

102. If an asset is purchased by instalments, then the taxpayer can claim depreciation under section 32. Besides interest payable on unpaid purchase price can also be claimed as deduction. In the case of obtaining an asset on hire, deduction can be claimed in respect of hire charges. By comparing present value of cash outflows a correct decision can be taken.

Purchase by instalment *v.* Hire

Case study

X Ltd., an Indian company, engaged in the business of manufacture of transformers and switchgears, negotiates for the purchase or taking on hire a machine from a concern in U.K. If it acquires the machine, then the total cost will be Rs. 60,00,000 payable in 5 annual (interest-free) instalments of Rs. 12,00,000 each, the payments to be made on July 1 each year beginning with the year 2019. If it takes the machine on hire, it has to pay an annual rent of Rs. 8,00,000 also payable on July 1 each year starting from the same year 2019. The company proposes to use the machine for 10 years from 2019.

The following assumptions have been made :

1. The company is a widely-held company and tax rate is 34.944 per cent.

2. Rate of depreciation on machinery is 15 per cent.

3. Cost of capital is assumed as 10 per cent.

The following chart highlights the tax implication under the two alternatives :

Purchase	*Rs.*
Present value of cash outflow on account of payment of instalments (*see* Note 1)	(-)50,02,800
Tax saving on account of depreciation (*i.e.*, 22.287% of Rs. 60,00,000—*see* Table 1, para 100)	(+)13,37,220
Present value of cash outflow	(-)36,65,580

Hire :	*Rs.*
Present value of cash outflow on account of payment of rent (Note 2)	(–)54,06,400
Present value of tax saving on account of payment of rent	18,89,212
Present value of cash outflow	(–)35,17,188

Conclusion : The machine should be taken on hire.

Note 1 : Present value of cash outflow on account of payment of instalments :

Date of payment	*Amount of instalment* Rs.	*Discounted value at 10%* Rs.
July 1, 2019	12,00,000	12,00,000
July 1, 2020	12,00,000	10,90,800
July 1, 2021	12,00,000	9,91,200
July 1, 2022	12,00,000	9,01,200
July 1, 2023	12,00,000	8,19,600
Total	60,00,000	50,02,800

Note 2 : Present value of cash outflow on account of payment of hire charges :

Date of payment	*Hire* Rs.	*Discounted value @ 10%* Rs.	*Tax @ 34.944%* Rs.
July 1, 2019	8,00,000	8,00,000	2,79,552
July 1, 2020	8,00,000	7,27,200	2,54,113
July 1, 2021	8,00,000	6,60,800	2,30,910
July 1, 2022	8,00,000	6,00,800	2,09,944

Date of payment	*Hire* *Rs.*	*Discounted value @ 10%* *Rs.*	*Tax @ 34.944%* *Rs.*
July 1, 2023	8,00,000	5,46,400	1,90,934
July 1, 2024	8,00,000	4,96,800	1,73,602
July 1, 2025	8,00,000	4,51,200	1,57,667
July 1, 2026	8,00,000	4,10,400	1,43,410
July 1, 2027	8,00,000	3,73,600	1,30,551
July 1, 2028	8,00,000	3,39,200	1,18,530
Total	80,00,000	54,06,400	18,89,212

Sale of assets used for scientific research

103. *See* para 116.

Make or buy

104. Many costing or non-costing considerations guide the decision relating to "make or buy". Some of these considerations are - (*a*) utilisation of capacity, (*b*) inadequacy of funds, (*c*) latest technology, (*d*) variable cost of manufacturing *vis-a-vis* purchase price, (*e*) dependence upon supplier, (*f*) labour problem in the factory, etc. The following tax consideration one has to keep in mind while taking "make or buy" decision—

1. Establishing a new unit - If the decision to manufacture a part or component involves setting up a separate industrial unit, then tax incentives available under sections 10A, 10B, 32, 80-IA, 80-IB and 80-IC one has to keep in mind.

2. Sale of plant and machinery - If buying is cheaper than manufacturing and the assessee decides to "buy" parts/components for a long period of time, he may like to sell the existing plant and machinery. Tax implications, as specified by section 50, one has to consider for taking the decision.

Case study

104-P1 *X Ltd. manufactures electric pumping sets. The company has the option to either make or buy from the market component Y used in manufacture of the sets.*

The following details are available :

The component will be manufactured on new machine costing Rs. 1 lakh with a life of 10 years. Material required cost Rs. 2 per kg. and wages Re. 0.30 per hour. The salary of the foreman employed is Rs. 1,500 per month and other variable overheads include Rs. 20,000 for manufacturing 25,000 components per year. Material requirement is 25,000 kgs. and requires 50,000 labour hours.

The component is available in the market at Rs. 4.30 per piece.

Will it be profitable to make or to buy the component ? Does it make any difference if the component can be manufactured on an existing machine?

■

The cost estimate of manufacture will be :

	Rs.
Material @ Rs. 2 kg. (25,000 × Rs. 2)	50,000
Labour @ 0.30 hour (50,000 × Re. 0.30)	15,000
Foreman's salary (Rs. 1,500 × 12)	18,000
Variable overhead	20,000
Total variable cost	1,03,000
Cost per unit (*i.e.*, Rs. 1,03,000 ÷ 25,000) (*a*)	4.12
Fixed cost	
Cost of new machine (net of Taxes) [*see* Table 4, para 101]	77,713
Net fixed cost per unit (*i.e.*, Rs. 77,713 ÷ 2,50,000 units to be manufactured in 10 years) (*b*)	0.311
Total [(*a*) + (*b*)]	4.431

Conclusion	*If new machine is required*	*If existing machine can be used*
	Rs.	*Rs.*
Cost of manufacturing	4.431	4.12
Cost of buying	4.30	4.30
Which one is better	Buy	Make

104-P2 *XYZ Ltd. needs a component in an assembly operation. It is contemplating the proposal to either make or buy the aforesaid component.*

1. *If the company decides to make the product itself, then it would need to buy a machine for Rs. 8 lakh which would be used for 5 years. Manufacturing costs in each of the five years would be Rs. 12 lakh, Rs. 14 lakh, Rs. 16 lakh, Rs. 20 lakh and Rs. 25 lakh respectively. The relevant depreciation rate is 15 per cent. The machine will be sold for Rs. 1 lakh at the beginning of the sixth year.*

2. *If the company decides to buy the component from a supplier the component would cost Rs. 18 lakh, Rs. 20 lakh, Rs. 22 lakh, Rs. 28 lakh and Rs. 34 lakh respectively in each of the five year.*

The relevant discounting rate and tax rate are 14 per cent and 34.944 per cent respectively. Additional depreciation is not available. Should XYZ Ltd. make the component or buy from outside ?

■

Alternative 1 - Make the component

Year	*Depreciation Rs.*	*WDV Rs.*
1	1,20,000	6,80,000
2	1,02,000	5,78,000
3	86,700	4,91,300
4	73,695	4,17,605
5	62,641	3,54,964

Computation of short-term capital loss

	Rs.
Sales consideration	1,00,000
Less: Cost of acquisition	3,54,964
Short-term capital loss	(-) 2,54,964

Year	*Manufacturing cost Rs.*	*Depreciation Rs.*	*Tax saving Rs.*	*Cash outflow from operations (COFO) Rs.*
1	12,00,000	1,20,000	4,61,261	7,38,739
2	14,00,000	1,02,000	5,24,859	8,75,141
3	16,00,000	86,700	5,89,400	10,10,600
4	20,00,000	73,695	7,24,632	12,75,368
5	25,00,000	62,641	8,95,489	16,04,511

Discounted cash flow analysis of make proposal

	Year	*PVF/A*	*Cash outflow*	*PV Rs.*
Investment	0	1	8,00,000	8,00,000
Cash outflow	1	0.877	7,38,739	6,47,874
Cash outflow	2	0.769	8,75,141	6,72,983
Cash outflow	3	0.675	10,10,600	6,82,155
Cash outflow	4	0.592	12,75,368	7,55,018
Cash outflow	5	0.519	16,04,511	8,32,741
Sale of machine	6	0.519	(–) 1,00,000	(–) 51,900
				43,38,872

Alternative 2 - Buy the component

Year	*Purchase cost*	*Tax saving*	*Cash outflow from operations (COFO)*
	Rs.	*Rs.*	*Rs.*
1	18,00,000	6,28,992	11,71,008
2	20,00,000	6,98,880	13,01,120
3	22,00,000	7,68,768	14,31,232
4	28,00,000	9,78,432	18,21,568
5	34,00,000	11,88,096	22,11,904

Discounted cash flow analysis of buy proposal

	Year	*PVF/A*	*Cash outflow Rs.*	*PV Rs.*
Cash outflow	1	0.877	11,71,008	10,26,974
Cash outflow	2	0.769	13,01,120	10,00,561
Cash outflow	3	0.675	14,31,232	9,66,082
Cash outflow	4	0.592	18,21,568	10,78,368
Cash outflow	5	0.519	22,11,904	11,47,978
				52,19,963

Decision - The above analysis shows that there are considerable savings in making the component, amounting to Rs. 8,81,091 (*i.e.,* Rs. 52,19,963 – Rs. 43,38,872). Hence, it is beneficial to manufacture the component. Moreover, XYZ Ltd. will have a short-term capital loss of Rs. 2,54,964 after the end of the fifth year. Assuming that, it has an equal amount of short-term capital gain also this will result in tax savings of Rs. 89,095 at the current corporate tax rate (*i.e.,* Rs. 2,54,964 × 34.944%).

Repairs, replace, renewal or renovation

105. The main tax consideration which one has to keep in mind is whether expenditure on repair, replace or renewal is deductible as revenue expenditure under section 30, 31, or 37(1). If the expenditure is deductible as revenue expenditure under these sections, then cost of financing such expenditure is reduced to the extent of tax saved. For instance, if tax rate is 34.608 per cent and a "renewal" expenditure of Rs. 1,00,000 is allowed as deduction under section 30, 31 or 37(1), then effective out of pocket expenditure is Rs. 65,392 [*i.e.,* Rs. 1,00,000 *minus* 34.608 per cent of Rs. 1,00,000]. On the other hand, if such expenditure is not allowed as deduction under section 30, 31 or 37(1), then it may be capitalised and on the amount so capitalised depreciation is available if certain conditions are satisfied.

Case study

105-P1 *XYZ Ltd. is considering the purchase of a new machine costing Rs. 60,000 with an expected life of 5 years with salvage value of Rs. 3,000, in replacement of an old machine purchased 3 years ago for Rs. 30,000 with expected life of 8 years. The present market value of this old machine is Rs. 35,000. Because of the purchase of new machinery, the annual profits before depreciation are expected to increase by Rs. 12,000. The relevant depreciation rate for the machine is 15 per cent on written down value basis and the tax rate is 29.12 per cent. Assume the after tax cost of capital (discounting rate) to be 14 per cent. Advise the company suitably.*

■

Assumptions :

1. It is assumed that the old machine is sold and the new machine is purchased at the beginning of fourth year of the purchase of old machine.

2. There is no other asset in the block.

Working note

Computation of the written down value of the old machine (after providing three years depreciation)

Year	*Depreciation Rs.*	*WDV Rs.*
1	4,500	25,500
2	3,825	21,675
3	3,251	18,424

	Rs.
WDV of the old machine (in the beginning of the fourth year)	18,424
Add : Purchases	60,000
Total	78,424
Less : Sales	35,000
WDV at the beginning of fourth year for old machine (or first year for new machine)	43,424

Future years	*Change in depreciation Rs.*	*Change in WDV Rs.*
1	25,000 × 0.15 = 3,750 (60,000 — 35,000)	21,250 (25,000—3,750)
2	21,250 × 0.15 = 3,188	18,062 (21,250—3,188)
3	18,062 × 0.15 = 2,709	15,353 (18,062 — 2,709)
4	15,353 × 0.15 = 2,303	13,050 (15,353 — 2,303)
5	10,050 Short-term capital loss (13,050 — 3,000)	

Future years	*Change in profit Rs.*	*Change in depreciation Rs.*	*Change in tax Rs.*	*Change in cash flow Rs.*
1	12,000	3,750	2,402	9,597
2	12,000	3,188	2,566	9,434
3	12,000	2,709	2,706	9,291
4	12,000	2,303	2,823	9,177
5	12,000	10,050	568	11,432

Discounted cash flow analysis of the project

	Year	*PVF/A*	*Cash flow Rs.*	*Present value Rs.*
Net investment	0	1	– 25,000	– 25,000
Cash inflow from operations	1	0.877	+ 9,597	+ 8,416
Cash inflow from operations	2	0.769	+ 9,434	+ 7,254
Cash inflow from operations	3	0.675	+ 9,291	+ 6,271
Cash inflow from operations	4	0.592	+ 9,177	+ 5,432
Cash inflow from operations	5	0.519	+ 11,432	+ 5,933*
Sale of scrap	6	0.519	+ 3,000	+ 1,557
Net present value				+ 9,863

Decision - Since the net present value on the basis of the above stated analysis is positive, the old machine should be replaced with the new machine.

*It is assumed that the taxpayer will have capital gain to set off short-term capital loss.

MULTIPLE CHOICE QUESTIONS

Q1. A company want to purchase a plant (cost: Rs. 80 crore). It can outrightly purchase it. Alternatively, it can take the plant on lease. The following factors are taken into consideration to find out which one is better—

a. Corporate tax rate;

b. Corporate tax rate and depreciation rate;

c. Corporate tax rate, depreciation rate, lease rent, cost of capital and useful life of plant;

d. None of above.

Q2. If corporate tax rate is reduced the tax saving on account of depreciation will increase—

a. True;

b. False.

Q3. If rate of depreciation is reduced the tax saving on account of depreciation will increase—

a. True;

b. False.

Q4. If borrowed funds are used for purchase of a plant and tax rates are reduced, the tax saving will increase—

a. True;

b. False.

Q5. Depreciation is not available in the case of machine acquired under hire purchase—

a. True;

b. False.

Q6. X Ltd. is considering a proposal to manufacture a component itself or purchase from market. No fresh investment in plant and machinery will be required if it decides to manufacture the component within its factory. Total variable cost of manufacturing is Rs. 74 per unit of component. Net fixed cost of use of plant and machinery comes to Rs. 20 per unit of component. The component is available in market at Rs. 79 per unit of component. It is better to purchase the component from market—

a. True;

b. False.

Q7. Y Ltd. has an option to purchase a machine out of own funds or alternatively a bank can finance it. At the current rate of corporate tax, the tax saving in the later option is higher. If the corporate tax rate is reduced, the second option will become less attractive—

a. True;

b. False.

Q8. To find out which one is better—repair or replace, the main tax consideration is whether expenditure on repair or replace is deductible as revenue expenditure under section 30, 31 or 37—

a. True;

b. False.

TAX PLANNING IN RESPECT OF EMPLOYEES' REMUNERATION

11
CHAPTER

Factors which require consideration

109. Two factors require consideration in the case of remuneration planning. First, one has to ensure that while calculating business income of the employer, remuneration paid to employees is fully deductible. If such expenditure is not allowed as deduction (or disallowed under any of the provisions), then tax bill of the employer increases. On the other hand, one has to see that remuneration received by the employees is taxable in their hands at concessional rates to minimise their tax bill and to maximise their take home pay.

Deduction of remuneration in the hand of employer

110. Payment of salary/allowance and perquisites to employees is allowable as deduction under section 37(1).

Besides the above provisions, the employer has to ensure that proper tax is deducted at source under section 192.

Tax incidence in the hands of employees

111. To find out tax incidence in respect of salary received by an employee, one has to study the provisions of sections 5, 6, 9, 10, 15, 16, 17, 89 and 80C to 80U. These provisions are briefly discussed in Chapter 1.

Fringe benefit tax

112. Fringe benefit tax has been abolished from the assessment year 2010-11.

Remuneration planning

113. Making a selection between different possible remuneration plans keeping in view the following broad objectives is remuneration planning—

1. Whatever is paid by employer is deductible in the hands of the employer while calculating business income of the employer.

2. In the hands of the employee it is not chargeable to tax or it is subject to lower tax incidence.

Broad hints

113.1 Remuneration should be paid in the form of basic salary, different allowances and different perquisites. Tax bill of employees can be reduced substantially if salary is divided into different allowances (which are not taxable or which are partially exempt from tax) and perquisites (which are taxable at concessional rate). The optimum combination of allowances and perquisites depends upon individual requirement of each employee taking into consideration present take home pay and future benefits of different items in salary structure.

Salary - In case of new appointment, basic salary may be taken at 25 to 30 per cent of total pay package. There is no hard and fast rule. However, tax liability can be reduced if basic salary is reduced and the expenditure by the employer on allowance and perquisites is increased.

Allowances - The following allowances can be given—

1. Education allowance for two children may be given wherever it is possible.

2. Uniform allowance may be given if the employer has uniform code in the organization.

3. Helper allowance may be given for engaging a helper at residence to complete office work after office hours.

4. Research allowance can be given for conducting a research on behalf of employer.

Perquisites - Rent-free house may be given if the employee is interested in employer's accommodation. If the employee owns a house which he has occupied for his own residence, the house may be taken by the employer on self lease and the same house may be allotted to the employee as rent-free perquisite.

Besides, the following perquisites may be given to employees (in the same order of priority) as given below as far as possible—

1. Tea, coffee, snacks, lunch/dinner in factory or office.

2. Conference participation fees.

3. Computer or laptop for office and private use.

4. LTC twice in a block of four years.

5. Medi-claim insurance premium for employee and his family members.

6. Motor car for office and private use along with driver.

7. Telephone at residence along with mobile phone.

8. Staff welfare expenses.

9. Free holiday home.

10. Gift in kind.

11. Club including health club.

12. Scholarship to children.

Other points

113.2 For the purpose of tax planning under the head "Salaries", the following propositions should also be kept in view—

■ It should be ensured that, under the terms of employment, dearness allowance and dearness pay form part of basic salary. This will minimise tax incidence on house rent allowance, gratuity and commuted pension. Likewise, incidence of tax on employer's contribution to recognised provident fund will be lesser if dearness allowance forms a part of basic salary.

■ The Supreme Court has held in *Gestetner Duplicators (P.) Ltd.* v. *CIT* [1979] 1 Taxman 1/117 ITR 1 that commission, payable as per terms of contract of employment at a fixed percentage of turnover achieved by an employee, falls within the expression "salary" as defined in rule 2(*h*) of Part A of the Fourth Schedule. Consequently, tax incidence on house rent allowance, gratuity and commuted pension will be lesser if commission is paid at a fixed percentage of turnover achieved by the employee.

■ As uncommuted pension is always taxable, employees should get their pension commuted. Commuted pension is fully exempt from tax in the case of Government employees and partly exempt from tax in the case of non-Government employees who can claim relief under section 89.

■ An employee, being a member of a recognised provident fund, who resigns before completing five years of continuous service, should ensure that he joins a firm which maintains a recognised provident fund for the simple reason that the accumulated balance of the provident fund with the former employer will be exempt from tax, provided the same is transferred to the new employer, who also maintains a recognised provident fund.

■ Since employer's contribution towards recognised provident fund is exempt from tax up to 12 per cent of salary, employer may give extra benefit to their employees by raising their contribution to 12 per cent of salary without increasing any tax liability.

■ While medical allowance payable in cash is taxable, provision of hospital facilities is not taxable if some conditions are satisfied. Therefore, employees should go in for hospital facilities instead of fixed medical allowance.

■ Since incidence of tax on retirement benefits like gratuity, commuted pension, accumulated balance of unrecognised provident fund is lower if they are paid in the beginning of the financial year, employer and employees should mutually plan their affairs in such a way that retirement, termination or resignation, as the case may be, takes place in the beginning of a financial year.

■ An employee should take the benefit of relief available under section 89 wherever possible. Relief can be claimed even in the case of a sum received from unrecognised provident fund so far as it is attributable to employer's contribution and interest thereon. Although gratuity received during employment is not exempt from tax under section 10(*10*), relief under section 89 can be claimed. It should, however, be ensured that the relief is claimed only when it is beneficial.

■ Pension received in India by a non-resident assessee from abroad is taxable in India. If, however, such pension is first received by or on behalf of the employee in a foreign country and later on remitted to India, it will be exempt from tax.

■ As the perquisite in respect of leave travel concession is not taxable in the hands of employees if certain conditions are satisfied, it should be ensured that the travel concession should be claimed to the maximum possible extent without attracting any incidence of tax.

■ As the perquisite in respect of free refreshments during office hours, free residential telephone, providing use of computer/laptop, gift of movable assets (other than computer, electronic items, car) by employer after using for 10 years or more are not taxable, employees can claim these benefits without adding to their tax bill.

■ Since the term "salary" includes basic salary, bonus, commission, fees and all other taxable allowances for the purpose of valuation of perquisite in respect of rent free house, it would be advantageous if an employee goes in for perquisites rather than for taxable allowances. This will reduce valuation of rent-free house.

Case studies

114. The following case studies are given to have better understanding—

Case study 1 - X (31 years) has been offered an employment on monthly salary of Rs. 90,000 and his tax liability is calculated as under –

	Rs.
Salary (Rs. 90,000 × 12)	10,80,000
Less : Standard deduction	50,000
Net income	10,30,000
Tax on net income	1,26,360
Take-home pay (*i.e.*, Rs. 10,80,000 – Rs. 1,26,360)	9,53,640

Is it possible to reduce tax liability ?

■

X can take the same salary of Rs. 90,000 per month in different forms of allowances/perquisites. While framing salary structure one is to ensure that expenditure incurred by the employer should be allowed as deduction and in the hands of the employee, the allowances/perquisites are not taxable or taxable at lower rate.

In the aforesaid case, X can take salary of Rs. 90,000 per month in the form of the following allowances/ perquisites —

	Expenditure incurred by the employer Rs.	*Amount taxable in the hands of the employees Rs.*
Basic salary	4,00,000	4,00,000
Employer's contribution towards recognised provident fund	48,000	—
Education allowance for two children	2,400	—
Academic research allowance [*on the assumption that the amount is used for conducting research]	5,000	*Nil**

*It is assumed that X is not eligible for deduction under section 80GG.

	Expenditure incurred by the employer Rs.	*Amount taxable in the hands of the employees Rs.*
Uniform allowance [*on the assumption that the amount is used for purchase and maintenance of uniform for official purposes]	6,000	*Nil**
Rent-free house in Bombay (rent paid by employer)	3,45,000	60,000
Free car with driver for official and private use but not for commuting between office and residence (cubic capacity of engine 1.3 litres)	1,90,000	32,400
Free telephone and mobile phone	30,400	*Nil*
Leave travel concession (twice in a block of 4 years) (one year's expenses are given on proportionate basis) [* on the assumption the amount is actually used for travelling and it does not exceed economy class air fare]	53,200	*Nil**
Total expenditure/gross salary	10,80,000	4,92, 400
Less: Standard deduction		50,000
Income from salary		4,42,400
Less : Deduction under section 80C (being employee's contribution towards PF)	-	48,000
Net income	-	3,94,400
Tax on net income		*Nil*
Take-home pay (*i.e.,* Rs. 4,00,000 + Rs. 2,400 + Rs. 5,000 + Rs. 6,000 + Rs. 53,200 — Rs. 48,000 being X's contribution towards provident fund)		4,18,600

Comparison –

	Option 1 (given in the problem) Rs.	*Option 2 (as suggested above) Rs.*
Take-home pay	9,53,640	4,18,600
Less : Payment by X for —		
- House accommodation*	3,45,000	—
- Car and driver	1,90,000	—
- Telephone and mobile phone	30,400	—
- Future saving (Rs. 48,000 + Rs. 48,000)	96,000	—
Balance	2,92,240	4,18,600

The difference of Rs. 1,26,360 between the two options is because of lower tax bill under option 2 (*i.e.,* Option 1: Rs. 1,26,360, Option 2 : *Nil*).

Case study 2 - X is offered an employee by A Ltd. Total cost to the company (CTC) will be Rs. 18 lakh. The entire amount is received by cheque without any planning and his tax liability is calculated as follows –

	Rs.
Salary (Rs. 18,00,000 – standard deduction : Rs. 50,000)	*17,50,000*
Any other income	Nil
Gross total income	*17,50,000*
Less*: Deductions*	Nil
Net income	*17,50,000*
Tax on net income	*3,51,000*
Effective tax rate (i.e., Rs. 3,51,000 ÷ Rs. 18,00,000)	*19.5%*

*It is assumed that X is not eligible for deduction under section 80GG.

Is it possible to reduce tax liability ?

■

Tax liability can be reduced if Rs. 18 lakh is paid by way of salary, allowances and perquisites as follows —

	Rs.
Basic salary	6,00,000
Education allowance for children	2,400
Helper allowance	36,000
Uniform allowance	24,000
Research allowance	30,000
Rent-free house	6,00,000
Car with driver for official and private purposes but cannot be used for commuting between office and residence (car: Rs. 1,50,000 + driver: Rs. 91,200)	2,41,200
Medi-claim insurance premium	28,000
Leave travel concession (twice in a block of 4 years: projected expenditure of 1 year is given)	49,000
Telephone	50,400
Gift-in-kind	40,000
Free lunch in office (Rs. 90 per lunch for 300 working days)	27,000
Employer's contribution towards provident fund (12% of Rs. 6,00,000)	72,000
Cost to the company (CTC)	18,00,000

Tax liability will be calculated as follows—

Basic salary	6,00,000
Education allowance for children [exempt under section 10(*14*)]	*Nil*
Helper allowance (it is assumed that the entire amount is used for engaging a helper after office hour at residence to complete office work) [exempt under section 10(*14*)]	*Nil*
Uniform allowance (there is a uniform code in the organization and it is assumed that this allowance is utilized for purchase and/or maintenance of uniform for official purposes) [exempt under section 10(*14*)]	*Nil*
Research allowance (it is assumed that the entire amount is used for conducting research for office purposes) [exempt under section 10(*14*)]	*Nil*
Rent-free house (*i.e.*, 15% of Rs. 6,00,000)	90,000
Car with driver (taxable amount is Rs. 1,800 per month for car and Rs. 900 per month for driver)	32,400
Medi-claim insurance premium	*Nil*
Leave travel concession (twice in a block of 4 years not chargeable to tax)	*Nil*
Telephone	*Nil*
Gift-in-kind (Rs. 40,000 – Rs. 5,000)	35,000
Free lunch in office (up to Rs. 50 per lunch is not chargeable to tax)	12,000
Employer's contribution towards provident fund	*Nil*
Salary	7,69,400
Less: Standard deduction	50,000
Income from salary	7,19,400
Less: Deduction under section 80C (12% of salary contributed by employee)	72,000
Net income	6,47,400
Tax liability	43,660
Effective rate of tax (Rs. 43,660 ÷ Rs. 18,00,000)	2.43%

Case study 3 - In Case Study 2, X owns a property (municipal tax: Rs. 24,000, interest on borrowed capital: Rs. 3,60,000). He does not want to take the perquisite in respect of rent-free house from the employer. Discuss whether any modification is required in the remuneration plan given above.

■

As can be seen from the data given in Case Study 2, the tax liability is reduced to a substantial extent only because of the perquisite in respect of rent-free house. In such a situation, the house owned by X may be given on self-lease to the employer company (lease rent will be Rs. 6,00,000). The same house will be allotted by the company to X as a perquisite. Out of the CTC of Rs. 18,00,000, Rs. 6,00,000 can be paid as rent and the balance can be given in the form of different allowances and perquisites as given above. Taxable income of X will be calculated as follows —

	Rs.
Income under the head "Salaries" as calculated above	7,19,400
Income from house property (Rs. 6,00,000 — Rs. 24,000 being municipal tax — 30% of the balance as standard deduction — Rs. 3,60,000 being interest on borrowed capital)	43,200
Gross total income	7,62,600
Less: Deduction under section 80C	72,000
Net income	6,90,600
Tax liability	52,640
Effective rate of tax (Rs. 52,640 ÷ Rs. 18,00,000)	2.92%

If the house owned by X does not have any interest liability, the tax liability will be slightly higher as is evident from the calculations given below—

	Rs.
Income under the head "Salaries" as calculated above	7,19,400
Income from house property (Rs. 6,00,000 — Rs. 24,000 being municipal tax — 30% of the balance as standard deduction — *Nil* being interest on borrowed capital)	4,03,200
Gross total income	11,22,600
Less: Deduction under section 80C	72,000
Net income	10,50,600
Tax liability	1,32,790
Effective rate of tax (Rs. 1,32,790 ÷ Rs. 18,00,000)	7.38%

Although the effective rate of tax is 7.38% but still it is lower than 19.5% which is calculated when the entire CTC is paid without any planning.

Case study 4 - Mrs. X is offered an employment by PQR Ltd. at a basic salary of Rs. 1,24,000 per month. Other allowances according to rules of the company are : dearness allowance : 18 per cent of basic pay (not forming part of salary for calculating retirement benefits), bonus : 1 month basic pay ; project allowance : 6 per cent of basic pay.

The company gives Mrs. X an option either to take a rent-free unfurnished accommodation at Indore for which the company would directly bear the rent of Rs. 45,000 per month, or to accept a house rent allowance of Rs. 45,000 per month and find out own accommodation. If Mrs. X opts for house rent allowance, she will have to pay Rs. 45,000 per month for an unfurnished house. Her income from other sources is Rs. 1,70,000. Discuss which one is better alternative.

■

For determining which one is a better option, one has to calculate taxable income under the two options –

	Rent-free accommodation Rs.	*House rent allowance Rs.*
Basic salary (Rs. 1,24,000 × 12)	14,88,000	14,88,000
Dearness allowance (18% of Rs. 14,88,000)	2,67,840	2,67,840
Bonus	1,24,000	1,24,000
Project allowance (6% of Rs. 14,88,000)	89,280	89,280
Rent-free accommodation [*see* Note 1]	2,55,192	—
House rent allowance [*see* Note 2]	—	1,48,800
Gross salary	22,24,312	21,17,920
Less : Standard deduction	50,000	50,000
Income from salary	21,74,312	20,67,920

Mrs. X should, therefore, opt for house rent allowance option.

Notes :

1. Salary for the purpose of calculation of taxable value of rent-free accommodation is Rs. 17,01,280 (*i.e.,* Rs. 14,88,000 + Rs. 1,24,000 + Rs. 89,280). Lease rent of the house is Rs. 5,40,000.

As lease rent of the house exceeds 15% of salary, 15% of salary, *i.e.,* Rs. 2,55,192 is taxable value of the perquisite.

2. Amount of house rent allowance exempt from tax is the least of the following :

a. Rs. 5,95,200 (being 40% of Rs. 14,88,000) ;

b. Rs. 5,40,000 (being house rent allowance) ; and

c. Rs. 3,91,200 (being the excess of rent paid over 10% of salary, *i.e.,* Rs. 5,40,000 — 10% of Rs. 14,88,000).

Rs. 3,91,200, being the least, is exempt from tax. Therefore, Rs. 1,48,800 (being Rs. 5,40,000 — Rs. 3,91,200) is chargeable to tax.

MULTIPLE CHOICE QUESTIONS

Q1. X Ltd. wants to provide a big size house to its managing director. His remuneration in cash is very nominal (*i.e.,* Rs. 10,000 per month). The company wants to take a building on rent (rent being Rs. 85,000 per month) and the same will be provided to the managing director as a perquisite. Alternatively, the company can give a monthly house rent allowance of Rs. 85,000 and the managing director will take the same building on rent as a tenant—

a. House rent allowance is better than rent-free house;

b. Rent-free house is better than house rent allowance;

c. The tax liability of the director will remain same in the two cases;

d. The tax liability may or may not be the same in these two cases.

Q2. Fringe benefit tax (FBT) is removed from the previous year 2019-20—

a. True;

b. False.

Q3. Y Ltd. provides a car to an executive. The executive can use the car for official purposes as well as personal purposes—

a. Earlier it was subject to fringe benefit tax and now it will not be taxable in the hands of executive;

b. Earlier it was not subject to fringe benefit tax but now it will not be taxable in the hands of executive;

c. Earlier it was subject to fringe benefit tax and now it will be taxable in the hands of executive;

d. Earlier it was not subject to fringe benefit tax but now it will be taxable in the hands of executive.

Q4. Z Ltd. gives an option to an employee X to purchase 1,000 shares in the company at a pre-determined price of Rs. 200 per share. On March 20, 2019, X applies to purchase 800 shares. Shares are allotted on April 1, 2019—

a. Z Ltd. will pay fringe benefit tax;

b. X will pay tax on perquisite;

c. None will pay tax;

d. Z Ltd. will pay fringe benefit tax and X will pay tax on perquisite.

Q5. If there is no change in the salary structure, then after abolition of fringe benefit tax—

a. Tax liability of employees will reduce;

b. Tax liability of employees will remain same;

c. Tax liability of employees is likely to increase;

d. Tax liability of employees may or may not be same.

Q6. After abolition of fringe benefit tax—

a. Rent-free house provided to an employee is not chargeable to tax;

b. Rent-free house will be chargeable to tax in the hands of employer;

c. Total expenditure incurred by the employer is taxable in the hands of employees;

d. It will be taxable in the hands of employees and maximum taxable amount 15 per cent of salary of employees.

Q7. Employer's contribution towards an approved superannuation fund is—

a. Not taxable in the hands of employees;

b. Taxable in the hands of employer;

c. Taxable in the hands of employees (entire amount);

d. Taxable in the hands of employees (amount in excess of Rs. 1.50 lakh per annum).

Q8. Compensation received on voluntary retirement is exempt up to Rs. 5 lakh, if a few conditions are satisfied. If such payment is more than Rs. 5 lakh—

a. The amount in excess of Rs. 5 lakh is taxable in the hands of employees;

b. The amount in excess of Rs. 5 lakh is taxable in the hands of employees and employees can claim relief under section 89;

c. The amount in excess of Rs. 5 lakh is not taxable in the hands of employees provided the employer pays tax out of his pocket;

d. The amount in excess of Rs. 5 lakh is taxable in the hands of employees and employees cannot claim relief under section 89.

Q9. X is entitled to child education allowance of Rs. 85 per month per child for 4 children. The exempt amount is—

a. Rs. 1,200;

b. Rs. 2,040;

c. Rs. 2,400;

d. Rs. 4,080.

Q10. X, an employee of A Ltd. (not being covered by the Payment of Gratuity Act, 1972), retires on March 10, 2018 after rendering services for 15 years 11 months and 29 days. The completed years of service for calculating exemption of gratuity shall be—

a. 15 years;

b. 16 years;

c. 14 years;

d. None of the above.

Q11. X is entitled to a transport allowance of Rs. 1,100 per month for commuting between his office and residence. He actually spends Rs. 550 per month. The amount exempt is—

a. Nil;

b. Rs. 1,100 per month;

c. Rs. 550 per month;

d. None of the above.

Q12. Refreshment provided by an employer to all employees during working hours in office premises is—

a. Exempt from tax;

b. Chargeable to tax;

c. Exempt from tax up to Rs. 35 per day;

d. None of the above.

Q13. During the previous year 2018-19, X is reimbursed Rs. 39,000 as medical expenses incurred by him, which includes Rs. 20,000 spent in a Government hospital. The taxable perquisite in this case shall be—

a. Rs. 24,000;

b. Rs. 4,000;

c. Rs. 39,000;

d. None of the above.

Q14. X, an employee of A Ltd., receives salary of Rs. 3,32,000 per annum. The fair rent of the unfurnished house in Delhi given to him is Rs. 4,22,000. The valuation of the perquisite of the house is—

a. Rs. 33,200;

b. Rs. 2,56,000;

c. Rs. 89,200;

d. None of the above.

Q15. X is provided with a car, which is mainly used for personal purposes. However, the car is used on a few occasions for official purposes. Expenditure incurred by the employer company is Rs. 2 lakh per month. After abolition of fringe benefit tax, the employer wants to convert this perquisite into conveyance allowance of Rs. 2 lakh per month—

a. Conveyance allowance is better than perquisite in respect of car, as tax liability of X will reduce;

b. Conveyance allowance is not better than perquisite in respect of car, as tax liability of X will increase;

c. Tax liability of X will remain same;

d. None of above is correct.

Q16. Exemption in respect of value of leave travel concession is available in respect of—

a. Two journeys performed in a block of four calendar years;

b. One journey performed in a block of four calendar years;

c. Three journeys performed in a block of four calendar years;

d. None of the above.

Q17. For the purpose of valuation of the perquisite in respect of medical facilities, family means—

a. Spouse of the individual;

b. Children of the individual;

c. Dependent parents of the individual;

d. Dependent brothers and sisters of the individual;

e. All of the above.

Q18. X, an employee of A Ltd., along with his wife went for his kidney transplant in United Kingdom. The expenses on medical treatment of X and the stay outside India of both husband and wife amounted to Rs. 10,00,000 as against Rs. 9,20,000 permitted by the RBI. The travel expenses amount to Rs. 1,20,000. All expenses were reimbursed by A Ltd. Assuming the gross salary of X (before including travelling expenditure) is Rs. 4,22,000, the taxable value of the perquisite is—

a. Rs. 80,000;

b. Rs. 2,00,000;

c. *Nil*;

d. None of the above.

Q19. X receives domestic servant allowance of Rs. 750 per month from his employer A Ltd. He engages the services of a gardener and sweeper for Rs. 250 per month and Rs. 300 per month, respectively. The taxable value of the allowance is—

a. Rs. 750 per month;

b. Rs. 200 per month;

c. Rs. 550 per month;

d. None of the above.

Q20. Employer's contribution (in the year of making contribution) and interest credited (in the year of giving credit) to recognised provident fund is—

a. Exempt from tax;

b. Employer's contribution is exempt up to 12% of salary and interest is exempt up to 12% per annum;

c. Chargeable to tax;

d. None of the above.

Q21. X Ltd. gives an option to his employees. Under option 1, the entire salary will be paid by cheque by way of salary. Under option 2, salary would be paid by way of basic salary, allowance and perquisites—

a. Tax liability of employees will remain same;

b. Under option 1, tax liability will be lower;

c. Under option 1, tax liability would be higher;

d. Within the parameters of Income-tax Act, it is not permissible.

Q22. An employee owns a house. He gets house rent allowance from the employer company—

a. No planning is possible;

b. House rent allowance will be chargeable to tax;

c. House rent allowance will not be chargeable to tax;

d. House owned by the employee may be given on self-lease to the employer and the same house may be allotted to the employee as a perquisite. Tax liability of the employee will be reduced.

Q23. An employee owns a car. He gets fixed conveyance allowance from the employer company, which is mainly used for personal purposes—

a. No planning is possible;

b. Conveyance allowance will not be chargeable to tax;

c. Car owned by the employee may be given on self-lease to the employer and the same car may be allotted to the employee as a perquisite. Car can be used for official and private purposes. Running and maintenance expenditure of the car will be met by the employer. A part of CTC can be given as rent of the car. Tax liability of the employee will be reduced.

d. Conveyance allowance will be chargeable to tax to the extent it is used for official purposes.

Q24. X is employed by A Ltd. (CTC being Rs. 15 lakh per annum). The employer company has given an option. X can take the entire by cheque by way of salary or alternatively, it can be paid by dividing it into salary, allowances and perquisites. In the second option, the tax liability may be reduced but taken home pay (in cash) will be reduced. Thus, there is a positive co-relation between take home pay (in cash) and tax liability—

a. True;

b. False.

12 CHAPTER TAX PLANNING WITH REFERENCE TO SALE OF SCIENTIFIC RESEARCH ASSETS

Sale of scientific research assets

116. If the asset is sold without having been used for other purposes, sale proceeds or deduction allowed, whichever is less, is chargeable to tax as business income of the previous year in which the sale took place [section 41(3)]. The excess of sale proceeds over deduction allowed is, however, chargeable to tax as capital gains according to the provisions of section 45.

Case study

XYZ Ltd., a paper manufacturing concern, purchases a machine on March 1, 2011 for Rs. 6,10,000 for its laboratory with a view to improving the quality of art paper manufactured by the company.

1. What will be the amount of deduction under section 35 on account of capital expenditure of Rs. 6,10,000 for the assessment year 2011-12.

2. If the research activity for which the aforesaid machine is purchased ceases in 2017 and the machinery is brought into business proper on November 1, 2017 (market value of the machine : Rs. 2,30,000) ; depreciation is admissible at the rate of 15 per cent ; depreciated value of the relevant block of assets on April 1, 2017 is Rs. 14,07,860, the scientific research machine is sold for Rs. 1,90,000 on April 4, 2018, what will be the amount of depreciation and amount of chargeable profit under section 41(3).

3. If the research activity for which the machine was purchased ceases on November 1, 2017 (market value of the machine : Rs. 2,30,000) and the machine is sold on April 4, 2018 without using it for another purpose, sale price being Rs. 1,90,000, or Rs. 5,40,000, or Rs. 8,10,000 or Rs. 15,00,000.

■

1. As the scientific research is related to the business of assessee, the whole of capital expenditure of Rs. 6,10,000 is allowable as deduction under section 35(2)(*ia*) for the assessment year 2011-12.

2. The machine is brought into business proper on November 1, 2017. Profit arising on sale of machinery is, in this case, not chargeable under sub-section (3) of section 41. Provision of sub-section (3) of section 41 would not apply as the section covers only such assets which are represented by expenditure of capital nature on scientific research that is sold *without having been used for any other purpose*.

Tax treatment of depreciation will be as under :

	Rs.
Depreciated value of the block of assets on April 1, 2017	14,07,860
Add : Cost of machine transferred from laboratory on November 1, 2017 [*i.e.*, Rs. 6,10,000 — deduction of Rs. 6,10,000 claimed under section 35]	*Nil*
Written down value	14,07,860
Less : Depreciation for the previous year 2017-18 [15% of Rs. 14,07,860]	2,11,179
Depreciated value of the block on April 1, 2018	11,96,681
Less : Sale proceeds of machine sold on April 4, 2018	1,90,000
Written down value	10,06,681
Less : Depreciation for the previous year 2018-19	1,51,002
Depreciated value of the block on April 1, 2019	8,55,679

There will be no capital gain or loss in this case

3. Tax treatment should be as under :

	If sale price is			
	Rs. 1.90 lakh Rs.	*Rs. 5.40 lakh Rs.*	*Rs. 8.10 lakh Rs.*	*Rs. 15 lakh Rs.*
Amount chargeable under section 41(3) (*i.e.,* sale proceeds but subject to maximum of deduction claimed under section 35 for the assessment year 2011-12)	1,90,000	5,40,000	6,10,000	6,10,000
Capital gain under section 45				
Sale proceeds	1,90,000	5,40,000	8,10,000	15,00,000
Less : Indexed cost of acquisition (*i.e.,* Rs. 6,10,000 × 280÷184)	9,28,261	9,28,261	9,28,261	9,28,261
Long-term capital gain or loss	(–)7,38,261	(–)3,88,261	(–) 1,18,261	(–) 5,71,739

Note - It can be seen from the above computation that when the capital asset is transferred for Rs. 1.90 lakh/ 5.40 lakh/Rs. 8.10 lakh without putting it to some other use, the taxpayer can claim long-term capital loss apart from claiming deduction under section 35—*Pharmson Pharmaceuticals Ltd.* v. *CIT* [2003] 87 ITD 668 (Delhi).

MULTIPLE CHOICE QUESTIONS

Q1. Deduction under section 35 was taken when plant and machinery was purchased for scientific research purposes in the year 2014-15. In the previous year 2018-19, the plant and machinery is transferred without putting it to some other use. The project is yet to be completed—

a. Sale proceeds of plant and machinery is not chargeable to tax;

b. Sale proceeds of plant and machinery shall be deducted from block of assets;

c. Entire sale proceeds will be taxable under the head “Capital gains”;

d. Sale proceeds (to the extent of original cost) will be taxable as business income and the balance will be taxable as capital profit under the head “Capital gains”.

Q2. Deduction under section 35 was taken when plant and machinery was purchased for scientific research purposes in the year 2015-16. In the previous year 2018-19, the plant and machinery is transferred to factory for manufacturing purposes. The scientific research project is yet to be completed—

a. Sale proceeds of plant and machinery is not chargeable to tax;

b. Sale proceeds of plant and machinery shall be deducted from block of assets;

c. Entire sale proceeds will be taxable under the head “Capital gains”;

d. Sale proceeds (to the extent of original cost) will be taxable as business income and the balance will be taxable as capital profit under the head “Capital gains”.

13 CHAPTER

TAX PLANNING WITH REFERENCE TO RECEIPT OF INSURANCE COMPENSATION

Insurance claim

118. In *Vania Silk Mills (P.) Ltd.* v. *CIT* [1991] 59 Taxman 3, the Supreme Court *held* that insurance claim received on account of destruction of asset is not chargeable to tax as "destruction" does not amount to transfer. The effect of the judgment has been nullified to some extent by inserting sub-section (1A) in section 45 with effect from the assessment year 2000-01.

When section 45(1A) is attracted

119. The following two conditions should be satisfied —

■ *Condition one* - The first condition is that the compensation is received because of 'damage to' or 'destruction of' any capital asset. If it is not a capital asset, then section 45(1A) is not applicable[1].

■ *Condition two* - The damage or destruction is a result of four categories of circumstances, *viz.*, (*i*) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature; or (*ii*) riot or civil disturbance; or (*iii*) accidental fire explosion; or (*iv*) action by an enemy or action taken in combating an enemy (whether with or without a declaration of war).

If the aforesaid two conditions are satisfied, then section 45(1A) is attracted.

Consequences where section 45(1A) is applicable

119.1 Where a person receives at any time during the previous year any money or other assets under any insurance from an insurer and the above two conditions are satisfied, then the following three consequences, one should note —

1. Taxability of income - Any profits or gains arising from receipt of such money or other assets shall be chargeable to income-tax under the head "Capital gains".

2. Year - It shall be deemed to be the income of such person for the previous year in which such money or other asset is received.

3. Full value of consideration - For this purpose, the value of any money or the fair market value of other asset (on the date of receipt) shall be deemed to be the full value of the consideration received or accruing as a result of transfer of such asset.

When section 45(1A) is not applicable

120. In case section 45(1A) is not applicable, the tax treatment is as follows—

When insurance compensation is a capital receipt

120.1 If the two conditions mentioned in para 119 are not satisfied, then section 45(1A) is not applicable and, consequently, insurance compensation (if it is a capital receipt) will not be chargeable to tax as per ruling given by the Supreme Court in *Vania Silk Mills (P.) Ltd.* v. *CIT* [1991] 59 Taxman 3. Consider a case where a road accident takes place in which vehicles and machinery or furniture being carried are destroyed. A ship, being overweight, is sunk and assets are lost. The receipt of insurance compensation in such circumstances is not chargeable to tax under section 45(1A). The reasons for destruction being other than those mentioned in the *condition two* (*supra*). The compensation received will have to be dealt with as per the Supreme Court's judgment in the case of *Vania Silk Mills (P.) Ltd.* v. *CIT* [1991] 191 ITR 647/59 Taxman 3.

1. In such case, compensation may be taxable under section 28, if it is a revenue receipt.

120.2 If the two conditions mentioned in para 119 are not satisfied and insurance compensation is a revenue receipt, then section 45(1A) is not applicable but the receipt may be taxable as trading receipt under section 28 or 56. For instance, insurance compensation for theft of stock-in-trade is not taxable under section 45(1A) but it will be taxable as business income under section 28. *When insurance compensation is a revenue receipt*

121. The following case studies are given— Case studies

121-P1 *X Ltd. is a manufacturing company. On April 1, 2018, it owns Plant A and Plant B (depreciation rate : 15 per cent; depreciated value of block being Rs. 2,40,000). Plant C (depreciation rate 15 per cent) is purchased by the company on June 10, 2018 for Rs. 60,000. It is put to use on the same day. Find out the tax consequences in the following different situations—*

1. *Plant B is destroyed by fire on January 25, 2019. Rs. 10,000, being the compensation is paid by the insurance company on February 10, 2019.*

2. *Suppose insurance compensation in situation (1) is Rs. 3,70,000.*

3. *Plants A, B and C are destroyed by fire on January 25, 2019. Compensation paid by insurance company on February 10, 2019 is Rs. 20,000.*

4. *Suppose in situation (3) insurance compensation is Rs. 4 lakh.*

	Situation 1 *Rs.*	*Situation 2* *Rs.*	*Situation 3* *Rs.*	*Situation 4* *Rs.*
Depreciation				
Depreciated value of block (consisting of Plants A and B) on April 1, 2018	2,40,000	2,40,000	2,40,000	2,40,000
Add : Cost of Plant C purchased during 2018-19	60,000	60,000	60,000	60,000
Less : Money payable in respect of assets destroyed during 2017-18 (subject to maximum of Rs. 3,00,000)	(-) 10,000	(-) 3,00,000	(-) 20,000	(-) 3,00,000
Written down value on March 31, 2019	2,90,000	*Nil*	2,80,000	*Nil*
Depreciation for the previous year 2018-19 [normal depreciation @ 15% of WDV (not available when WDV is zero or block is empty) + additional depreciation @ 20% of Rs. 60,000]	55,500	12,000	12,000	12,000
Depreciated value of the block on April 1, 2019 (*block ceases to exist)	2,34,500	*Nil*	—*	—*
Capital gain [Sec. 45(1A) read with sec. 50]				
Sale consideration (being the amount of compensation)	10,000	3,70,000	20,000	4,00,000
Less : Cost of acquisition as per section 50 (*section 50 is not applicable as the block does not cease to exist or written down value of the block is not reduced to zero)	NA*	3,00,000	3,00,000	3,00,000
Short-term capital gain/loss for the assessment year 2019-20	—	70,000	(-) 2,80,000	1,00,000

121-P2 *Suppose in case study 121-P1, insurance compensation is paid by the insurance company on April 14, 2019.*

■

As per section 45(1A), capital gain arising on account of receipt of insurance compensation is chargeable to tax in the year in which such compensation is received by the taxpayer. Consequently, the amount of capital gains computed in case study 121-P1 is chargeable to tax in the assessment year 2020-21 (other computation including depreciation for the assessment year 2019-20 will remain the same).

121-P3 *X Ltd., a manufacturing company, owns two plants—Plant A and Plant B (depreciation rate 15 per cent). The depreciated value of the block on April 1, 2018 is Rs. 14,30,000. Till June 30, 2018, Plant B is installed in a foreign branch of the company. When Plant B is in transit to India on a ship in Indian Ocean, the ship drowns on July 7, 2018 due to engine failure and Plant B is completely destroyed. A compensation of Rs. 26,80,000 is paid by the insurance company. Find out the tax consequence in the following situations—*

1. *Out of insurance compensation, the company purchases Plant C for Rs. 5,00,000 on October 10, 2018 and remaining amount of compensation is transferred to statement of profit and loss.*

2. *Out of insurance compensation, the company purchases Plant C for Rs. 5,00,000 on April 1, 2019 and the remaining amount is transferred to capital reserve account.*

■

	Situation 1 *Rs.*	*Situation 2* *Rs.*
Depreciated value of the block (consisting of Plants A and B) on April 1, 2019 (*a*)	14,30,000	14,30,000
Add : Cost of Plant C acquired during 2018-19 (*b*)	5,00,000	—
Less : Money payable in respect of Plant B destroyed during 2018-19 [but subject to a maximum of (*a*) + (*b*)]	(-) 19,30,000	(-) 14,30,000
Written down value on March 31, 2019	*Nil*	*Nil*
Less : Depreciation for the previous year 2018-19 (*i.e.*, additional depreciation @ 10% of Rs. 5,00,000)	50,000	*Nil*
Depreciated value of the block on April 1, 2019	*Nil*	*Nil*
Add : Cost of Plant C acquired during the previous year 2019-20	—	5,00,000
Written down value on March 31, 2020	*Nil*	5,00,000
Less : Depreciation for the previous year 2019-20 (normal depreciation : 15% of Rs. 5,00,000 + additional depreciation : 20% of Rs. 5,00,000)	*Nil*	1,75,000
Depreciated value on April 1, 2020	*Nil*	3,25,000
Capital gains		
Sale consideration being the compensation received	26,80,000	26,80,000
Less : Cost of acquisition as per section 50	19,30,000	14,30,000
Short-term capital gain	*Nil**	*Nil**

*Section 45(1A) is not applicable. *Condition two* mentioned in para 119 is not satisfied. Insurance compensation will not be chargeable to tax as per ruling given by the Supreme Court in *Vania Silk Mills (P.) Ltd.* v. *CIT* [1991] 59 Taxman 3.

121-P4 *X Ltd. owns two plants—Plant A and Plant B (depreciation rate 30 per cent). Depreciated value of the block on April 1, 2018 is Rs. 3,90,000. Find out the amount of depreciation and capital gains in the following situations—*

1. *Plant B is destroyed by fire on May 31, 2018. Insurance company pays Rs. 50,000 as compensation. The company purchases Plant C on September 2, 2018 for Rs. 50,000. It is put to use on the same day.*

2. *Suppose under* situation 1, *insurance compensation as well as cost of Plant C is Rs. 4,60,000.*

3. *Plant B is destroyed by fire on May 31, 2018. Insurance compensation is determined at Rs. 60,000. Instead of paying Rs. 60,000 as compensation the insurance company gives Plant C whose market value is Rs. 60,000. It is put to use on October 16, 2018.*

4. *Suppose under* situation 3 *insurance compensation and fair market value of Plant C is Rs. 4,90,000.*

■

	Situation 1 *Rs.*	*Situation 2* *Rs.*	*Situation 3* *Rs.*	*Situation 4* *Rs.*
Depreciated value of the block on April 1, 2018	3,90,000	3,90,000	3,90,000	3,90,000
Add : Cost of Plant C acquired during 2018-19 [*as per *Explanation 10* to sec. 43(*1*) amount reimbursed/met by any person shall not be included in actual cost]	50,000	4,60,000	—*	—*
Less : Money payable in respect of Plant B destroyed during 2018-19 [*as per ruling of the Supreme Court in *CIT* v. *Kasturi Sons Ltd.* [1999] 103 Taxman 342 the expression "money payable" includes only actual money received/receivable and not other things/benefits which can be converted in terms of money]	(-) 50,000	(-) 4,60,000	—*	—*
Written down value on March 31, 2019	3,90,000	3,90,000	3,90,000	3,90,000
Less : Depreciation for the previous year 2018-19	1,17,000	1,17,000	1,17,000	1,17,000
Less : Additional depreciation	10,000	92,000	*Nil*	*Nil*
Depreciated value of the block on April 1, 2019	2,63,000	1,81,000	2,73,000	2,73,000

	Situation 1 *Rs.*	*Situation 2* *Rs.*	*Situation 3* *Rs.*	*Situation 4* *Rs.*
Capital gains				
Sale consideration of Plant B (being compensation received in cash or kind)	50,000	4,60,000	60,000	4,90,000
Less : Cost of acquisition as per section 50 [*section 50 is not applicable as sale consideration does not exceed opening balance of the block of assets *plus* new purchase made during the year)	—*	—*	—*	3,90,000
Short-term capital gain	—	—	—	1,00,000

121-P5 *On April 1, 2018, X Ltd. owns the following assets :*

Asset	Rate of depreciation	Actual cost Rs.	Depreciated value on April 1, 2018 Rs.
Plant A	*15%*	*8,00,000*	*5,15,600*
Plant B	*15%*	*4,10,000*	*2,05,400*
Plant C	*15%*	*6,00,000*	*3,10,000*
Plant D	*15%*	*2,18,000*	*1,85,300*

*The aforesaid assets are covered by insurance against loss by fire. Plant A is partly damaged on June 2, 2018 by fire and X Ltd. receives Rs. 6,40,000 as compensation in respect of loss. It, however, spends Rs. 1,60,000 and restores the plant to working condition. The Assessing Officer wants to tax Rs. 4,80,000 (*i.e., *Rs. 6,40,000—Rs. 1,60,000) either as revenue receipt under section 28 or as capital receipt under section 45. Alternately, he wants to reduce the written down value of block of assets by Rs. 4,80,000 for determining depreciation for the previous year 2018-19. Does it make any difference if the amount of compensation is Rs. 16,40,000 ?*

■

Written down value of block of assets, as per definition given under section 43(*6*)(*c*), is depreciated value of all assets at the beginning of the previous year. However, the following adjustments would be made :

1. Cost of an asset acquired during the previous year (if the asset falls in that block) will be added [sec. 43(*6*)(*c*)(*A*)].

2. Moneys payable (together with scrap) in respect of that asset (falling within that block) which is sold, discarded, demolished or destroyed during the previous year will be deducted [sec. 43(*6*)(*c*)(*B*)].

Section 43(*6*)(*c*)(*B*) postulates for its applicability that the plant and machinery, whether in whole or in part, should be sold, discarded, demolished or destroyed. It has no application to a case where plant or machinery is merely damaged and by repairing the damage the asset is restored to working condition. Since, in this case, Plant A is only partly damaged by fire and after repairing the damage, the plant is recommissioned, there is no scope for application of section 43(*6*)(*c*)(*B*)—*see CIT* v. *Sirpur Paper Mills Ltd.* [1978] 112 ITR 776 (SC).

Depreciation allowance for the assessment year 2019-20, in this case, will be determined as under :

	Rs.
Block of assets : Plant (rate of depreciation : 15 per cent)	
Depreciated value of Plants A, B, C and D on April 1, 2018 (Rs. 5,15,600 + Rs. 2,05,400 + Rs. 3,10,000 + Rs. 1,85,300)	12,16,300
Add : Cost of asset acquired during the previous year	*Nil*
Less : Money payable in respect of assets sold, discarded, demolished or destroyed during the previous year	*Nil*
Written down value for the previous year 2018-19	12,16,300
Less : Depreciation for the previous year 2018-19 (15% of Rs. 12,16,300)	1,82,445
Depreciated value of the block on April 1, 2019	10,33,855

Capital gains

	If compensation is Rs. 6,40,000 *Rs.*	*If compensation is Rs. 16,40,000* *Rs.*
Sale consideration (being the compensation received)	6,40,000	16,40,000
Less : Cost of acquisition as per section 50	Not applicable [Note 1]	12,16,300
Short-term capital gain	*Nil*	4,23,700

Notes—

1. Section 50 is applicable in two cases. If sale consideration exceeds, the opening balance *plus* cost of assets purchased during the year *plus* expenses on transfer, then the excess shall be taken as short-term capital gain [sec. 50(1)]. Further, it is applicable if the block of assets ceases to exist [sec. 50(2)]. In the given problem, if insurance compensation is Rs. 6,40,000, then section 50(1)/(2) is not applicable and, consequently, the capital gain is not chargeable.

2. The expenditure incurred to restore the plant to working condition is not taken into consideration while calculating written down value or capital gain. The answer given above will remain the same even if (*a*) no expenditure is incurred or (*b*) the expenditure incurred exceeds the insurance compensation.

MULTIPLE CHOICE QUESTIONS

Q1. A building is destroyed because of a cyclone in the town. Insurance compensation is received. Section 45(1A) is not applicable—

a. True;

b. False.

Q2. Insurance compensation is received but it is not covered by section 45(1A)—

a. Insurance compensation is chargeable to tax if it is a revenue receipt;

b. Insurance compensation is not chargeable to tax whether it is a revenue receipt or capital receipt;

c. Insurance compensation is always chargeable to tax;

d. Insurance compensation is chargeable to tax but the taxpayer can get a rebate under section 89.

Q3. Insurance compensation is received and it is covered by section 45(1A). Insurance compensation is taxable—

a. In the year, the asset was destroyed;

b. In the year in which the insurance company awards compensation;

c. In the year in which it is actually received by the taxpayer;

d. In any year at the choice of the taxpayer.

Q4. Insurance compensation is received in respect of a non-depreciable asset, which was acquired in 1997 and it is covered by section 45(1A)—

a. Written down value of the asset will be taken as "full value of consideration";

b. Book value will be taken as "full value of consideration";

c. Insurance compensation will be taken as "full value of consideration";

d. Fair market value of the asset on April 1, 2001 will be taken as "full value of consideration".

Q5. Section 45(1A) is applicable only in the case of a businessman. A person having only salary income is outside the purview of section 45(1A)—

a. True;

b. False.

Q6. A depreciable asset is destroyed in civil disturbance. Insurance compensation is received. After deducting insurance compensation from the relevant block of assets, the resulting amount is Rs. 8,45,000 on which the company claims depreciation at the rate of 15 per cent (the block is not empty)—

a. Section 45(1A) is applicable and capital gain is chargeable to tax;

b. Section 45(1A) is not applicable but capital gain is chargeable to tax;

c. Section 45(1A) is applicable but capital gain is not chargeable to tax;

d. Section 45(1A) is not applicable but the compensation is taxable as business income.

TAX PLANNING WITH REFERENCE TO DISTRIBUTION OF ASSETS BY COMPANIES IN LIQUIDATION

14
CHAPTER

Liquidation of a company

Tax treatment in the hands of the company [Sec. 46(1)]

125. The provisions of section 46 are given below—

125.1 Section 46(1) is applicable if the following three conditions are satisfied—

Condition 1	Assets are distributed by a company.
Condition 2	Assets are distributed at the time of liquidation.
Condition 3	Assets are distributed to the shareholders.

If all the three conditions are satisfied, there is no "transfer" in such distribution and capital gain is not chargeable in the hands of the company.

Where, however, the liquidator sells the assets and distributes the cash so realised to the shareholders, then section 46(1) shall not apply. The company shall be liable to tax on the capital gains arising from sale of the assets—*Sri Kannan Rice Mills Ltd.* v. *CIT* [1954] 26 ITR 351 (Mad.).

Tax treatment in the hands of share-holders [Sec. 46(2)]

126. When a shareholder receives money or other assets at the time of liquidation of the company (in which he is a shareholder), section 46(2) is applicable. Capital gain under section 46(2) shall be determined as follows —

1. Find out the money received and the market value of other "assets" on the date of distribution. The word "asset" does not mean "capital asset". It may be "capital asset" or any other asset—*N. Bagavathy Ammal* v. *CIT* [2003] 127 Taxman 422 (SC).

2. Find out the amount treated as dividend under section 2(*22*)(*c*) [any distribution by a company at the time of liquidation is treated as dividend to the extent of accumulated profit of the company].

3. The excess of (*1*) over (*2*) is treated as full value of consideration received on transfer of shares.

4. From the consideration [as calculated at *3 supra*], deduct cost of acquisition/indexed cost of acquisition, expenditure on sale, etc. to find out capital gain.

Case study

127-P1 *X purchases 4,000 equity shares in Y Ltd. on April 16, 2003 at the rate of Rs. 2 per share. Y Ltd. goes into liquidation on June 30, 2019. The balance sheet of the company as on June 30, 2019 is as follows —*

	Rs.		*Rs.*
40,000 equity shares	*4,00,000*	*10,000 Debentures (non-listed) of Z Ltd. (cost : Rs. 9,00,000) at the time of acquisition on May 1, 2017*	*28,00,000*
Accumulated profit	*30,00,000*	*Cash in hand*	*12,16,659*
Provision for dividend tax	*6,16,659*		
	40,16,659		*40,16,659*

Assets are distributed to the shareholders. Consequently, X gets 1,000 debentures in Z Ltd. (market value Rs. 2,80,000) and Rs. 60,000 in cash on June 30, 2019. He transfers 1,000 debentures on April 6, 2020 for Rs. 3,10,000. Find out the tax consequences of these transactions.

■

Y Ltd. - During the previous year 2019-20, the company has distributed assets (being debentures in Z Ltd.) to its shareholders at the time of liquidation. Even if the cost of debentures is Rs. 9 lakh and the market value is Rs. 28 lakh, the surplus is not taxable, as by virtue of section 46(1) distribution of capital asset in kind to shareholders at the time of liquidation is not treated as "transfer". It may be noted that the difference of Rs. 19 lakh is tax-free income.

	Rs.
Total distribution to shareholders [*i.e.*, debentures in Z Ltd. of Rs. 28 lakh + Rs. 6 lakh]	34,00,000
Out of which amount to be treated as dividend under section 2(*22*)(*c*) to the extent of accumulated profit	30,00,000
Tax on dividend [15/85 (*plus* surcharge + HEC) of Rs. 30 lakh]	6,16,659
Income of X at the time of liquidation of the company [assessment year 2019-20]—	
Amount received by X on June 30, 2018 (*i.e.*, market value of 1,000 debentures + Rs. 60,000)	3,40,000
Less : Dividend on which Y Ltd. has paid dividend tax [dividend is not taxable in the hands of X]	3,00,000
Balance which is treated as full value of consideration on transfer of 4,000 shares in Y Ltd.	40,000
Less : Indexed cost of acquisition [4,000 × Rs. 2 × 280/109]	21,748
Long-term capital gain	18,252
Income of X for the assessment year 2021-22—	
Sale consideration of 1,000 debentures in Z Ltd. on April 6, 2020	3,10,000
Less: Cost of acquisition on June 30, 2019 (being the market value on June 30, 2019)	2,80,000
Short-term capital gain	30,000

MULTIPLE CHOICE QUESTIONS

Q1. Capital asset distributed by a company to its members at the time of liquidation is not a "transfer"—

a. True;

b. False.

Q2. At the time of liquidation a shareholder gets a sum of Rs. 40 lakh from the liquidator—

a. It is not chargeable to tax;

b. Section 46(2) will be applicable. Cost of acquisition of shares shall be deducted and the balance is chargeable to tax;

c. Section 46(2) is not applicable but the entire amount is taxable as business income or as capital gains;

d. Section 46(2) will be applicable. Amount of dividend under section 2(*22*)(*c*) shall be deducted along with cost of acquisition or indexed cost of acquisition of shares. The balance will be chargeable to tax.

UNIT IV

NON-RESIDENT

TAX PLANNING IN RESPECT OF NON-RESIDENT

15 CHAPTER

Residential status

142. *See* Chapter 1 - Residential status.

Income taxable in the hands of non-resident in India

143. Indian income is taxable in India if the taxpayer is a resident or non-resident. However, foreign income is taxable only when the taxpayer is resident in India. In other words, a non-resident is not subject to tax in India in respect of his foreign income.

■ *Indian income* - Any of the following three is an Indian income—

1. If income is received (or deemed to be received) in India during the previous year and at the same time it accrues (or arises or is deemed to accrue or arise) in India during the previous year.

2. If income is received (or deemed to be received) in India during the previous year but it accrues (or arises) outside India during the previous year.

3. If income is received outside India during the previous year but it accrues (or arises or is deemed to accrue or arise) in India during the previous year.

■ *Foreign income* - If the following two conditions are satisfied, then such income is "foreign income"—

a. Income is not received (or not deemed to be received) in India; and

b. Income does not accrue or arise (or does not deemed to accrue or arise) in India.

To get the status of foreign income, it should not be received or deem to be received in India and at the same time it should not accrue or arise in India or deemed to accrue or arise in India.

Income deemed to accrue or arise in India [Sec. 9]

144. Certain incomes are deemed to accrue or arise in India under section 9, even though they may actually accrue or arise outside India. Section 9 applies to all assessees irrespective of their residential status, nationality, domicile and place of business. The categories of income which are deemed to accrue or arise in India are as under :

Income from business connection [Sec. 9(1)(i)]

144.1 The following conditions should be satisfied—

■ *Condition One* - The tax-payer has a "business connection" in India.

■ *Condition Two* - By virtue of "business connection" in India, income actually arises outside India.

If the above two conditions are satisfied, income which arises outside India because of "business connection" in India is deemed to accrue or arise in India.

A business connection involves a relation between a business carried on by a non-resident which yields profits or gains and some activity in India which contributes to the earning of these profits or gains. A business connection can arise between a non-resident and a resident if both of them carry on business and if the non-resident earns income through such a connection. It predicates an element of continuity between the business of the non-resident and the activity in India : a stray or isolated transaction is not normally regarded as business connection.

Business connection may take several forms : it may include carrying on a part of main business of the non-resident through an agent, or it may merely be a relation between the business of the non-resident and the activity in India which facilitates or assists the carrying on of that business. The expression "business connection" postulates a real and intimate relation between the trading activity carried on outside India and the trading activity within India, the relation between the two contributing to the earning of income by the non-resident in his trading activity. An isolated transaction between a non-resident and a resident in India without any course of dealings such as might fairly be described as business connection does not attract section 9. There is no question of continuing business relation when a person purchases machinery or other goods abroad and uses them in India and earns profit.

WHAT IS BUSINESS CONNECTION AS DEFINED IN THE ACT

144.1-1 It includes a profession connection. It includes a person acting on behalf of a non-resident and who performs any one or more of the following —

■ *Activity one* - He exercises in India an authority to conclude contracts on behalf of the non-resident (it does not cover the activity of only the purchase of goods or merchandise for the non-resident).

■ *Activity two* - He has no such authority but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident.

■ *Activity three* - He habitually secures order in India (mainly or wholly) for the non-resident or for non-residents under the same management.

Where a business is carried on in India through a person referred to in Activity one, two or three (*supra*) only so much of income as is attributable to the operations carried out in India shall be deemed to accrue or arise in India.

INDEPENDENT BROKERS/AGENTS ARE EXCLUDED

144.1-1a The "business connection", shall not include cases where the non-resident carries on business through a broker, general commission agent or any other agent of an independent status, provided that such a person is acting in the ordinary course of his business.

Where a broker, general commission agent or any other agent works (mainly or wholly) on behalf of a non-resident or other non-residents under the same management, he shall not be deemed to be a broker, general commission agent or an agent of an independent status.

JUDICIAL RULINGS ON BUSINESS CONNECTION

144.1-2 One should keep in view the following judicial rulings—

■ *Sale of machinery and deputation of personnel for erection* - Where the assessee, an Indian company, purchased machinery from a foreign company and the foreign company had no other interest in the Indian company except sale of machinery/accessories and deputation of personnel for erection of the same and putting it into operation, it could not be said that there was business connection between foreign company and Indian company within the meaning of section 9—*CIT* v. *Navabharat Ferro Alloys Ltd.* [2000] 109 Taxman 122/244 ITR 261 (AP).

■ *Procurement of import order* - The assessee was engaged in procuring import orders from India and communicating the same to non-resident exporters. The orders were offers, which the assessee had no authority to accept on behalf of non-residents. The contracts for sale of goods took place outside India, price was received and also delivery of goods were given outside India. Even no operation such as procuring raw materials, manufacturing of finished goods took place in India. On these facts, it was held by the Supreme Court that there was no business connection between the assessee and non-residents—*CIT* v. *R.D. Aggarwal & Co.* [1965] 56 ITR 20 (SC).

■ *Meaning of business* - The word "business" in the expression "business connection" is of widest import and an inclusive one and it means an activity carried on continuously and systematically by a person by the application of his labour or skill, with a view to earn income. It does not necessarily mean trade or manufacture only. It is used as including within its scope professions, vocations and callings from a fairly long time. Professions are generally regarded as business. The expression "business connection" in section 9(1) is comprehensive enough to include all heads of income mentioned in section 14. The context in which the expression "business connection" is used in section 9(1) clearly shows that there is no warrant for giving a restricted meaning to it by excluding "professional connection" from its scope.

144.1-3 The following operations do not amount to business connection by virtue of specific provisions in the Act : *OPERATIONS NOT TAKEN AS BUSINESS CONNECTIONS*

144.1-3a If all business operations are not carried out in India, the income of the business deemed to accrue or arise in India shall be only such part of income as is reasonably attributable to the operations carried out in India. WHERE ALL OPERATIONS ARE NOT CARRIED OUT IN INDIA [EXPLANATION (*a*) TO SEC. 9(1)(*i*)]

The apportionment of profits should be on a rational basis and should not be arbitrary.

■ The Assessing Officers shall compute the advertising income in the cases of the foreign telecasting companies (FTC) which are not having any branch office or permanent establishment in India or are not maintaining country-wise accounts, by adopting presumptive profit rate of 10 per cent of the gross receipts meant for remittance abroad or the income returned by such companies, whichever is higher.

144.1-3b In the case of non-resident no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export. PURCHASE OF GOODS FOR EXPORT [EXPLANATION (*b*) TO SEC. 9(1)(*i*)]

Where assessee, a non-resident, carried on business in readymade garments in Japan and he had an arrangement with a commission agent in India to purchase readymade garments on his behalf and export them to him, assessee's case was covered by clause (*b*) of *Explanation* to section 9(1)(*i*) and not by clause (*a*) thereof and, therefore, assessee was not liable to be taxed on any income deemed to accrue or arise from conversion of materials purchased for the purpose of export.

144.1-3c No income shall be deemed to accrue or arise in the case of a non-resident engaged in the business of running a news agency or of publishing newspapers, magazines or journals from activities confined collection of news and views in India for transmission out of India. COLLECTION OF NEWS AND VIEWS [EXPLANATION (*c*) TO SEC. 9(1)(*i*)]

144.1-3d In the case of a non-resident no income shall be deemed to accrue or arise in India through or from operations which are confined to the shooting of any cinematograph film in India, if such non-resident is either an individual, who is not a citizen of India, or a firm which does not have any partner who is a citizen of India or who is a resident in India, or a company which does not have any shareholder who is a citizen of India or is resident in India. SHOOTING OF CINEMATOGRAPH FILM IN INDIA [EXPLANATION (*d*) TO SEC. 9(1)(*i*)]

144.1-3e In the case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India through or from the activities which are confined to the display of uncut and unassorted diamond (without any sorting or sale) in any special zone notified by the Central Government in the Official Gazette in this behalf. DISPLAY OF UNCUT AND UNASSORTED DIAMOND IN A NOTIFIED SPECIAL ZONE [*EXPLN.* (*e*) TO SEC. 9(1)(*i*)]

144.1-3f In the case of an "eligible investment fund", the fund management activity carried out through an "eligible fund manager" acting on behalf of such fund shall not constitute business connection in India of the said fund. ELIGIBLE INVESTMENT FUND [SEC. 9A]

144.2 Income through or from any property, asset or source of income in India is deemed to accrue or arise in India. The term "source" means not a legal concept but something which a practical man would regard as a real source of income. The term "property" does not refer to the "property" dealt with by sections 22 and 23, but it includes any tangible movable or immovable property. The term "asset" would, however, include all intangible rights and, consequently, interest, dividends, patent and copyright royalties, rents, etc., will find room in the four corners of the term "asset". *Income through or from any property, asset or source of income in India [Sec. 9(1)(i)]*

Provisions illustrated - X Ltd. a foreign company, owns a property in Mumbai. It is given on rent (rent being 2,000 US dollar per month) to B Ltd. another foreign company. The two companies are non-resident in India. The agreement is made outside India. Rent is payable in foreign currency outside India. As per agreement rent is accrued outside India.

As the property is situated in India, rent of the property will deemed to be earned in India.

144.3 Any capital gain, within the meaning of section 45, earned by a non-resident by transfer of any capital asset situated in India, is deemed to accrue or arise in India. *Transfer of capital asset situated in India [Sec. 9(1)(i)]*

■ *Supreme Court's ruling in Vodafone and subsequent amendment by Finance Act, 2012* - Any capital gain earned by a person through the transfer of any capital asset situated in India is deemed to accrue or arise in India within the parameters of section 9(1)(*i*). On this issue, the Supreme Court in the case of *Vodafone International Holdings B.V.* v. *Union of India* [2012] 204 Taxman 408 gave the following ruling –

1. The legal fiction in section 9(1) does not mean that if a foreign company has a subsidiary in India, shares of the foreign company are deemed to be situated in India.

2. Section 9 does not cover income arising from indirect transfers.

3. Source in relation to an income is construed to be where transaction of sale takes place and not where item of value, which was subject to transaction, was acquired or derived from.

4. Section 9(1) is not a look through provision, merely because word "through" is there in the said section.

To supersede the aforesaid ruling, *Explanations 4* and *5* have been inserted by the Finance Act, 2012 in section 9(1)(*i*) with retrospective effect from April 1, 1962. The amended provisions provide that –

1. The expression 'through' shall mean and include and shall be deemed to have always meant and included "by means of", "in consequence of" or "by reason of".

2. An asset or a capital asset (being any share or interest in a company or entity registered or incorporated outside India) shall be deemed to be and shall always be deemed to have been situated in India if the share† or interest derives, directly or indirectly, its value substantially from the assets located in India.

■ *Meaning of the expression "substantially"* - The Delhi High Court in the case of *DIT* v. *Copal Research Ltd.* [2014] 49 taxmann.com 125 examined the meaning of expression "substantially" and held that gains arising from sale of a share of a company incorporated overseas, which derives less than 50 per cent of its value from assets situated in India would certainly not be taxable under section 9(1)(*i*) read with *Explanation 5* thereto.

■ *Further amendment by the Finance Act, 2015* - The Finance Act, 2015 further amended section 9(1) with effect from the assessment year 2016-17 –

"Substantial" - The share or interest of a foreign company or entity shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if on the specified date, the value of Indian assets,–

a. exceeds the amount of Rs. 10 crore; and

b. represents at least 50 per cent of the value of all the assets owned by the company or entity.

Taxation on proportionate basis - The taxation of gains arising on transfer of a share or interest deriving, directly or indirectly, its value substantially from assets located in India will be on proportional basis. The method for determination of proportionality will be specified in the rules.

Exemption in case foreign entity that is transferred directly or indirectly owns Indian assets - Exemption shall be available to the transferor of a share of, or interest in, a foreign entity if the transferor (along with its associated enterprises) –

a. neither holds the right of control or management;

b. nor holds voting power or share capital or interest exceeding 5 per cent of the total voting power or total share capital,

in the foreign company or entity directly holding the Indian assets.

Exemption in the case of amalgamation/demerger - The transfer of shares in a foreign company (deriving value of assets substantially from assets situated in India) on account of amalgamation/demerger of foreign companies will be exempt from tax subject to the satisfaction of the conditions given by section 47(*viab*)/(*vicc*).

Declaration of dividend by company having substantial assets in India - If dividend is declared by a foreign company outside India, it cannot be deemed to accrue or arise in India even if the foreign company declaring dividend has substantial assets (held by it directly or indirectly) located in India. This rule is applicable even if the foreign company satisfies the conditions given in above para – Circular No. 4 /2015, dated March 26, 2015.

*Income under the head "Salaries" [Sec. 9(1)(*ii*)]*

144.4 Income chargeable to tax under the head "Salaries" is deemed to accrue or arise in India if it is earned in India. Income chargeable under the head "Salaries" payable for service rendered in India is regarded as income earned in India.

Any salary payable for rest period or leave period which is preceded and succeeded by service in India, will also be regarded is salary earned in India.

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† However, these provisions are not applicable in the case of any asset or capital asset being investment held by a non-resident, directly or indirectly, in –

- a Foreign Institutional Investor [as referred to in the *Explanation (a)* to section 115AD (for the assessment years 2012-13 to 2014-15)];
- Category-I or Category II Foreign Portfolio Investor under the SEBI (Foreign Portfolio Investors) Regulations, 2014 (for the assessment year 2015-16 onwards).

■ *Exception* - Section 9(*2*) makes an exception to the aforesaid rule in the case of certain retired civil servants and judges permanently residing outside India.

*Salary payable abroad [Sec. 9(1)(*iii*)]*

144.5 Salary received by Indian nationals from the Government, in respect of services rendered out of India, is deemed to accrue or arise in India. By virtue of section 10(*7*), any allowance or perquisite paid abroad is, however, fully exempt from tax.

*Dividend paid by an Indian company [Sec. 9(1)(*iv*)]*

144.6 Any dividend paid by an Indian company outside India is deemed to accrue or arise in India.

*Income by way of interest [Sec. 9(1)(*v*)]*†

144.7 Interest income of the following types are deemed to accrue or arise in India :

■ Interest payable by the Central Government or any State Government is deemed to accrue/ arise in India.

■ Interest payable by a resident shall be deemed to accrue/arise in India in all cases except in the following :

a. interest payable by a resident in respect of any debt incurred, or any moneys borrowed and used, for the purpose of a business or profession carried on by him outside India ; and

b. interest payable by resident in respect of any debt incurred, or any moneys borrowed and used for the purposes of making or earning any income from any source outside India.

It may be noted that where moneys borrowed by a resident for the purposes of a business or profession carried on by him outside India are actually used for any other purpose, interest payable thereon is deemed to accrue or arise in India. Similarly, interest payable on moneys borrowed by a resident for purposes of making or earning any income from any source outside India is deemed to accrue or arise in India if the moneys are actually used for any purpose in India.

■ Interest payable by a non-resident shall be deemed to accrue/arise in India if it is in respect of any debt incurred, or money borrowed and used, for purposes of a business or profession carried on by him in India.

It may be noted that interest payable by a non-resident in respect of any debt incurred, or moneys borrowed and used, for the purposes of making or earning any income from any source, other than the business or profession carried on by him in India, are not to be deemed to accrue or arise in India.

*Income by way of royalty [Sec. 9(1)(*vi*)]*†

144.8 Clause (*vi*) of section 9(1) specifies the circumstances in which the royalty is deemed to accrue or arise in India. Under this clause, royalty income of the following types will be deemed to accrue or arise in India :

a. royalty payable by the Central Government or any State Government ;

b. royalty payable by a resident, except where the payment is relatable to a business or profession carried on by him outside India or to any other source of his income outside India ; and

c. royalty payable by a non-resident if the payment is relatable to a business or profession carried on by him in India or any other source of his income in India.

Thus, royalty income consisting of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of any data, documentation, drawings or specifications relating to any patent, invention, model, design, secret formula or process or trade mark or similar property are ordinarily chargeable to tax in India under section 9(1)(*vi*).

■ The Finance Act, 2012 has amended the aforesaid provision with retrospective effect from June 1, 1976 as follows –

- *Explanation 4* - *Explanation 4* has been inserted to clarify that the transfer of all or any rights in respect of any right, property or information includes transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.
- *Explanation 5* - *Explanation 5* has been inserted to clarify that the royalty includes consideration in respect of any right, property or information, whether or not—
  - *a.* the possession or control of such right, property or information is with the payer;
  - *b.* such right, property or information is used directly by the payer;
  - *c.* the location of such right, property or information is in India.

†Income of a non-resident shall be deemed to accrue or arise in India under clause (*v*) or clause (*vi*) or clause (*vii*) of section 9(1) and shall be included in his total income, whether or not,

a. the non-resident has a residence or place of business or business connection in India; or

b. the non-resident has rendered services in India.

- *Explanation 6* - *Explanation 6* has been inserted to clarify that the expression "process" includes transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret.

Income by way of fees for technical services [Sec. 9(1)(vii)]†

144.9 Clause (*vii*) specifies the circumstances in which fees for technical services are deemed to accrue or arise in India. Under this clause, income by way of "fees for technical services" of the following types are deemed to accrue or arise in India :

a. fees for technical services payable by the Central Government or any State Government ;

b. fees for technical services payable by a resident, except where the payment is relatable to a business or profession carried on by him outside India or to any other source of his income outside India ; and

c. fees for technical services payable by a non-resident if the payment is relatable to a business or profession carried on by him in India or to any other source of his income in India.

EXCEPTION

144.9-1 The aforesaid provisions of section 9(1)(*vii*) shall not apply in relation to any income by way of fees for technical services payable in pursuance of an agreement made before April 1, 1976, and approved by the Central Government.

An agreement made on or after April 1, 1976 shall be deemed to have been made before that date if the agreement is made in accordance with proposals approved by the Central Government before that date.

*Deemed accrual of gift of money to a non-resident/ foreign company [Sec. 9(1)(*viii*)]*

144.10 Clause (*viii*) has been inserted in section 9(1) by the Finance (No. 2) Act, 2019, with effect from the assessment year 2020-21. This clause is applicable if the following conditions are satisfied –

1. Payer is resident in India (or money is received from a person resident in India). Payer may be resident and ordinarily resident in India or resident but not ordinarily resident in India. Payer may be an individual, HUF, AOP, BOI, artificial juridical person, firm, LLP, company or any other person.

2. Recipient is non-resident/foreign company (or money is received by a non-resident/foreign company).

3. A sum of money is received by non-resident/foreign company on or after July 5, 2019.

4. Income arises outside India. The transaction is not covered by any of the exceptions specified by section 56(2)(*x*). If these conditions are satisfied, money received by a non-resident/foreign company, shall be deemed to accrue or arise in India.

If these conditions are satisfied, money received by a non-resident/foreign company, shall be deemed to accrue or arise in India.

Hints for tax planning in respect of residential status

145. For the purposes of tax planning the following broad propositions should be borne in mind. However, these propositions would hold good only in the context in which they have been made :

- In order to enjoy non-resident status, individuals, who are visiting India on a business trip or in some other connection, should not stay in India for more than 181 days during one previous year and their total stay in India during any four previous years preceding the relevant previous year should in no case exceed 364 days.
- If individuals, having been in India for more than 365 days during four years preceding the relevant previous year, wish to stay in India for more than 60 days, they should plan their visit to India in such a manner that their total stay in India falls under two previous years. To illustrate, such persons can come to India any time in the first week of February and stay up to May 29 without incurring any risk of losing their non-resident status.
- An Indian citizen or a person of Indian origin (whether rendering service outside India or not) can stay for a maximum period of 181 days on a visit to India without losing his non-resident status. If, however, such persons wish to stay in India for more than 181 days, they should plan their visit in such a manner that their maximum stay of 362 days fall under 2 previous years, stay in each previous year being not more than 181 days.

†Income of a non-resident shall be deemed to accrue or arise in India under clause (*v*) or clause (*vi*) or clause (*vii*) of section 9(1) and shall be included in his total income, whether or not,

a. the non-resident has a residence or place of business or business connection in India; or

b. the non-resident has rendered services in India.

■ An Indian citizen, leaving India for the purpose of *employment*, will not be treated as resident in India, unless he has been in India in that year for 182 days or more. In other words, Indian citizens going abroad for the purpose of *employment* can stay in India for 181 days without becoming resident in that year, even if they were in India for more than 365 days during the four preceding years. This concession is available only to those who want to leave the country for the purpose of *employment*. However, the term "employment" is not defined in the Act. One has, therefore, to depend upon judicial pronouncements. It would be useful to quote Denman and Vaisey, JJ*. in this context :

❑ Per Denman, J.- "I do not think that employment means only where one is set to work by others to earn money ; a man may employ himself so as to earn profits in many ways"—*Partridge* v. *Mallandaine* [1886] 18 QBD 276 (DC).

❑ Per Vaisey, J. - "The word 'employment' is one of very wide significance. But the words 'employer' and the 'employee' are much more restricted in their meanings. Thus I may be said to 'employ' my time or my talents without being in any proper sense an employer, and I may also be said to be employed in some pursuit or activity without being an 'employee' "—*Westall Richardson Ltd.* v. *Roulson* [1954] 2 AER 448.

Applying the aforesaid ratios, there is no reason why a professional who expects to set up an independent practice in, or a businessman who wants to shift his activities to, a foreign country should be denied the benefit of concession.

■ A non-resident can escape tax liability in respect of income earned out of India if he first receives it out of India and then remits the whole or part of it to India, even though the business is controlled from India.

■ A person, who is not ordinarily resident, earning income outside India from a business controlled outside India, can avoid tax liability if he first receives such income in a foreign country and then remits the whole or part of it to India, either in the same year or in the following year(s).

■ Not ordinarily resident persons can claim set off of losses sustained in the business controlled outside India against their income taxable in India, provided they shift the control of the business to India.

Interest to non-residents [Sec. 10(4), (4B)]

146. The following interest incomes are exempt from tax :

a. in the case of a non-resident, interest on bonds or securities notified by the Central Government including income by way of premium on the redemption of such bonds ; and

b. in the case of a person resident outside India [under section 2(*q*) of the Foreign Exchange Regulation Act] income from interest on money standing to credit in a Non-Resident (External) Account in India, in accordance with the said Act.

■ The Central Board of Direct Taxes have clarified that the joint holders of the Non-resident (External) Accounts do not constitute an "association of persons" by merely having these accounts in joint names. The benefit of exemption under section 10(*4*)(*ii*) will be available to such joint account holders, subject to fulfilment of other conditions contained in that section by each of the individual joint account holder—Circular No. 592, dated February 4, 1991.

Salaries of foreign citizens

147. Tax treatment of salary received by other foreign nationals is as follows :

Salary of diplomatic personnel [Sec. 10(6)(ii)]

147.1 Remuneration received by a person as an official (by whatever name called) of an embassy, high commission, legation, commission, consulate or trade representation of a foreign state, or a member of the staff of any of that official will be exempt from tax if corresponding Indian official in that foreign country enjoys a similar exemption.

Salary of foreign employees [Sec. 10(6)(vi)]

147.2 The remuneration received by a foreign national, as an employee of a foreign enterprise, for services rendered by him during his stay in India, is totally exempt from tax provided : (*a*) the foreign enterprise is not engaged in any business or trade in India ; (*b*) his stay in India does not exceed a period of 90 days in such previous year; and (*c*) such remuneration is not liable to be deducted from the income of the employer chargeable under the Income-tax Act.

Salary received by a ship's crew [Sec. 10(6)(viii)]

147.3 Salary received by, or due to, a non-resident foreign national as a member of a ship's crew is exempt from tax provided his total stay in India does not exceed 90 days during the previous year.

*A similar ruling is given by the Karnataka High Court in the case of *CIT* v. *O. Abdul Razak* [2011] 198 Taxman 1.

Remuneration of a foreign trainee [Sec. 10(6)(xi)]

147.4 Remuneration received by a foreign national as an employee of a foreign Government, during his stay in India, is exempt from tax, if remuneration is received in connection with training in an undertaking or office owned by —

a. the Government ; or

b. any company owned by the Central Government or any State Government ; or

c. any company which is subsidiary of a company referred to in (*b*) *supra* ; or

d. any statutory corporation ; or

e. any co-operative society, wholly financed by the Central Government, or any State Government.

Exemption from tax paid on behalf of foreign companies in respect of certain income [Sec. 10(*6A*)]

148. The following conditions should be satisfied—

Condition 1	The taxpayer is a foreign company.
Condition 2	It has income by way of royalty or fees for technical services.
Condition 3	Such royalty is received from the Central Government or State Government or an Indian concern under an agreement made after May 31, 1976 but before June 1, 2002.
Condition 4	The above agreement is in accordance with the industrial policy of the Indian Government or it is approved by the Central Government.
Condition 5	The payer of income pays tax liability of the foreign company in respect of the above income.

If all the aforesaid conditions are satisfied, the tax liability of the foreign company borne by the payer is not taxable in the hands of the foreign company (income will not be grossed up).

Provisions illustrated - X Ltd., a foreign company, provides technical services to B Ltd., an Indian company, in accordance with an approved agreement (date of agreement being January 2, 2001). As per the agreement, X Ltd. annually gets Rs. 80,000. Tax on Rs. 80,000 (*i.e.*, Rs. 16,000) is borne by B Ltd. If this exemption is not available, then the amount taxable in the hand of X Ltd., will be Rs. 96,000 (*i.e.*, Rs. 80,000 + Rs. 16,000). But because of the exemption under section 10(*6A*) the amount taxable in the hand of X Ltd. will be Rs. 80,000. Rs. 16,000, being the amount paid by B Ltd. on behalf of X Ltd. will not be chargeable in the hand of X Ltd.

Tax paid on behalf of non-resident [Sec. 10(*6B*)]

149. The following conditions should be satisfied—

Condition 1	The taxpayer is a non-resident (not being a company) or a foreign company.
Condition 2	It gets income (not being salary, royalty or technical fees) from the Central Government, State Government or an Indian concern.
Condition 3	The above income is generated in pursuance of an agreement entered into (before June 1, 2002) by the Central Government with a foreign Government/international organization or any related agreement approved by the Central Government (before June 1, 2002).
Condition 4	Tax liability of the recipient [*i.e.*, given in *Condition 1 (supra)*] in respect of the above income is met by the payer.

If the above conditions are satisfied, then the tax liability of the recipient borne by the payer, is not taxable in the hands of the recipient (income will not be grossed up).

Technical fees received by a notified foreign company [Sec. 10(*6C*)]

150. Income by way of royalty or fees for technical services received by a notified foreign company is exempt, if such income is received in pursuance of an agreement entered into with the Central Government to provide services in or outside India in projects connected with security of India.

The following companies have been declared for the purpose of section 10(*6C*) by the Central Government—

Company	*Project*
■ Redecon Australia Pvt. Ltd., Australia; and Nedeco, Netherland	Technical fees payable for the project "Seabird"
■ State Foreign Economic Corpn. for Export & Import of Armament and Equipment, Russia	Technical fees for projects connected with security of India

Company	*Project*
■ Rolls Royce Military Aero Engines Ltd., England	Technical fees for projects connected with security of India
■ Dowty Aerospace Gloucester Ltd., UK	Project connected with security of India.
■ Rosoboron Export, Russia	Project connected with security of India
■ BAe System (Operations) Ltd., UK	Technical fees
■ Rolls Royce Turbomeca Ltd., London	Technical fees
■ Sinclair Knight Merz Pty Limited, Australia	Technical fees payable for the project Seabird (Phase II-A)
■ EADS Deutschland GmbH Worthstrable	Consultancy services for airborne early warning and control system
■ Rolls Royce Defense Services Inc., Indiana, USA	Maintenance of aero engines (IAE 3007 AIE Engines) fitted in embraer aircraft

Foreign Government employee under co-operative programmes [Sec. 10(*8*)]

151. Income of an individual serving in India in connection with any co-operative technical assistance programme in accordance with an agreement entered into by the Central Government and a foreign Government, is exempt from tax. The exemption is, however, available only if :

a. the remuneration is received by the individual, directly or indirectly, from the foreign Government ; and

b. any other income of such individual which accrues or arises outside India and is not deemed to accrue or arise in India, provided such individual is required to pay income-tax (including social security tax) to the foreign Government.

Non-resident consultants

152. The following will not be chargeable to tax :

*Under section 10(*8A*)*

152.1 The following two incomes in the case of a consultant are exempt from tax—

Case 1	Any remuneration or fee received by him or it (directly or indirectly) out of the funds made available to an international organisation [hereafter referred to as the agency] under a technical assistance grant agreement between the agency and the Government of a foreign State.
Case 2	Any other income which accrues or arises to him or it outside India, and is not deemed to accrue or arise in India, in respect of which such consultant is required to pay any income or social tax to the Government of the country of his or its origin.

Who is a consultant - The expression "consultant" has been defined to mean any individual who is either not a citizen of India or, being a citizen of India, is not ordinarily resident in India or any other person who is a non-resident and is engaged by the agency for rendering technical services in India in accordance with an agreement entered into by the Central Government and the said agency and the agreement relating to the engagement of the consultant is approved by the prescribed authority*.

*Under section 10(*8B*)*

152.2 The remuneration received by an employee of the consultant referred to in the aforesaid para is exempt from income-tax, provided such employee is either not a citizen of India or, being a citizen of India, is not ordinarily resident in India and the contract of his service is approved by the prescribed authority before the commencement of his service.

Income of family members [Sec. 10(*9*)]

153. Any family member of an employee, mentioned in paras 151 and 152 accompanying him to India enjoys tax exemption in respect of foreign income or an income not deemed to accrue or arise in India, if the family member is required to pay income-tax (including social security tax) to the foreign Government.

Aircraft lease rent payable to foreign Government [Sec. 10(*15A*)]

154. Payment made under an agreement made before April 1, 1997 or after March 31, 1999 but before April 1, 2007 (and approved by the Central Government) by an Indian company, engaged in the business of operation of aircraft to acquire an aircraft or an aircraft engine (other than a payment for providing spares, facilities or services in connection with operation of leased aircraft) on lease from a foreign Government or foreign enterprise (*i.e.*, a person who is non-resident) is not taxable in the hands of recipient.

*"Prescribed authority" for this purpose is the Additional Secretary, Department of Economic Affairs in the Ministry of Finance, Government of India in concurrence with Member (Income-tax) of the Board.

■ The aforesaid exemption shall be available only in respect of agreement entered before April 1, 1997 or after March 31, 1999 but before April 1, 2007. If the agreement is entered during April 1, 1997 and March 31, 1999 or after March 31, 2007, the exemption under section 10(*15A*) will not be available. However, if the tax is paid by the payer of lease rent, the tax so borne by it, will not be grossed up in the hands of recipient by virtue of the exemption given by section 10(*6BB*).

Provisions illustrated - Under agreements approved by the Government of India, X Airways Ltd. (an Indian company) pays lease rent to Y Inc. (a foreign enterprise) for providing aircrafts on lease. During the previous year 2018-19, the following payments are made by X Airways Ltd. —

Date of agreement under which payment is made	*Lease rent of aircraft/air-craft engine Rs.*	*Payment for services and spares Rs.*	*Amount taxable in the hands of Y Inc. Rs.*
□ *As per agreement dated March 1, 2004***			
- Payment to Y Inc.	15,40,000	2,90,000	2,90,000
- Tax borne by X Airways Ltd.	—	60,000	60,000
Total	15,40,000	3,50,000	3,50,000
□ *As per the agreement dated April 10, 1998*†			
- Payment to Y Inc.	20,90,000	5,48,000	26,38,000
- Tax borne by X Airways Ltd.	9,70,000	3,10,000	3,10,000
Total	30,60,000	8,58,000	29,48,000

Note - In this case, for the assessment year 2019-20, Y Inc. can claim exemption of Rs. 15,40,000 and Rs. 9,70,000 under section 10(*15A*) and 10(*6BB*), respectively.

Shipping [Sec. 44B]

155. The provisions of section 44B are given below—

Conditions

155.1 Section 44B is applicable if the following conditions are satisfied—

1. The assessee is non-resident in India.

2. The assessee is engaged in the business of operation of ships.

Consequences if the above conditions are satisfied

155.2 If the above conditions are satisfied, then following provisions given by section 44B are applicable—

1. The provisions of sections 28 to 43A are not applicable.

2. Income shall be calculated at the rate of 7.5 per cent of the aggregate of the following—

a. the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of carriage of passengers, livestock, mail or goods shipped at any port in India ; and

b. the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.

The amounts paid or payable or the amounts received or deemed to be received also include the amount received by way of demurrage charge or handling charge or any other amount of similar nature.

SECTION 44B OVERRIDES ONLY SECTIONS 28 TO 43A

155.2-1 It should be noted that section 44B overrides the provisions of sections 28 to 43A only and, accordingly, other provisions (including those relating to aggregation of income and set off or carry forward and set off of losses) will be applicable in the case of non-residents deriving profits from shipping business.

SECTION 44B VIS-A-VIS SECTION 172

155.2-2 Section 172 entails recovery mechanism for non-residents engaged in a shipping business. However, such assessee can opt for being governed by the provision of section 44B, and accordingly, in such cases taxes paid under section 172 shall be adjusted in light of the tax liability computed under section 44B.

**The same rule will be applicable if the agreement after March 31, 1999 but before April 1, 2007.

†The same rule will be applicable if the agreement is made after March 31, 2007.

The Table given below highlights to the scope of sections 172 and 44B—

	Section 172	Section 44B
■ Overriding effect	It overrides all other provisions of the Act subject to availing the facility of regular assessment under section 172(7).	It overrides sections 28 to 43A.
■ Set off and carry forward of losses	Not available	Available
■ Deduction from gross total income under sections 80C to 80U	Not available	Available
■ Tax liability	7.5 per cent of amount received on account of carriage of goods, passengers, etc., is taxable at the rate applicable to a foreign company [if not opted for regular assessment under section 172(7)]	7.5 per cent of such collection is taken as business income; other provisions will be applicable to find out taxable income which will be taxable at the rate applicable to a non-resident.

155.2-P1 *X (62 years), a non-resident, is engaged in the business of shipping. During the previous year 2018-19, one of the ships owned by X collects freight as follows :* Case study

a. *on August 6, 2018, a sum of Rs. 40 lakh for shipping goods from Cochin Port (it includes demurrage of Rs. 10,000 and handling charges of Rs. 60,000); and*

b. *on January 10, 2019, a sum of Rs. 25 lakh for shipping goods from Bombay (it is paid to X in New York).*

Besides, X collects Rs. 42,70,000 in India on March 3, 2019 for shipping goods from Karachi to California.

Barring the cases noted above, X does not have any other income in India. X incurs an expenditure of Rs. 2,40,000 in India (out of which Rs. 65,000 is paid in cash). X has brought forward loss of Rs. 5,000 from a trading business in India which was discontinued in 2017. Compute the tax liability of X for the assessment year 2019-20.

■

Ad hoc *assessment under section 172(4)*

	Shipping of goods from Cochin Rs.	*Shipping goods from Bombay Rs.*
Deemed income (7.5% of amount of freight including demurrage)	3,00,000	1,87,500
Less : Expenses (not deductible)	—	—
Business income	3,00,000	1,87,500
Less : Brought forward loss [not to be adjusted section 172(4)]	—	—
Income	3,00,000	1,87,500
Tax payable including surcharge at the rate applicable to a foreign company [41.6% of income is tax payable under section 172(4)]	1,24,800	78,000

For Rs. 42,70,000, X will submit his return of income and tax will be computed under section 44B as follows—

	Rs.
Income (under section 44B it is computed @ 7.5%)	3,20,250
Less : Brought forward business loss	5,000
Net income	3,15,250
Tax (including HEC) at the rate applicable to an individual	3,390
Aggregate tax liability of X (Rs. 1,24,800 + Rs. 78,000 + Rs. 3,390)	2,06,190

If X opts for normal assessment under section 172(7), then tax will be computed as under—

Computation under section 172(7) read with section 44B

Income [by virtue of section 44B, 7.5% of receipt is taken as business income, *i.e.*, 7.5% of (Rs. 40 lakh + Rs. 25 lakh + Rs. 42.70 lakh)]	8,07,750
Add : Disallowance under section 40A(3) (not applicable)	—
Total	8,07,750
Less : Brought forward business loss	5,000
Net income	8,02,750

	Rs.
Tax (according to the rate applicable to an individual)	73,050
Add : Surcharge (applicable only if net income exceeds Rs. 50 lakh)	*Nil*
Tax and surcharge	73,050
Add : Health and education cess (4% of tax and surcharge)	2,922
Tax liability	75,972
Less : Tax paid under section 172(4) which is treated as advance tax—*A.S. Glittre* v. *CIT* [1997] 225 ITR 739 (SC) (Rs. 1,24,800 + Rs. 78,000)	2,02,800
Balance to be refunded (rounded off)	(–) 1,26,830

Note - X is entitled to get interest under section 244A—*Circular No. 9/2001*, dated July 9, 2001. X should opt for normal assessment under section 172(7).

Exploration of mineral oils [Sec. 44BB]

156. The provisions of section 44BB are given below—

Conditions

156.1 Section 44BB is applicable if the following conditions are satisfied.

1. The assessee is non-resident. He may be an Indian citizen or a foreign citizen.

2. The assessee is engaged in the business of providing services and facilities in connection with, or supplying plant and machinery on hire, used or to be used in the exploration for, and exploitation of, mineral oils.

Consequences if the above conditions are satisfied

156.2 The following provisions are applicable, if the above conditions are satisfied—

1. The provisions of sections 28 to 41, 43 and 43A are not applicable.

2. Income is calculated at the rate of 10 per cent of the amounts given below.

3. The amounts in respect of which the provisions apply are the amounts paid or payable to the taxpayer or to any person on his behalf whether in or out of India, on account of the provision of aforesaid services or facilities or supplying plant and machinery for the aforesaid purposes. This amount also includes the amounts received or deemed to be received in India on account of such services or facilities or supply of plant and machinery.

4. The aforesaid provision shall not, however, apply to any income to which the provisions of section 42, 44D, 44DA, 115A or 293A apply.

Is it possible to declare lower income

156.3 The scheme of section 44BB has been modified with effect from the assessment year 2004-05 on the following lines—

1. An assessee may claim lower profits and gains than the amount specified above.

2. In such case—

a. the assessee will have to maintain books of account under section 44AA(2);

b. the assessee will get his books of account audited under section 44AB (irrespective of turnover); and

c. the Assessing Officer will complete the assessment under section 143(3).

Case study

156-P1 *ONGC has agreements (approved by the Government) with the following three foreign companies which provide services and facilities to ONGC in connection with prospecting for (or extraction/production of) mineral oils in India—*

	A Inc.	*B Inc.*	*C Inc.*
Date of agreement	*June 10, 1982*	*June 10, 1992*	*June 10, 2002*
Amount paid by ONGC during 2018-19 on account services provided by foreign companies (in Rs.)	*90 crore*	*90 crore*	*90 crore*
Tax liability borne by ONGC (in Rs.)	*Nil*	*3.81888 crore*	*3.9881 crore*

*Find out the taxable income and tax liability of the foreign companies. Discuss whether tax liability borne by ONGC would be perquisite arising to B Inc. and C Inc. under section 28(*iv*) and would be taxable separately in addition to income computed under section 44BB.*

■

Income of the foreign companies would be taxable as under— *Rs. in crore*

	A Inc.	*B Inc.*	*C Inc.*
Income from business providing services and facilities to ONGC	90	90	90
Add: Income-tax paid by ONGC [*exempt under section 10(*6B*)]	-	*Nil**	3.9881
Total receipts (*a*)	90	90	93.9881
Taxable income as per section 44BB [*i.e.*, 10% of (*a*)] (*b*)	9	9	9.39881
Income-tax and surcharge (including HEC) on (*b*) [42.432% of (*b*)]	3.81888	3.81888	3.9881
Less: Tax paid by ONGC	*Nil*	3.81888	3.9881
Tax to be borne by the foreign companies	3.81888	*Nil*	*Nil*

Note - In *Oil India Ltd.* v. *CIT* [1995] 212 ITR 225/78 Taxman 226 (Ori.), it was held that tax liability of non-resident firm which has been undertaken by the Indian firm and has been paid by the Indian firm would be a perquisite arising from the business of oil exploration under the agreement entered into by the non-resident firm with the Indian firm and would be taxable as such. The computation of the same would have to be made under section 44BB(1) and, therefore, only 10% of the same would be deemed to be the profits of such business chargeable to tax and not the entire sum.

Computation of income in respect of foreign airlines [Sec. 44BBA]

157. This section is a *non obstante* provision and consequently sections 28 to 43A are not applicable in the case of a non-resident engaged in the business of operation of aircraft. Income from such business is calculated at a flat rate of 5 per cent of the following :

a. amount received (in or out of India) by the taxpayer or on his behalf on account of carriage of passenger, livestock, mail or goods from any place in India ; and

b. amount received or deemed to be received in India by or on behalf of the taxpayer on account of carriage of passenger, livestock, mail or goods from any place outside India.

■ *Business of operation of aircraft* - Section 44BBA is applicable in a case where the assessee, a non-resident, is engaged in the business of operation of aircraft. The qualifying condition is that the assessee must be engaged in the business of operation of aircraft. The expression "business of operation of aircraft" is a comprehensive term visualizing the carrying on of the entire activities necessary for running the business of airlines engaged in the carriage of passengers, livestock, mail or goods. For instance, where a non-resident enters into a wet leasing agreement with Air India under which it leases out its aircrafts to Air India and not carrying on business of operation of aircraft, rental income received by the non-resident from Air India cannot be brought to tax under provisions of section 44BBA.

Computation of profits and gains of foreign companies engaged in the business of civil construction [Sec. 44BBB]

158. Section 44BBB is applicable if the following conditions are satisfied—

1. The taxpayer is a foreign company.

2. The taxpayer is engaged in the business of civil construction or the business of erection of plant or machinery or testing or commissioning thereof, in connection with a turnkey power project.

3. The aforesaid project is approved by the Central Government. The approval should be obtained from the Department of Power in the Ministry of Energy—Circular No. 552, dated February 9, 1990.

4. The above project is financed under any international aid programme. Section 44BBB is also applicable even in respect of those turnkey power projects which are not financed under any international aid programme.

If all the aforesaid conditions are satisfied, provisions of sections 28 to 44AA are not applicable and 10 per cent of the amount paid or payable (whether in or out of India) to the said assessee (or to any person on his behalf) on account of such civil construction, erection, etc., shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession."

Is it possible to declare lower income

158.1 An assessee can claim lower profits and gains than the amount specified by section 44BBB. However, in such a case—

a. the assessee will have to maintain books of account under section 44AA(2);

b. the assessee will get his books of account audited under section 44AB (irrespective of turnover); and

c. the Assessing Officer will complete the assessment under section 143(3).

Head office expenditure in the case of non-resident [Sec. 44C]

159. Head office expenditure in the case of a non-resident is allowed in accordance with the provision of section 44C. This section is a *non obstante* provision and anything contrary contained in sections 28 to 43A is not applicable. Deduction in respect of head office expenditure is restricted to the least of the following :

a. an amount equal to 5 per cent of "adjusted total income", or in the case of loss, 5 per cent of "average adjusted total income", or

b. the amount of so much of the expenditure in the nature of head office expenditure incurred by the assessee as is attributable to the business or profession of the assessee in India.

Meaning of adjusted total income

159.1 "Adjusted total income" means the total income computed in accordance with the provisions of the Act without giving effect to the following :

- Allowance under section 44C
- Unabsorbed depreciation allowance under section 32(2)
- Expenditure incurred by a company for the purpose of promoting family planning amongst its employees under the first proviso to clause (*ix*) of section 36(1)
- Business loss brought forward under section 72(1)
- Speculation loss brought forward under section 73(2)
- Loss under the head "Capital gains" under section 74(1)
- Loss from certain specified sources brought forward under section 74A(2)
- Deductions under sections 80C to 80U.

Average adjusted total income

159.2 Where the total income of the assessee is assessable for each of the three assessment years immediately preceding the relevant assessment year, one-third of the aggregate amount of the adjusted total income in respect of the previous years relevant to the aforesaid three assessment years is average adjusted total income.

- Where the total income of the assessee is assessable only for two of the aforesaid three assessment years, one-half of the aggregate amount of the adjusted total income in respect of the previous years relevant to the aforesaid two assessment years is taken as average adjusted total income.

- Where the total income of the assessee is assessable only for one of the aforesaid three assessment years, the amount of the adjusted total income in respect of the previous year relevant to that assessment year is average adjusted total income.

Head office expenditure

159.3 "Head office expenditure" means executive and general administration expenditure incurred by the assessee outside India, including expenditure incurred in respect of :

a. rent, rates, taxes, repairs or insurance of any premises outside India used for the purposes of the business or profession ;

b. salary, wages, annuity, pension, fees, bonus, commission, gratuity, perquisites or profits in lieu of or in addition to salary, whether paid or allowed to any employee or other person employed in, or managing the affairs of, any office outside India ;

c. travelling by any employee or other person employed in, or managing the affairs of, any office outside India; and

d. such other matters connected with executive and general administration as may be prescribed.

Section 44C - When not applicable

159.4 Section 44C is not applicable where the computation of non-resident's Indian income is made in accordance with rule 10(*ii*).

Rule 10(*ii*) requires the computation of the total world income of the non-resident assessee from business in accordance with the provisions of the tax laws applicable in India. After such computation, one has to determine the proportion between the receipts accruing or arising within the taxable territories and the total world receipts of the business. The next step requires the determination of the profits or gains of business by application of that proportion for the purposes of assessment to income-tax. The income so arrived at is taken as the taxable income without any further allowances.

Royalties and technical fees in the case of foreign companies [Sec. 44D]

160. To regulate taxation of income by way of royalties and fees for technical services received by foreign companies from the Government or an Indian concern, section 44D was inserted. There is no scope for making a distinction between fees for technical services and income from business of providing technical services, insofar as taxability under section 44D is concerned - *Advance Ruling Petition No. P-6 of 1995, In re* [1998] 100 Taxman 206/234 ITR 371 (AAR - New Delhi).

Agreement made before April 1, 1976

160.1 Where such income is received under an agreement made before April 1, 1976, the deduction in respect of expenses incurred for earning such income is subject to a ceiling limit of 20 per cent of the gross amount of such income, as reduced by the amount, if any, of so much of the royalty income as consists of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process or trade mark or similar property.

The aforesaid ceiling limit is applicable in relation to all royalties and technical service fees received by foreign companies from Indian concerns, irrespective of whether such royalties or technical service fees are received under agreements which have been approved by the Central Government or not.

For this purpose, an agreement made by a foreign company with an Indian concern on or after April 1, 1976 is regarded as agreement made before that date if such agreement is made on the basis of proposals approved by the Central Government before that date and the foreign company has exercised an option in this behalf under section 9(1)(*vi*).

Agreement made on or after April 1, 1976 not being covered by section 44DA [sec. 115A]

160.2 Royalties and technical service fees received under an agreement made on or after April 1, 1976 (not being covered by section 44DA) are chargeable to tax at the rate of 10 per cent by virtue of section 115A is following four cases —

a. where such agreement is with the Government of India ; or

b. where such agreement is with an Indian concern, the agreement is approved by the Central Government ; or

c. where such agreement relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy ; or

d. where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the proviso to sub-section (1A) of section 115A to the Indian concern or in respect of computer software referred to the second proviso to section 115A(1A) to a person resident in India.

In other words, the gross amount of income by way of royalties or fees for technical services received by a non-resident from an Indian concern is chargeable to tax. In the aforesaid four cases, the gross amount of such income is chargeable to tax at the flat rate of 10 per cent (+SC+ HEC) by virtue of section 115A. In other remaining cases, such gross income is taxable at the normal rate [*i.e.*, 40 per cent (+SC+ HEC)].

■ According to section 44D, while calculating the aforesaid income no deduction under sections 28 to 44C shall be allowed to foreign companies having income by way of royalty or fees for technical services received from Central Government or Indian concern for agreement with them after March 31, 1976 but before April 1, 2003 [applicable even if the agreement is not approved by the Central Government].

■ *Whether tax paid on behalf of foreign companies is to be grossed up* - If tax is payable on the aforementioned income by the Indian counterpart on behalf of foreign companies, then in few cases tax shall not be grossed up in the hands of foreign company.

■ *Indian concern* - An 'Indian concern' in section 115A should be taken as a business carried on in India which may include a business carried on in India even by a non-resident.

Section 44DA

160.3 Section 44DA has been inserted to harmonise the provisions relating to the income from royalty or fees for technical services attributable to a fixed place of profession or a permanent establishment in India with similar provisions in the various Double Taxation Avoidance Agreements. The provisions of new section 44DA are given below.

WHEN SECTION 44DA IS APPLICABLE

160.3-1 Section 44DA is applicable if the following conditions are satisfied—

1. The taxpayer is a foreign company or non-resident non-corporate-assessee.

2. The taxpayer carries on a business in India through a permanent establishment situated in India. Alternately, the taxpayer performs professional services from a fixed place of profession situated in India. "Permanent establishment" includes a fixed place of business through which the business of an enterprise is wholly or partly carried on.

3. The taxpayer gets income by way of royalty or fees for technical services. One may refer to section 9(1) for meaning of "royalty" and "fees for technical services".

4. The aforesaid royalty or technical fees is received from—

a. Government (*i.e.*, the Central Government or a State Government); or

b. an Indian concern.

5. The income mentioned in (*3*) (*supra*) is received in pursuance of an agreement made by the taxpayer with the Government or the Indian concern after March 31, 2003. If such agreement is made before April 1, 2003, then section 44D is applicable (not section 44DA).

6. The right, property or contract in respect of which the royalties or fees for technical services are paid to the taxpayer is effectively connected with permanent establishment or fixed place of profession [as mentioned in (*2*) (*supra*)].

CONSEQUENCES IF SECTION 44DA IS APPLICABLE

160.3-2 Section 44DA is applicable if the above-mentioned 6 conditions are satisfied. Under section 44DA the following special provisions are applicable—

1. Deduction will not be allowed in respect of any expenditure or allowance, which is not wholly and exclusively incurred for the business of permanent establishment or fixed place of profession in India.

2. Moreover, deduction will not be allowed in respect of amounts, if any, paid by the permanent establishment to its head office or to any of its other offices. However, reimbursement of actual expenditure will be allowed as deduction even if such amount is paid by the permanent establishment to its head office or to any of its other offices.

3. Barring the aforesaid 2 cases, income of the taxpayer shall be computed according to the normal provisions of the Act.

4. The taxpayer shall keep and maintain books of account and other documents in accordance with the provisions contained in section 44AA.

5. The books of account should be audited by a chartered accountant and the audit report (in Form No. 3CE) should be submitted along with the return of income.

6. The provisions of section 44BB shall not apply to the income covered under section 44DA.

Conclusions

160.4 The cumulative impact of sections 44D, 44DA and 115A is given below—

Royalty or fees for technical services received by a foreign company or a non-resident non-corporate assessee from Government or an Indian concern	*Deductions under sections 28 to 44D and 57*	*Deductions under sections 80C to 80U*	*Rate of tax† on such royalty or fees [on 1–2–3]*
1	*2*	*3*	*4*
A Such royalty is received under an agreement made before April 1, 1961 or such technical fee is received under an agreement made before March 1, 1964			
A1 Where the agreement is approved by the Government	*Note 1*	Deduction is available	40 per cent†

† *Plus* surcharge and health and education cess.

1	*2*	*3*	*4*
A2 Where the agreement is not approved	*Note 1*	Deduction is available	40 per cent†
B Such royalty is received under an agreement made after March 31, 1961 but before April 1, 1976 or such technical fee is received under an agreement made after February 29, 1964 but before April 1, 1976			
B1 Where agreement is approved by the Central Government	*Note 1*	Deduction is available	50 per cent†
B2 Where such agreement is not approved by the Central Government	*Note 1*	Deduction is available	40 per cent†
C Such royalty or technical fee is received under an agreement made after March 31, 1976 but before April 1, 2003			
C1 Where such agreement is with the Government	No deduction	Deduction is available	10 per cent†
C2 Where such agreement is with an Indian concern, the agreement is approved by the Central Government	No deduction	Deduction is available	10 per cent†
C3 Where the agreement relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy	No deduction	Deduction is available	10 per cent†
C4 Where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the proviso to sub-section (1A) of section 115A to the Indian concern or in respect of computer software referred to in the second proviso to section 115A(1A) to a person resident in India	No deduction	Deduction is available	10 per cent†
C5 In any other case	Foreign company cannot claim any deduction, non-resident non-corporate assessee can claim deduction	Deduction is available	Applicable rate
D Such royalty or technical fee is received under an agreement made after March 31, 2003			
D1 Where royalty or technical fees is effectively connected to Permanent Establishment (PE) in India	Deduction is available	Deduction is available	Applicable rate
D2 Where PE is absent but the case is covered by section 115A(1) [*i.e.*, C1 to C4 (*supra*)]	No deduction	Deduction is available	10 per cent†
D3 In any other case	Deduction is available [*see* Note 3]	Deduction is available	Applicable rate

Notes :

1. Deduction shall not exceed in the aggregate 20 per cent of the gross amount of such royalty or fees as reduced by so much of the gross amount of such royalty as consists of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process or trade mark or similar property.

2. The tax rates given in column 4 of the table *supra* are not applicable where a lower rate is prescribed under an Avoidance of Double Taxation Agreement entered into by the Central Government under section 90 [*see* Annex 1].

3. Neither section 44D (agreement is made after March 31, 2003) nor section 115A(3) (it is not agreement covered by C1 to C4) will apply in such a case. In other words, the computation will be governed by the normal provisions of the Act.

4. Provisions of sections 70, 71, 72 will be applicable before computing the aforesaid income.

† *Plus* surcharge and health and education cess.

Computation of income and tax

161. The chart given below highlights the provisions of sections 115A, 115AB, 115AC, 115AD, 115BBA and 115D regarding computation of income and tax thereon :

Sections	*Nature of income*	*Deductions under sections 28 to 44C and 57*	*Whether the benefit of computing capital gain in foreign currency as provided by the first proviso to section 48 and the rule of indexation as provided by the second proviso to section 48 are applicable*	*Deductions under sections 80C to 80U*	*Tax rate†*	*Is it necessary to submit return of income*
1	*2*	*3*	*4*	*5*	*6*	*7*
115A(1)(*a*)	The following incomes in the case of a non-resident non-corporate assessee or a foreign company—					
	a. dividend (not being dividend covered under section 115-O)	Not available	—	Not available‡	20 per cent†	*Note 1*
	b. interest received from Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency	Not available	—	Not available‡	20 per cent†	*Note 1*
	c. interest received from an infrastructure debt fund referred to in section 10(*47*)	Not available	—	Not available‡	5 per cent†	*Note 1*
	d. interest from an Indian company referred to in section 194LC or section 194LD or section 194LBA(2)	Not available	—	Not available‡	5 per cent†	*Note 1*
	e. income received in respect of units, purchased in foreign currency, of a Mutual Fund specified under clause (*23D*) of section 10 or of the Unit Trust of India	Not available	—	Not available‡	20 per cent†	*Note 1*
115A(1)(*b*)	Royalty or technical fees of a non-resident non-corporate assessee or a foreign company	*See* para 160.4	—	*See* para 160.4	*See* para 160.4	*Yes*
115AB	The following incomes of an assessee, being an overseas financial organisation -					
	a. income received in respect of units purchased in foreign currency	Not available	—	Not available	—	*Yes*
	b. income by way of long-term capital gains arising from the transfer of units purchased in foreign currency	—	First proviso is not relevant (as it is applicable only in the case of shares/debentures)	—	10 per cent†	—
		—	Second proviso to section 48 is not applicable£	Not available	10 per cent†	*Yes*

† *Plus* surcharge and health and education cess.

£ The taxpayer is not entitled (no option) to the benefit of indexation.

‡ Deduction under section 80LA is available in the case of a unit of an International Financial Services Centre (applicable from the assessment year 2020-21).

1	*2*	*3*	*4*	*5*	*6*	*7*
115AC†	The following incomes[1] of a non-resident :					
	a. income by way of interest or dividends (not being covered by section 115-O), on bonds or Global Depository Receipts of an Indian company issued in accordance with the notified scheme, *i.e.*, Foreign Currency Convertible Bonds and Ordinarily Global Depository Receipts (Through Depository Receipt Mechanism) Scheme, 1993 or on bonds/Global Depository Receipts of a public sector company sold by the Government and purchased by him in foreign currency	Not available	—	Not available	10 per cent‡	*Note 1*
	b. income by way of long-term capital gains arising from transfer of bonds or, as the case may be, Global Depository Receipts referred above	—	First and second provisos£ to section 48 are not applicable	Not available	10 per cent‡	*Yes*
115ACA	Income from Global Depository Receipts held by a resident individual who is an employee of an Indian company engaged in specified knowledge based industry or service[2] or an employee of its subsidiary engaged in specified knowledge based industry or service					
	▪ Dividend (not being covered by section 115-O) on Global Depository Receipts of an Indian company engaged in specified knowledge based industry/service issued under notified* employees stock option scheme and purchased in foreign currency	Not available	—	Not available	10 per cent‡	*Yes*
	▪ Long-term capital gain on transfer of such receipts	—	First and second provisos£ to section 48 are not applicable	Not available	10 per cent‡	*Yes*
115AD	The following income of a notified Foreign Institutional Investor**:					
	a. income (not being dividend covered by section 115-O) received in respect of securities (other than units referred to in section 115AB) listed in a recognised stock exchange in India in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956, and any rules made thereunder	Not available	—	Not available	20 per cent‡	*Yes*

1. Where an assessee acquires shares or bonds, as the case may be, in a resulting or amalgamated company by virtue of his holding shares in the amalgamating or demerged company in accordance with the provisions of section 115AC(1), the provisions of section 115AC(1) shall apply to such shares or bonds.

†The concessional tax rate of 10 per cent has been extended to GDRs issued under notified schemes of the Central Government also.

2. Specified knowledge based industry or service means information technology software/services, entertainment service, pharmaceutical industry, bio-technology industry or any other notified industry or service.

*The Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993.

**For notified institutions, *see Taxmann's Direct Taxes Circulars*, Vol. 2, 2006 edition.

£The taxpayer is not entitled (no option) to the benefit of indexation.

‡*Plus* surcharge and health and education cess.

1	*2*	*3*	*4*	*5*	*6*	*7*
	b. income by way of short-term or long-term capital gains arising from the transfer of such securities	—	First and second provisos£ to section 48 are not applicable	Not available	Long-term: 10 per cent‡, short-term u/s 111A 15 per cent‡, long-term u/s 112A in excess of Rs. 1 lakh : 10 per cent‡ any other short-term: 30 per cent‡	*Yes*
	c. income referred to in section 194LD	Not available	—	Not available	5 per cent†	*Yes*
115BBA (1)(*a*)	The following income of non-resident sportsman who is a foreign citizen					
	i. participation in India in any game (other than a game the winnings wherefrom are taxable under section 115BB) or sport or	Not available	—	Not available	20 per cent†	*Note 1*
	ii. advertisement ; or	Not available	—	Not available	20 per cent†	*Note 1*
	iii. contribution of articles relating to any game or sport in India in newspapers, magazines or journals	Not available	—	Not available	20 per cent†	*Note 1*
115BBA (1)(*b*)	Any amount guaranteed to be paid or payable to a non-resident sports association or institution in relation to any game (not being a game referred to in section 115BB) or sports played in India	Not available	—	Not available	20 per cent†	*Note 1*
115BBA (1)(*c*)	Income of a non-resident foreign citizen entertainer	Not available	—	Not available	20 per cent†	*Note 1*
115D	The following incomes of a non-resident Indian					
	a. investment income from foreign exchange assets	No deduction under any provision	—	Not available	20 per cent†	*Note 1*
	b. long-term capital gain on transfer of foreign exchange assets	—	First proviso to section 48 is applicable but not the second proviso£	Not available	10 per cent†	*Note 1*

Note 1 - It is not necessary for an assessee referred to in section 115A(1), 115AC(1), 115BBA or 115D to furnish his return of income under section 139(1) if :

a. his income in respect of which he is assessable under the Act during the previous year consisted only of income referred to in section 115A(1)(*a*), or 115AC(1)(*a*), or 115BBA or section 115D ; and

b. the tax deductible at source under the Act has been deducted from such income.

Computation of capital gain in the case of non-resident [First proviso to sec. 48]

162. First proviso to section 48 is applicable only in the case of a non-resident. Under this provision, capital gain is calculated in foreign currency in some cases.

■ *Conditions* - To avail the benefit of this provision, the following conditions should be satisfied —

£The taxpayer is not entitled (no option) to the benefit of indexation—*Universities Superannuation Scheme Ltd. In re* [2005] 145 Taxman 141 (AAR - New Delhi).

†*Plus* surcharge and health and education cess.

Condition 1	The taxpayer is a non-resident (maybe an Indian or foreign citizen, or a corporate-assessee or a non-corporate assessee but not being an assessee covered by sections 115AC and 115AD) at the time of sale of capital asset.
Condition 2	He acquires shares in (or debentures of) an Indian company (maybe public limited or private limited) by utilising foreign currency.
Condition 3	The asset may be short-term or long-term.

■ *Rule of computation* - If the aforesaid conditions are satisfied, then the following procedure shall be adopted to determine capital gain (it may be noted that the procedure given below is applicable without any exception whenever the above conditions are satisfied)† —

1. Capital gain shall be computed in the same foreign currency which was initially utilised in acquiring shares or debentures.

2. Capital gain so calculated in the foreign currency shall be reconverted into Indian currency.

3. The benefit of indexation shall not be available.

4. The aforesaid manner of computation of capital gain shall be applicable in respect of capital gain accruing or arising from every re-investment thereafter in (and sale of) shares in (or debentures of) an Indian company.

5. The aforesaid mode of computation is applicable only when the conditions above-mentioned are satisfied. In no other case, the above procedure is applicable.

Even if the aforesaid provisions are applicable the option of adopting fair market value of April 1, 2001 is available.

■ *How to determine capital gain* - In order to understand the method of computation of capital gain, it is imperative to know the meaning of (*a*) average exchange rate, and (*b*) buying rate.

1. Average exchange rate - It is the average of the telegraphic transfer buying rate and telegraphic transfer selling rate of the foreign currency initially utilised in the purchase of the said asset.

For this purpose, telegraphic transfer buying/selling rate in relation to a foreign currency is rate of exchange adopted by the State Bank of India for purchasing or selling such currency where such currency is made available by that bank through telegraphic transfer.

2. Buying rate - It is telegraphic transfer buying rate of such currency.

■ *Mode of computing* - Capital gain shall be determined as under —

	Conversion rate	*Conversion rate of which date is applicable*	*Computation*
Sale consideration	Average exchange rate	Date of transfer	Find out sale consideration in Indian currency and convert it into foreign currency at "average exchange rate" on the date of transfer (suppose it is *x*).
Cost of acquisition	Average exchange rate	Date of acquisition	Find out the cost of acquisition in Indian currency and convert it into foreign currency at "average exchange rate" on the date of acquisition (suppose it is *y*).
Expenditure on sale	Average exchange rate	Date of transfer	Find out the expenditure on transfer in Indian currency and convert it into foreign currency at "average exchange rate" on the date of transfer (not on the date when expenditure is incurred) (suppose it is *z*).
Capital gain	Buying rate	Date of transfer	(*x*—*y*—*z*) will be reconverted into Indian currency at "buying rate" on the date of transfer.

162-P1 *X, a non-resident foreign citizen, remits US $ 60,000 to India on August 10,2001. The amount is partly utilised on August 17,2001 for purchasing 50,000 preference shares in Lotus Ltd., an Indian company, at the rate of Rs. 12 per share (brokerage paid : Re. 1 per share). These shares are sold for Rs. 28 per share on April 10, 2015 (brokerage paid on April 16, 2015 @ Rs. 1.50 per share). The sale consideration is utilised on April 25, 2015 for purchasing 40,000 preference shares in Indian Sugars and Chemicals Ltd. at the rate of Rs. 34 per share (brokerage paid : Re. 1 per share). Shares in Indian Sugars and Chemicals Ltd. are transferred on April 20, 2018 @ Rs. 40 per share : (brokerage paid @ Rs. 1.55 per share on June 30, 2018).* Case study

Find out the capital gains chargeable to tax for the assessment years 2016-17 and 2019-20 on the assumption that telegraphic transfer, buying and selling rates of US dollars adopted by the State Bank of India are as follows :

† In some cases, capital gain on transfer of equity shares is not chargeable to tax.

	Buying (1 US $) Rs.	Selling (1 US $) Rs.
August 10, 2001	*18.30*	*19.10*
August 17, 2001	*18.40*	*19.30*
April 10, 2015	*25.90*	*26.40*
April 16, 2015	*26.10*	*26.60*
April 25, 2015	*26.10*	*26.60*
April 20, 2018	*28.30*	*29.10*
June 30, 2018	*30.10*	*31.15*

■

For computing capital gains, one has to find out the average of the telegraphic transfer buying rate and telegraphic transfer selling rate on the date of purchase and sale of shares. Date of making expenditure in connection with transfer is not relevant.

These rates are as follows :

Average rate on	*Rs. (1 US $ =)*
August 17, 2001	18.85
April 10, 2015	26.15
April 25, 2015	26.35
April 20, 2018	28.70

Assessment year 2016-17	*Rs.*	*US$*
Sale consideration (*50,000 × Rs. 28) ;	14,00,000*	
**(Rs. 14,00,000 ÷ Rs. 26.15)	—	53,537.28**
Less :		
Cost of acquisition (*50,000 × Rs. 13 ; **Rs. 6,50,000 ÷ Rs. 18.85)	6,50,000*	34,482.76**
Expenditure on transfer (*Rs. 75,000 ÷ Rs. 26.15)	75,000	2,868*
Long-term capital gain	N.A.	16,186.45
Long-term capital gain in Indian currency ($ 16,186.45 × Rs. 25.90)	4,19,229.05	—
Assessment year 2019-20		
Sale consideration		
*Rs. 40 × 40,000, **Rs. 16,00,000 ÷ Rs. 28.70	16,00,000*	55,749.13**
Less :		
Cost of acquisition [*Rs. 35 × 40,000, **Rs. 14,00,000 ÷ Rs. 26.35]	14,00,000*	53,130.93**
Expenditure on transfer [*Rs. 1.55 × 40,000, **Rs. 62,000 ÷ Rs. 28.70]	62,000*	2,160.28**
Balance	*N.A.*	457.92
Long-term capital gain chargeable to tax for the assessment year 2019-20 (*i.e.*, $ 457.92 × Rs. 28.30)	12,959.14	—

Notes

1. The benefit of deduction of indexed cost of acquisition is not available in the aforesaid case.

2. The aforesaid procedure is applicable even in the case of short-term capital gain.

Special provisions in the case of a non-resident Indian [Sec. 115F]

162.1 If the following conditions are satisfied, one can take the benefit of section 115F—

■ The taxpayer is a non-resident Indian (*i.e.*, an individual being a citizen of India or a person of Indian origin who is non-resident ; a person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, was born in undivided India) at the time of sale of capital asset.

■ He has transferred a specified asset [*i.e.*, shares in an Indian company, debentures of an Indian public limited company, deposits with an Indian public limited company or Central Government securities (hereinafter referred to as "original asset")] which has been acquired or purchased with, or subscribed to in, convertible foreign exchange.

■ Such asset is a long-term capital asset.

■ Within six months of transfer of original asset, the taxpayer has invested the whole or any part of net consideration (*i.e.,* consideration received less expenses on transfer) in any of the following assets (hereinafter referred to as "new asset") —

a. shares in an Indian company ;

b. debentures of an Indian public limited company ;

c. deposit with an Indian public limited company ; or

d. Central Government securities.

AMOUNT OF EXEMPTION

162.1-1 If all the above conditions are satisfied, exemption is available as follows :

$$\text{Amount invested in new asset} \times \frac{\text{Capital gains}}{\text{Net sale consideration}}$$

Notes:

1. The amount of exemption cannot exceed the amount of capital gain.

2. Net sale consideration is sale consideration *minus* expenditure on transfer.

CONSEQUENCES IF THE NEW ASSET IS TRANSFERRED WITHIN 3 YEARS

162.1-2 In case the new asset acquired by the assessee is transferred or converted into money within a period of three years from the date of its acquisition, the capital gains exempted by virtue of the provisions given above is deemed to be income by way of long-term capital gains of the previous year in which such new asset is so transferred or converted into money.

OPTION TO AVAIL OR NOT TO AVAIL THE BENEFIT OF SECTION 115F

162.1-3 A non-resident Indian may elect (by virtue of section 115-I) not to be governed by the provision of section 115F for any assessment year by giving a declaration in the return of income to this effect.

Case study

162.1-P1 *In problem 162-P1, assume that X is a non-resident Indian and he wants to avail the benefit of section 115F.*

■

Assessment year 2016-17

Since X has invested the entire net consideration received on the sale of 50,000 shares in Lotus Ltd. (*i.e.,* Rs. 14,00,000 – Rs. 75,000) in acquiring a new asset (*i.e.,* shares in Indian Sugar and Chemical Ltd.) within 6 months from transfer, the resulting long-term capital gain of Rs. 4,19,229 is not chargeable to tax for the assessment year 2016-17.

Assessment year 2019-20

Shares in Indian Sugars and Chemical Ltd. has been transferred within three years from the date of acquisition. Consequently, the exemption given for the assessment year 2016-17 will be revoked and income under the head "Capital gains" for the assessment year 2019-20 will be as follows :

	Rs.
Long-term capital gain on transfer of shares in Indian Sugars & Chemical Ltd. [as computed earlier]	12,959.14
Deemed long-term capital gain	4,19,229.05
Income under the head "Capital gains"	4,32,188.19

Special provisions

163. A few special provisions relating to non-residents are given by sections 115C to 115-I.

Who can claim the benefit of special provisions

163.1 The benefit of special provisions can be claimed by non-resident Indians. The following are "non-resident Indians" for this purpose :

a. citizen of India who is a non-resident ; or

b. a person of Indian origin who is a non-resident.

A person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, was born in undivided India.

Incomes which are qualified for special treatment

163.2 The provisions under sections 115C to 115-I are applicable only in respect of the following incomes derived by a non-resident Indian :

a. investment income derived from a "foreign exchange assets" ; and

b. long-term capital gains on sale or transfer of "foreign exchange assets".

Foreign exchange asset - It means those "specified assets" (which are given below) which the assessee has acquired or purchased with, or subscribed to in, convertible foreign exchange.

The following are "specified assets" for this purpose :

a. shares in an Indian company (public or private) ;

b. debentures issued by an Indian company which is not a private company ;

c. deposits with an Indian company which is not a private company, it may be even deposit with SBI or any other banking company;

d. any security of the Central Government ; and

e. such other assets as the Central Government may specify in this behalf by notification in the Official Gazette [no notification has been issued so far].

163.2-1 In computing the investment income of a non-resident Indian, no deduction in respect of any expenditure or allowance shall be allowed under any provision of the Act. Moreover, no deduction under sections 80C to 80U shall be allowed in respect of investment income of non-resident Indians.

163.2-2 Long-term capital gain on sale or transfer of foreign exchange assets shall be calculated subject to the following points :

1. The benefit of indexation is not available in respect of sale or transfer of foreign exchange assets.

2. No deduction is permissible in respect of long-term capital gain under sections 80C to 80U.

3. By investing sale consideration in another asset, the non-resident Indian can claim exemption under section 115F [*see* para 162.1 for detailed discussion].

163.3 Non-resident Indians are chargeable to tax on investment income and long-term capital gain (as computed above) at the rate of 20 per cent* and 10 per cent*, respectively.

163.4 In cases where a non-resident Indian has income only from a foreign exchange asset or income by way of long-term capital gains arising on transfer of a foreign exchange asset, or both, and tax deductible at source from such income has been deducted, he is not required to file the return of income under section 139(1).

The income from foreign exchange assets and long-term capital gains arising on transfer of such assets would be treated as a separate block and charged to tax at a flat rate as explained above. If the non-resident Indian has other income in India, such other income is treated as an altogether separate block and charged to tax in accordance with other provisions of the Act.

163.5 Where a person, who is a non-resident Indian in any previous year, becomes assessable as resident in India in any subsequent year, he may furnish to the Assessing Officer a declaration in writing (along with his return of income under section 139 for the assessment year for which he is so assessable) to the effect that the special provisions shall continue to apply to him in relation to the investment income derived from any foreign exchange asset being debentures and deposit with an Indian public limited company and Central Government securities. If he does so, the special provisions shall continue to apply to him in relation to such income for that assessment year (and for every subsequent assessment year) until the transfer or conversion (otherwise than by transfer) into money of such assets.

163.6 A non-resident Indian may opt that the special provisions relating to taxation of the investment income and long-term capital gains at a flat rate should not apply to him. This option is exercisable by a taxpayer by making a declaration to that effect in his return of income for the relevant assessment year. In cases where such an option is exercised by a non-resident Indian, the whole of his total income (including income from foreign exchange assets and long-term capital gains arising on transfer of a foreign exchange asset) is charged to tax under the general provisions of the Act.

163-P1 *X, Y and Z are persons (aged 32 years) of Indian origin, though their residential status is non-resident. During the previous year relevant for the assessment year 2019-20, their income from investment in India is as follows :*

**Plus* surcharge and health and education cess.

	X Rs.	Y Rs.	Z Rs.
a. *Interest on deposits with public limited companies received on March 31, 2019*	*30,000*	*60,000*	*2,80,000*
b. *Interest on Government securities received on December 31, 2018*	*1,95,000*	*2,40,000*	*2,40,000*
c. *Interest on deposits with private limited companies on September 30, 2018*	—	*2,30,000*	*7,25,000*
Tax deducted at source, i.e., *@ 20.8 per cent in respect of foreign exchange assets* (a) *and* (b)*; and @ 31.2 per cent in respect of* (c)	*46,800*	*1,34,160*	*3,34,360*

Determine the amount of tax liability/refund for the assessment year 2019-20. Also discuss whether the assessee should opt under section 115-I, i.e., *not to be governed by provisions of sections 115C to 115-I.*

■

Tax liability if the assessee opts under section 115-I, not to be governed under the provisions of sections 115C to 115-I :

	X Rs.	Y Rs.	Z Rs.
Gross total income	2,25,000	5,30,000	12,45,000
Less : Deduction	—	—	—
Net income	2,25,000	5,30,000	12,45,000
Tax (including education cess and secondary and higher education cess) (*d*)	*Nil*	19,240	1,93,440
Tax deducted at source (*e*)	46,800	1,34,160	3,34,360
Final tax liability [*i.e.,* (*d*) – (*e*)] (rounded off)	(–) 46,800	(-) 1,14,920	(-)1,40,920
Tax liability if provisions of sections 115C to 115-I are applicable :			
Income from foreign exchange assets eligible for provisions of sections 115C to 115-I [*i.e., (a) + (b)*]	2,25,000	3,00,000	5,20,000
Tax on income from foreign exchange assets [*i.e.,* @ 20.8% in the case of X, Y and Z] (*f*)	46,800	62,400	1,08,160
Other income [*i.e.,* (*c*)]	—	2,30,000	7,25,000
Less : Deduction	—	*Nil*	*Nil*
Taxable income	—	2,30,000	7,25,000
Tax (including Health and education cess) (*g*)	—	—	59,800
Tax liability [*i.e.,* (*f*) + (*g*)] (*h*)	46,800	62,400	1,67,960
Tax deducted at source (*i*)	46,800	1,34,160	3,34,360
Final tax liability [*i.e.,* (*h*) – (*i*)] (rounded off)	*Nil*	(-) 71,760	(-) 1,66,400

Note : In the problem given above, X and Y should opt under section 115-I (*i.e.,* not to be governed by special provisions of sections 115C to 115-I) by furnishing return of income under section 139. Z should take the benefit of special provisions of sections 115C to 115-I.

164-P1 *A public sector company is proposing to enter into an agreement for transfer of technology with a Japanese company. The consideration is a lump sum royalty of Rs. 25,00,000 (net of the Indian taxes). The company will get the necessary Government approval. It wants to know the tax implications and in particular whether the Indian tax payable by it would be grossed up. Advise the company.* Case studies

■

Tax liability on lump sum payment of Rs. 25,00,000 comes to Rs. 2,50,000 (*i.e.,* @ 10%)†.

164-P2 *A foreign technician is sent by a foreign company to India in terms of a collaboration agreement with an Indian company to assist the Indian company in setting up a plant. The fees charged by the foreign company are Rs. 5,000 per day for every day of stay in India of the technician for such work. The technician draws total emoluments of Rs. 2,000 per day, out of which a sum of Rs. 1,200 per day is paid by the Indian company. The technician stays in India for 75 days. What are the tax effects in India of the transactions mentioned in the preceding paragraph?*

■

† *Plus* surcharge and health and education cess.

Assessment of foreign technician : The foreign technician, it is assumed, comes to India as an employee of the foreign company and not of the Indian concern. As he stays in India for less than 90 days and his salary is not deductible in computing business income of his employer, salary income is exempt under section 10(*6*)(*vi*).

Assessment of foreign company : The entire receipt of Rs. 5,000 per day for 75 days, *i.e.*, Rs. 3,75,000 becomes chargeable to tax in its hands as fees for technical services under section 9(1)(*vi*) @ 10%† as per section 115A.

Assessment of Indian company : Since the foreign technician comes to India to assist the Indian company in setting up the plant, the expenses incurred on this account by the company are in the nature of expenses incurred for erection of machinery and putting the items of plant in working condition and can, therefore, be capitalised and treated as part of the "actual cost" of plant and machinery.

164-P3 *X Ltd., an Indian company, proposes to enter into a collaboration agreement with ABC Inc., a company registered in the United States, in 1989-90, obtaining for this purpose all the necessary approvals from the prescribed authorities. The principal terms of the proposed agreement were as under* :

1. *Foreign technicians were to be sent by ABC Inc. to India to supervise the erection and installation and commencement of production by X Ltd. For this purpose, X Ltd. was to pay ABC Inc. a sum calculated @ US $ 1,000 per day for each day of service in India by every technician so deputed.*

2. *ABC Inc. was to prepare the layout of the factory of X Ltd. for which work was to be done entirely in the United States and for this a fee of $ 1 million was to be paid.*

3. *Manufacturing formulae and similar technical know-how were to be supplied by ABC Inc. to X Ltd. by postal service, all the necessary data being prepared outside India.*

4. *Indian personnel would be deputed by X Ltd. for training in the factory of ABC Inc. for which no fees would be charged but the actual expenses incurred for their stay abroad while on training would be reimbursed to ABC Inc. by X Ltd.*

Consider in each case the liability to Indian income-tax incurred by ABC Inc. It may be noted that by virtue of the agreement, all such liability was actually to be borne by X Ltd. The tax liability of the foreign technicians need not be considered.

■

1. *Foreign technicians* - The amount paid to ABC Inc. on account of the services rendered by the foreign technicians deputed by ABC Inc. to X Ltd. is deemed to be income accruing or arising in India. By virtue of section 9(1)(*vii*), the entire amount of such fees is taxable [rate of tax : 10%† (sec. 115A), *see* also Annex 1, para 0.7].

2. *Payment to prepare factory layout* - By virtue of section 9(1) (*vii*), amount received by ABC Inc. to prepare the layout of factory of X Ltd. is deemed as income chargeable to tax [tax rate : 10%† (sec. 115A), *see* also Annex 1, para 0.7].

3. *Supply of technical know-how* - Mode of providing remuneration is not given. Regardless of the mode of payment, the remuneration would be covered by the term "royalty" under section 9(1)(*vi*) and it will be deemed as income [tax rate : 10%† (sec. 115A), *see* also Annex 1, para 0.7].

4. *Training of Indian personnel* - Since ABC Inc. does not earn any income for providing training to Indian personnel, nothing is chargeable to tax.

5. *Tax paid by X Ltd. on behalf of ABC Inc.* - Tax paid by X Ltd. on behalf of ABC Inc. is chargeable to tax in the hands of X Ltd. To put it differently, the amount paid by X Ltd. to ABC Inc. will be grossed up to charge tax under section 115A.

164-P4 *X Ltd. (a company incorporated in the U.K.) and A Ltd. (an Indian company) have entered into an agreement on June 30, 1997 under which the English company agreed to give to the Indian company the know-how for the manufacture in India of cameras, projectors and allied equipments, on the following terms* :

1. *The English company will hand over to the Indian company in London, the detailed data, documentation, drawings and specifications relating to the manufacture for which it will be paid £ 50,000 in London in foreign exchange.*

2. *The English company will depute two technicians to India to assist the Indian company in setting up of plant and also in the operation of the plant for a period of 12 months, during which time they will train an adequate number of Indians in the manufacturing operations. In return for these services, the Indian company will pay to the English company £ 10,000 in four equal quarterly instalments, which will be over and above the salary and allowances of the two technicians which will be paid to them in India by the Indian company.*

3. *The Indian company will pay to the English company a royalty at the rate of £ 2 per camera and £ 5 per projector manufactured by it, for a period of 15 years from the commencement of production.*

---

† *Plus* surcharge and health and education cess.

The agreement has been approved by the Central Government. Discuss the following :

1. *What is the scope of tax liability in India of the English company in respect of the amounts payable to it under the agreement?*

2. *What deductions, if any, are available to it in the computation of its income for tax purposes?*

3. *At what rate is tax chargeable on the various items? Also indicate the time at which the tax is to be paid or recovered.*

■

The cumulative impact of sections 5(2), 9 and 115A on the point raised in the problem would be as under :

1. Tax incidence on X Ltd. - X Ltd., the English company, will be liable to tax in India on the following receipts, namely, lump sum receipt of royalty : £ 50,000 ; fees for technical services : £ 40,000 ; and recurring royalty of £ 2 per camera and £ 5 per projector manufactured in India.

2. Deduction - By virtue of section 44D, X Ltd. cannot claim deduction of any expenditure.

3. Tax rates - Under section 115A, £ 50,000, being lump sum royalty will be charged to tax at the rate of 10% *plus* surcharge *plus* education cess. Technical fees and recurring royalty on cameras and projectors will be taxable at the rate of 10%†. X Ltd., the company making payments to the English company, should deduct tax at source under section 195.

Multiple Choice Questions

Q1. A non-resident receives technical fees from the Government of India. He receives it outside India. Service is also rendered from outside India—

a. Income is deemed to be earned outside India;

b. Income is deemed to accrue or arise in India;

c. One has to examine the agreement with the Government to find out whether income is deemed to accrue or arise in India;

d. It depends upon the Government of India. If the Government wants, the receipt will be deemed to be earned outside India.

Q2. An Indian company employees a Japanese citizen at its head office at Jamnagar for a period of 6 months. He will join the company at Jamnagar during September 2019. Salary will be paid to him outside India. The agreement between the company and the foreign citizen clearly pinpoints that salary income is deemed to be earned outside India. Consequently, the Japanese citizen is not chargeable to tax in India—

a. True;

b. False.

Q3. Under section 9(1), dividend declared by an Indian company is deemed to accrue or arise in India. This provision does not have any practical utility as dividend income from an Indian company in the hands of shareholders is not chargeable to tax in India—

a. True;

b. False.

Q4. Under section 6(4), a partnership firm is either resident in India or non-resident in India. It cannot be "not ordinarily resident" in India. However, in income-tax return form for partnership firm (*i.e.*, ITR-5), a firm can be "not ordinarily resident" in India. As income-tax return form (*i.e.*, ITR-5) can supersede the provisions of the Income-tax Act, a partnership firm can either be—

a. Resident in India;

b. Non-resident in India;

c. Not ordinarily resident in India;

d. None of above.

Q5. X Ltd. is incorporated in India. It has 10 shareholders, all are foreign citizens and non-resident in India. The company has a manufacturing unit in Germany and the entire business of the company is situated outside India. Board meetings are generally held outside India. The company is non-resident in India—

a. True;

b. False.

Q6. X is resident but not ordinarily resident in India for the assessment year 2019-20. He owns a house property in Dubai. As the house property is situated in Dubai, rent is received outside India and X is resident but not ordinarily resident in India, rental income of the property is not taxable in India for the assessment year 2019-20—

† *Plus* surcharge and health and education cess.

a. True;

b. False.

Q7. Salary of diplomatic personnel posted at New Delhi is not taxable in India—

a. True;

b. False.

Q8. Shipping profits of non-resident is taxable under section 44B. Income is calculated at the rate of 8.5 per cent of amount received on account of carriage of goods/passengers from a port in India—

a. True;

b. False.

Q9. Income from activities connected with exploration of mineral oils is taxable within the parameters of section 44BB in the hands of a non-resident. For this purpose, income is calculated at the rate of 8.5 per cent of the amount received by the non-resident on account of provision of services and facilities in connection with exploration of mineral oil—

a. True;

b. False.

Q10. Amount received by a foreign airline on accounts of carriage of passengers from India is taxable under section 44BBA. Income from such business is calculated at a flat rate of 8.5 per cent of the fare collected from India—

a. True;

b. False.

Q11. A foreign company has an agreement with an Indian company to provide technical services in respect of a project in India. The agreement was signed last year and it is yet to be approved by the Central Government. However, the agreement relates to a matter given in industrial policy. The foreign company does not have any permanent establishment (PE) in India. India does not have any avoidance of double taxation agreement with the foreign country—

a. The entire income of the foreign company after deducting expenses will be taxable at the rate of 10 per cent;

b. The entire income of the foreign company after deducting expenses will be taxable at the rate applicable to foreign company;

c. The entire receipt of the foreign company without any deduction will be taxable at the rate of 10 per cent;

d. Income of the foreign company will be calculated as if the foreign company has a PE in India and such income will be taxable at the rate applicable to the foreign company.

Q12. The answer in the above question will not be different if the foreign company has an agreement with the Central Government—

a. True;

b. False.

Q13. The answer in the above question will not be different if the foreign company has an agreement with Indian company and the agreement was signed in 1975—

a. True;

b. False.

Q14. A non-resident purchases debentures of an Indian company by utilizing foreign exchange remitted from outside India. Capital gain on transfer of debentures will be calculated in the foreign currency under the first proviso to section 48 at the option of the non-resident—

a. True;

b. False.

DOUBLE TAXATION RELIEF

16

CHAPTER

Relief for double taxation [Secs. 90, 90A and 91]

170. Foreign income of a person generally becomes liable to tax in two countries - the country in which income is earned and the country in which the person is resident. Double taxation of such income is avoided by means of double taxation avoidance agreements (ADT) entered into by the Government of India with the Governments of other countries under section 90. Where the income accrues or arises in a country with which no agreement exists, unilateral tax relief is provided on the doubly taxed income under the provisions of section 91.

ADT agreements [Sec. 90]

171. The Government of India has entered into comprehensive agreements for avoidance of double taxation with 57 countries. Besides, the Government of India has entered into agreements which cover limited areas of activity like aircraft and shipping business.

Modes of granting relief under ADT agreements

171.1 Generally, there are two modes of granting relief under ADT agreements - (*a*) exemption method, and (*b*) tax credit method. Under exemption method a particular income is taxed in one of the two countries. Under tax credit method, an income is taxable in both the countries in accordance with their respective tax laws read with the ADT agreement. However, the country of residence of the taxpayer allows him credit for the tax charged thereon in the country of source against the tax charged on such income in the country of residence.

In India's ADT agreements, double taxation relief is provided by a combination of the two modes.

The effect of an ADT agreement is as follows —

a. if no tax liability is imposed under the Act, the question of resorting to the agreement would not arise, no provision of the agreement can possibly fasten a tax liability where the liability is not imposed by the Act ;

b. if a tax liability is imposed by the Act, the agreement may be resorted to for negativing or reducing it ;

c. in case of difference between the provisions of the Act and of the agreement, the provisions of the agreement prevail over the provisions of the Act and can be enforced by the appellate authorities and the court.

■ Provisions of India's ADT agreements regarding taxation of dividend, interest, royalty and technical fees are summarised in para 0.10 (Annex 1).

■ Provisions of section 90 are to be invoked for granting relief to the assessee if the income of the non-resident assessee is chargeable to tax under sections 4, 5 and 9; if the income of non-resident is not chargeable to tax under the Act, the question of invoking the provisions of section 90 would not arise at all.

■ Provisions of DTAAs override the provisions of the Act, to the extent these agreements are more favourable to the assessee.

Unilateral relief [Sec. 91]

172. Section 91 provides for the grant of unilateral relief in the case of resident taxpayers on income which has suffered tax in India as well as in the country with which there is no ADT agreement.

The following requirements have to be satisfied in order that an assessee is entitled to claim deduction on the doubly taxed income :

a. the assessee must have been resident in India in the relevant previous year ;

b. income must have accrued or arisen to him during that previous year outside India ;

c. in respect of that income which accrued or arose outside India, he must have paid by deduction or otherwise tax under the law in force in the country in question.

The relief is worked out as under :

1. First, ascertain the amount of doubly taxed income. It consists of such income as has accrued or arisen to the taxpayer in a foreign country and has been subjected to income-tax in that country as well as in India. It, however, does not include income which is deemed to have accrued or arisen to the taxpayer in India, even though it has been charged to income-tax in a foreign country.

2. On the amount of the doubly taxed income so ascertained, income-tax is calculated at the Indian rate of tax and the rate of tax of the foreign country. The foreign tax rate has to be calculated separately for each country.

3. Relief is granted by allowing to the taxpayer a deduction from the tax liability of an amount equal to the tax calculated at the average Indian rate of tax or the amount of tax calculated at the rate of tax of the other country on the doubly taxed income, whichever is lower. For example, if out of income of Rs. 4,80,000 deduction of Rs. 36,000 is allowed under section 80E in computing the total income, the assessee will be entitled to the double taxation relief under section 91 only in respect of Rs. 4,44,000 which has been subjected to income-tax in India.

■ *What is Indian rate* - The Indian rate of tax means the rate determined by dividing the amount of Indian income-tax after deduction of any relief due under the provisions of the Act, but before deduction of any relief due under sections 90 and 91, by the total income.

■ *What is foreign rate* - The rate of tax of the foreign country means income-tax and super-tax actually paid in that country in accordance with the corresponding laws in force thereafter deduction of all relief due, divided by the whole amount of the income as assessed in that country.

Double taxation relief in case of specified associations [Sec. 90A]

173. Section 90A provides as under—

■ There is a specified association in India.

■ It enters into an agreement with any specified association in a specified territory outside India.

■ The Central Government may, by notification in the Official Gazette, make the necessary provisions for adopting and implementing such agreement—

a. for grant of double taxation relief, for avoidance of double taxation ;

b. for exchange of information for the prevention of evasion or avoidance of income-tax ;

c. for recovery of income-tax.

■ In relation to any assessee to whom the said agreement applies, the provisions of the Income-tax Act shall apply to the extent they are more beneficial to that assessee.

Case studies

174. The following case studies are given :

174-P1 *Find out the tax liability for the assessment year 2019-20 in the following cases —*

1. *X (28 years) is resident and ordinarily resident in India. His income is Rs. 8,96,000 from a business in India and Rs. 1,92,000 from a business in a foreign country with whom India has an ADT agreement. According to the ADT agreement, income is taxable in the country in which it is earned and not in the other country. However, in the other country such income can be included for computation of tax rate. According to the tax laws of the foreign country, business income of Rs. 1,92,000 is taxable @ 23 per cent. During the previous year, X has deposited Rs. 42,000 in his public provident fund account (out of which Rs. 10,000 is deposited out of foreign income). He has also received an interest of Rs. 32,000 on Government securities.*

2. *X Ltd. is an Indian company. For the previous year 2018-19, the following incomes are noted from the books of account of the taxpayer —*

	Rs.
Income from a business in India	*3,80,000*
Income from a business in a foreign country with whom India has ADT agreement	*2,16,000*

According to the ADT agreement, Rs. 2,16,000 is taxable in India. However, it can also be taxed in the foreign country @ 17.5 per cent which can be set off against Indian tax liability.

3. *Y (24 years) and Z (26 years) are resident in India. The following points are noted for the previous year 2018-19 from the books of account —*

	Y Rs.	Z Rs.
Income from a business in India	*80,000*	*(–)1,30,000*
Income from business in Argentina (India does not have ADT agreement with Argentina)	*1,80,000*	*5,50,000*
Income from other sources in India (bank interest)	*60,000*	*1,40,000*
PPF contribution	*16,000*	*41,500*
Tax levied in Argentina	*39,000*	*10,000*

■

1. Computation of income and tax of X

	Rs.
Business income in India	8,96,000
Interest on Government securities	32,000
Gross total income	9,28,000
Less : Deduction under section 80C	42,000
Net income	8,86,000
Foreign income to be included for rate purposes	1,92,000
Total	10,78,000
Tax on Rs. 10,78,000 [*see* Annex 1]	1,35,900
Add : Surcharge	*Nil*
Tax and surcharge	1,35,900
Add : Health and education cess	5,436
Tax payable	1,41,336
Average rate of tax [Rs. 1,41,336/Rs. 10,78,000 × 100]	13.11%
Indian tax liability (*i.e.,* tax on Rs. 8,86,000 @ 13.11%) (rounded off)	1,16,663

2. Computation of income and tax of X Ltd.

	Indian tax Rs.	*Foreign tax Rs.*
Business income in India	3,80,000	—
Foreign business income	2,16,000	2,16,000
Net income	5,96,000	2,16,000
Tax on net income [@ 31.2% in India and 17.5% in foreign country]	1,85,952	37,800
Less : Tax paid in foreign country	37,800	—
Indian tax liability (rounded off)	1,48,150	—

3. Computation of income and tax of Y and Z

	Y Rs.	*Z Rs.*
Business income	2,60,000	4,20,000
Bank interest	60,000	1,40,000
Gross total income	3,20,000	5,60,000
Less : Deduction under section 80C	16,000	41,500
Net income	3,04,000	5,18,500

	Y *Rs.*	*Z* *Rs.*
Tax	2,700	16,200
Less : Rebate under section 87A (100% of tax or Rs. 2,500, whichever is less, applicable only in the case of a resident individual if net income does not exceed Rs. 3,50,000)	2,500	*Nil*
Balance	200	16,200
Add : Surcharge	*Nil*	*Nil*
Tax and surcharge	200	16,200
Add : Health and education cess	8	648
Indian tax liability	208	16,848
Indian average rate of tax (*a*)	0.07%	3.25%
Argentine average rate of tax [Rs. 39,000/Rs. 1,80,000; Rs. 10,000/ Rs. 5,50,000] (*b*)	21.67%	1.82%
Rate at which rebate is admissible under section 91 [(*a*) or (*b*), whichever is lower]	0.07%	1.82%
Doubly taxed income	1,80,000	5,18,500
Amount of rebate [0.07% of Rs. 1,80,000 and 1.82% of Rs. 5,18,500]	123	9,427
Tax payable in India (rounded off)	80	7,420

174-P2 *X (62 years) is a musician deriving income from concerts performed outside India of Rs. 7,50,000. Tax of Rs. 1,50,000 was deducted at source in the country where the concerts were given and remaining Rs. 6,00,000 is remitted to India. India does not have any agreement with that country for avoidance of double taxation. Assuming that the Indian income of X is Rs. 4,00,000, what is the relief due to him under section 91 for assessment year 2019-20. X is resident in India and has deposited Rs. 22,000 in the public provident fund account.*

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	Rs.
Indian income	4,00,000
Foreign income	7,50,000
Gross total income	11,50,000
Less : Deduction under section 80C	22,000
Net income	11,28,000
Tax on net income†	1,48,400
Add : Surcharge	*Nil*
Tax and surcharge	1,48,400
Add : Health and education cess (4% of tax)	5,936
Tax liability in India	1,54,336
Rate of tax in India [*i.e.*, Rs. 1,54,336 ÷ Rs. 11,28,000]	13.68%
Rate of tax in foreign country [*i.e.*, Rs. 1,50,000/Rs. 7,50,000]	20%
Doubly taxed income	7,50,000
Rebate under section 91 on Rs. 7,50,000 @ 13.68%	1,02,617
Tax payable in India [Rs. 1,54,336 – Rs. 1,02,617] (rounded off)	51,720

174-P3 *X (46 years), an individual, is resident and ordinarily in India. During the previous year 2018-19, he has followed incomes—*

	Rs.
Income from Business A situated in India	*8,00,000*
Income from Business B situated in a foreign country (India does not have ADT agreement) (tax levied in the foreign country : Rs. 2,80,000)	*7,15,000*

†Rebate under section 87A is available in case of a resident individual only if taxable income does not exceed Rs. 3.50 lakh.

	Rs.
Loss from Business C situated in another foreign country (India does not have ADT agreement)	*(-)1,60,000*
Income from other sources in India	*40,000*
Amount deductible under sections 80C and 80D	*80,000*

Find out the tax liability of X for the assessment year 2019-20.

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Computation of income of X—

	Rs.
Business income (*i.e.*, Business A : Rs. 8,00,000 + Business B : Rs. 7,15,000— Business C : Rs. 1,60,000)	13,55,000
Income from other sources	40,000
Gross total income	13,95,000
Less: Deductions	80,000
Net income	13,15,000
Tax on net income	
Income-tax	2,07,000
Add: Health and education cess	8,280
Tax liability	2,15,280
Average rate of tax in India (*i.e.*, Rs. 2,15,280 ÷ Rs. 13,15,000) : 16.37% (*a*)	
Foreign tax rate (Rs. 2,80,000 ÷ Rs. 7,15,000) : 39.16% (*b*)	
Doubly taxed income : Rs. 7,15,000	
Rate of relief on doubly taxed income [*i.e.*, (*a*) or (*b*), whichever is lower] : 16.37%	
Relief under section 91 (*i.e.*, 16.37% of Rs. 7,15,000)	1,17,053
Tax liability (rounded off)	98,230

Note - Double taxation relief under section 91 shall be calculated in respect of foreign income which is taxable in India as well as outside India. In this case, income of Business B (*i.e.*, Rs. 7,15,000) has been taxed in the foreign country. It is also taxable in India. Rs. 7,15,000 is, therefore, doubly taxed income. To find out doubly taxed income, loss incurred in Business C in another foreign country cannot be reduced—*CIT* v. *Bombay Burmah Trading Corpn. Ltd.* [2003] 126 Taxman 403 (Bom.). On Rs. 7,15,000 relief is available at the average rate of tax (*i.e.*, Indian tax rate or foreign tax rate, whichever is lower). To calculate Indian tax rate, one has to first find out taxable income in India from all sources (including loss from foreign Business C) and tax liability thereon. In other words, to find out average rate of tax in India, loss from Business C shall be taken into consideration. The ruling of Bombay High Court in the case of *Bombay Burmah Trading Corpn. Ltd.* (*supra*) supports this view.

174-P4 *X (41 years) is resident and ordinarily resident in India. The following information is given by him pertaining to the assessment year 2019-20—*

	Rs.
Income from Business A in India	*11,50,000*
Income from Business B situated in country B (India does not have ADT agreement with country B)	*11,80,000*
Tax paid by X in country B	*1,40,000*
Income from Business C situated in country C (India does not have ADT agreement with country C)	*9,60,000*
Tax paid by X in country C	*3,80,000*
Bank FD interest in India	*2,00,000*
Public provident fund contribution	*50,000*
Amount donated to a public charitable institute (notified for the purpose of section 80G)	*3,20,000*

Find out the net income and taxable thereon for the assessment year 2019-20. X is of the opinion that to find out double taxation relief, Indian average rate of tax shall be calculated separately for income generated in country B (without including income from country C) and likewise, for calculating average rate of tax in India in respect of income generated in country C (without including income from country B). This view he has taken from the ruling of Bombay High Court in the case of CIT *v.* Bombay Burmah Trading Corpn. Ltd. *[2003] 126 Taxman 403. Is he legally tenable ?*

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The opinion of X is not legally tenable. Indian average rate of tax shall be calculated by taking into consideration income from all sources including income from countries B and C. However, foreign tax rate shall be calculated separately for country B and country C. To the same effect ruling is given by the Bombay High Court in the case of *Bombay Burmah Trading Corpn. Ltd.* (*supra*). Net income and tax liability shall be calculated as follows—

	Rs.
Income from Business A in India	11,50,000
Income from Business B situated in country B	11,80,000
Income from Business C situated in country C	9,60,000
Bank interest in India	2,00,000
Gross total income	34,90,000
Less: Deduction under section 80C	50,000
Less: Deduction under section 80G (50% of Rs. 3,20,000)	1,60,000
Net income	32,80,000
Tax on net income	
Income-tax	7,96,500
Add: Health and education cess	31,860
Tax liability	8,28,360
Average rate of tax in India (*i.e.*, Rs. 8,28,360 ÷ Rs. 32,80,000) : 25.25% (*a*)	
Foreign tax rate for country B (Rs. 1,40,000 ÷ Rs. 11,80,000) : 11.86% (*b*)	
Foreign tax rate for country C (Rs. 3,80,000 ÷ Rs. 9,60,000) : 39.58% (*c*)	
Income doubly taxed in India and country B : Rs. 11,80,000	
Rate of relief on doubly taxed income in India and country B [*i.e.*, (*a*) or (*b*), whichever is lower] : 11.86%	
Relief under section 91 in the case of income from country B (*i.e.*, 11.86% of Rs. 11,80,000)	1,40,000
Income doubly taxed in India and country C : Rs. 9,60,000	
Rate of relief on doubly taxed income in India and country C [*i.e.*, (*a*) or (*c*), whichever is lower] : 25.25%	
Relief under section 91 in the case of income from country C (*i.e.*, 25.25% of Rs. 9,60,000)	2,42,447
Tax liability (rounded off)	4,45,910

MULTIPLE CHOICE QUESTIONS

Q1. Avoidance of double taxation agreement—

a. Can increase tax liability;

b. Can reduce tax liability;

c. Does not have any impact on tax liability;

d. Can impose tax liability in respect of income which is otherwise exempt under Income-tax Act.

Q2. There are two modes of granting relief under avoidance of double taxation agreement, exemption method and tax credit method—

a. True;

b. False.

Q3. Doubt taxation agreement provides bilateral relief whereas unilateral relief is provided by section 91—

a. True;

b. False.

Q4. India does not have an avoidance of double taxation agreement with a country where X, a resident and ordinarily resident in India, earns a business income of Rs. 4 lakh (no tax is payable in foreign country because the income is exempt in that country). In this case—

a. Relief will be calculated under section 91 at the average rate of tax applicable in India;

b. Relief will be calculated at the maximum marginal rate of tax application in India;

c. No relief will be available under section 91;

d. Such income will be exempt from tax in India.

Q5. A tax liability is imposed under the Income-tax Act. The avoidance of double taxation agreement may be resorted to for negativing tax liability or reducing tax liability—

a. True;

b. False.

Q6. Provisions of double taxation agreement override Income-tax Act provisions to the extent the provisions in agreement are more favourable to the Government—

a. True;

b. False.

Q7. X is resident and ordinarily resident in India. During the previous year 2018-19, he has Indian income of Rs. 40,000. Besides, he has a foreign income of Rs. 1 lakh (tax collected in the foreign country is Rs. 17,000, India does not have any avoidance of double taxation agreement with the other country)—

a. Relief will be available under section 91;

b. Relief available under section 91 will be zero, as the total income of X is Rs. 1,40,000 which is lower than the exemption limit;

c. Rs. 1 lakh will be taxable at the maximum marginal rate of 30 per cent and a credit of Rs. 17,000 would be available;

d. As the income is lower than exemption limit, no tax is payable in India and the Indian Government will refund Rs. 17,000 collected in the foreign country.

17 CHAPTER TRANSFER PRICING

International transaction [Secs. 92 to 92F]

177. The provisions under sections 92 to 92F have been enacted with a view to provide a statutory framework which can lead to computation of reasonable, fair and equitable profit and tax in India so that the profits chargeable to tax in India do not get diverted elsewhere by altering the prices charged and paid in intra-group transactions leading to erosion of Indian tax revenue. Any income arising from an international transaction shall be computed with regard to arm's length price.

■ With effect from the assessment year 2013-14, section 92BA has been inserted to extend transfer pricing provisions to a few domestic transactions [*see* para 183 for detailed discussion].

Conditions for applicability of arm's length price in the international transaction

177.1 The following conditions need to be satisfied for the applicability of the arm's length price in the international transaction—

1. International transaction is subjected to the arm's length price only in case of transaction between two entities called associate enterprises. An enterprise would be regarded as an associated enterprise of another enterprise, if—

a. it participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or

b. in respect of it one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

Clause (*a*) is about participation by one enterprise into other enterprise, whereas clause (*b*) is about participation by a third enterprise into both the enterprises.

2. Two enterprises shall be *deemed to be associated enterprises* if the two enterprises fall, at any time during the previous year, in any of the prescribed thirteen categories. In addition, these provisions are applicable if there is complete dependency of one enterprise on the other enterprise. In other words, in case of partial dependency, the two enterprises will not be deemed to be associated enterprises.

3. An international transaction should be carried out by the associated enterprises.

4. The transactions between an enterprise and another person is deemed as transactions entered into between two associated enterprises if either there is a prior agreement in relation to the relevant transaction between such other person and the associated enterprise or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise, irrespective of whether such other person is non-resident or not.

■ "International transaction" shall include –

a. the purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;

b. the purchase, sale, transfer, lease or use of intangible property, including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trade marks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;

c. capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance payments or deferred payment or receivable or any other debt arising during the course of business;

d. provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;

e. a transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date.

■ Further, the expression "intangible property" shall include (with retrospective effect from the assessment year 2002-03) for the aforesaid purpose of the following –

a. marketing related intangible assets, such as, trade marks, trade names, brand names, logos;

b. technology related intangible assets, such as, process patents, patent applications, technical documentation such as laboratory notebooks, technical know-how;

c. artistic related intangible assets, such as, literary works and copyrights, musical compositions, copyrights, maps, engravings;

d. data processing related intangible assets, such as, proprietary computer software, software copyrights, automated databases, and integrated circuit masks and masters;

e. engineering related intangible assets, such as, industrial design, product patents, trade secrets, engineering, drawing and schematics, blue prints, proprietary documentation;

f. customer related intangible assets, such as, customer lists, customer contracts, customer relationship, open purchase orders;

g. contract related intangible assets, such as, favourable supplier, contracts, licence agreements, franchise agreements, non-compete agreements;

h. human capital related intangible assets, such as, trained and organised work force, employment agreements, union contracts;

i. location related intangible assets, such as, leasehold interest, mineral exploitation rights, easements, air rights, water rights;

j. goodwill related intangible assets, such as, institutional goodwill, professional practice goodwill, personal goodwill of professional, celebrity goodwill, general business going concern value;

k. methods, programmes, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data;

l. any other similar item that derives its value from its intellectual content rather than its physical attributes.

Computation of the arm's length price (ALP)

178. Arm's length price as per section 92F is the price applied (or proposed to be applied) when two unrelated persons enter into a transaction in uncontrolled conditions. Therefore to constitute arm's length price :

a. the price should be applied or proposed to be applied in a transaction;

b. the transaction is between unrelated persons; and

c. the transaction is taking place in uncontrolled conditions.

Computation of ALP [Sec. 92C]

179. The arm's length price shall be determined by any of the method specified in this section, being the most appropriate method.

Method of computing arm's length price

179.1 Arm's length price can be computed by the following methods :

a. comparable uncontrolled price method (CUP);

b. resale price method (RPM);

c. cost plus method (CPM);

d. profit split method (PSM);

e. transactional net margin method (TNMM);

f. such other method as may be prescribed by the Board (other method).

■ *Comparable uncontrolled price method (CUP)* - Under this method,

a. the price charged or paid for property transferred or services provided in a comparable uncontrolled transaction, (*i.e.*, a transaction between enterprises other than associated enterprises whether resident or non-resident) or a number of such transactions, is identified;

b. such price is adjusted to account for differences, if any, between the international transaction and the comparable uncontrolled transactions or between the enterprises entering into such transactions, which could materially affect the price in the open market;

c. the adjusted price arrived at under (*b*) *supra* is taken to be an arm's length price in respect of the property transferred or services provided in the international transaction.

CUP is applied when a price is charged for a product or service. This is essentially comparison of prices charged for the property or services transferred in a controlled transaction to a price charged for property or services transferred in a comparable uncontrolled transaction. The bedrock of this method is the identification of an identical transaction, in a situation where a price is charged for products or services between unrelated parties.

■ *Resale price method (RPM)* - Under this method,

a. the price at which property purchased or services obtained by the enterprise from an associated enterprise is resold or are provided to an unrelated enterprise, is identified;

b. such resale price is reduced by the amount of a normal gross profit margin accruing to the enterprise or to an unrelated enterprise from the purchase and resale of the same or similar property or from obtaining and providing the same or similar services, in a comparable uncontrolled transaction, or a number of such transactions;

c. the price so arrived at is further reduced by the expenses incurred by the enterprise in connection with the purchase of property or obtaining of services;

d. the price so arrived at is adjusted to take into account the functional and other differences, including differences in accounting practices, if any, between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of gross profit margin in the open market;

e. the adjusted price arrived at under (*d*) (*supra*) is taken to be an arm's length price in respect of the purchase of the property or obtaining of the services by the enterprise from the associated enterprise.

The RPM is to be applied when a property purchased or service obtained from an associated enterprise is resold to an unrelated enterprise. The RPM is based on the price at which a product that has been purchased from an associated enterprise is resold to an independent enterprise. The resale price is reduced by resale price margin for arriving at the ALP. The resale price of goods is reduced by the direct expenditure and the normal gross profit margin that would have been earned by an unrelated enterprise in a similar transaction. The price is further adjusted on account of different accounting practices and other differences between the transactions. There may be an internal RPM or external RPM as in the case of a CUP. Benchmarking of the margins is critical in this process. RPM could be reasonable method to apply to transactions involving resale of tangible property or in cases where the services are resold without value addition. This method is particularly suitable in cases where goods are sold within a short period of purchases and influence of other factors is found to be minimal.

■ *Cost plus method (CPM)* - Under this method,

a. the direct and indirect costs of production incurred by the enterprise in respect of property transferred or services provided to an associated enterprise, are determined;

b. the amount of a normal gross profit mark-up to such costs (computed according to the same accounting norms) arising from the transfer or provision of the same or similar property or services by the enterprise, or by an unrelated enterprise, in a comparable uncontrolled transaction, or a number of such transactions, is determined;

c. the normal gross profit mark-up referred to in (*b*) *supra* is adjusted to take into account the functional and other differences, if any, between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect such profit mark-up in the open market;

d. the costs referred to in (*a*) *supra* are increased by the adjusted profit mark-up arrived at under (*c*) *supra*;

e. the sum so arrived at is taken to be an arm's length price in relation to the supply of the property or provision of services by the enterprise.

This method is ordinarily used where some semi-finished goods are sold between related parties or similar situations or in respect of joint facility agreements, long-term buy and supply arrangements of provisions of services, etc.

■ *Profit split method (PSM)* - This method is applicable mainly in international transactions involving transfer of unique intangibles or in multiple international transactions which are so interrelated that they cannot be evaluated separately for the purpose of determining the arm's length price of any one transaction. As per profit split method, which—

a. the combined net profit of the associated enterprises arising from the international transaction in which they are engaged, is determined;

b. the relative contribution made by each of the associated enterprises to the earning of such combined net profit, is then evaluated on the basis of the functions performed, assets employed or to be employed and risks assumed by each enterprise and on the basis of reliable external market data which indicates how such contribution would be evaluated by unrelated enterprises performing comparable functions in similar circumstances;

c. the combined net profit is then split amongst the enterprises in proportion to their relative contributions, as evaluated under (*b*) (*supra*);

d. the profit thus apportioned to the assessee is taken into account to arrive at an arm's length price in relation to the international transaction.

This method may be applicable in cases where transactions involved transfer of unique, intangible or any multiple interrelated international transactions, which cannot be evaluated separately for determining the ALP of any one transaction.

■ *Transactional Net Margin Method (TNMM)* - According to transactional net margin method—

a. the net profit margin realised by the enterprise from an international transaction entered into with an associated enterprise is computed in relation to costs incurred or sales effected or assets employed or to be employed by the enterprise or having regard to any other relevant base;

b. the net profit margin realised by the enterprise or by an unrelated enterprise from a comparable uncontrolled transaction or a number of such transactions is computed having regard to the same base;

c. the net profit margin referred to in (*b*) (*supra*) arising in comparable uncontrolled transactions is adjusted to take into account the differences, if any, between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of net profit margin in the open market;

d. the net profit margin realised by the enterprise and referred to in (*a*) (*supra*) is established to be the same as the net profit margin referred to in (*c*) (*supra*);

e. the net profit margin thus established is then taken into account to arrive at an arm's length price in relation to the international transaction.

The TNMM is similar to RPM and CPM to the extent that it involves comparison of margin earned in a controlled situation with margins earned from comparable uncontrolled situation. The only difference is that in the RPM and CPM methods, comparison is of margins of gross profits whereas in TNMM the comparison is of margins of net profit.

Comparability of transaction

179.2 The comparability of one transaction with another shall be judged with reference to the following, namely—

a. the specific characteristics of the property or services transferred in either transaction;

b. the functions performed, taking into account assets employed or to be employed and the risks assumed, by the respective parties to the transactions;

c. the contractual terms (whether or not such terms are formal or in writing) of the transactions which lay down explicitly or implicitly how the responsibilities, risks and benefits are to be divided between the respective parties to the transactions;

d. conditions prevailing in the markets in which the respective parties to the transactions operate, including the geographical location and size of the markets, costs of labour and capital in the markets, overall economic development and level of competition and whether the markets are wholesale or retail.

An uncontrolled transaction shall be comparable to an international transactions, if—

a. none of the differences (if any) between the transactions being compared, or between the enterprises entering into such transaction, are likely to materially affect the price or cost charged or paid in, or the profit arising from, such transactions in the open market; or

b. reasonably accurate adjustments can be made to eliminate the material effects of such differences.

Most appropriate method

179.3 According to section 92C(1), the arm's length price shall be determined having regard to the most appropriate method. The most appropriate method shall be the method which is best suited to the facts and circumstances of each particular transaction, and which provides the most reliable measure of an arm's length price in relation to an international transaction.

In a case where the factors referred to above indicate more than one method as the most appropriate method, the method providing a result consistent with the result obtainable by application of a method other than such methods may be taken as the most appropriate method.

However, in a given situation, and to the extent possible, the comparable uncontrolled price method, or the resale price method or the cost plus method shall be considered to be more appropriate than the profit split method or the transactional net margin method.

Where more than one price is determined by the most appropriate method, the arm's length price shall be determined as discussed in para 179A.

Determination of arm's length price by Assessing Officer in certain cases [Sec. 92C(3)]

179.4 The Assessing Officer may determine the arm's length price, if the following conditions are satisfied :

1. There is a proceeding for assessment of income.

2. The Assessing Officer has material or information or document in his possession.

3. On the basis of such material or information or document, the Assessing Officer is of the 'opinion' that the—

a. arm's length price charged or paid in an international transaction has not been determined in accordance with sub-section (1) or (2) of section 92C; or

b. assessee has not kept the prescribed information and document relating to an international transaction; or

c. information or data used for consulting the arm's length price is not reliable or correct; or

d. assessee has failed to furnish, within the time specified any information or document which was required to be furnished by the Assessing Officer.

On satisfaction of the aforesaid conditions, the Assessing Officer may proceed to determine the arm's length price.

However, an opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, why the arm's length price should not be so determined on the basis of material or information or document in the possession of the Assessing Officer.

Computation of arm's length price in cases where more than one price is determined under most appropriate method

179A. Where more than one price is determined under most appropriate method, arm's length price is computed as follows –

Transactions undertaken prior to April 1, 2014	On the basis of arithmetic mean	Only single year data is used
Transactions undertaken on or after April 1, 2014	Range concept is applicable in some cases, in other remaining cases arithmetic mean is to be applied	Multiple year data can be used in some cases

179A.1 Range concept/multiple year data is applicable only in respect of transactions undertaken on or after April 1, 2014 in some cases as follows –

Range concept/ multiple year data - When applicable

Methods	*Applicability of range concept*		*Applicability of single year/multiple year data*
	If comparable transactions are 6 or more	*If comparable transactions are 2 or 3 or 4 or 5*	
Comparable uncontrolled price method (CUP)	Applicable	Not applicable	Single year data
Resale price method (RPM)	Applicable	Not applicable	Multiple year data
Cost plus method (CPM)	Applicable	Not applicable	Multiple year data
Profit split method (PSM)	Not applicable	Not applicable	Single year data
Transactional net margin method (TNMM)	Applicable	Not applicable	Multiple year data
Other method as may be prescribed by the Board (Other method)	Not applicable	Not applicable	Single year data

179A.2 Range concept is not applicable if comparable transactions are less than 6 (*i.e.*, when comparable transactions are either 2 or 3 or 4 or 5). Moreover, range concept is not applicable in the case of PSM and Other method (even if comparable transaction for 6 or more). When range concept is not applicable, arm's length price shall be taken to be arithmetic mean of comparable transactions.

When range concept is not applicable

■ *Tolerance tag or tolerance range in the case of arithmetic mean is used* - If the variation between the arm's length price (determined by using arithmetic mean) and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such notified percentage of the latter, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price. By virtue of section 92C, the Central Government has power to notify tolerance tag for this purpose. Tolerance tag cannot exceed 3 per cent if notification pertains to the assessment year 2013-14 or any subsequent year. The Central Government has notified the tolerance tag for different assessment years as follows –

Assessment year 2012-13	5 per cent
Assessment year 2013-14 onwards	1 per cent for wholesale traders, 3 per cent for others

For the above table, "wholesale trading" means an international transaction or specified domestic transaction of trading in goods, which fulfils the following conditions, namely–

a. purchase cost of finished goods is 80 per cent or more of the total cost pertaining to such trading activities; and

b. average monthly closing inventory of such goods is 10 per cent or less of sales pertaining to such trading activities.

179A.2-P1 *X Ltd., an Indian company, is a subsidiary company of Y Inc., a company registered in the Netherlands. It purchases raw materials from Y Inc. Purchase prices of raw material determined under CUP method (being the most appropriate method) for the previous year 2018-19 are Rs. 9,700, Rs. 10,000, Rs. 10,100 and Rs. 10,300 per unit. X Ltd., however, pays to Y Inc. Rs. 1,04,50,000 (i.e., 950 units at the rate of Rs. 11,000 per unit). Net profit as per statement of profit and loss for the year ending March 31, 2019 is Rs. 9,40,000. Determine arm's length price and net income of X Ltd. for the assessment year 2019-20. X Ltd. is not a "wholesale trader".*

Case studies

■

	Rs.
Arithmetic mean of price determined under the most appropriate methods [(Rs. 9,700 + Rs. 10,000 + Rs. 10,100 + Rs. 10,300) ÷ 4] (*a*)	10,025
Price at which raw material is purchased from associate enterprise under international transaction (*b*)	11,000
Difference between arithmetic mean and transaction price [(*b*) – (*a*)] (*c*)	975

	Rs.
Tolerance tag (X Ltd. is not a wholesale trader)	3%
3% of transaction price [*i.e.*, 3% of (*b*)]	330
Arm's length price (if purchase price of raw material is more than arithmetic mean and difference is more than 3% of purchase price, then arithmetic mean is taken as arm's length price; otherwise no adjustment would be required)	10,025
Computation of net income –	
Net profit as per statement of profit and loss	9,40,000
Add: Transfer pricing adjustment [950 × (purchase price : Rs. 11,000 – arm's length price : Rs. 10,025)]	9,26,250
Net income	18,66,250

179A.2-P2 *Suppose in problem 179A.2-P1, purchase price determined under the most appropriate method are Rs. 10,400, Rs. 10,600, Rs. 10,800 and Rs. 10,920 for the previous year 2018-19. Another transaction of a comparable unit is discovered by the TPO (price being Rs. 10,300 per unit). However, this transaction pertains to March 2018. No other change in data.*

■

Under CUP method data pertaining to multiple year cannot be used. Therefore, the transaction pertaining to Rs. 10,300 cannot be utilised for the previous year 2018-19.

	Rs.
Arithmetic mean of price determined under the most appropriate methods [(Rs. 10,400 + Rs. 10,600 + Rs. 10,800 + Rs. 10,920) ÷ 4] (*a*)	10,680
Price at which raw material is purchased from associate enterprise under international transaction (*b*)	11,000
Difference between arithmetic mean and transaction price [(*b*) – (*a*)] (*c*)	320
3% of transaction price [*i.e.*, 3% of (*b*)]	330
Arm's length price (purchase price of raw material is more than arithmetic mean but the difference is not more than 3% of purchase price, no adjustment is required)	11,000

When range concept is applicable

179A.3 Range concept is applicable in a few cases (as discussed in the Table given in para 179A.1). Multiple year data (*i.e.*, current year and earlier 2 years) can be used in some cases. When multiple year data is used, weighted average is applied. These conditions are given in the Table below –

Applicability of range concept if comparable transactions are 6 or more	*Single year data or multiple year data*	*Weighted average price to be computed with weight being assigned to the following –*
Comparable uncontrolled price method (CUP)	Single year data	Weighted average not applicable
Resale price method (RPM)	Multiple year data	Quantum of sales which has been considered for arriving at the respective prices
Cost plus method (CPM)	Multiple year data	Quantum of costs which has been considered for arriving at the respective prices
Transactional net margin method (TNMM)	Multiple year data	Quantum of costs incurred or sales effected or assets employed or any other base which has been considered for arriving at the respective prices

■ *Other relevant points pertaining to range concept* - Other relevant points are given below –

1. When RPM, CPM or TNMM is selected as the most appropriate method, multiple year data can be used as follows –

- Current year data along with data of preceding 2 years can be used where current year data is available at the time of furnishing return provided comparable uncontrolled transactions satisfy the test of comparability analysis.

- If current year data is not available at the time of furnishing return, data pertaining to preceding 2 years can be used provided comparable uncontrolled transactions satisfy the test of comparability analysis.

2. A dataset needs to be constructed by arranging the comparable data in an ascending order. If dataset has less than 6 comparable transactions, range concept is not applicable.

3. The related party transactions would be treated as arm's length price if it false between the 35th percentile and 65th percentile of dataset. Rule 10CA gives mode of computation of percentile which is discussed in the problems given below.

4. If the related party transaction does not fall within the range given above, the median of dataset will be taken as arm's length price and necessary transfer pricing adjustment in computing taxable income shall be made accordingly. For this purpose, the median of dataset shall be the lowest value in the dataset so that at least 50 per cent of the values included in the dataset are equal to or less than such value.

179A.3-P1 *X Ltd. is an Indian manufacturing company. It is a subsidiary company of Y Inc. (a US company). X Ltd. purchases raw material from Y Inc. at the rate of Rs. 450 per unit during the previous year 2018-19. X Ltd. purchases the same raw material from other companies (not associated or related with X Ltd.) during the current year as well as preceding years (data is given below in the table). The most appropriate method for transfer pricing adjustments is CUP method. Determine the arm's length price for computation of net income of X Ltd. for the assessment year 2019-20. X Ltd. is not a "wholesale dealer".* Case studies

Raw material supplier (not being associated enterprise of X Ltd.)	Transaction price for different previous years (per unit in Rs.)		
	2018-19	2017-18	2016-17
A Ltd.	*360*	*190*	*298*
B Ltd.	*460*	*180*	*390*
C Ltd.	*510*	*No transaction*	*410*
D Ltd.	*No transaction*	*420*	*400*
E & Co. (a firm)	*305*	*410*	*390*
F Ltd.	*270*	*560*	*No transaction*
G (a sole proprietor)	*390*	*400*	*400*
H Ltd.	*295*	*390*	*405*
I Ltd.	*No transaction*	*190*	*407*
J Ltd.	*392*	*210*	*380*
K Ltd.	*508*	*350*	*250*

■

CUP method is the most appropriate method, as given in the problem. Preceding 2 years data is available. But in CUP method multiple year data cannot be used. Only current year data is considered for the purpose of calculating arm's length price. In the current year (*i.e.*, previous year 2018-19), there is no transaction with D Ltd. and I Ltd. Consequently, these parties will be excluded. The following dataset can be constructed on the basis of data given in *Column 2* by arranging transaction prices in ascending order.

No.	1	2	3	4	5	6	7	8	9
Transaction price	270	295	305	360	390	392	460	508	510

35th percentile in the dataset (No. of items : $9 \times 35 \div 100$) = 3.15	3.15 is not whole number. The next higher data place (Item 4) shall be taken	Value of Item 4 : Rs. 360
65th percentile in the dataset (No. of items : $9 \times 65 \div 100$) = 5.85	5.85 is not whole number. The next higher data place (Item 6) shall be taken	Value of Item 6 : Rs. 392

Arm's length range will be Rs. 360 – Rs. 392. If transaction price falls in this range, the transaction price will be taken as arm's length price. In this case, transaction price is Rs. 450. It is outside this range. Transaction price cannot be taken as arm's length price. The median of above dataset will become arm's length price. For this purpose, the median of dataset shall be calculated as follows –

Median of dataset (No. of items : 9 × 50 ÷ 100) = 4.5	4.5 is not whole number. The next higher data place (Item 5) shall be taken	Value of Item 5 : Rs. 390

Therefore, arm's length price will be Rs. 390. Taxable income of X Ltd. will be calculated by taking arm's length price of Rs. 390 as purchase price of raw material in respect of raw material procurement from Y Inc.

179A.3-P2 *Suppose in problem 179A.3-P1, X Ltd. purchases raw material from 20 unassociated enterprises during the current year. The dataset pertaining to purchase price of raw material arranged in ascending order is as follows –*

No.	*1*	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*10*	*11*	*12*	*13*	*14*	*15*	*16*	*17*	*18*	*19*	*20*
Price	*262*	*272*	*280*	*302*	*303*	*305*	*308*	*360*	*372*	*374*	*405*	*406*	*408*	*418*	*422*	*470*	*475*	*478*	*479*	*530*

Recalculate arm's length price for transfer pricing adjustment.

■

35th percentile in the dataset (No. of items : 20 × 35 ÷ 100) = 7	7 is whole number. 35th percentile will be the average of Item 7 and (the next higher) Item 8.	Average of Items 7 and 8 : Rs. 334 [*i.e.*, (Rs. 308 + Rs. 360) ÷ 2]
65th percentile in the dataset (No. of items : 20 × 65 ÷ 100) = 13	13 is whole number. 65th percentile will be the average of Item 13 and (the next higher) Item 14.	Average of Items 13 and 14 : Rs. 413 [*i.e.*, (Rs. 408 + Rs. 418) ÷ 2]

Arm's length range will be Rs. 334 – Rs. 413. If transaction price falls in this range, the transaction price will be taken as arm's length price. In this case, transaction price is Rs. 450. It is outside this range. Transaction price cannot be taken as arm's length price. The median of above dataset will become arm's length price. For this purpose, the median of dataset shall be calculated as follows –

Median of dataset (No. of items : 20 × 50 ÷ 100) = 10	10 is whole number. The median will be the average of Item 10 and (the next higher) Item 11	Average of Items 10 and 11 : Rs. 389.5 [*i.e.*, (Rs. 374 + Rs. 405) ÷ 2]

Therefore, arm's length price will be Rs. 389.5. Taxable income of X Ltd. will be calculated by taking arm's length price of Rs. 389.5 as purchase price of raw material in respect of raw material procurement from Y Inc.

179A.3-P3 *Suppose in problem 179A.3-P1, X Ltd. purchases raw material from 5 unassociated enterprises during the current year (data is given below). Data pertaining to external uncontrolled transactions is not available, as the same raw material is not acquired by any other person in India.*

Raw material supplier	*A Ltd.*	*B Ltd.*	*C Ltd.*	*D & Co.*	*E Ltd.*
Price per unit in Rs.	*300*	*410*	*305*	*408*	*490*

Recalculate arm's length price.

■

Range concept is not applicable, as number of comparable uncontrolled transactions is less than 6. In such a situation, arithmetic mean along with tolerance tag will be applicable as follows –

	Rs.
Arithmetic mean of price determined under the most appropriate methods (*i.e.*, CUP method) [(Rs. 300 + Rs. 410 + Rs. 305 + Rs. 408 + Rs. 490) ÷ 5] (*a*)	382.6
Price at which raw material is purchased from associate enterprise under international transaction (*b*)	450
Difference between arithmetic mean and transaction price [(*b*) – (*a*)] (*c*)	67.4
Tolerance tag (X Ltd. is not a wholesale trader)	3%
3% of transaction price [*i.e.*, 3% of (*b*)]	13.50
Arm's length price (if purchase price of raw material is more than arithmetic mean and difference is more than 3% of purchase price, then arithmetic mean is taken as arm's length price; otherwise no adjustment would be required)	382.6

179A.3-P4 *X Ltd., an Indian company, provides engineering design and information technology services to its three subsidiary companies which operate from Germany, UK and Netherlands. Operating margin during the previous year 2018-19 is 8.2 per cent. Nine comparable companies have been identified with TNMM as most appropriate method. All the identified comparable companies have also undertaken comparable uncontrolled* *transactions in the current year and preceding 2 years. Data pertaining to these companies for the current year as well as 2 preceding years is given below –*

Name	*2018-19*		*2017-18*		*2016-17*		*Total*	
	OP	*OC*	*OP*	*OC*	*OP*	*OC*	*OP*	*OC*
(1)	*(2)*	*(3)*	*(4)*	*(5)*	*(6)*	*(7)*	*(8) =(2+4+6)*	*(9) =(3+5+7)*
A Ltd.	*11*	*95*	*9*	*140*	*25*	*115*	*45*	*350*
B Ltd.	*9*	*75*	*8*	*85*	*7*	*93*	*24*	*253*
C Ltd.	*12*	*144*	*14*	*280*	*8*	*75*	*34*	*499*
D Ltd.	*13*	*130*	*16*	*170*	*9*	*92*	*38*	*392*
E Ltd.	*17*	*185*	*21*	*215*	*19*	*108*	*57*	*508*
F Ltd.	*16*	*90*	*18*	*111*	*12*	*125*	*46*	*326*
G Ltd.	*21*	*208*	*7*	*86*	*11*	*85*	*39*	*379*
H Ltd.	*9*	*110*	*17*	*200*	*23*	*320*	*49*	*630*
I Ltd.	*22*	*115*	*20*	*175*	*18*	*197*	*60*	*487*

OP = Operating profit, OC = Operating cost.

Determine the arm's length price for computation of net income of X Ltd. for the assessment year 2019-20.

■

TNMM is the most appropriate method, as given in the problem. Preceding 2 years data is available. In TNMM multiple year data can be used. The profit level indicator used in applying the most appropriate method is operating profit as compared to operating cost (OP/OC). The weighted average shall be based upon the weight of operating cost as computed below –

Name	*Total*		*Weighted average*
	OP	*OC*	*Column (8) ÷ Column (9)*
(1)	*(8) =(2+4+6)*	*(9) =(3+5+7)*	
A Ltd.	45	350	12.85714%
B Ltd.	24	253	9.486166%
C Ltd.	34	499	6.813627%
D Ltd.	38	392	9.693878%
E Ltd.	57	508	11.22047%
F Ltd.	46	326	14.11043%
G Ltd.	39	379	10.29024%
H Ltd.	49	630	7.777778%
I Ltd.	60	487	12.32033%

The following dataset can be constructed on the basis of weighted average data given above by arranging percentages in ascending order –

No.	1	2	3	4	5	6	7	8	9
Operating margin indicator	6.81%	7.78%	9.49%	9.69%	10.29%	11.22%	12.32%	12.86%	14.11%

35th percentile in the dataset (No. of items : 9 × 35 ÷ 100) = 3.15	3.15 is not whole number. The next higher data place (Item 4) shall be taken	Value of Item 4 : 9.69%
65th percentile in the dataset (No. of items : 9 × 65 ÷ 100) = 5.85	5.85 is not whole number. The next higher data place (Item 6) shall be taken	Value of Item 6 : 11.22%

Arm's length range will be 9.69% – 11.22%. If operating margin falls in this range, no transfer pricing adjustment will be required. In this case, operating margin is 8.2%. It is outside this range. Consequently, transfer pricing adjustment is required. The median of above dataset will become arm's length profit indicator. For this purpose, the median of dataset shall be calculated as follows –

Median of dataset (No. of items : $9 \times 50 \div 100) = 4.5$	4.5 is not whole number. The next higher data place (Item 5) shall be taken	Value of Item 5 : 10.29%

Taxable income of X Ltd. will be recalculated by taking profit margin of 10.29%.

Reference to transfer pricing officer [Sec. 92CA]

180. The Assessing Officer may refer the computation of arm's length price under section 92C to the Transfer Pricing Officer (TPO) if he considers it necessary and expedient and an approval of the Commissioner has been obtained.

Transfer Pricing Officer shall serve a notice to the assessee requiring him to produce (or cause to be produced) on a specified date any evidence which the assessee may rely in support of the computation made by him of the arm's length price in relation to the international transaction.

The Transfer Pricing Officer shall by order in writing determine the arm's length price in relation to the international transaction and send a copy of his order to the Assessing Officer and to the assessee.

Transfer Pricing Officer can also determine arm's length price of an international transaction noticed by him in the course of proceedings before him, even if the said transaction was not referred to him by the Assessing Officer.

Computation of income by Assessing Officer

180.1 On receipt of the order of the Transfer Pricing Officer, the Assessing Officer shall proceed to compute the total income of the assessee in conformity with the arm's length price determined by the Transfer Pricing Officer.

Mistakes apparent from record

180.2 Transfer Pricing Officer may amend any order passed by him with a view to rectify any mistake apparent from the record and provisions of section 154 shall apply accordingly. Thereafter Transfer Pricing Officer shall send the copy of such order to the Assessing Officer and on the basis of such order the Assessing Officer shall amend his order accordingly.

Action can be taken with a view to rectifying any mistake apparent from the record. It does not enable an order to be reversed by revision or by review, but permits only some error which is apparent on the face of the record to be corrected. Where an error is far from self-evident, it ceases to be an apparent error.

Powers under section 131 or 133

180.3 The Transfer Pricing Officer may for the purpose of determining the arm's length price under section 92CA exercise all or any of the powers specified in clauses (*a*) to (*d*) of section 131(1) or section 133(6).

Maintenance of books of account [Sec. 92D]

181. Every person who has entered into an international transaction shall keep and maintain the prescribed books of account such as a description of the ownership structure of the assessee enterprise with details of shares or other ownership interest held by other enterprises; a profile of the multinational group of which the assessee enterprise is a part along with the name, address, legal status and country of tax residence; etc. Such information should be available by the due date of submission of return of income.

In a case where the aggregate value of international transactions entered into by the assessee does not exceed Rs.1 crore, the information and documents specified above may not be maintained. However, such assessee shall be required to substantiate, on the basis of material available with him, that income arising from international transactions entered into by him has been computed in accordance with section 92.

Support by authentic documentation

181.1 The information specified above shall be supported by authentic documentation such as official publications, reports, studies, data bases, published accounts and financial statements relating to the business affairs of the associated enterprise, etc. The information specified above should by available by the due date of submission of return of income.

Continuity for more than a year

181.2 Where an international transaction continues to have effect over more than one previous year, fresh documentation need not be maintained separately in respect of each previous year, unless there is any significant change in the nature or terms of the international transaction.

Period

181.3 The information and documents specified in paras 181, 181.1 and 181.2 shall be kept and maintained for a period of 8 years from the end of the relevant assessment year.

Furnishing information about international transaction

181.4 The Assessing Officer or Commissioner (Appeals) may in the course of any proceeding under this Act require any person who has entered into an international transaction to furnish any information or document in respect thereof (only during continuation of any proceeding under Income-tax Act at the relevant time).

Thus, (*a*) there should be a pending proceeding in existence, and (*b*) information sought to be furnished must be of a nature which is relevant and fruitful for such pending proceedings.

This information or document will have to be furnished within a period of 30 days (with further extension of 30 more days) from the date of receipt of notice in this regard.

Report from accountant [Sec. 92E]

182. The report from a chartered accountant [Form No. 3CEB] is required to be furnished by every person who has entered into an international transaction during the previous year in prescribed form (duly verified). It shall be furnished electronically before the due date of submission of return of income.

Specified domestic transactions

183. Section 92BA has been inserted with effect from the assessment year 2013-14. It provides meaning of "specified domestic transaction" with reference to which the income is computed under section 92 having regard to arm's length price. The following transactions are covered within the meaning of "specified domestic transactions" if the aggregate of these transactions entered into by the assessee in a previous year exceeds Rs. 20 crore ––

a. any expenditure in respect of which payment has been made or is to be made to a person referred to in section 40A(2)(*b*) (applicable only for the assessment years 2013-14 to 2016-17);

b. any transaction referred to in section 80A;

c. any transfer of goods or services referred to in section 80-IA(8);

d. any business transacted between the assessee and other person as referred to in section 80-IA(10);

e. any transaction referred to in any other section under Chapter VI-A or section 10AA, to which provisions of section 80-IA(8)/(10) are applicable; or

f. any other transaction as may be prescribed.

Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the above domestic transactions shall be computed having regard to the arm's length price. For this purpose, arm's length price shall be determined within the parameters of sections 92 to 92F discussed earlier in this chapter.

Advance pricing agreement (APA) [Secs. 92CC and 92CCD]

184. Advance Pricing Agreement is an agreement between a taxpayer and a taxing authority on an appropriate transfer pricing methodology for a set of transactions over a fixed period of time in future. The APA offers better assurance on transfer pricing methods and are conducive in providing certainty and unanimity of approach.

Sections 92CC and 92CD have been inserted by the Finance Act, 2012 with effect from July 1, 2012 to provide a framework for advance pricing agreement under the Act. These provisions provide the following –

■ *Board may enter into APA* - Section 92CC empowers the Board (with the approval of the Central Government) to enter into an advance pricing agreement with any person.

■ *Purpose of APA* - Such APA shall include determination of the arm's length price or specify the manner in which arm's length price shall be determined, in relation to an international transaction to be entered into by that person.

■ *How to compute ALP* - The manner of determination of arm's length price in such cases shall be any method including those already provided in section 92C(1), with necessary adjustments or variations.

■ *APA to supersede provisions of section 92C or 92CA* - The arm's length price of any international transaction, which is covered under such APA, shall be determined in accordance with the APA so entered into. The provisions of section 92C or 92CA which normally apply for determination of arm's length price will be modified to this extent. As a consequence, arm's length price shall be determined in accordance with APA.

■ *Validity of APA* - The APA shall be valid for such previous years as are specified in the agreement which in no case shall exceed five consecutive previous years.

■ *Roll back provisions* - Roll back provisions are applicable from October 1, 2014. The "roll back" provisions refer to the applicability of the methodology of determination of ALP, or the ALP, to be applied to the international transactions which had already been entered into in a period prior to the period covered under an APA. These provisions have been incorporated by the Finance (No. 2) Act, 2014. Under these provisions, the APA may, subject to such prescribed conditions†, procedure and manner, provide for determining the arm's length price in relation to an international transaction entered into by a person during any period not exceeding 4 previous years preceding the first of the previous years for which the advance pricing agreement applies in respect of the international transaction to be undertaken in future.

■ *Effectiveness of APA* - The APA shall be binding only on the person and the Commissioner (including income-tax authorities subordinate to him) in respect of the transaction in relation to which the agreement has been entered into. The APA shall not be binding if there is any change, in law, or facts having bearing on such APA.

■ *APA obtained by fraud* - The Board is empowered to declare, with the approval of Central Government, any such agreement to be void *ab initio*, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts. Once an agreement is declared void *ab initio*, all the provisions of the Act shall apply to the person as if such APA had never been entered into.

For the purpose of computing any period of limitation under the Act, the period beginning with the date of such APA and ending on the date of order declaring the agreement void *ab initio* shall be excluded. However, if after the exclusion of the aforesaid period, the period of limitation referred to in any provision of the Act is less than 60 days, such remaining period shall be extended to 60 days.

■ *Procedures* - The Board is empowered to prescribe a scheme providing for the manner, form, procedure and any other matter generally in respect of the advance pricing agreement.

■ *Pending proceedings* - Where an application is made by a person for entering into such an APA, proceedings shall be deemed to be pending in the case of the person for the purposes of the Act like for making enquiries under section 133.

■ *Modified return within 3 months* - The person entering into such APA shall necessarily have to furnish a modified return within a period of 3 months from the end of the month in which the said APA was entered into in respect of the return of income already filed for a previous year to which the APA applies. The modified return has to reflect modification to the income only in respect of the issues arising from the APA and in accordance with it.

■ *Pending assessments* - Where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the agreement applies are pending on the date of filing of a modified return, the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the agreement, taking into consideration the modified return so filed and normal period of limitation of completion of proceedings shall be extended by 1 year.

■ *Modification of completed assessment* - If the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the agreement applies has been completed before the expiry of period allowed for furnishing of modified return, the Assessing Officer shall, in a case where modified return is filed, pass an order modifying the total income of the relevant assessment year determined in such assessment or reassessment, having regard to and in accordance with the APA. To such order, all the provisions relating to assessment shall apply as if the modified return is a return furnished under section 139. The period of limitation for such order is 1 year from the end of the financial year in which the modified return is furnished.

CASE STUDY

For the assessment year 2017-18, X Ltd. submits return of income on November 10, 2017. On November 18, 2017, it enters into an advance pricing agreement (APA) with the Board pertaining to determination of arm's length price in connection with import of semi-finished goods from its holding company situated in the Netherlands. The agreement provides ALP for the transactions pertaining to the assessment years 2016-17 and 2017-18. The assessment of 2016-17 has already been completed but the assessment for 2017-18 is pending on the date of entering into APA.

†*See* rule 10MA.

In this case, X Ltd. will have to submit a modified return for the assessment year 2016-17 (and also for the assessment year 2017-18) on or before February 28, 2018 (*i.e.*, within 3 months from the end of the month in which APA is made).

On February 28, 2018, the assessment for the assessment year 2016-17 has already been completed. For the assessment year 2016-17, the Assessing Officer will reassess or modify the income keeping in view the provisions of APA. This order can be completed on or before March 31, 2019 (*i.e.*, within 1 year from the end of the financial year in which modified return is submitted).

On February 28, 2018, the assessment for the assessment year 2017-18 is pending. Normally, the assessment for the assessment year 2017-18 should be completed before April 1, 2020. In this case, the Assessing Officer can complete the assessment for the assessment year 2017-18 (keeping in view the provisions of APA) at any time before April 1, 2021.

Secondary adjustment in certain international transactions [Sec. 92CE]

185. Section 92CE has been inserted with effect from the assessment year 2018-19.

Secondary adjustment in common parlance

185.1 "Secondary adjustment" means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee. As per the OECD's Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD transfer pricing guidelines), secondary adjustment may take the form of constructive dividends, constructive equity contributions, or constructive loans.

The provisions of secondary adjustment are internationally recognised and are already part of the transfer pricing rules of many leading economies in the World (countries like Canada, France, Korea, South Africa, USA have adopted this kind of adjustment in their transfer pricing legislations). While mode of secondary adjustments in different countries is different, yet there can be no case of secondary adjustment in the absence of primary adjustment. Deemed dividend, deemed equity contribution or deemed loan are different approaches adopted by different countries. However, the object of different approaches is to align the economic benefit of the transaction with the arm's length position.

When section 92CE is applicable

185.2 Under section 92CE, the assessee is required to carry out secondary adjustment where the primary adjustment to transfer price has been made.

- *What is primary adjustments* - "Primary adjustment" to a transfer price means the determination of transfer price in accordance with the arm's length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee.

- *What is secondary adjustment* - "Secondary adjustment" means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise is consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

- *When secondary adjustment will be applicable* - Secondary adjustment will be applicable in the following situations –

1. Where a primary adjustment to transfer price has been made *suo motu* by the assessee in his return of income.

2. Where a primary adjustment to transfer price made by the Assessing Officer has been accepted by the assessee.

3. Where a primary adjustment to transfer price is determined by an advance pricing agreement entered into by the assessee under section 92CC on or after April 1, 2017.

4. Where a primary adjustment to transfer price is made as per the safe harbour rules framed under section 92CB.

5. Where a primary adjustment to transfer price is arising as a result of resolution of an assessment by way of the mutual agreement procedure under DTAA entered into under section 90/90A.

■ *Threshold limit - When secondary adjustment is not applicable* - If the following two conditions are not satisfied, secondary adjustment is not required –

a. the amount of primary adjustment made in the case of an assessee in any previous year does not exceed Rs. 1 crore; or

b. the primary adjustment is made in respect of the assessment year 2016-17 (or any earlier assessment year).

■ *Quantification of secondary adjustment* - The relevant provisions are as follows –

1. As a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee.

2. The difference between the arm's length price determined in primary adjustment and the price at which the international transaction has actually been undertaken, is "excess money".

3. The excess money is not repatriated to India by the associated enterprise within the prescribed time (given by rule 10CB) (in general terms, repatriation means effectively reversing the funds so that the accounts of the parties involved are in line with the economic intend of the primary adjustment). The excess money (or part thereof, which is not repatriated to India) shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance shall be computed as the income of the assessee in the manner as is prescribed by rule 10CB.

■ *Prescribed time-limit as per rule 10CB* - CBDT has notified rule 10CB which prescribes computation of interest income pursuant to secondary adjustment. Rule 10CB also provides that repatriation of excess money shall be made on or before 90 days from –

- Due date of filing of return, if primary adjustment to TP has been made *suo motu* by assessee.
- Date of order of Assessing Officer or appellate authority, if primary adjustment determined in the order has been accepted by assessee.
- Due date of filing of return in case assessee had entered into advance pricing agreement.
- Due date of filing of return in case assessee opted for safe harbour rules.
- Due date of filing of return in case an agreement is made under mutual agreement procedure (MAP).

The time-limit of 90 days for repatriation of excess money shall begin only when the primary adjustments exceeding Rs. 1 crore made in respect of assessment year 2017-18 (or later), attains finality. Where the transfer pricing order is appealed against by the taxpayer, the time limit for repatriation shall commence only after the appeal is finalized by the appellate authority

■ *Prescribed rate of interest as per rule 10CB* - With regard to the rate of interest to be computed in the case of failure to repatriate the excess money within the prescribed time given above, rule 10CB provides for separate interest rates for international transactions denominated in Indian rupee and those denominated in foreign currency. The rate of interest is on annual basis and shall be computed as follows –

- At one year marginal cost of fund lending rate of SBI as on April 1 of previous year *plus* 325 basis points in case international transaction is denominated in Indian rupees.
- At six-month LIBOR as on September 30 of previous year plus 300 basis points in the case international transaction is denominated in foreign currency.

■ *Additional income tax* - In a case, where the excess money (or part thereof) has not been repatriated in time, the assessee has an option (with effect from September 1, 2019) to pay additional income-tax at the rate of 18 per cent on such excess money (or part thereof). It is subject to surcharge of 12 per cent and health and education cess of 4 per cent (effective tax rate : 20.9664 per cent). The following points should be noted –

- If the assessee pays the additional income-tax, he is not required to make secondary adjustment or compute interest from the date of payment of such tax. However, he is required to make secondary adjustment pertaining to interest till the date of payment of additional tax.

- The tax so paid shall be the final payment of tax and no credit shall be allowed in respect of the amount of tax so paid.
- The deduction in respect of the amount on which such tax has been paid, shall not be allowed under any other provision.

CASE STUDY

Implications of the above amendment may be examined with the help of case were studies given below –

1. X Ltd. is an Indian company. It renders services to Y Inc. (an American company which is an associated enterprise of X Ltd. within the parameters of section 92A). During the previous year 2018-19, X Ltd. charges 8 per cent on cost for providing services to Y Inc. However, X Ltd. would have earned a margin of 11 per cent on cost if similar services were provided to unconnected foreign concern. The Assessing Officer makes transfer pricing adjustments to the tune of 3 per cent which comes to an addition of Rs. 11.5 crore to the reported income of X Ltd. The adjustment is accepted by X Ltd. The addition of Rs. 11.5 crore is known as primary adjustment. However, the primary adjustment to the income of X Ltd. does not address the benefit obtained by Y Inc. by retaining Rs. 11.5 crore in cash. Provisions of section 92CE on secondary adjustment seek to target such cash benefit by applying a tax charge on the excess benefit in the hands of foreign entity. Under this section, Rs. 11.5 crore will be considered as a separate transaction as a deemed loan (in the language of section 92CE it is known as "secondary adjustment") given by X Ltd. to Y Inc. This deemed loan would exist for tax purposes only and would not appear in the books of account of X Ltd. Arm's length value of interest on deemed loan will be taxable in the hands of X Inc. annually till Rs. 11.5 crore is repatriated by Y Inc. (of America) to X Ltd. (in India).

2. A Ltd. (an Indian company) gets a loan of US $ 50,00,000 from its overseas related company (B Ltd.). A Ltd. is required to pay interest at the rate of 8 per cent per annum. However, TPO finds that interest is excessive to the extent of 3.5 per cent which is accepted by A Ltd. Consequently, primary adjustment of Rs. 1.14 crore is made by the Assessing Officer to the income of A Ltd. for the assessment year 2019-20. The secondary adjustment will result in creating in deemed loan of Rs. 1.14 crore by A Ltd. to B Ltd. and arm's length value of interest will be taxable annually in the hands of A Ltd. till Rs. 1.14 crore is repatriated by B Ltd. to A Ltd.

For the assessment year 2020-21, the adjustment of 3.5 per cent results in addition of Rs. 1.05 crore to the income of X Ltd. This will be primary adjustment. Interest on deemed loan of Rs. 1.05 crore (along with interest on deemed loan of 1.14 crore of the earlier year) will be treated as secondary adjustment for the assessment year 2020-21 (both will continue till Rs. 1.14 crore + Rs. 1.05 crore is repatriated to India).

For the assessment year 2021-22, the adjustment of 3.5 per cent results in addition of Rs. 97 lakh. This is primary adjustment. Since it is not more than Rs. 1 crore, secondary adjustment will not be applicable. However, interest on deemed loan of Rs. 1.14 crore + interest on deemed loan of Rs. 1.05 crore (pertaining to earlier years) will continue (till 1.14 crore + Rs. 1.05 crore is repatriated to India).

3. C Ltd. is an Indian subsidiary company of D Inc. (a US company). During the previous year 2018-19, C Ltd. issues shares to D Inc. at the rate of Rs. 800 per share. As per TPO, the issue price of shares should have been Rs. 1,900 per share. On this account, a transfer pricing adjustment of Rs. 5.5 crore is made by TPO to the income of C Ltd. TPO further wants to make secondary adjustment by treating Rs. 5.5 crore as deemed loan under section 92CE. Notional interest at the rate of 9 per cent on deemed loan is added as secondary adjustment by TPO. Point for consideration is whether primary and secondary adjustment are tenable in law.

Even if it is assumed that shares are issued by C Ltd. to its associated enterprise D Inc. at less than arm's length price, the short fall of Rs. 5.5 crore would have increased the share capital of C Ltd. and not credit side of its profit and loss account. Under section 92, notional "income" arising from an international transaction with reference to arm's length price can be added to taxpayer's income. If an international transaction does not have any impact on the income of taxpayers, transfer pricing provisions are not applicable. No adjustment can be made under section 92. In other words, there cannot be any primary adjustment. When there is no primary adjustment, secondary adjustment is not possible under section 92CE. Therefore, both primary adjustment and secondary adjustment are legally not tenable.

Provisions pertaining to thin capitalisation

185A. A company is typically financed or capitalized through a mixture of debt and equity. The way a company is capitalized often has a significant impact on the amount of profit it reports for tax purposes as the tax legislations of countries typically allow a deduction for interest paid or payable in arriving at the profit for tax purposes while the dividend paid on equity contribution is not deductible (in some countries, dividend distribution attracts additional tax). Therefore, higher the level of debt in a company (and thus the amount of interest it pays), the lower will be its taxable profit and tax liability. For this reason, debt is often a more tax efficient method of finance than equity. Multinational groups are often able to structure their financing arrangements to maximize these benefits. For this reason, country's tax administrations often introduce rules that place a limit on the amount of interest that can be deducted in computing a company's profit for tax purposes. Such rules are designed to counter cross-border shifting of profit through excessive interest payments, and, thus, aim to protect a country's tax base.

Limitation on interest deductible [Sec. 94B]

185A.1 Section 94B has been inserted with effect from the assessment year 2018-19.

■ *Conditions* - Section 94B is applicable if the following conditions are satisfied –

1. The assessee (*i.e.*, borrower) is an Indian company or a permanent establishment of a foreign company in India.

2. It incurs any expenditure by way of interest (or of similar nature) in respect of any debt (or deemed debt). The debt is issued by a non-resident (being an associated enterprise of the borrower). Where the debt is issued by a lender (which is not associated with the borrower) and an associated enterprise either provides an implicit or explicit guarantee to such lender (or deposits a corresponding and matching amount of funds with the lender), such debt shall be "deemed" to have been issued by an associated enterprise. "Debt" means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible.

3. Interest is deductible while computing income chargeable under the head "Profits and gains of business or profession".

4. For the aforesaid debt, interest (which is otherwise deductible for computing business/ professional income of the borrower for the previous year) is more than Rs. 1 crore.

5. The borrower is not engaged in the business of banking or insurance.

■ *Limitation on deduction of interest under section 94B* - If the above conditions are satisfied, interest shall not be deductible while computing income under the head "Profit and gains of business or profession" to the extent it arises from "excess interest". "Excess interest", as per section 94B(2), is –

a. interest paid or payable in excess of 30 per cent of earnings (before interest, taxes, depreciation and amortization) (EBITDA) of borrower in the previous year; or

b. interest paid or payable to associated enterprises for that previous year,

whichever is less.

■ *Carry forward of the excess interest* - The excess interest of the current year (which is not allowed as deduction) shall be carried forward to the following assessment year. In the next assessment year, it shall be allowed as a deduction against business/profession income of the borrower to the extent of maximum allowable interest expenditure in accordance with section 94B(2). This carry forward is allowed for 8 assessment years (immediately succeeding the assessment year for which the excess interest was first computed).

CASE STUDY

185A.1-P1 *X Ltd. is an Indian company. It is Indian subsidiary of A Inc. (a US company having business connections in US, Europe and Asia). X Ltd. has taken a loan from A Inc. From the data given below, find out disallowance under section 94B and net income of X Ltd. for the assessment years 2019-20 and 2020-21.*

(Rs. in crore)

		Previous year	
		2018-19	2019-20
Business income (calculated after deducting the following) –	(a)	*156*	*400*
- *Interest to A Inc.*	(b)	*130*	*140*
- *Interest to others in India and outside India (recipients are not associated enterprises)*	(c)	*70*	*90*
- *Depreciation (normal and additional) under section 32*	(d)	*30*	*20*
- *Amount deductible under section 35*	(e)	*10*	*5*
- *Amortisation of expenses under section 35D*	(f)	*15*	*15*
- *Investment allowance under section 32AD*	(g)	*25*	*Nil*
Transfer pricing adjustment under section 92 out of (b) made by TPO	(h)	*20*	*40*

■

Business income	(*a*)	156	400
Add: Disallowance			
Under section 92	(*h*)	20	40
Under section 94B [*see* Note 1]		59.7	*Nil*

Less: Adjustment of carry forward of disallowance under section 94B(4) [*see* Note 2]	(*s*)	–	9.5
Net income		235.7	430.5
Note 1 - Computation of disallowance under section 94B			
Interest to A Inc. (deductible under provisions other than section 94B) [(*b*) – (*h*)]	(*i*)	110	100
Interest to others	(*c*)	70	90
Total interest (deductible under provisions other than section 94B) [(*i*) + (*c*)]	(*j*)	180	190
Earnings before interest, tax, depreciation and amortization (EBITDA)			
- Business income (taxable if section 94B is ignored) [(*a*) + (*h*)]	(*k*)	176	440
- *Add*: Interest to A Inc. (deductible if section 94B is ignored) [(*b*) – (*h*)]	(*l*)	110	100
- *Add*: Interest to others, depreciation, amortization under section 35D [(*c*) + (*d*) + (*f*)]	(*m*)	115	125
EBITDA [(*k*) + (*l*) + (*m*)]	(*n*)	401	665
30% of EBITDA	(*o*)	120.3	199.5
Excess of interest over 30% of EBITDA [(*j*) – (*o*)]	(*p*)	59.7	*Nil*
Disallowance under section 94B [(*p*) or (*i*), whichever is less]	(*q*)	59.7	*Nil*
Disallowance to be carried forward to next year [(*q*) – (*s*)]	(*q*)	59.7	50.2
Note 2 - Adjustment of carry forward of disallowance under section 94B(4)			
- Amount of disallowance brought forward	(*q*)	–	59.7
- 30% of EBITDA not utilised during the current year [(*o*) – (*j*)]	(*r*)		9.5
Amount deductible under section 94B(4) [(*q*) or (*r*), whichever is lower]	(*s*)		9.5

185A.1-P2 *Y Ltd. is an Indian company. It is Indian subsidiary of B Inc. (a Japanese company having business connections in Asia and South Africa). Y Ltd. has taken a loan from Z Ltd., an Indian company, which is guaranteed by B Inc. Find out the amount of disallowance under section 94B for the assessment year 2019-20 in the following different situations –*

(Rs. in crore)

	Situation 1	*Situation 2*	*Situation 3*	*Situation 4*
Business income (calculated after deducting the following) –	*500*	*2*	*300*	*300*
- *Interest to Z Ltd.*	*100*	*1.1*	*80*	*120*
- *Interest to others*	*10*	*1.2*	*120*	*80*
- *Depreciation deductible under section 32*	*72*	*2*	*20*	*20*
Disallowance @ 30 per cent under section 40(a)(ia) [tax not deducted out of interest to Z Ltd.]	*30*	*0.33*	*24*	*36*

■

Business income	500	2	300	300
Add: Disallowance				
Under section 40(*a*)(*ia*)	30	0.33	24	36
Under section 94B [*see* Note]	*Nil*	*Nil*	20	8
Net income	530	2.33	344	344
Note - Computation of disallowance under section 94B				
Interest to Z Ltd. (deductible under provisions other than section 94B)	70	0.77	56	84
Interest to others	10	1.2	120	80
Total interest (deductible under provisions other than section 94B)	80	1.97	176	164
Earnings before interest, tax, depreciation and amortization (EBITDA)				
- Business income (taxable if section 94B is ignored)	530	2.33	324	336
- *Add*: Interest to Z Ltd. (deductible if section 94B is ignored)	70	0.77	56	84
- *Add*: Interest to others and depreciation	82	3.2	140	100

EBITDA	682	6.3	520	520
30% of EBITDA	204.6	1.89	156	156
Excess of interest over 30% of EBITDA	*Nil*	0.08	20	8
Disallowance under section 94B (excess of interest over 30% of EBITDA or interest otherwise deductible which is paid to Z Ltd., whichever is lower) (section 94B not applicable in *Situation 2*, as interest to Z Ltd. is less than Rs. 1 crore)	*Nil*	*Nil*	20	8

MULTIPLE CHOICE QUESTIONS

Q1. The Transfer Pricing Officer may for the purpose of determining the arm's length price under section 92CA exercise all or any of the powers specified in clauses (*a*) to (*d*) of section 131(1) or section 133(6)—

a. True;

b. False.

Q2. Where the aggregate value of international transactions entered into by the assessee does not exceed Rs. 1 crore, the information and documents specified under section 92D may not be maintained—

a. True;

b. False.

Q3. Arm's length price according to comparable uncontrolled price method is Rs. 1,010 per unit, whereas according to cost *plus* method it comes to Rs. 1,060 per unit. The taxpayer has, however, adopted price for transfer of goods from Indian subsidiary to foreign holding company at the rate of Rs. 986 per unit. Under the provisions of the Income-tax Act, Arm's length price in this case shall be—

a. Rs. 1,010 per unit;

b. Rs. 1,060 per unit;

c. Rs. 986 per unit;

d. Rs. 1,035 per unit.

Q4. In the RPM and CPM methods, comparison is of margins of gross profits whereas in TNMM the comparison is of margins of net profit—

a. True;

b. False.

Q5. Semi-finished goods are sold by a foreign holding company to an Indian subsidiary company. The most appropriate method in this case is—

a. Cost *plus* method;

b. Profit split method;

c. Re-sale price method;

d. None of above.

Q6. Comparable uncontrolled price method is a comparison of prices charged for the property or services transferred in a controlled transaction to a price charged for property or services transferred in a comparable uncontrolled transaction—

a. True;

b. False.

Q7. On receipt of the order of the Transfer Pricing Officer, the Assessing Officer shall proceed to compute the total income of the assessee under section 92C(3)—

a. Having regard to the arm's length price determined by the Transfer Pricing Officer;

b. Having regard to the advice take from his Commissioner;

c. In conformity with the arm's length price determined by the Transfer Pricing Officer;

d. None of above.

Q8. Any income arising from an international transaction shall be computed with regard to arm's length price—

a. True;

b. False.

ADVANCE RULING FOR NON-RESIDENTS

18

CHAPTER

Advance ruling

186. The following are the salient features of the scheme of advance ruling.

Authority for advance ruling [Sec. 245-O]

186.1 The Authority for Advance Ruling consists of a Chairman and such number of Vice-chairmen, revenue Members and law Members as the Central Government may by notifications appoint. The headquarters of the Authority is in Delhi. No proceeding of the Authority will be invalid merely on grounds of the existence of any vacancy or defect in the constitution of the Authority.

Meaning of "applicant" and advance ruling [Sec. 245N(a) and (b)]

186.2 The provisions are given below —

*Meaning of "applicant"† under section 245N(*b*)*	*Meaning of advance ruling as per section 245N(*a*)*	*The authority shall not allow the application when the question raised in the application relates to the following —*
A non-resident [*see* para 186.3] who makes an application under section 245Q(1)	Determination by the authority in relation to a transaction which has been undertaking (or is proposed to be undertaken) by a non-resident applicant and such determination shall include the determination of any question of law or fact specified in the application.	If (*i*) it is already pending before any income-tax authority or Appellate Tribunal or court, or (*ii*) it involves determination of fair market value of any property; or (*iii*) it relates to a transaction or issue which is designed *prima facie* for the avoidance of income-tax [*see* para 188.1]
A resident who makes an application under section 245Q(1) in respect of a transaction which has been undertaken (or proposed to be undertaken) by him or it with a non-resident	Determination by the Authority in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with a non-resident and such determination shall include the determination of any question of law or of fact specified in the application	If (*i*) it is already pending before any income-tax authority or Appellate Tribunal or court, or (*ii*) it involves determination of fair market value of any property, or (*iii*) it relates to a transaction or issue which is designed *prima facie* for the avoidance of income-tax [*see* para 188.1]
A resident falling within any such class or category of persons as the Central Government may, by notification in the Official Gazette, specify in this behalf (*i.e.*, a public sector company) who makes an application under section 245Q(1)	Determination or decision by the Authority in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal and such determination or decision shall include the determination or decision of any question of law or of fact relating to such computation of total income specified in the application	If it involves determination of fair market value of any property [*see* para 188.1]
A resident or non-resident who makes an application under section 245Q(1) in respect of impermissible avoidance arrangement	Determination or decision by the authority whether an arrangement, which is proposed to be undertaken by the applicant is an impermissible avoidance arrangement as referred to in Chapter X-A or not	If (*i*) it is already pending before any income-tax authority or Appellate Tribunal or court, or (*ii*) it involves determination of fair market value of any property [see para 188.1]

† The definition of "applicant" in section 245N has been amended by the Finance Act, 2017 (with effect from April 1, 2017) to provide reference of applications for Advance Rulings made under the Customs Act, 1962, the Central Excise Act, 1944 and the Finance Act, 1994 (which makes provisions in respect of service tax matters). Similarly, amendment has been made to section 245Q which relates to application for advance ruling.

Meaning of "applicant" under section 245N(b)	*Meaning of advance ruling as per section 245N(a)*	*The authority shall not allow the application when the question raised in the application relates to the following —*
A resident (falling within any such class or category of persons as the Central Government notifies)	Determination by the authority in relation to a transaction which has been undertaken (or is proposed to be undertaken) by resident applicant	If (*i*) it is already pending before any income-tax authority or Appellate Tribunal or court, or (*ii*) it involves determination of fair market value of any property; or (*iii*) it relates to a transaction or issue which is designed *prima facie* for the avoidance of income-tax [*see* para 188.1]

Non-resident in which year

186.3 While section 245N stipulates that a non-resident can make an application under Chapter XIX-B, it does not say in specific terms that he should be a non-resident as on the date of the application. In fact, residence or non-residence for the purposes of the Act has to be determined with reference to a previous year (which is, generally, a financial year) and not with reference to a particular date.

Procedure for filing application

187. Procedure for filing application for advance ruling is given below —

Application form number

187.1 An application shall be made in the forms given below —

Applicant	*Form No.*
▪ When applicant is non-resident	34C
▪ When applicant is resident	
- Person seeking advance ruling in relation to a transaction undertaken or proposed to be undertaken with a non-resident	34D
- Person falling within such class or category of persons as notified by the Central Government (*i.e.*, a public sector company).	34E

Fees

187.2 The above application (in quadruplicate) should be accompanied with a demand draft of Rs. 10,000 in favour of authority for advance ruling.

Who should sign the application

187.3 The application, the verification appended thereto, the annexures to the said application and the statements and documents accompanying it, shall be signed by the following :

1. In the case of an individual by the individual himself (or a person duly authorised by him).

2. In the case of a Hindu undivided family, by the karta thereof (or any other adult member of such family).

3. In the case of a company by the managing director thereof (or director thereof or by any person who is duly authorised by the company).

4. In the case of a firm, by the managing partner thereof [or any partner thereof (not being a minor)].

5. In the case of an association of persons, by any member of the association or the principal officer thereof.

6. In the case of any other person, by that person or by some person competent to act on his behalf.

Where a person signing the application and other documents claims to have been duly authorised in that behalf under the rules, the application shall be accompanied by a power of attorney, authorising him to append his signature and an affidavit setting out the unavoidable reason which entitles him to sign it.

Withdrawal of application

187.4 An applicant may withdraw an application within 30 days from the date of the application.

Procedure on receipt of application [Sec. 245R]

188. The Authority on receipt of an application will send a copy to the Commissioner concerned and, wherever considered necessary, also call upon the Commissioner to furnish relevant records. Such records will be returned to the Commissioner as soon as possible. The Authority may either allow or reject an application.

When the application can be rejected

188.1 In the three cases given below it is specifically provided that the authority shall not allow the application in the case of a non-resident applicant [*see* also column (*3*) of the table given in para 186.2].

CASES ALREADY PENDING

188.1-1 The Authority shall not allow an application from a non-resident where the question of law or fact raised is already pending in the case of the applicant, either before any income-tax authority, the Appellate Tribunal or any Court.

■ The words "already pending", should be interpreted to mean : "already pending as on the date of the application" and not with reference to any future date—*Monte Harris* v. *CIT* [1995] 82 Taxman 365 (AAR - New Delhi).

APPLICATION FOR AVOIDANCE OF TAX

188.1-2 Applications will also not be allowed where the transaction, in relation to which the question is raised, is designed for the avoidance of income-tax.

APPLICATION FOR DETERMINATION OF FAIR MARKET VALUE

188.1-3 Application will not be allowed where the question raised relates to the determination of the fair market value of any property.

Pronouncement of advance ruling

188.2 Where an application is allowed, the Authority shall (after examining such further material as may be placed before it by the applicant or obtained by the Authority), pronounce its advance ruling on the question specified in the application.

The applicant can, on request, appear either in person or can be represented through a duly authorised representative. A time limit of 6 months is provided for the pronouncement of advance ruling after the receipt of the application by the authority.

A copy of the advance ruling pronounced by the Authority (duly signed by the Members and certified in the prescribed manner), shall be sent to the applicant and the Commissioner, as soon as may be, after such pronouncement.

Continuation of proceedings after the death, etc., of the applicant

188.3 Where the applicant dies or is wound up or dissolved or disrupted or amalgamated or succeeded by any other person or otherwise comes to an end, the application shall not abate and may be permitted by the Authority (where it considers that the circumstances justify it) to be continued by the executor, administrator or other legal representative of the applicant or by the liquidator, receiver or assignee, as the case may be, on an application made in this behalf.

Hearing of application ex parte

188.4 Where on the date fixed for hearing (or any other day to which the hearing may be adjourned) the applicant or the Commissioner does not appear in person (or through an authorised representative) when called up for hearing, the Authority may dispose of the application *ex parte* on merits. Where an application has been disposed of as above and the applicant or the Commissioner, as the case may be, applies within 15 days of receipt of the order and satisfies the Authority that there was sufficient cause for his non-appearance when the application was called up for hearing, the Authority may (after allowing the opposite party a reasonable opportunity of being heard) make an order setting aside the *ex parte* order and restore the application for fresh hearing.

Modification of order

188.5 Where the Authority finds *suo motu* or on a representation made to it by the applicant or the Commissioner or otherwise, but before the ruling pronounced by the Authority has been given effect to by the Assessing Officer, that there is a change in law or facts on the basis of which the ruling was pronounced, it may by order modify such ruling in such respects as it considers appropriate, after allowing the applicant and the Commissioner a reasonable opportunity of being heard.

Rectification

188.6 The Authority may, with a view to rectifying any mistake apparent from the record, amend any order passed by it before the ruling pronounced by the Authority has been given effect to by the Assessing Officer. Such amendment may be made *suo motu* or when the mistake is brought to its notice by the applicant or the Commissioner, but only after allowing the applicant and the Commissioner reasonable opportunity of being heard.

Appellate authority not to proceed in certain cases

188.7 No income-tax authority or the Appellate Tribunal shall proceed to decide any issue in respect to which an application has been made by an applicant, being a resident, under section 245Q(1).

Applicability of advance ruling [Sec. 245S]

189. The advance ruling shall be binding only on the applicant who has sought it and in respect of the specific transaction in relation to which such advance ruling was sought. It will also be binding on the Commissioner and the income-tax authorities subordinate to the Commissioner. The ruling will continue to remain in force unless there is a change in law or in fact on the basis of which the advance ruling was pronounced.

Advance ruling to be void in certain circumstances [Sec. 245T]

190. Where the Authority finds (on a representation made to it by the Commissioner or otherwise) that an advance ruling pronounced by it has been obtained by the applicant by fraud or misrepresentation of facts, it may (by order), declare such ruling to be void *ab initio* and thereupon all the provisions of the Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order declaring such ruling as void), to the applicant as if such advance ruling had never been made.

Powers of authority [Sec. 245U]

191. The Authority will have all the powers of a Civil Court in respect of discovery and inspection, enforcing the attendance of any person including any officer of a banking company and examining him on oath, issuing commissions and compelling the production of books of account and other records. It will also have the power to regulate its own procedure in all matters arising out of the exercise of its powers under the Act. The Authority would be deemed to be a Civil Court for the purposes of section 195 of the Code of Criminal Procedure, 1973, and every proceeding before the Authority shall be deemed to be a judicial proceeding under certain provisions of the Indian Penal Code.

Authority for advance rulings [Sec. 245-O]

192. The provisions of section 245-O are given below –

1. The Authority† shall consist of a Chairman and such number of Vice-chairmen, revenue Members and law Members as the Central Government may by notifications appoint.

2. A person shall be qualified for appointment as –

Chairman	Who has been a Judge of the Supreme Court or the Chief Justice of a High Court or for at least 7 years a Judge of a High Court
Vice-chairman	Who has been Judge of a High Court
Revenue Member	- From Indian Revenue Service, who is, or is qualified to be, a Member of the Central Board of Direct Taxes‡; or. - From the Indian Customs and Central Excise Service, who is, or is qualified to be, a Member of the Central Board of Excise and Customs, on the date of occurrence of vacancy.
Law Member	From the Indian Legal Service, who is, or is qualified to be, an Additional Secretary to the Government of India on the date of occurrence of vacancy.

3. The terms and conditions of service and the salaries and allowances payable to the Members shall be such as may be prescribed.

4. The Central Government shall provide to the Authority with such officers and employees, as may be necessary, for the efficient discharge of the functions of the Authority under the Act.

† Section 245-O, *inter alia*, provides for constitution of an Authority for Advance Rulings. This section has been amended by the Finance Act, 2018 (with effect from April 1, 2018) so as to provide that the said Authority shall cease to act as an Authority for Advance Rulings for the purpose of Chapter V of the Customs Act, 1962 on and from the date of appointment of Customs Authority for Advance Rulings under section 28EA of the Customs Act, 1962 and the Authority for Advance Rulings under section 245-O shall act as an Appellate Authority, for the purpose of Chapter V of the Customs Act, 1962 on and from the said date.

Moreover, the Authority for Advance Rulings under section 245-O shall not admit any appeal against any ruling or order passed earlier by it in the capacity of Authority for Advance Rulings for the purposes of Chapter V of the Customs Act after the date of appointment of Customs Authority for Advance Rulings.

‡ Where the Authority for Advance Rulings under section 245-O is dealing with an application seeking advance ruling in the matters of the Income-tax Act, the revenue Member of the Bench shall be from Indian Revenue Service, who is, or is qualified to be, a Member of the Central Board of Direct Taxes.

5. The powers and functions of the Authority may be discharged by its Benches as may be constituted by the Chairman from amongst the Members thereof.

6. In the event of the occurrence of any vacancy in the office of the Chairman (because of his death, resignation or otherwise), the senior-most Vice-chairman shall act as the Chairman until the date on which a new Chairman (appointed in accordance with the provisions of this Act to fill such vacancy) enters upon his office.

7. In case the Chairman is unable to discharge his functions (owing to absence, illness or any other cause), the senior-most Vice-Chairman shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.

8. A Bench shall consist of the Chairman or the Vice-chairman and one revenue Member and one law Member.

9. The Authority shall be located in the National Capital Territory of Delhi and its Benches shall be located at such places as the Central Government may, by notification specify.

10. Further, Part XIV of Chapter VI of the Finance Act, 2017 will apply in respect of qualifications, terms and conditions of service of Chairman, etc., of AAR.

MULTIPLE CHOICE QUESTIONS

Q1. A domestic company has taken a loan from a foreign bank. Under the agreement the domestic company will have to bear tax in India in respect of interest earning of the foreign bank. In order to ascertain in advance, tax liability of the foreign company (which is payable by the domestic company), the domestic company wants to approach the Authority for Advance Rulings. The Authority for Advance Rulings cannot give any ruling in this case as it pertains to tax which has to be borne by a domestic company.

a. True;

b. False.

Q2. The Authority for Advance Rulings shall not allow an application when the question raised in the application relates to determination of fair market value of a property.

a. True;

b. False.

Q3. The advance ruling is binding only on the applicant who has sought it.

a. True;

b. False.

Q4. When applicant is non-resident, an application shall be made in—

a. Form No. 34D;

b. Form No. 34E;

c. Form No. 34C;

d. None of above.

UNIT V

BUSINESS RESTRUCTURING

RESTRUCTURING BUSINESS

19 CHAPTER

Restructuring business

195. The term 'business restructuring' is composed of two different words 'business' and 'restructuring'. The term business includes trade, commerce, manufacture, etc. The word 'restructuring' means rearranging the affairs. In this way, business restructuring refers to the process by which the business enterprises rearrange their affairs. The following are some of the reasons for restructuring of business :

- To acquire competitive strength.
- To vertically integrate (*i.e.*, combination of company's business with the business of supplier (backward integration) or customer (forward integration)
- To achieve synergies through consolidation.
- To avail tax related benefits.
- To grow in size.
- To keep pace with changing technology.
- Continuous search for areas of possible comparative advantage.
- Requirement of timely updation in business strategies.

This Unit covers the following :

1. Amalgamation [*see* para 196]

2. Demerger [*see* para 205]

3. Conversion of sole proprietary business into company [*see* para 215]

4. Conversion of firm into company [*see* para 216]

5. Slump sale [*see* para 220]

6. Transfer of assets between holding and subsidiary companies [*see* para 230]

7. Amalgamation or demerger of co-operative banks [*see* para 213].

8. Conversion of a private company/unlisted public company into a limited liability partnership [*see* para 238].

20 CHAPTER AMALGAMATION

Amalgamation

196. Amalgamation is a blending of two or more existing undertakings into one undertaking. The shareholders of each blending company become substantially the shareholders in the company which is to carry on the business of blended undertakings. There may be amalgamation either by the transfer of two or more undertakings to a new company, or by the transfer of one or more undertakings to an existing company.

Meaning of "amalgamation" under the Income-tax Act [Sec. 2(*1B*)]

197. For the purpose of the Income-tax Act, amalgamation of companies means either merger of one or more companies with another company or the merger of two or more companies to form one company. The definition of amalgamation under section 2(*1B*) covers the following cases (subject to conditions mentioned in para 197.1-1)—

- Merger of A Ltd. with X Ltd. (A Ltd. goes out of existence).
- Merger of A Ltd. and B Ltd. with X Ltd. (A Ltd. and B Ltd. go out of existence).
- Merger of A Ltd. and B Ltd. into a newly incorporated company X Ltd. (A Ltd. and B Ltd. go out of existence).
- Merger of A Ltd., B Ltd. and C Ltd., into a newly incorporated company X Ltd. (A Ltd., B Ltd. and C Ltd. go out of existence).

In the aforesaid cases, A Ltd., B Ltd. and C Ltd. are amalgamating companies, while X Ltd. is an amalgamated company.

Conditions

197.1 For a merger to qualify as an "amalgamation" for the purpose of the Income-tax Act, it has to satisfy the following conditions—

Condition 1	All the properties of the amalgamating company immediately before the amalgamation should become the property of the amalgamated company by virtue of the amalgamation
Condition 2	All liabilities of the amalgamating company immediately before the amalgamation should become the liabilities of the amalgamated company by virtue of the amalgamation
Condition 3	Shareholders holding not less than three-fourths (in value) of the shares in the amalgamating company (other than shares already held by the amalgamated company or by its nominee) should become shareholders of the amalgamated company by virtue of the amalgamation.

One should also keep in view the following—

1. To illustrate, the aforesaid condition (3), where A Ltd. merges with X Ltd., in a scheme of amalgamation, and immediately before the amalgamation, X Ltd. held 20 per cent of the shares in A Ltd., the above-mentioned condition will be satisfied if shareholders holding not less than 3/4 (in value) of the remaining 80 per cent of the shares in A Ltd., *i.e.*, 60 per cent thereof (3/4 × 80), become shareholders of X Ltd., by virtue of the amalgamation. Where, however, the whole of the share capital of a company is held by another company, the merger of the two companies will qualify as an amalgamation within section 2(*1B*), if the other two conditions are fulfilled—Circular No. 5-P, dated October 9, 1967.

2. For the purpose of condition (3), "shareholders" may be equity shareholders or preference shareholders. Consequently, persons holding at least 75 per cent of the equity and preference shares (in value) in the amalgamating company should become shareholders (by holding equity or preference shares or both) in the amalgamated company.

Transactions not treated as "amalgamation"

197.2 Section 2(*1B*) specifically provides that in the following two cases there is no "amalgamation" for the purpose of the Income-tax Act, though the element of merger exists :

a. where the property of the company which merges is sold to the other company and the merger is a result of a transaction of sale *;*

b. where the company which merges is wound up in liquidation and the liquidator distributes its property to the other company.

In these two cases, there would not be an "amalgamation" within the meaning of section 2(*1B*).

Actual cost and written down value when assets are transferred in a scheme of amalgamation

198. It is covered by the following two provisions—

When a capital asset (other a block of assets) is transferred

198.1 Where an asset is transferred, in a scheme of amalgamation, to an Indian company, the actual cost of the transferred asset will be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purpose of its own business.

When a block of asset is transferred

198.2 Where in any previous year, any block of assets is transferred in a scheme of amalgamation by the amalgamating company to the amalgamated company, then actual cost* of block of assets in the case of amalgamated company, shall be the written down value of block of assets as in the case of amalgamating company for the immediately preceding previous year as reduced by the amount of depreciation actually allowed in relation to the said previous year. This rule is, however, applicable only if the amalgamated company is an Indian company.

Case study

198.2-P1 *X owns a block of assets (consisting of plants A and B, depreciation rate 15 per cent. On April 1, 2018, depreciated value of the block is Rs. 10,40,000. On July 7, 2018, the block of assets is transferred by X to Y for Rs. 30,70,000. Find out the tax consequences under the following situations—*

1. *X is amalgamating company and Y, being an Indian company, is the amalgamated company and the block of assets is transferred by X to Y in a scheme of amalgamation. Y does not own any other asset.*

2. *Suppose in (1)(supra) Y is a foreign company.*

3. *Suppose in (1) Y owns a block of assets (consisting of plants C and D, depreciation rate 15 per cent) on April 1, 2018. Depreciated value of the block of asset being Rs. 6,40,000. Y purchases plant E, an office appliance (rate of depreciation 15 per cent) on March 10, 2019 for Rs. 2,90,000. It is put to use on the same day.*

4. *X is a partnership firm. It is converted into Y company. The conversion satisfies the conditions of section 47*(xiii)*. Y does not own any other asset.*

5. *X is a firm. The business of X is taken over by Y, a partner in the firm. On April 1, 2018, Y owns plants C and D (depreciation rate 15 per cent, depreciated value of the block Rs. 60,78,000). Y purchases plant E, an office appliance on December 5, 2018 (depreciation rate 15 per cent, actual cost Rs. 36,000). It is put to use on the same day. On March 13, 2019, Y sells plant C for Rs. 26,40,000.*

■

Computation of depreciation allowance on Plants A and B	*Rs.*
Depreciated value of the block on April 1, 2018	10,40,000
Depreciation @ 15%	1,56,000

*Without reducing therefrom unabsorbed depreciation relating to earlier years.

Apportionment between X and Y	*Rs.*
Number of days when the assets are held by X (from April 1, 2018 to July 6, 2018)	97 days
Number of days when assets are held by Y (366 days – 97 days)	268 days
Depreciation available to X (Rs. 1,56,000 × 97 ÷ 365)	41,458
Depreciation available to Y (Rs. 1,56,000 × 268 ÷ 365)	1,14,542

Tax consequences in the hands of X and Y

	Situation 1 *Rs.*	*Situation 2* *Rs.*	*Situation 3* *Rs.*	*Situation 4* *Rs.*	*Situation 5* *Rs.*
Tax consequences in the hands of X					
Depreciation	41,458	41,458	41,458	41,458	41,458
Short term capital gain under section 48 read with section 45	*Nil*[1]	20,30,000[2]	*Nil*[1]	*Nil*[3]	20,30,000
Depreciation in the hands of Y					
Depreciated value of the block on April 1, 2018	*Nil*	*Nil*	6,40,000	*Nil*	60,78,000
Add: "Actual cost" of assets acquired from X	10,40,000	30,70,000	10,40,000	30,70,000	30,70,000
Add : Actual cost of plant E acquired by Y	-	-	2,90,000	-	36,000
Less: Assets sold during the year	-	-	-	-	26,40,000
Written down value of the block	10,40,000	30,70,000	19,70,000	30,70,000	65,44,000
Depreciation					
❑ On assets acquired from X	1,14,542	1,14,542	1,14,542	1,14,542	1,14,542
❑ On Plant E	-	-	21,750[4]	-	2,700[6]
❑ On other assets	-	-	96,000[5]	-	5,15,700[7]
Total depreciation	1,14,542	1,14,542	2,32,292	1,14,542	6,32,942
Written down value of the block on April 1, 2019	9,25,458	29,55,458	17,37,708	29,55,458	59,11,058

Notes :

1. It is exempt under section 47(*vi*).

2. As the amalgamated company is not an Indian company, the provisions of section 47(*vi*) are not applicable.

3. It is exempt under section 47(*xiii*).

4. It is 15% of 1/2 of Rs. 2,90,000 as Plant E is put to use for less than 180 days during the previous year.

5. It is 15% of (Rs. 19,70,000 – Rs. 10,40,000 – Rs. 2,90,000).

6. It is 15% of 1/2 of Rs. 36,000.

7. It is 15% of (Rs. 65,44,000 – Rs. 30,70,000 – Rs. 36,000).

8. In the above problem, situation *4* covers the case if a firm is converted into company by satisfying conditions of section 47(*xiii*). The tax treatment will be same in the following cases [except exemption under section 47(*xiii*)]—

a. if X is a firm and the business is taken over by Y a partner in the firm;

b. if X is HUF and the business is taken over by Y a member of the family;

c. if X is a sole proprietor and business is taken over by Y, a firm in which X is one of the partners.

d. if X is a sole proprietor and business is taken over by a company in which X is one of the shareholders.

In (*d*) if conditions of section 47(*xiv*) are satisfied, exemption will be available to X under that section.

9. In situations *2, 4* and *5* if the Assessing Officer is satisfied that fair market value of Plants A and B is less than Rs. 30,70,000 (being the consideration paid by Y), then he can take action under *Explanation 3* to section 43(*1*).

Assets in amalgamation not treated as "transfer"

199. By virtue of section 47, the following are not treated as transfer—

Transfer of capital assets to

199.1 Any transfer, in scheme of amalgamation of capital assets by the amalgamating company to the amalgamated company is not taken as "transfer" if the following conditions are satisfied—

a. the scheme of amalgamation satisfies the conditions of section 2(*1B*); and

b. the amalgamated company is Indian company.

amalgamated Indian company [sec. 47(vi)]

199.2 By virtue of section 47(*via*), if the following conditions are satisfied, the transaction is not treated as "transfer"—

Transfer of shares in an indian company held by a foreign company to another foreign company [Sec. 47(via)]

a. shares in an Indian company are held by a foreign company;

b. the business of the above foreign company (including shares mentioned above) is taken over by another foreign company in a scheme of amalgamation;

c. at least 25 per cent of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company; and

d. such transfer does not attract tax on capital gains in the country in which the amalgamating company is incorporated.

199.3 Any transfer by a shareholder in a scheme of amalgamation of shares held by him in the amalgamating company shall not be regarded as transfer if—

Allotment of shares in amalgamated company to the shareholders of amalgamating company [Secs. 47(vii) and 49(2)]

a. transfer is made in consideration of allotment to him of shares in the amalgamated company; and

b. amalgamated company is an Indian company.

According to section 49(2), in the aforesaid cases, the cost of shares of the amalgamating company shall be cost of shares of the amalgamated company.

Provisions illustrated - X Ltd., an Indian company, takes over the business of Y Ltd. in a scheme of amalgamation of the two companies. Z has purchased 100 shares in Y Ltd. in 1994 for Rs. 60 per share. As per the scheme of amalgamation, he gets 50 shares in X Ltd. in lieu of 100 shares in Y Ltd. Consequently, the cost of shares in X Ltd. will be taken as Rs. 120 per share [*i.e.*, Rs. 6,000, being cost of 100 shares in Y Ltd. ÷ 50 shares in X Ltd.].

■ The following points should be noted in this regard —

1. To find out whether or not shares in the amalgamated company are long-term capital asset or not, the period of holding shall be determined from date of acquisition of shares in the amalgamating company.

2. The indexation will start from the date of allotment of shares in the amalgamating company.

3. If besides shares in the amalgamated company, the shareholders of amalgamating company are allotted something more, say bonds or cash, etc., in consideration of transfer of their shares in the amalgamating company, then the shareholders cannot get the benefit under section 47(*vii*) and such transfer shall be chargeable to capital gains—*CIT* v. *Gautam Sarabhai Trust* [1988] 173 ITR 216 (Guj.).

200. If the following conditions are satisfied, then the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be loss/depreciation of the amalgamated company for the previous year in which the amalgamation is effected—

Carry forward and set-off of loss and depreciation - When permissible in the hands of amalgamated company [Sec. 72A]

1. Condition one - There is an amalgamation of a company owning industrial undertaking*, ship or a hotel with another company; or a banking company with a SBI or any subsidiary of SBI. From the assessment year 2008-09, section 72A is also applicable in the case of an amalgamation of a public sector airlines with another public sector airlines. For this purpose, an industrial undertaking is an undertaking engaged in the manufacture or processing of goods, or the manufacture of computer software or the business of generation or distribution of electricity or any other form of power or mining or the construction of ships, aircrafts or rail systems, the business of providing telecommunication services whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services.

2. Condition two - The amalgamating company has been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for 3 or more years.

*Hospital is not an industrial undertaking.

3. Condition three - The amalgamating company has held continuously as on the date of the amalgamation at least three-fourths of the book value of fixed assets held by it two years prior to the date of amalgamation.

4. Condition four - The amalgamated company continues to hold at least three-fourths in the book value of fixed assets of the amalgamating company which is acquired as a result of amalgamation for five years from the effective date of amalgamation.

5. Condition five - The amalgamated company continues the business of the amalgamating company for a minimum period of 5 years from the date of amalgamation.

6. Condition six - The amalgamated company, which has acquired an industrial undertaking of the amalgamating company by way of amalgamation, shall achieve the level of production of at least 50 per cent of the installed capacity of the said undertaking before the end of 4 years from the date of amalgamation and continue to maintain the said minimum level of production till the end of 5 years from the date of amalgamation.

However, the Central Government, on an application made by the amalgamated company may relax this condition.

7. Condition seven - The amalgamated company shall furnish electronically to the Assessing Officer a certificate in Form No. 62, duly verified by an accountant, with reference to the books of account and other documents showing particulars of production, along with the return of income for the assessment year relevant to the previous year during which the prescribed level of production is achieved and for subsequent assessment years relevant to the previous years falling within 5 years from the date of amalgamation.

■ *Consequences when the above conditions are satisfied* - If the above conditions are satisfied, then accumulated business loss and unabsorbed depreciation of the amalgamating company shall be deemed to be loss and depreciation of the amalgamated company for the previous year in which amalgamation is effected.

■ *Consequences when the above conditions are not satisfied after adjusting loss/depreciation* - In case the above specified conditions are not fulfilled, then that part of brought forward of loss and unabsorbed depreciation which has been set off by the amalgamated company shall be treated as the income of the amalgamated company for the year in which the failure to fulfil the conditions occurs.

Set-off of losses of a banking company against the profit of a banking institution under a scheme of amalgamation [Sec. 72AA]

201. Section 72AA provides carry forward and set-off of accumulated loss and unabsorbed depreciation allowance of a banking company against the profits of a banking institution under a scheme of amalgamation sanctioned by the Central Government.

■ *Condition* - Section 72AA would be applicable if the following conditions are satisfied—

1. There is an amalgamation of a "banking company" with any other "banking institution". Banking company for this purpose means a company which transacts the business of banking in India. A manufacturing or trading company which accepts deposits of money from the public merely for the purpose of financing its business shall not be deemed to transact the business of banking. A banking institution for this purpose means any banking company and includes State Bank of India or a scheduled bank.

2. The amalgamation is sanctioned and brought into force by the Central Government under section 45(7) of the Banking Regulation Act, 1949.

3. The provisions of section 2(1B)(*i*)/(*ii*)/(*iii*) may or may not be satisfied.

4. The provisions of section 72A may or may not be satisfied.

■ *Consequences if the above conditions are satisfied* - If the above conditions are satisfied, the accumulated loss and unabsorbed depreciation of the amalgamating banking company shall be deemed to be the loss or the allowance for depreciation of the banking institution for the previous year in which the scheme of amalgamation is brought into force.

For this purpose, "accumulated loss" means so much of the loss of the amalgamating banking company under the head "Profits and gains of business or profession" which such amalgamating banking company, would have been entitled to carry forward and set off under the provisions of section 72 if the amalgamation had not taken place. It does not, however, include speculative business loss. "Unabsorbed depreciation" means so much of the allowance for depreciation of the amalgamating banking company which remains to be allowed and which would have been allowed to such banking company if amalgamation had not taken place.

202. The following case studies are given— Case studies

202-P1 *XY Ltd. wants to amalgamate with PQ Ltd. on June 30, 2017. You are required to find out the tax implication in respect of the following losses/allowances of XY Ltd. in the assessments of XY Ltd. (i.e., amalgamating company) and PQ Ltd. (i.e., amalgamated company).*

Unabsorbed depreciation allowance of the previous year 1998-99 : Rs. 36,000 ; brought forward business loss of the previous year 2007-08 : Rs. 10,00,000 ; unabsorbed scientific research expenditure : Rs. 11,000 ; bad debts : Rs. 15,000 ; capital gain arising on transfer of assets to PQ Ltd. : Rs. 2,50,000 and brought forward capital loss Rs. 40,000. Also discuss whether PQ Ltd. can claim deduction under section 80-IA or 80-IB in respect of industrial undertaking taken over from XY Ltd.

■

The following Table highlights the tax implications in respect of various items given in the problem on the assumption that assets are transferred in a scheme of amalgamation which satisfies the provisions of section 2(*1B*).

Loss/allowances of XY Ltd. before amalgamation	*Tax implication in the hands of*	
	PQ Ltd.	*XY Ltd.*
Unabsorbed depreciation of 1998-99 : Rs. 36,000	If amalgamation satisfies the conditions of section 72A it is deductible, otherwise it is not deductible	As XY Ltd. ceased to exist after amalgamation, it is not entitled for deduction.
Brought forward business loss of 2006-07 : Rs. 10,00,000	If amalgamation satisfies conditions of section 72A it can be set-off and carried forward by PQ Ltd.; otherwise such right is not available	XY Ltd. cannot carry it forward, as it has ceased to exist after amalgamation.
Unabsorbed scientific research expenses : Rs. 11,000	Allowed subject to conditions of section 35	It cannot be carried forward, as XY Ltd. has ceased to exist.
Bad debts : Rs. 15,000	Allowed	It is not allowed as deduction as XY Ltd. ceased to exist after amalgamation.
Capital gain : Rs. 2,50,000	It is not taxable in the hands of PQ Ltd. If, however, assets acquired in the scheme of amalgamation are sold by PQ Ltd., cost of acquisition for the purpose of computing capital gain would be cost to XY Ltd. (indirectly Rs. 2,50,000 will merge in capital gain arising at the time of sale of assets by PQ Ltd.)	It is not taxable, as transfer of assets in a scheme of amalgamation to an Indian company does not amount to "transfer" for the purpose of charging tax on capital gains.
Brought forward capital loss : Rs. 40,000	It cannot be set-off and carried forward by PQ Ltd.	It cannot be carried forward by XY Ltd., as it ceased to exist after amalgamation.

202-P2 *A Co. Ltd. and B Co. Ltd., both being Indian companies, desire to merge together. At the end of the financial year 2018-19 (the financial year being the previous year for both the companies) the position of losses and allowances, in taxation, is as under* :

A Co. Ltd.

Assessment year	Unabsorbed trading loss (Rs. in lakh)	Unabsorbed depreciation (Rs. in lakh)
2015-16	*2*	*3*
2016-17	—	*2.5*
2017-18	—	*1*
2018-19	*3*	*2*
2019-20	*4*	*2*

B. Co. Ltd. - *There is no loss or depreciation remaining unabsorbed at the end of the assessment year 2019-20.*

As the tax consultant for both the companies advise them as to the basis and method in which the merger should be effected so as to reduce any adverse tax effects to the minimum. Discuss specifically the problems of taxation arising out of the merger in regard to the undernoted matters :

Discuss chargeability of tax on capital gains, if any, in the hands of the shareholders and/or the companies.

■

In the aforesaid problem, merger can take three different forms—A Ltd. merges with B Ltd. (A Ltd. goes out of existence), B Ltd. merges with A Ltd. (B Ltd. goes out of existence), and A Ltd. and B Ltd. merge in a new company : C Ltd. (both A Ltd. and B Ltd. goes out of existence).

Amalgamation can take the following three different forms :

a. it may not satisfy conditions of sections 2(*1B*) and 72A

b. it may satisfy conditions of section 2(*1B*) but may not satisfy the conditions of section 72A ; and

c. it may satisfy conditions of section 2(*1B*) as well as section 72A.

Tax implication is highlighted in the following Table :

	If amalgamation does not satisfy conditions of sections 2(1B) and 72A	*If amalgamation satisfies conditions of section 2(1B) but does not fulfil requirement of section 72A*	*If amalgamation satisfies conditions of sections 2(1B) and 72A*
A Ltd. merges with B Ltd. (A Ltd. goes out of existence)	*Note 1*	*Note 3*	*Note 5*
B Ltd. merges with A Ltd. (B Ltd. goes out of existence)	*Note 2*	*Note 4*	*Note 4*
A Ltd. and B Ltd. merge with C Ltd.	*Note 1*	*Note 3*	*Note 5*

Notes :

1. In this situation (*a*) brought forward business loss/unabsorbed depreciation allowance of A Ltd. cannot be set-off and carried forward by B Ltd.; and (*b*) transfer of assets to B Ltd. will attract capital gains in the hands of A Ltd., because transfer will be treated as "transfer", as it does not satisfy conditions of section 2(*1B*).

2. In this case, (*a*) brought forward business loss/unabsorbed depreciation allowance of A Ltd. can be carried forward by it which can be set-off even against profit arising in subsequent years from business undertaking taken over from B Ltd. (subject to time-limit of 8 years in the case of brought forward business loss) ; and (*b*) transfer of assets of B Ltd. to A Ltd. will attract capital gain in the hands of B Ltd., as conditions of section 2*(1B)* are not satisfied.

3. Here (*a*) brought forward business loss/unabsorbed depreciation allowance of A Ltd. cannot be set-off and carried forward by B Ltd. ; and (*b*) transfer of assets to B Ltd. will not attract capital gains in the hands of A Ltd., as transfer of assets, in a scheme of amalgamation satisfying conditions of section 2*(1B)*, does not amount to "transfer" for the purpose of computation of capital gain.

4. In this situation, propositions stated in Notes 2(*a*) and 3(*b*) will hold good.

5. In this case, B Ltd. can set-off and carry forward brought forward business loss/unabsorbed depreciation of A Ltd. Also propositions stated in Note 3(*b*) will apply.

202-P3 *Company A is proposed to be merged with company B. The following are the particulars of the former company :*

	Rs.
Unabsorbed depreciation	*2,50,65,000*
Unabsorbed business losses	*1,15,10,000*

Consider which of the benefits can be availed of by company B and advise the latter on the condition to be fulfilled to claim each such benefit.

■

There is no indication in the question whether merger of company A and company B satisfies conditions of sections 2(*1B*) and 72A

Answer to the given problem can be given under the following three situations :

a. if the merger is not "amalgamation" within the meaning of section 2(*1B*) ; or *b.* if the merger is an "amalgamation" within section 2(*1B*) but it does not fulfil conditions of section 72A ; or

c. if the merger satisfies conditions of section 2(*1B*) as well as section 72A.

Under the aforesaid situations, the position regarded the set-off of the unabsorbed loss/allowances by company B will be as under :

	Whether company B can set-off unabsorbed allowance/loss of company A		
	Situation (a)	*Situation (b)*	*Situation (c)*
Unabsorbed depreciation of Rs. 2,50,65,000	*No*	*No*	*Yes*
Unabsorbed losses of Rs. 1,15,10,000	*No*	*No*	*Yes*

As is evident from the aforesaid chart, all unabsorbed losses/allowances can be set-off if the merger satisfies requirement of section 72A. Alternatively, in order to retain the advantage of claiming set-off of unabsorbed loss/allowance, the business of company B may be taken over by company A. In that case all unabsorbed losses/allowances can be set-off by company A, even if the merger does not satisfy the conditions of sections 2(*1B*) and 72.

202-P4 *Company X which has an accumulated loss of Rs. 5,00,000 and unabsorbed depreciation of Rs. 3,00,000 wants to reorganize its business by amalgamating with a rival company Y, which is engaged in the same line of production but with a smaller capital, but has an efficient management set up and more modern machinery. Company Y is agreeable to the amalgamation.*

What are the alternative courses available to the companies for effecting the merger and how would you advise them as to the best course of action?

■

The alternatives for merger that are available to X and Y are : (*i*) merger of X into Y, whereby X goes out of existence ; (*ii*) merger of Y into X, whereby Y goes out of existence ; and (*iii*) merger of X and Y into a new company, whereby a new company, say Z, is formed and both X and Y go out of existence.

All the three mergers can take place under one of the following situations—

a. If the merger is not an "amalgamation" within the meaning of section 2(*1B*).

b. If the merger is an "amalgamation" within the meaning of section 2(*1B*), though it does not satisfy provisions of section 72A.

c. If the merger satisfies conditions of sections 2(*1B*) and 72A.

Under the aforesaid situations, the set-off of accumulated loss of Rs. 5,00,000 and unabsorbed depreciation of Rs. 3,00,000 is possible in the following cases :

	Whether set-off of unabsorbed loss/ depreciation allowance is possible?		
	Situation (a)	*Situation (b)*	*Situation (c)*
i. Merger of X into Y (X goes out of existence after merger)	*No*	*No*	*Yes*
ii. Merger of Y into X (Y goes out of existence)	*Yes*	*Yes*	*Yes*
iii. Merger of X and Y into Z (X and Y go out of existence, Z is formed as a new company)	*No*	*No*	*Yes*

To conclude, it can be said that if the conditions of section 72A [*see* para 200] are satisfied, any of the three alternatives for mergers can be adopted, as in all the cases the loss can be set-off by the amalgamated company. If, however, conditions of section 72A are not satisfied, alternative (*ii*) (*i.e.*, merger of company Y into X) should be adopted, as in this case, company X would be able to carry forward and set-off of loss/depreciation even if the merger does not fulfil the requirement of section 2(*1B*). This kind of merger is also known as reverse merger.

Expenditure on amalgamation/demerger [Sec. 35DD]

203. Where an assessee, being an Indian company, incurs expenditure (on or after April 1, 1999), wholly and exclusively for the purpose of amalgamation or demerger, the assessee shall be allowed a deduction equal to one-fifth of such expenditure for 5 successive previous years beginning with the previous year in which amalgamation or demerger takes place.

No deduction shall be allowed in respect of the above expenditure under any other provisions of the Act.

The following points should be noted—

1. If expenditure is allowed as deduction under section 35DD, then the same is not allowed as deduction under any other provision of the Act.

2. Unlike section 37(1) which prohibits deduction in respect of capital expenditure, section 35DD does not stipulate any such restriction. Even capital expenditure, if it is wholly and exclusively incurred for the purpose of the amalgamation or demerger, would be available as a deduction under section 35DD.

3. In the case of amalgamation, the amalgamating company ceases to exist. Therefore, the amalgamating company can claim one-fifth of amalgamation expenditure as deduction in the year in which amalgamation takes place. In the subsequent year (as the amalgamating company ceases to exist) deduction will not be available. On the other hand, the amalgamated company can claim deduction in the year of amalgamation and the next four years. Therefore, as far as possible amalgamation expenditure should be borne by the amalgamated company.

Consequences of amalgamation

204. In pursuance of an agreement of amalgamation (or demerger) the amalgamated company (or the resulting company) in case it is an Indian company shall be entitled to benefits available under sections 35, 35AB, 35ABB, 35D, 35DDA, 35E, 41, 80-IA and 80-IB as they would have applied to the amalgamating company (or demerged company) if no amalgamation had taken place. Moreover, the deduction in respect as the previous year in which the amalgamation (or demerger) takes place shall be available only to the amalgamated company (or resulting company) and not to the amalgamating company (or demerged company). However, the rule regarding depreciation is different.

Date of amalgamation

204.1 Every scheme of amalgamation has to necessarily provide a date with effect from which the amalgamation shall take place. It is true that while sanctioning the scheme, it is open to the court to modify the said date and prescribe such date of amalgamation as it thinks appropriate on the facts and circumstances of the case. If the court so specifies a date, there is little doubt that such date would be the date of amalgamation. Where, however, the court does not prescribe any specific date but merely sanctions the scheme presented to it, it should follow that the date of amalgamation is the date specified in the scheme as 'the transfer date'. It cannot be otherwise.

MULTIPLE CHOICE QUESTIONS

Q1. In an "amalgamation" all assets and liabilities of the amalgamating company is taken over by the amalgamated company. Besides—

a. Shareholders holding not less than 90 per cent (in value) of shares in amalgamating company should become shareholders in amalgamated company;

b. Shareholders holding not less than 51 per cent (in value) of shares in amalgamating company should become shareholders in amalgamated company;

c. Shareholders holding not less than 75 per cent (in value) of shares in amalgamating company should become shareholders in amalgamated company;

d. Shareholders holding not less than 26 per cent (in value) of shares in amalgamating company should become shareholders in amalgamated company.

Q2. In a scheme of amalgamation of X Ltd. will takeover the business of Y Ltd. One of the assets owned by Y Ltd. is a plot of land whose cost is Rs. 25 lakh. This plot is transferred to X Ltd. in the scheme of amalgamation at the value of Rs. 75 lakh. Y Ltd. does not want to pay tax on capital gain—

a. The amalgamation should satisfy conditions of section 2(1B);

b. The amalgamation should satisfy conditions of sections 2(1B) and 72A;

c. The amalgamation should satisfy conditions of section 72A;

d. The amalgamation should satisfy conditions of section 2(1B) and X Ltd. should be an Indian company.

Q3. If conditions of section 72A are satisfied, accumulated unabsorbed depreciation of the amalgamating company will become unabsorbed depreciation of the amalgamated company of the previous year in which the amalgamation takes place and it can be carried forward—

a. For 4 years;

b. For 8 years;

c. For 16 years;

d. None of above.

Q4. There is an amalgamation of X Ltd. with Y Ltd. and it satisfies conditions of sections 2(1B) and 72A. The date of amalgamation is September 7, 2018. X Ltd. has accumulated loss (pertaining to the period - April 1, 2017 to September 6, 2018). This loss can be carried forward by Y Ltd.—

a. Without any time-limit;

b. Up to the previous year 2021-22;

c. Cannot be carried forward;

d. Up to the previous year 2025-26.

Q5. Under section 72A the amalgamated company, which has acquired an industrial undertaking of the amalgamated company by way of amalgamation, shall achieve the level of production of at least 50 per cent of installed capacity of the said undertaking before the end of—

a. 10 years;

b. 1 year;

c. 4 years;

d. 5 years.

Q6. Under section 72A, the amalgamated company should continue the business of the amalgamating company for a minimum period of—

a. 10 years from the date of amalgamation;

b. 5 years from the date of incorporation;

c. 10 years from the date of incorporation;

d. 5 years from the date of amalgamation.

Q7. There is an amalgamation of shipping company with another shipping company. Both the companies are Indian companies. Under section 72A the amalgamated company in this case, shall achieve the level of production of at least 50 per cent of installed capacity of the amalgamated company before the end of—

a. 10 years;

b. 1 year;

c. 4 years;

d. 5 years.

e. None of above.

Q8. There is an amalgamation of a private sector airline with another airline in the private sector. The two companies are Indian company. If all conditions of section 72A are satisfied the amalgamated company can set off and carry forward accumulated loss of amalgamating company.

a. True;

b. False.

Q9. There is an amalgamation of a private sector bank with another bank in public sector. The two companies are Indian company. If all conditions of section 72A are satisfied the amalgamated company can set off and carry forward accumulated loss of amalgamating company.

a. True;

b. False.

Q10. There is an amalgamation of a private sector hospital with another hospital in public sector. The two companies are Indian company. If all conditions of section 72A are satisfied the amalgamated company can set off and carry forward accumulated loss of amalgamating company.

a. True;

b. False.

Q11. There is an amalgamation of a private sector telecommunication services (*i.e.*, satellite service) providing company with another company in the private sector, which provides broadband network services. The two companies are Indian company. However, in the amalgamated company 20 per cent shares are held by a foreign company. If all conditions of section 72A are satisfied the amalgamated company can set off and carry forward accumulated loss of amalgamating company.

a. True;

b. False.

DEMERGER

21 CHAPTER

205. The company whose undertaking is transferred pursuant to demerger is known as "demerged" company. The company to which the undertaking is transferred is known as "resulting" company.

Meaning of demerger [Sec. 2(19AA)]

Under the Act, "demerger" should satisfy the following conditions—

Condition one - Entities involved should be companies

205.1 Under the Income-tax Act, demerger is possible between companies only. Consequently, a demerger of an undertaking of a firm with a company would not be covered by the definition under section 2(*19AA*) although such a demerger may be permitted under the Companies Act, 1956.

Condition two - Sections 391 to 394

205.2 Conditions of sections 391 to 394 of the Companies Act should be satisfied.

Condition three - It involves transfer of an undertaking

205.3 The definition under section 2(*19AA*) applies only in respect of transfer of an "undertaking".

Explanation 1 defines the term "undertaking". The term includes any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

To put it differently, a part of undertaking will not be "undertaking" for the purposes of the definition if the assets/liabilities of the specific part of the undertaking cannot by themselves constitute a business activity. Likewise, transfer of assets which excludes a few significant assets without which the business cannot be carried on effectively, may not be considered as a transfer of business.

Condition four - All property of the undertaking should be transferred to the resulting company

205.4 All the property of the undertaking being transferred by the demerged company becomes the property of the resulting company.

The following points should be noted—

- One has to see whether in actuality all the properties are transferred, and the resulting company is able to carry on the activities of the demerged company as a going concern. If this is the case, then the condition regarding transfer of property should also be deemed to have been satisfied.
- Section 2(*19AA*) requires that all the properties of the undertaking should be transferred. It does not, however, state that any asset (not forming part of an undertaking) should not be transferred. Consequently, if a specific asset is transferred, out of prudence that it forms part of the undertaking (whereas it does not form part of the undertaking) the benefits attached to demerger cannot be denied.
- If an asset is used partly for the unit, which is transferred and partly for other units, such an asset may not be transferred.
- Property of the undertaking, which is transferred in a scheme of demerger includes all assets (fixed, current, circulating) but does not include miscellaneous expenditure (like preliminary expenses, discount allowed on issue of shares, and other deferred revenue expenditure), which appears on assets side of a balance sheet.

Condition five - The resulting company should take over all liabilities of the undertaking

205.5 All the liabilities relatable to the undertaking being transferred by the demerged company, should become the liabilities of the resulting company.

For this purpose, the liabilities shall include :

a. the liabilities which arise out of the activities or operations of the undertaking;

b. the specific loans or borrowings (including debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and

c. in cases, other than those referred to in (*a*) or (*b*), so much of the amounts of general or multipurpose borrowings, if any, of the demerged company as stand in the same proportion in which the value of the assets transferred in a demerger bears to the total value of the assets of such demerged company immediately before the demerger.

The following points should be noted—

■ For the purpose of (*c*) (*supra*), the computation shall be made on the following lines - amount of general/multi-purpose borrowing of the demerged company × book value of assets (ignoring the effect of revaluation if any) transferred in the demerger ÷ total book value of assets (ignoring the effect of revaluation) of the demerged company before demerger.

■ The liability for the purpose of setting up the undertaking shall be considered as a liability.

■ As contingent liabilities are not liabilities of the demerged company immediately before demerger, the resulting company may or may not take over such liabilities.

Condition six - Liabilities/ properties are to be transferred at book value

205.6 The properties and the liabilities of the undertaking are transferred at book values appearing in the books of account of the demerged company immediately before the demerger. *Explanation 3* provides that any change in the value of assets consequent to their revaluation shall not be taken into consideration.

The following points should be noted—

■ Revaluation made in any year (maybe in the year of demerger or before that year) shall be ignored.

■ If inventory is valued at market value or net realisable value, it does not amount to revaluation.

■ Indian Accounting Standards (Ind-AS) compliant companies are required to record the property and the liabilities of the undertaking at a value different from the book value of the demerged company. In order to accommodate such companies, section 2(*19AA*) has been amended with effect from the assessment year 2020-21†. The amended provisions provide that the requirement of recording property and liabilities at book value by the resulting company shall not be applicable in a case where the property and liabilities of the undertakings received by it, are recorded at a value different from the value appearing in the books of account of the demerged company immediately before the demerger in compliance of the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015.

Condition seven - Shares in resulting company to shareholders of demerged company

205.7 The resulting company issues shares to the shareholders of the demerged company on a proportionate basis as a consideration for demerger.

The word 'proportionate' suggests that, for each share of the demerged company, the ratio of shares in demerged company to the share in resulting company should be identical. This ratio is to be maintained separately for each class of shares. In case of odd lot shares, the consideration for the 'odd lot' may be discharged in the form of cash.

The aforesaid issue of shares to the shareholders of demerged company on "proportionate" basis is not possible where the resulting company is a shareholder in the demerged company. To accommodate such cases, the Finance Act, 2012 amended section 2(*19AA*) so as to exclude the requirement of issue of shares where resulting company itself is a shareholder of the demerged company. The requirement of issuing shares will still have to be met by the resulting company in case of other shareholders of the demerged company.

† However, courts have been unanimous in holding that amendments, which are intended to remove unintended hardships, are declaratory in nature and, therefore, operate retrospectively – *CIT* v. *Calcutta Export Company* [2018] 255 Taxman 293 (SC), *CIT* v. *Alom Extrusions Ltd.* [2009] 185 Taxman 416 (SC), *CIT* v. *Amrit Banaspati Co. Ltd.* [2002] 123 Taxman 74 (SC), *Allied Motors (P.) Ltd.* v. *CIT* [1997] 91 Taxman 205 (SC).

205.8 The shareholders holding not less than three-fourths in value of the shares in the demerged company (other than the shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company.

Condition eight - Person holding 75 per cent shares in the demerged company to become shareholders in the resulting company

The following points should be noted—

■ The resulting company should issue its shares to the shareholders of demerged company in consideration of transfer of undertaking by the demerged company. The resulting company cannot transfer its investments to the shareholders of demerged company.

■ If the shareholders in demerged company includes the resulting company or its nominees or its subsidiary, then shareholding by such entities shall not be considered for determining the aforesaid "three-fourth" criteria. For this purpose, it is only the shares held immediately before the demerger by the resulting company, etc., that have to be excluded, and the consent of the three-fourths of the remaining shareholders have to be obtained. Any acquisition of shares by the resulting company, etc., after the appointed date cannot be reduced for the purpose of calculating three-fourth shareholders.

■ 'Shares' include all classes of shares whether equity shares or preference shares. Consequently, 'three-fourths in value of shares' means three-fourths in value of the aggregate share capital and not merely equity capital of the demerged company.

Provisions illustrated - The following are shareholders of D Ltd. (demerged company) [one of the undertakings of D Ltd. is transferred in a scheme of demerger to R Ltd. (resulting company)].

Face value in thousand Rs.

	Equity shares	*Preference shares*
A	100	-
B	400	-
C	200	-
D	500	-
R Ltd.	300	100
IDBI	150	130
Public	50	70
Total	1700	300

Total paid-up capital is Rs. 20,00,000. After excluding shares held by R Ltd., the remaining paid-up capital is Rs. 16,00,000. 75 per cent of Rs. 16,00,000 is held by any of the following group of shareholders—

Group 1 - A, B, C and D

Group 2 - B, C, D and public

Group 3 - A, B, D, IDBI

Group 4 - A, C, D, IDBI and public

If shares are issued by R Ltd. to A, B, C and D. Suppose total consideration is Rs. 15,60,000 and 1,56,000 shares are to be issued of Rs. 10 each, then these shares should be allotted to A, B, C and D in the rate of 1 : 4 : 2 : 5 (*i.e.,* 13,000 shares to A, 52,000 shares to B, 26,000 shares to C and 65,000 shares to D).

205.9 The transfer of the undertaking should be on a going concern basis. The business should be continuing at the time of demerger.

Condition nine - Transfer as ongoing concern

205.10 The demerger is in accordance with the conditions, if any, notified under section 72A(5).

Condition ten - Section 72A(5) conditions

205.11 The following points should also be noted—

Other points

1. The aforesaid provisions are not applicable if an undertaking is transferred as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company.

2. For this purpose, the term "undertaking" shall include any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

3. For this purpose, the splitting up or the reconstruction of any authority or a body constituted or established under a Central, State or Provincial Act, or a local authority or a public sector company, into separate authorities or bodies or local authorities or companies, as the case may be, shall be deemed to be a demerger if such split up or reconstruction fulfils such conditions as may be specified by the Central Government†.

Actual cost and WDV

206. The provisions are given below :

When a capital asset (other than forming part of a block of asset) is transferred

206.1 In the case of a demerger where any capital asset is transferred by the demerged company to the resulting company, the actual cost of the transferred asset to the resulting company shall be taken to be the same as it would have been if the demerged company had continued to hold the asset.

However, such actual cost shall not exceed the written down value of such capital asset in the hands of demerged company.

When an asset forming part of block of assets is transferred [Explns. 2A and 2B to sec. 43(6)]

206.2 These provisions are given below -

- *Explanation 2A* provides that where in any previous year any asset forming part of a block of assets is transferred by a demerged company to the resulting company, the written down value of the block of assets of the demerged company for the immediately preceding year shall be reduced by the written down value of the assets transferred to the resulting company.
- *Explanation 2B* provides that where any asset forming part of a block of assets is transferred by a demerged company to the resulting company, the written down value of the block of assets in the case of resulting company shall be the written down value of the transferred assets of the demerged company immediately before the demerger.

For the aforesaid purpose, the written down value of the assets transferred by the demerged company shall be determined on the assumption that the assets transferred were the only assets in the block since their acquisition.

Computation of depreciation

206.3 Fifth proviso to section 32(1) is applicable.

Case study

206.3-P1 *X Ltd. has two undertakings A and B. The following information is available—*

	(Rs. in thousand)		
	Unit A	Unit B	Total
Assets Rate of depreciation	Plants R and S 15 per cent	Plants P and Q 15 per cent	
Depreciated value on April 1, 2016	—	*600*	*600*
Add *: Actual cost of old Plants R and S acquired on June 1, 2016*	*400*	—	*400*
Less *: Sale proceeds of Plant P transferred on November 30, 2016*	—	*900*	*900*
Written down value on March 31, 2017	*400*	—	*100*
Less *: Depreciation for 2016-17*	*60*	—	*15*
Depreciated value on April 1, 2017	*340*	—	*85*
Less *: Depreciation for 2017-18*	*51*	—	*12.75*
Depreciated value on April 1, 2018	*289*	—	*72.250*

† For this purpose, the Central Government has specified that where the split up or the reconstructed authority or body, constituted or established under a Central, State or Provincial Act, is an entity engaged in the generation or transmission or distribution of electrical power, or in all of these activities, such splitting up or reconstruction shall be deemed to be a demerger if the following conditions are fulfilled, namely,—

a. splitting up or reconstruction is effected through a notification in the Official Gazette by the Central or the State Government; and

b. assets of the split up or reconstructed authority or body, are transferred to one or more resulting companies on a going concern basis—Notification No. 11576, dated December 26, 2000.

Further, the Central Government has specified that the reconstruction or splitting up of a company which ceased to be a public sector company as a result of transfer of its shares by the Central Government, into separate companies, shall be deemed to be a demerger if the following conditions are fulfilled, namely:—

a. that such reconstruction or splitting up has been made to transfer any assets of the demerged company to the resulting company to give effect to the conditions mentioned in the Share Holders' Agreement and Share Purchase Agreement; and

b. that the resulting company is a public sector company – Notification No. SO 3204(E), dated October 14, 2016.

On April 1, 2018, Unit A is transferred to Y Ltd., an Indian company, in a scheme of demerger. What will be written down value and actual cost in the hands of X Ltd. and Y Ltd.?

■

Written down value in the hands of X Ltd.

	Rs.
Depreciated value of assets on April 1, 2018	72,250
Less : Written down value of assets transferred to Y Ltd.	(–) 2,89,000
Written down value on April 1, 2018	*Nil*

Note - By virtue of section 47(*vib*) income is not taxable under the head "Capital gains".

Written down value in the hands of Y Ltd.

In the hands of Y Ltd., the written down value shall be Rs. 2,89,000.

206.3-P2 *X Ltd. (demerged company) and Y Ltd. (resulting company) are two Indian companies. The following information is noted from the books of the two companies :*

	X Ltd.	*Y Ltd.*
Block of assets	Plants A and B (Unit I) and C and D (Unit II)	Plant P
Rate of depreciation	15 per cent	15 per cent
	Rs.	Rs.
*Depreciated value of the block on April 1, 2018 [*out of which Unit I : Rs. 13,00,000, Unit II : Rs. 17,00,000]*	*30,00,000**	*20,00,000*
New acquisition being actual cost of		
– Plant E (for Unit II) purchased and put to use on June 2, 2018	*1,00,000*	—
– Plant Q purchased and put to use on November 6, 2018	—	*2,60,000*

In a scheme of demerger Unit I is transferred by X Ltd. to Y Ltd. on July 5, 2018. Find out the depreciation available to X Ltd. and Y Ltd. Assume that additional depreciation is not available on acquisition of Plant E and Plant Q.

■

Depreciation of the previous year 2018-19 in respect of assets of Unit I which will be allocated between X Ltd. and Y Ltd. as per fifth proviso to section 32(1)

	Rs.	*Rs.*
15% of Rs. 13,00,000		1,95,000
Number of days when the assets are used by—		
- X Ltd.		95 days
- Y Ltd.		270 days
Share of X Ltd. in depreciation (95 ÷ 365 of Rs. 1,95,000)		50,753
Share of Y Ltd. (Rs. 1,95,000 – Rs. 50,753)		1,44,247
Depreciation to X Ltd.		
Depreciated value of the block on April 1, 2018		30,00,000
Add : Cost of Plant E		1,00,000
Less : Written down value of Unit I (being written down value for the immediately preceding year) [it is not "immediately preceding demerger"]		(-) 13,00,000
Written down value on March 31, 2019		18,00,000
Depreciation		
- On Unit I	50,753	
- On Unit II	2,70,000	3,20,753
Depreciated value of the block on April 1, 2019		14,79,247
Depreciation to Y Ltd.		
Depreciated value of the block on April 1, 2018		20,00,000
Add : Actual cost of Plant Q		2,60,000
Add : Actual cost of Unit I acquired in a scheme of demerger (being written down value in the hands of demerged company immediately before demerger; as per *Explanation 2B* to section 43(6), *i.e.*, Rs. 13,00,000 *minus* Rs. 50,753)		12,49,247
Written down value on March 31, 2019		35,09,247

	Rs.	Rs.
Depreciation @ 15% on—		
- Unit I	1,44,247	
- Plant Q (1/2 of 15% of Rs. 2,60,000)	19,500	
- Other assets [15% of (Rs. 35,09,247 – Rs. 12,49,247 – Rs. 2,60,000)]	3,00,000	4,63,247
Depreciated value of the block on April 1, 2019		30,45,500

Demerger and capital gains

207. The Act has made special provisions regulating tax incidence on capital gains in the case of demerger.

When it is not treated as transfer

207.1 The following are not treated as transfer by virtue of section 47—

a. any transfer in a demerger of a capital asset by the demerged company to resulting company provided that resulting company is an Indian company [sec. 47(*vib*)] ;

b. any transfer of shares held in an Indian company by a demerged foreign company to the resulting foreign company if the following conditions are satisfied :

i. the shareholders holding not less than three-fourths in value of shares of the demerged foreign company continue to remain shareholders of the resulting foreign company ; and

ii. such transfer does not attract tax on capital gains in the country, in which the demerged foreign company is incorporated [sec. 47(*vic*)] ;

c. any transfer or issue of shares by the resulting company in a scheme of demerger to the shareholders of the demerged company if the transfer or issue is made in consideration of demerger of the undertaking [sec. 47(*vid*)].

However, the distinction between section 47(*vic*) and section 2(*19AA*) should be noted. Under section 2(*19AA*), while applying the limit of three-fourths in value of the shares, the shares already held in the demerged company immediately before the demerger by (or by a nominee for) the resulting company, (or its subsidiary) should be excluded, a similar provision is not made in section 47(*vic*).

Cost of acquisition of shares in resulting company and demerged company [Sec. 49(2C)/(2D)]

207.2 Cost of acquisition of the shares in the resulting company shall be the amount which bears to the cost of acquisition of shares held by the assessee in the demerged company the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger. For this purpose "net worth" shall mean the aggregate of the paid-up share capital and general reserves as appearing in the books of account of the demerged company immediately before the demerger.

■ The following points should be noted —

1. Cost of acquisition of the original shares held by the shareholder in the demerged company shall be deemed to have been reduced by the amount as mentioned above.

2. To find out whether or not shares in the resulting company are long-term capital asset, the period of holding shall be determined from the date of acquisition of shares in the demerged company.

3. The indexation will start from the date of allotment of shares in the resulting company.

Expenditure on demerger

208. *See* para 203.

Carry forward and set-off of losses/depreciation - When permissible in the hands of

209. In the case of demerger, the accumulated loss and unabsorbed depreciation of the demerged company will be allowed to be carried forward and set-off in the hands of the resulting company.

The Central Government may, for this purpose, by notification in the Official Gazette, specify such conditions as it considers necessary to ensure that the demerger is for genuine business purposes.

How to compute the loss/depreciation allowance which will be carried forward by the resulting company - If the loss/depreciation is directly relatable to the undertakings transferred to the resulting company, then such loss/depreciation shall be allowed to be carried forward in the hands of the resulting company.

Where, however, such loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting company, it will be apportioned between the demerged company and the resulting company in the same proportion in which the assets of the undertakings have been retained by the demerged company and transferred to the resulting company, and it will be allowed to be carried forward and set-off in the hands of the demerged company or the resulting company, as the case may be. resulting company [Sec. 72A]

210. The following case studies is given— Case study

210-P1 *D Ltd. (demerged company) wants to transfer one of its undertakings to R Ltd. (resulting company). D Ltd. is the holding company of R Ltd. The two companies are Indian companies.*

The following is the balance sheet of D Ltd. as on March 31, 2018 immediately before demerger.

(Rs. in thousand)

Equity share capital	*140,00*	Unit 1	
Capital reserve	*1,00*	*Land (acquired in 1990)*	*30,00*
Share premium	*2,99.290*	*Plant and machinery*	*60,00*
General reserve	*15,00*	*Stock-in-trade*	*4,00*
Revaluation reserve		*Sundry debtors*	*3,00*
- Land of Unit 1	*4,00*	*Deferred revenue expenditure*	*2,00*
- Building of Unit 2	*6,00*	Unit 2	
Loan (taken to purchase plant and machinery of Unit 1)	*22,00.710*	*Plant and machinery*	*36,00*
		Building	*14,00*
Loan (general)	*3,00*	*Stock-in-trade*	*6,00*
Current liability		*Sundry debtors*	*4,00*
Unit 1	*7,00*	Other assets	
Unit 2	*1,00*	*Land and building*	*30,00*
Bank overdraft (general)	*8,00*	*Investment*	
		- Shares in R Ltd.	*8,00*
		- Shares in Tac Chem.	*2,00*
		Cash and bank	*10,00*
		Pre-incorporation expenses	*1,00*
	210,00		*210,00*

Other information—

1. Shareholders list of D Ltd. is as follows—A : 20 per cent, B : 40 per cent, C Ltd. : 30 per cent and UTI : 10 per cent.

2. Accumulated business loss for tax purpose of D Ltd. up to the assessment year 2018-19 is Rs. 45 lakh. This loss pertains to the assessment year 2013-14.

*3. D Ltd. wants to transfer Unit 1 to R Ltd. on April 1, 2018 by satisfying conditions of section 2(*19AA*).*

4. The market value of assets of Unit 1 is as follows - Land : Rs. 69 lakh and plant and machinery : Rs. 49 lakh.

5. After the demerger, the face value of equity shares of D Ltd. will be reduced to Rs. 6 per share.

6. Securities transaction tax is not applicable.

■

R Ltd. should take over the following assets and liabilities pertaining to D Ltd.—

	(Rs. in thousand)
Land (Rs. 30 lakh *minus* Rs. 4 lakh)	26,00
Plant and machinery	60,00
Stock	4,00
Debtors	3,00
Total assets (at book value)	93,00
Less : Liabilities	
Loan taken to purchase plant and machinery	22,00.71
Current liabilities	7,00
Loan (general) [*see* Note]	1,41.62
Bank overdraft (general) [*see* Note]	3,77.67
Consideration	58,80

The following points should be noted—

1. Total assets of D Ltd. are Rs. 210 lakh. Out of which, the following shall be excluded : Deferred revenue expenditure of Unit 1 : Rs. 2 lakh, pre-incorporation expenditure : Rs. 1 lakh, revaluation reserve Unit 1 : Rs. 4 lakh and Unit 2 : Rs. 6 lakh. The balance is Rs. 197 lakh. The book value of assets of Unit 1 is Rs. 93 lakh. Therefore, general loan and bank overdraft shall be allocated to Unit 1 in ratio of 93/197 [*i.e.*, Rs. 3 lakh × 93/197 : Rs. 1,41,624 and Rs. 8 lakh × 93/197 : Rs. 3,77,665].

2. The total consideration is Rs. 58,80,000. It will be paid by R Ltd. by issue of shares. Suppose shares are issued at par, then R Ltd. will issue shares to shareholders of D Ltd. as follows (a person holding 100 shares in D Ltd. will get 42 shares in R Ltd.)—

	Number of shares	*Face value of shares (Rs.)*
A (20%)	1,17,600	11,76,000
B (40%)	2,35,200	23,52,000
C Ltd. (30%)	1,76,400	17,64,000
UTI (10%)	58,800	5,88,000
	5,88,000	58,80,000

3. Accumulated business loss of D Ltd., which will be set off and carry forward by R Ltd. under the provisions of section 72A will be Rs. 21,24,365 (*i.e.*, Rs. 45 lakh × 93 ÷ 197). It can be carried forward up to the assessment year 2021-22.

4. Market value of assets of Unit 1 is not taken into consideration for determining total consideration.

5. Shareholders of D Ltd. will get shares in R Ltd. By virtue of section 2(*22*)(*v*), it will not be treated as "dividend".

6. D Ltd. transfers Unit 1 to R Ltd. It is not treated as "transfer" for the purpose of capital gains by virtue of section 47(*vib*).

7. Shareholders of D Ltd. get shares in R Ltd. in lieu of reduction in share capital. It is not chargeable under the head "Capital gains", as it is not taken as "transfer" under section 47(*vid*).

8. Suppose land acquired from D Ltd. is transferred by R Ltd. on March 1, 2019 for 80 lakh, then amount of capital gain shall be determined as under —

Capital gain in the case of R Ltd.	*Rs.*
Sale proceeds	80,00,000
Less : Cost of acquisition	26,00,000
Short-term capital gain	54,00,000

In this case, the period of holding is taken from April 1, 2018 to March 1, 2019.

9. R Ltd. can claim depreciation in respect of plant and machinery acquired from D Ltd. For mode of computation, *see* para 206.

10. D Ltd. can claim depreciation in respect of remaining assets. For mode of computation, *see* para 206.

11. B who holds 5,60,000 (40% of 14,00,000 shares) in D Ltd., gets 2,35,200 shares in R Ltd. on April 1, 2018. Suppose 5,60,000 shares in D Ltd. were acquired by him as follows—

Lot	*No. of shares*	*Date of acquisition*	*Rate per share (incl. brokerage) Rs.*	*Fair market value on April 1, 2001 Rs.*
I	75,000	April 25, 1989	6	9
II	25,000	June 6, 1990	*Nil* (bonus share)	9
III	3,00,000	May 7, 2006	8	—
IV	1,00,000	July 11, 2011	*Nil* (bonus share)	—
V	60,000	March 28, 2018	7	—

After demerger, B holds 5,60,000 shares in D Ltd. (face value Rs. 6 per share) and 2,35,200 shares in R Ltd. (face value Rs. 10 per share). Suppose on March 15, 2019, B transfers shares in D Ltd. @ Rs. 17 per share and shares in R Ltd. @ Rs. 81 per share, then capital gain shall be computed as under—

	Lot I	*Lot II*	*Lot III*	*Lot IV*	*Lot V*
Number of shares in D Ltd. (*a*)	75,000	25,000	3,00,000	1,00,000	60,000
Number of shares in R Ltd. (a person who holds 100 shares in D Ltd. gets 42 shares in R Ltd.) (*b*)	31,500	10,500	1,26,000	42,000	25,200
Period of holding of shares in D Ltd. and R Ltd. [in respect of shares in R Ltd. the period of holding shall be taken from the date of acquisition of shares in D Ltd.—Sec. 2(*42A*), *Expln. 1*(*g*)]	April 25, 1989 to March 15, 2019	June 6, 1990 to March 15, 2019	May 7, 2006 to March 15, 2019	July 11, 2011 to March 15, 2019	March 28, 2018 to March 15, 2019
Status long-term capital asset (LT) or short-term capital asset (ST)	*LT* *Rs.*	*LT* *Rs.*	*LT* *Rs.*	*LT* *Rs.*	*ST* *Rs.*
Cost per share in D Ltd.	6	*Nil*	8	*Nil*	7
Fair market value on April 1, 2001	9	9	—	—	—
Cost or market value on April 1, 2001, whichever is more (*c*)	9	9	8	*Nil*	7
Cost of acquisition for capital gain if there is no demerger [(*a*) × (*c*)] (*d*)	6,75,000	2,25,000	24,00,000	*Nil*	4,20,000
Cost of acquisition of shares in R Ltd. [*see* Note 1] [(*d*) × Rs. 58,80,000 ÷ Rs. 1,55,00,000] (*e*)	2,56,065	85,355	9,10,452	*Nil*	1,59,329
Cost of acquisition of shares in D Ltd. [*see* Note 2] [(*d*) - (*e*)] (*f*)	4,18,935	1,39,645	14,89,548	*Nil*	2,60,671
Computation of capital gains					
Shares in D Ltd.					
Sale proceeds [(*a*) × Rs. 17]	12,75,000	4,25,000	51,00,000	17,00,000	10,20,000
Less : Indexed cost of acquisition in the case of Lot I to IV [Note 3] or cost of acquisition in the Lot V	11,73,018	3,91,006	34,18,635	*Nil*	2,60,671
Long-term capital gain	1,01,982	33,994	16,81,365	17,00,000	—
Short-term capital gain	—	—	—	—	7,59,329
Shares in R Ltd.					
Sale proceeds [(*b*) × Rs. 81]	25,51,500	8,50,500	1,02,06,000	34,02,000	20,41,200
Less : Indexed cost of acquisition in the case Lot I to IV [*see* Note 3] or cost of acquisition in the case of Lot V	7,16,982	2,38,994	20,89,562	*Nil*	1,59,329
Long-term capital gain	18,34,518	6,11,506	81,16,438	34,02,000	—
Short-term capital gain	—	—	—	—	18,81,871

Note—

1. Section 49(2C) provides that the cost of acquisition of the shares in the resulting company shall be the amount which bears to the cost of acquisition of shares held by the assessee in the demerged company the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger. For this purpose "net worth" shall mean the aggregate of the paid-up share capital and general reserves as appearing in the books of account of the demerged company immediately before the demerger. In this case net book value of assets transferred in demerger is Rs. 58,80,000. Net worth of D Ltd. immediately before demerger is Rs. 1,55,00,000 (*i.e.*, paid-up capital Rs. 1,40,00,000 + general reserve Rs. 15,00,000). Therefore, 58.80/155 of cost of acquisition of shares in D Ltd. is taken as cost of acquisition of shares in R Ltd.

2. As per section 49(2D), the cost of acquisition of the original shares held by the shareholder in the demerged company shall be deemed to have been reduced by the amount as so arrived under sub-section (2C) (as mentioned above).

3. Indexed cost of acquisition in respect of shares in D Ltd. and R Ltd. is computed as follows—

Lot	*Cost of acquisition Rs.*	*CII of the year in which the asset was first held by the assessee*	*CII of the year in which the asset is transferred*	*Indexed cost of acquisition (2) × (4) ÷ (3) Rs.*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
D Ltd.				
I	4,18,935	100	280	11,73,018
II	1,39,645	100	280	3,91,006
III	14,89,548	122	280	34,18,635
IV	NA	184	280	NA
R Ltd.				
I	2,56,065	100	280	7,16,982
II	85,355	100	280	2,38,994
III	9,10,452	122	280	20,89,562
IV	NA	184	280	NA

Consequences of demerger

211. *See* para 204.

Amalgamation *vis-a-vis* Demerger

212. The key points of distinction between amalgamation and demerger are given below—

■ An amalgamation has a reference to a company as a whole whereas a demerger has a reference to an undertaking of the company.

The amalgamating company will lose its identity in amalgamation whereas the demerged company may continue to exist after demerger.

■ Demerger stipulates a transfer pursuant to a scheme of arrangement under sections 391 to 394, whereas there is no such requirement in case of amalgamation.

■ Demerger requires transfer of undertaking on a going-concern basis whereas there is no such explicit requirement under the Act in case of amalgamation.

Amalgamation or demerger of co-operative banks

213. The following provisions may be noted in this regard—

When not treated as transfer

213.1 By virtue of section 47, the following shall not be treated as transfer—

TRANSFER OF CAPITAL ASSETS TO AMALGAMATED CO-OPERATIVE BANKS

213.1-1 Any transfer of a capital assets in amalgamation/demerger of co-operative banks to amalgamated co-operative bank/resulting co-operative bank shall not be treated as transfer if amalgamation/demerger satisfied the conditions given under section 44DB.

ALLOTMENT OF SHARES IN AMALGAMATED CO-OPERATIVE BANK/ RESULTING CO-OPERATIVE BANK TO THE SHARE-HOLDERS OF AMALGAMATING/

213.1-2 Any transfer by a shareholder in a scheme of amalgamation/demerger of co-operative banks of shares held by him in the amalgamating/demerged co-operative bank shall not be regarded as transfer. This rule is applicable if—

a. transfer is made in consideration of allotment to him of shares in the amalgamated/resulting co-operative bank; and

b. amalgamation/demerger satisfies the conditions of section 44DB.

DEMERGED CO-OPERATIVE BANK [SEC. 47(1)(vicb)]

Actual cost of shares - According to section 49(1), in the aforesaid cases, the cost of shares of the amalgamated/resulting co-operative bank shall be cost of shares of the amalgamating/demerged co-operative banks.

Provisions illustrated - X co-operative bank takes over the business of Y co-operative bank in a scheme of amalgamation of the two banks which satisfies the requirement of section 44DB. Z has purchased 100 shares in Y co-operative bank in 1996 for Rs. 70 per share. As per the scheme of amalgamation, he gets 50 shares in X co-operative bank in lieu of 100 shares in Y co-operative bank. Consequently, the cost of shares in X co-operative bank will be taken as Rs. 140 per share [*i.e.*, Rs. 7,000, being cost of 100 shares in Y co-operative bank ÷ 50 shares in X co-operative bank].

■ The following points should be noted in this regard—

1. To find out whether or not shares in the amalgamated/resulting co-operative bank are long-term capital asset or not, the period of holding shall be determined from date of allotment of shares in the amalgamated/resulting co-operative bank.

2. The indexation will start from the date of allotment of shares in the amalgamated/resulting co-operative bank.

3. If besides shares in the amalgamated/resulting co-operative bank, the shareholders of amalgamating/demerged co-operative bank are allotted something more, say bonds or cash, etc., in consideration of transfer of their shares in the amalgamating/demerged co-operative bank, then the shareholders cannot get the benefit under section 47(*vicb*).

Carry forward and set-off of loss and depreciation - When permissible in the hands of amalgamated/resulting co-operative bank [Sec. 72AB]

213.2 The successor co-operative bank can set off and carry forward loss and depreciation allowance of the predecessor co-operative bank if a few conditions are satisfied—

1. The predecessor has been engaged in the business of banking, in which the accumulated loss occurred, for three or more years.

2. The predecessor has held at least 3/4 of the book value of fixed assets as on the date of the business reorganization, continuously for 2 years prior to the date of business reorganization.

3. The successor holds at least 3/4 of the book value of fixed assets of the predecessor acquired through business reorganization, continuously for a minimum period of 5 years immediately succeeding the date of business reorganization.

4. The successor continues the business of the predecessor for a minimum period of 5 years from the date of business reorganization.

5. The successor fulfils such other conditions as may be prescribed.

For this purpose, successor co-operative bank is amalgamated/resulting co-operative bank and predecessor co-operative bank is amalgamating/demerged co-operative bank. The expressions "amalgamation" and "demerger" have the same meaning which is given under section 44DB.

Special provision for computing deductions

213.3 Section 44DB is applicable for the purpose of calculating amount of deduction under sections 32, 35D, 35DD and 35DDA if there is a reorganization of business involving amalgamation or demerger of a co-operative bank.

IN THE YEAR IN WHICH AMALGAMATION OR DEMERGER TAKES PLACE

213.3-1 In the year in which change of ownership takes place because of the aforesaid reasons, deduction under sections 32, 35D, 35DD and 35DDA shall be calculated as under—

1. Find out the amount of deduction under the aforesaid sections of the previous year in which ownership of assets changes because of the aforesaid reasons on the assumption that the amalgamation or demerger has not taken place.

2. The amount of deduction so determined shall be apportioned between the (*a*) amalgamating co-operative bank and amalgamated co-operative bank, or (*b*) demerged co-operative bank and resulting co-operative bank, as the case may be, in the ratio of number of days for which the assets are used by them during the previous year in which ownership changes.

IN SUBSEQUENT YEARS

213.3-2 The provisions of sections 35D, 35DD and 35DDA shall, in a case where an undertaking of the amalgamating/demerged co-operative bank entitled to the deduction under that section is transferred before the expiry of the period specified in that section to amalgamated/resulting co-operative bank, apply to the successor in the financial years subsequent to the year of business reorganization as they would have applied to the predecessor, if the business reorganization had not taken place.

MEANING OF AMALGAMATION/ DEMERGER

213.3-3 For the aforesaid purpose, meaning of amalgamation/demerger is as follows—

■ *Amalgamation of co-operative banks* - It means the merger of an amalgamating co-operative bank or banks with an amalgamated co-operative bank, which satisfies the following conditions—

1. All the assets and liabilities of the amalgamating co-operative bank immediately before the merger become the assets and liabilities of the amalgamated co-operative bank. This rule is, however, not applicable in the case of the assets transferred, by sale or distribution on winding up, to the amalgamated co-operative bank.

2. The members holding 75 per cent or more voting rights in the amalgamating co-operative bank become members of the amalgamated co-operative bank.

3. The shareholders holding 75 per cent or more in value of the shares in the amalgamating co-operative bank (other than the shares held by the amalgamated co-operative bank or its nominee or its subsidiary, immediately before the merger) become shareholders of the amalgamated co-operative bank.

■ *Demerger of co-operative banks* - It means the transfer by a demerged co-operative bank of one or more of its undertakings to any resulting co-operative bank, which satisfies the following conditions—

1. All the assets and liabilities of the undertaking immediately before the transfer become the assets and liabilities of the resulting co-operative bank.

2. The assets and the liabilities are transferred to the resulting co-operative bank at values (other than change in the value of assets consequent to their revaluation) appearing in its books of account immediately before the transfer.

3. The resulting co-operative bank issues, in consideration of the transfer, its membership to the members of the demerged co-operative bank on a proportionate basis;

4. The shareholders holding 75 per cent or more in value of the shares in the demerged co-operative bank (other than shares already held by the resulting bank or its nominee or its subsidiary immediately before the transfer), become shareholders of the resulting co-operative bank, otherwise than as a result of the acquisition of the assets of the demerged co-operative bank or any undertaking thereof by the resulting co-operative bank.

5. The transfer of the undertaking is on a going concern basis.

6. The transfer is in accordance with the conditions specified by the Central Government having regard to the necessity to ensure that the transfer is for genuine business purposes.

MULTIPLE CHOICE QUESTIONS

Q1. Under the Income-tax Act, demerger is possible—

a. Between a company and a firm;

b. Between two companies;

c. Between two firms;

d. Between a limited liability company and a firm.

Q2. Under the Income-tax Act, "demerger" requires that—

a. All the assets should be transferred at market value;

b. All the assets and liabilities should be transferred at market value;

c. All the assets should be transferred at book value;

d. All the assets and liabilities should be transferred at book value.

Q3. Under the Income-tax Act, "demerger" should satisfy the requirement of section 2(*19AA*). One of the requirements is

a. Shareholders holding not less than 75 per cent (in value) of shares in demerged company should become shareholders in resulting company;

b. Shareholders holding not less than 49 per cent (in value) of shares in demerged company should become shareholders in resulting company;

c. Shareholders holding not less than 90 per cent (in value) of shares in demerged company should become shareholders in resulting company;

d. Shareholders holding not less than 26 per cent (in value) of shares in demerged company should become shareholders in resulting company.

Q4. The above percentage shall apply on the total shares of the demerged company *minus* shareholdings of the following in the demerged company immediately before demerger—

a. Shares held by resulting company;

b. Shares held by resulting company and its holding company;

c. Shares held by nominees of resulting company;

d. Shares held by resulting company, its nominees and subsidiary company.

Q5. X Ltd. is an Indian company, it has two units - Unit A (a unit which manufactures computer) and Unit B (a chain of retail selling outlets of stationary). Unit B is transferred to another company in a scheme of demerger which satisfies the conditions of section 2(*19AA*). By virtue of section 72A, the resulting company can carry forward the accumulated loss pertaining to Unit B.

a. True;

b. False.

Q6. X Ltd. is an Indian company, it has two units - Unit A (a unit which manufactures computer) and Unit B (an educational institute). Unit B is transferred to another company in a scheme of demerger which satisfies the conditions of section 2(*19AA*). By virtue of section 72A, the resulting company can carry forward the accumulated loss pertaining to Unit B.

a. True;

b. False.

Q7. As contingent liabilities are not liabilities of the demerged company immediately before demerger, the resulting company may or may not take over such liabilities.

a. True;

b. False.

Q8. Capital gains in the hands of demerged company is exempt from tax—

a. If the demerged as well as resulting companies are Indian companies;

b. If the resulting company is a foreign company but the demerged company should be Indian company;

c. If the demerged company is a foreign company but the resulting company should be Indian company;

d. If the two companies are foreign companies.

Q9. A business undertaking is transferred as a going concern in a scheme of demerger by A Ltd. (Indian company) to B Ltd. (Indian company). Shareholders in A Ltd. will be allotted shares in B Ltd. Persons holding more than 75 per cent of shares in A Ltd. are non-residents foreign citizens—

a. Shareholders of A Ltd. cannot avail exemption under section 47;

b. Shareholders of A Ltd. cannot avail exemption under section 47 unless it is permitted by the Central Board of Direct Taxes;

c. Shareholders of A Ltd. can avail exemption under section 47;

d. Shareholders of A Ltd. can avail exemption under section 47 if securities transaction tax is applicable.

22 CHAPTER CONVERSION OF SOLE PROPRIETARY BUSINESS OR FIRM INTO COMPANY

Conversion of sole proprietary concern

215. If the following conditions are satisfied, then transfer of capital assets in case of conversion of sole proprietary business into company is not chargeable to tax by virtue of section 47(*xiv*)—

i. all assets and liabilities of the sole proprietary concern relating to the business immediately before the succession shall become the assets and liabilities of the company ;

ii. the shareholding of the sole proprietor in the company is not less than 50 per cent of the total voting power in the company and shareholding shall continue to so remain for a period of five years from the date of the succession ;

iii. the sole proprietor does not receive any consideration or benefit directly or indirectly, in any form or manner other than by way of allotment of shares in the company.

Taking back the exemption

215.1 *See* para 216.1-1.

Set-off and carry forward loss of sole proprietary by company

215.2 Section 72A gives the method of set-off and carry forward of loss [*see* para 216.3].

Conversion of firm into company

216. The provisions regarding conversion of firm into company are given below —

*Exemption under section 47(*xiii*)*

216.1 By virtue of section 47(*xiii*), if the following conditions are satisfied, then transfer of capital assets in the case of conversion of a firm into company is not chargeable to tax—

i. all the assets and liabilities of the firm relating to the business immediately before the succession shall become the assets and liabilities of the company ;

ii. all the partners of the firm immediately before the succession become the shareholders of the company in the same proportion in which their capital accounts stood in the books of the firm on the date of succession ;

iii. the partners of the firm do not receive any consideration or benefit directly or indirectly, in any form or manner other than by way of allotment of shares in the company ; and

iv. the aggregate of the shareholding in the company of the partners of the firm is not less than 50 per cent of the total voting power in the company and their shareholding continues to be as such for a period of five years from the date of the succession.

The aforesaid conditions are also applicable if capital assets are transformed in the course of demutualisation or corporatisation of a recognised stock exchange in India as a result of which an association of persons or body of individuals is succeeded by a company.

WITHDRAWAL OF EXEMPTION [SEC. 47A(3)]

216.1-1 The following conditions should be satisfied—

1. A firm or proprietary concern is converted into company by satisfying conditions of section 47(*xiii*)/(*xiv*).

2. As conditions of section 47(*xiii*)/(*xiv*) are satisfied, capital gain is not chargeable to tax in the hands of firm/sole proprietary concern.

3. If after conversion, any of the conditions of section 47(*xiii*)/(*xiv*) are not satisfied, then capital gain (which was not taxed earlier) will become chargeable to tax in the hands of company.

Case study

X & Co. is a firm of X and Y (1:2) whose balance sheet as on April 1, 2018 is as follows —

Balance sheet of X & Co. as on April 1, 2018

	Rs.		*Rs.*
		Plant and machinery	80,000
Capital		House property (acquired in 2001-02)	2,00,000
X	1,00,000	Stock-in-trade	40,000
Y	2,00,000	Debtors	70,000
Sundry creditors	1,00,000	Bank and cash balance	10,000
	4,00,000		4,00,000

A Ltd. is incorporated on April 1, 2018 which takes over the assets and liabilities of X Co. as follows—

	Agreed valuation *Rs.*	*Cost of acquisition for the purpose of income-tax* *Rs.*
Plant and machinery	1,80,000	80,000
House property	12,32,000	2,00,000
Stock-in-trade	60,000	
Debtors	70,000	
Bank and cash balances	10,000	
Total	15,52,000	
Less : Sundry creditors	1,00,000	
Net consideration	14,52,000	
Equity shares (48,400 equity shares of Rs. 10) allotted to X by A Ltd.	4,84,000	
Equity shares (96,400 equity shares of Rs. 10) allotted to Y by A Ltd.	9,68,000	

Capital gain and business income of X & Co.

	Plant and machinery *Rs.*	*House property* *Rs.*	*Stock-in-trade* *Rs.*
Sale consideration	1,80,000	12,32,000	60,000
Less : Cost of acquisition or indexed cost of acquisition [Rs. 2,00,000 × 280 ÷100]	80,000	5,60,000	40,000
Business income	-	-	20,000
Short-term capital gain	1,00,000	-	-
Long-term capital gain	-	6,72,000	-

In this case, the firm will pay tax in respect of business income of Rs. 20,000 and the capital gain of Rs. 7,72,000 will not be taxable in the hands of the firm as conversion of the firm into company is not treated as "transfer" by virtue of section 47(*xiii*).

One of the conditions of section 47(*xiii*) is that the aggregate of the shareholding in the company of the partners of the firm should not be less than 50 per cent of the total voting power in the company and their shareholding continues to be as such for a period of five years from the date of the succession.

In other words, the aggregate shareholding of X and Y in A Ltd. should not be less than 50 per cent up till April 1, 2023. If suppose Y transfers all of his shares on April 6, 2020 to Z, then A Ltd. will be chargeable to tax in respect of Rs. 7,72,000 as profits and gains. It is not clear from the language of section 47A(3) as to the head under which the company would be taxed. However, having regard to the placement of section 47A(3) in the provisions relating to taxation of capital gains, it appears that it would be treated as capital gains. Consequently, A Ltd. will be chargeable to tax in respect of long-term capital gains of Rs. 6,72,000 and short-term capital gain of Rs. 1,00,000 and this will be deemed as income of the previous year 2019-20 (*i.e.*, the assessment year 2021-22).

*Exemption under section 47(*xi*)*

216.2 Exemption under section 47(*xi*) is available if the following conditions are satisfied —

a. transfer is made before January 1, 1999 ;

b. transfer is made by a person other than a company ;

c. transfer is made of a membership in a recognised stock exchange in India ;

d. it is transferred to a company ; and

e. consideration is paid by way of allotment of shares in the transferee-company to the transferor.

If all the aforesaid conditions are satisfied, then capital gain on transfer of stock exchange membership is not chargeable to tax.

Is it possible to set-off and carry forward loss of firm by company [Sec. 72A(6)]

216.3 In cases of succession of business, whereby, a firm is succeeded by a company fulfilling the conditions laid down in section 47(*xiii*) or a proprietary concern is succeeded by a company fulfilling the conditions laid down in section 47(*xiv*), the accumulated loss and the unabsorbed depreciation of the predecessor firm or proprietary concern, as the case may be, shall be deemed to be the loss or as the case may be, allowance for depreciation of the successor company for the previous year in which business reorganisation was effected and the other provisions of the Act relating to set-off and carry forward of loss and allowance for depreciation shall apply accordingly.

■ *When conditions of section 47(*xiii*)/(*xiv*) are not complied* - When conditions of section 47(*xiii*)/(*xiv*) are not complied with, the set-off of loss or allowance of depreciation in the hands of the successor company shall be deemed to be the income of the company chargeable to tax in the year in which such conditions are not complied with.

■ *Meaning of "unabsorbed depreciation" and "accumulated loss"* - "Accumulated loss" and "unabsorbed depreciation" means so much of the loss/depreciation of the predecessor firm/proprietary concern (not being speculative business loss) which such firm/concern would have been entitled to carry forward and set-off if the business re-organisation had not taken place.

Case study

X and Y (1:3) are two partners of X & Co. on March 31, 2018. It has brought forward business loss of Rs. 10 crore which remains due to be set off at the end of seventh year which falls on March 31, 2018. As per section 72, a loss cannot be allowed to be carried forward for more than 8 years. Thus X & Co. has one more year after which the unadjusted accumulated loss will lapse. Now the firm is converted into a company with effect from April 1, 2018. All the assets and liabilities of the firm are taken over by the company. Shares have been allotted to X and Y (1:3) in consideration of transfer of the business of the firm. The brought forward loss of the firm can be set off by the company. The unadjusted loss will get a new lease of life for another 8 years. For this purpose, the brought forward loss shall be treated as loss of the previous year 2018-19 of the company and it can be set off against the income of the previous year 2018-19 and if it is not possible to set off, it can be carried forward up to the previous year 2026-27.

One of the conditions for carry forward of the loss of the firm is that the aggregate of the shareholding in the company of the partners of the firm should not be less than 50 per cent of the total voting power in the company and their shareholding continues to be as such for a period of 5 years from the date of the succession.

Suppose the loss of Rs. 10 crore is set off by the company during the previous years 2018-19 and 2019-20 and Y transfers his entire shareholding on May 6, 2020, then Rs. 10 crore will become income of the previous year 2020-21 of the company.

MULTIPLE CHOICE QUESTIONS

Q1. If a firm is converted into company, capital gain in the hands of firm is not chargeable to tax. This exemption is available, if a few conditions given by section 47(*xiii*) are satisfied. One of the condition is—

a. All shareholders in the company should be partner in the firm immediately before succession;

b. All the partners in the firm should become shareholders in the company;

c. Both these conditions should be satisfied;

d. None of these conditions is relevant.

Q2. If a firm is converted into company, capital gain in the hands of firm is not chargeable to tax. This exemption is available, if a few conditions given by section 47(*xiii*) are satisfied. One of the condition is—

a. Shareholdings of partners (of firm) in the company should not be less than 51 per cent of the total voting power in the company and their shareholding continues to be as such for a period of 5 years from the date of the succession;

b. Shareholdings of partners (of firm) in the company should not be less than 75 per cent of the total voting power in the company and their shareholding continues to be as such for a period of 8 years from the date of the succession;

c. Shareholdings of partners (of firm) in the company should not be less than 26 per cent of the total voting power in the company and their shareholding continues to be as such for a period of 5 years from the date of the succession;

d. Shareholdings of partners (of firm) in the company should not be less than 50 per cent of the total voting power in the company and their shareholding continues to be as such for a period of 5 years from the date of the succession.

Q3. X & Co. is a partnership firm having two partners - X and Y. The firm is converted into company on September 1, 2019. Capital account balance of X is Rs. 20 lakh and of Y is Rs. 10 lakh. The entire business of the firm is transferred to A Ltd. for a consideration of Rs. 60 lakh. Shares of face value of Rs. 60 lakh are issued to X and Y in the ratio of 2:1 and remaining shares of Rs. 40 lakh are issued to B. On November 1, 2019, X transfers his entire shareholding to Y. In this case, all conditions of section 47(*xiii*) are satisfied.

a. True;

b. False.

Q4. A firm is converted into a company. To get the benefit of exemption under section 47(*xiii*), the company should be a newly set-up company. An existing company cannot claim the benefit of exemption under section 47(*xiii*).

a. True;

b. False.

Q5. A firm is converted into a company. The company wants to set off accumulated loss and depreciation of the firm.

a. The conversion should satisfy all conditions of section 47(*xiii*) and a few conditions given by section 72A;

b. The conversion should satisfy all conditions of section 47(*xiii*), a few conditions given by section 72A and the company should be an Indian company;

c. The conversion should satisfy all conditions of section 47(*xiii*). There is no additional requirement under section 72A. The resulting company may be an Indian company or foreign company;

d. The conversion should satisfy all conditions of section 47(*xiii*) and a few conditions given by section 72A. The resulting company may be an Indian company or foreign company.

Q6. A firm is converted into company. The conversion satisfies all conditions of section 47(*xiii*).

a. Accumulated losses of the firm can be set off by the company within 8 years from the year in which the loss was incurred by the firm;

b. Accumulated losses of the firm can be set off by the company within 8 years from the year of conversion;

c. No such carry forward is possible unless it is permitted by the Chief Commissioner;

d. Accumulated losses of the firm can be set off by the company. There is no time-limit.

Q7. A firm is converted into company. The conversion satisfies all conditions of section 47(*xiii*).

a. Accumulated unabsorbed depreciation of the firm can be set off by the company within 8 years from the year in which the depreciation was originally available to the firm;

b. Accumulated unabsorbed depreciation of the firm can be set off by the company within 8 years from the year of conversion;

c. No such carry forward is possible;

d. Accumulated unabsorbed depreciation of the firm can be set off by the company. There is no time-limit.

23 CHAPTER SLUMP SALE

Definition of slump sale [Section 2(*42C*)]

220. Section 2(*42C*)

> "Slump sale means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales."

In order to come within the purview of the definition, one should satisfy the following conditions—

1. Taxpayer owns an undertaking.

2. He transfers the undertaking by way of sale.

3. The transfer is for lump sum consideration without assigning values to individual assets and liabilities.

Taxpayer owns an undertaking

220.1 Undertaking for this purpose means any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

In other words, a part of undertaking will not be termed as "undertaking" for the purposes of the definition if the assets/liabilities of the specific part of the undertaking cannot by themselves constitute a business activity. Likewise, transfer of assets which excludes a few significant assets without which the business cannot be carried on effectively, may not be considered as a transfer of business.

The transferee of the undertaking (or part thereof) should be able to conduct the business as and when the undertaking is acquired. To come within the purview of "undertaking" it is essential that—

a. the undertaking itself should constitute a business activity as a whole if such undertaking is transferred; or

b. the part of the undertaking should constitute a business activity as a whole if that part of undertaking is transferred; or

c. the unit or division of the undertaking should constitute a business activity as a whole if such unit/division of the undertaking is transferred.

Transfer by way of sale

220.2 The "undertaking" is transferred by way of sale. A transfer by any other mode (like compulsory acquisition) is not covered by the definition of slump sale under section 2(*42C*).

Transfer takes place for a lump sum consideration

220.3 The transfer takes place for a lump sum consideration without assigning values to individual assets and liabilities. In this regard, the following points should be noted—

1. The determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities.

2. If the values of individual assets are determined for determining the purchase consideration (or where it is possible to identify the price attributable to different assets) [not being the case mentioned at (*1*) *supra*], the transaction would not be regarded as "slump sale" even if the individual values are not mentioned in the agreement—*CIT* v. *Artex Manufacturing Co.* [1997]

227 ITR 260 (SC). To put it differently, if the values of individual assets are determined for arriving at the purchase consideration [not being the case covered by (*1*) (*supra*)] the transaction will not be treated as "slump sale" even if such values are not disclosed in the agreement. Such determination of item-wise values may be regarded as assigning values to individual assets/ liabilities.

How to find out written down value in the hands of transferor in the case of slump sale [Sec. 43(6)]

221. The written down value of a block of assets shall be determined as follows in the case of slump sale—

Step 1	Find out the depreciated value of the block on the first day of the previous year.
Step 2	To this value add "actual cost" of the asset acquired during the previous year.
Step 3	From the resultant figure, deduct money received/receivable (together with scrap value) in respect of that asset (falling within the block of assets) which is sold, discarded, demolished or destroyed during the previous year.

Notes :—

1. The amount of reduction under *Step 3* cannot exceed the value of assets computed under *Step 1* and *Step 2.*

2. However, in the case of a slump sale, the following shall be reduced from the value determined after *Step 2.*

Actual cost of assets falling in the block transferred by "slump sale".

Less :

a. depreciation actually allowed in respect of that asset in respect of any previous year relevant to the assessment year commencing before 1988-89; and

b. depreciation that would have been allowable from the assessment year 1988-89 onward as if that asset was the only asset in the relevant block of assets.

Capital gains in the case of slump sale [Sec. 50B]

222. The provisions of section 50B, applicable for computation of capital gains in the case of slump sale, are given below—

1. Any profits or gains arising from the slump sale effected in the previous year shall be chargeable as long-term capital gains and shall be deemed to be the income of the previous year in which the transfer took place.

Where, however, any capital asset being one or more undertakings owned and held by the assessee for not more than 36 months is transferred under the slump sale, then capital gain shall be deemed to be short-term capital gain.

2. In the case of slump sale of the capital asset being one or more undertaking, the "net worth" of the undertaking shall be taken as cost of acquisition and cost of improvement. "Net worth" for this purpose is the aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in the books of account. Any change in the value of assets on account of revaluation of assets shall be ignored for the purpose of computing the net worth. The aggregate value of total assets of such undertaking or division shall be the written down value of block of assets determined in accordance with the provisions contained in sub-item (*C*) of section 43(*6*)(*c*)(*i*) in the case of depreciable assets and the book value for all other assets.

3. The benefit of indexation will not be available.

4. If net worth is negative, it is taken as equal to zero and the sale consideration will become capital gains - *Zuari Inds. Ltd.* v. *CIT* [2006] 9 SOT 563 (Mum.)

5. Every assessee, in the case of slump sale, shall furnish along with the return of income, a report of a chartered accountant in Form No. 3CEA indicating the computation of the net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division, as the case may be, has been correctly arrived at.

Other points

223. One should also keep in view the following—

1. Revaluation shall be ignored whether it is done during the current year or the earlier years, or whether it is upward revision or downward revision.

2. For computing net worth, the aggregate of total assets shall be—

■ In the case of depreciable assets	The written down value of block of assets determined in accordance with the provisions contained in sub-item (*C*) of section 43(6)(*c*)(*i*)
■ In the case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD	*Nil*
■ In the case of other assets	The book value of such assets

As mentioned earlier, any increase/decrease in book values due to revaluation shall be ignored. From the aggregate of total assets of the undertaking, which is transferred, liabilities of the undertaking shall be deducted. Nothing is deductible on account of contingent liability as it does not appear in balance sheet.

3. If transfer agreement specifies the individual value of assets to be transferred, then such a transaction is not covered by "slump sale". Consequently, capital gain shall be computed separately.

4. In case of slump sale if the undertaking or part of the undertaking is transferred, the gain (or loss) will be long-term if such undertaking was owned and held for more than 36 months, even if some of the assets in the undertaking are short-term capital asset or even if some of the assets are not "assets" under section 2(*14*) [for instance stock-in-trade forming part of slump sale].

5. In case of slump sale, accumulated loss/depreciation will be carried forward and set-off by the transferor (now losses/depreciation can be carried forward even if business is discontinued). In the case of amalgamation/demerger, the transferee can carry forward the losses/depreciation of the transferor by virtue of section 72A.

6. In the case of slump sale, a break up of cost of each asset/liability is not available. Consequently a problem arises as to how to find out "actual cost" of different assets acquired by way of slump sale in the hands of purchaser. No specific provision has been made in section 43(*1*) which defines "actual cost" or section 43(*6*) which defines "written down value". In *CIT* v. *Spunpipe & Construction Co. Ltd.* [1965] 55 ITR 68 (Guj.), it was held that in the case of acquisition of an undertaking as a going concern, the composite consideration can be bifurcated between various assets in a fair and reasonable manner permitted by law. Even Accounting Standard 10 provides that "where several assets are purchased for a consolidated price, the consideration is appropriated to the various assets on a fair basis as determined by competent valuers".

Therefore, a person who acquires an undertaking by way of slump sale can claim depreciation on the basis of fair apportionment of total consideration.

Case studies

224. To have better understanding the following problems are given—

224-P1 *X Ltd. is engaged in manufacture of chemicals and paper since 1960. Depreciated value of block of asset (depreciation rate : 15 per cent) on April 1, 2018 is Rs. 15,00,000. The company purchases Plant A* (rate of depreciation 15 per cent) on June 15, 2018 for Rs. 4,18,000. It is put to use on the same day. The company sells Plant B (rate of depreciation 15 per cent) on December 16, 2018 for (*a*) Rs. 11,70,000 (*b*) Rs. 14,70,000, (*c*) Rs. 25,70,000. The company transfers paper division by way of slump sale on December 31, 2018 for Rs. 6.60 lakh (expenditure on transfer : Rs. 1.60 lakh). The following information in respect of paper division is noted from the company's records and certified by the chartered accountant of the company in Form 3CEA—*

	Rs.
Actual cost of assets acquired in 1986-87	*6,40,000*
Depreciation claimed under the Income-tax Act up to the assessment year 1988-89	*60,000*
Depreciation that would have been allowable for the assessment years 1989-90 to 2018-19 as if the asset was the only asset in the relevant block	*90,000*

Find out the amount of depreciation and capital gain chargeable to tax for the assessment year 2019-20.

*Plant A is not qualified for additional depreciation.

▪

If Plant B is transferred for

	Rs. 11.70 lakh *Rs.*	*Rs. 14.70 lakh* *Rs.*	*Rs. 25.70 lakh* *Rs.*
Depreciated value of the block of assets on April 1, 2018	15,00,000	15,00,000	15,00,000
Add : Actual cost of Plant A acquired during the previous year	+4,18,000	+4,18,000	+4,18,000
Less : Sale proceeds of Plant B (*it cannot exceed Rs. 15 lakh + Rs. 4.18 lakh)	(-)11,70,000	(-)14,70,000	(-)19,18,000*
Balance (*a*)	7,48,000	4,48,000	*Nil*
Less : Actual cost *minus* depreciation of assets of paper division transferred by way of slump sale [*i.e.*, Rs. 6,40,000– Rs. 60,000 – Rs. 90,000 = Rs. 4,90,000; it cannot however exceed (*a*)] (*b*)	4,90,000	4,48,000	*Nil*
Written down value of the block on March 31, 2019	2,58,000	*Nil*	*Nil*
Depreciation for the previous year 2018-19 @ 15%	38,700	*Nil*	*Nil*
Depreciated value of the block on April 1, 2019	2,19,300	*Nil*	*Nil*
Capital gain on transfer of Plant B as per section 50			
Sale consideration of Plant B	Not applicable	Not applicable	25,70,000
Less : Cost of acquisition as per section 50 (*i.e.*, Rs. 15 lakh + Rs. 4.18 lakh)	-	-	19,18,000
Short-term capital gain	-	-	6,52,000
Capital gain on transfer of depreciable assets of paper division			
Sale proceeds	6,60,000	6,60,000	6,60,000
Less : Cost of acquisition and cost of improvement [being the net worth mentioned at (*b*)] (benefit of indexation is not available)	4,90,000	4,48,000	*Nil*
Expenses on transfer	1,60,000	1,60,000	1,60,000
Long-term capital gains	10,000	52,000	5,00,000

224-P2 *X Ltd. is engaged in manufacture of chemical (since 1960) and paper (since 2012). The following data is noted from the balance sheet of X Ltd. as on March 31, 2018—*

	(Rs. in thousand)
Equity share capital	*60,00*
Preference share capital	*10,00*
General reserve	*40,00*
Revaluation reserve	*6,00*
Share premium	*8,00*
Total	*1,24,00*

(Rs. in thousand)

	Chemical division	Paper division	Total
Land	*30,00*	*20,00*	*50,00*
Plant and machinery	*16,00*	*36,00*	*52,00*
Stock	*5,00*	*9,00*	*14,00*
Debtors and other current assets	*4,00*	*11,00*	*15,00*
Less : *Creditors*	*4,00*	*3,00*	*7,00*
Total	*51,00*	*73,00*	*1,24,00*

Revaluation reserve was created by making upward revision of land belonging to chemical division (Rs. 1 lakh) and paper divisions (Rs. 5 lakh). The company wants to transfer paper division on April 1, 2018 by way of slump sale for a total consideration of Rs. 88 lakh (transfer expenses being Rs. 28,000). By taking into consideration the following additional information, find out the amount of capital gains and other tax consequences.

1. *Transfer agreement does not specify value of individual assets/liabilities. However, the value of land of paper division for the purpose of stamp duty is Rs. 46 lakh. The same amount is adopted by the stamp valuation authority of the MP Government.*

2. *The rate of depreciation on plant and machinery owned by X Ltd. is 15 per cent†. The depreciated value of the block (consisting of chemical division and paper division) on April 1, 2018 is Rs. 70 lakh for income-tax*

†25 per cent upto the assessment year 2005-06.

purpose. Apart from transferring plant and machinery of paper division, the company purchases an old Plant P for Rs. 1 lakh and sells Plant Q for Rs. 20 lakh (situation 1) or Rs. 50 lakh (situation 2) in September 2018. Plant P and Q belong to chemical division.

Plant and machinery (old) of the paper division was purchased in May 2014 for Rs. 95 lakh. The division started commercial production in June 2014. However, one of the plant (cost Rs. 10 lakh) was put to use in March 2015. No other asset for paper division is purchased/sold between May 2014 and March 2018.

■

X Ltd. transfers paper division for a lump sum consideration. Transfer satisfies all conditions of section 2(*42C*). Paper division was set up in 2014 and it is transferred on April 1, 2018. The capital gain (or loss) will be long-term. The sale consideration is Rs. 88 lakh. The cost of acquisition is net worth of paper division which will be determined as follows—

Computation of written down value for the purpose of computing depreciation

	Situation 1 *Rs.*	*Situation 2* *Rs.*
Depreciated value of the block of assets of chemical and paper divisions on April 1, 2018	70,00,000	70,00,000
Add : Cost of Plant P	(+) 1,00,000	(+) 1,00,000
Less : Sale proceeds of Plant Q	(–) 20,00,000	(–) 50,00,000
Balance (*a*)	51,00,000	21,00,000
Less : Depreciated value of assets of paper division, it cannot exceed (*a*) [*see* Note]	(–) 50,05,119	(–) 21,00,000
Written down value	94,881	*Nil*
Less : Depreciation available to X Ltd. for the previous year 2018-19	14,232	*Nil*

Note - Computation of depreciated value of assets of paper division (as if paper division only paper division) is owned by X Ltd.—

	Rs.
Depreciated value on April 1, 2014	*Nil*
Add : Cost of assets acquired and put to use during 2014-15	95,00,000
Written down value on March 31, 2015	95,00,000
Less : Depreciation for 2014-15 (15% of Rs. 85 lakh + 7.5% of Rs. 10 lakh)	13,50,000
Depreciated value on April 1, 2015	81,50,000
Less : Depreciation for 2015-16	12,22,500
Depreciated value on April 1, 2016	69,27,500
Less : Depreciation for 2016-17	10,39,125
Depreciated value on April 1, 2017	58,88,375
Less : Depreciation for 2017-18	8,83,256
Depreciated value on April 1, 2018	50,05,119

Computation of net worth of paper division

	Situation 1 *Rs.*	*Situation 2* *Rs.*
Land (excluding Rs. 5 lakh which was added by revaluation)	15,00,000	15,00,000
Plant and machinery (*i.e.*, amount considered while computing written down value)	50,05,119	21,00,000
Stock	9,00,000	9,00,000
Debtors and other current assets	11,00,000	11,00,000
Total	85,05,119	56,00,000
Less : Creditors	3,00,000	3,00,000
Net worth	82,05,119	53,00,000
Computation of capital gain on transfer of paper division		
Sale consideration	88,00,000	88,00,000
Less : Cost of acquisition (being net worth, indexation benefit is not available)	82,05,119	53,00,000
Expenses on transfer	28,000	28,000
Long-term capital gain	5,66,881	34,72,000

Amalgamation/Demerger vis-a-vis slump sale

225. The chief points of distinction between amalgamation/demerger and slump sale are as follows :

- The payment of a lump sum sale consideration is required in respect of transfer of an undertaking by slump sale. In demerger the resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis. Likewise, in the case of amalgamation, the amalgamated company will issue its shares to the shareholders of the amalgamating companies.
- In a slump sale, values are not assigned to individual assets (and liabilities) of the undertaking whereas in the case of amalgamation and demerger, the assets and liabilities of the amalgamating company/demerged company are transferred at the values appearing in the books of account immediately before the merger/demerger to the amalgamated company/resulting company.
- The provisions pertaining to amalgamation and demerger are applicable to only companies. The provisions pertaining to slump sale apply to all the assessees and are not limited to companies.

MULTIPLE CHOICE QUESTIONS

Q1. Slump sale under section 2(*42C*) is possible only in the case of transfer of an industrial undertaking.

a. True;

b. False.

Q2. Slump sale under section 2(*42C*) is possible only when there is a transfer of an undertaking by a company to another company.

a. True;

b. False.

Q3. Capital gain on transfer of a unit under slump sale is always short-term capital gain.

a. True;

b. False.

Q4. A company transfers a unit to another company by way of slump sale for a consideration of Rs. 10 lakh. In the hands of the transferor, net worth of unit is (-) Rs. 2 lakh—

a. Capital gain in this case will be Rs. 8 lakh;

b. Capital gain in this case will be Rs. 10 lakh;

c. Capital gain in this case will be Rs. 12 lakh;

d. Capital gain in this case will be Rs. 2 lakh.

Q5. For calculating capital gain, from full value of consideration net worth of undertaking is deductible—

a. Besides, a deduction is also available in respect of cost of improvement;

b. Besides, a deduction is also available in respect of indexed cost of improvement;

c. Cost of improvement is not deductible, however, expenditure on sale is deductible;

d. Cost of improvement as well as expenditure on sale are not deductible.

Q6. If the transfer agreement specifies the individual value of different assets (of the undertaking) to be transferred, then—

a. It is not a slump sale and capital gain is not chargeable to tax;

b. It is not a slump sale, capital gain is chargeable to tax on aggregate basis but indexation benefit is not available;

c. It is not a slum sale, capital gain will be taxable separately in respect of individual assets but indexation benefit is not available;

d. It is not a slum sale, capital gain will be taxable separately in respect of individual assets and indexation benefit will be available in the case of long-term capital assets.

24 CHAPTER TRANSFER OF ASSETS BETWEEN HOLDING AND SUBSIDIARY COMPANIES

When a capital asset (other than block of asset) is transferred

230. Where a parent company transfers a capital asset to its 100 per cent subsidiary company or *vice versa*, the actual cost of the asset transferred to the transferee-company will be taken to be the same as it would have been if the transferor-company had continued to hold the capital asset for the purpose of its business provided that the transferee-company is an Indian company.

When a block of asset is transferred [Expln. 2 to sec. 43(6)]

231. The aforesaid rule is not applicable if a block of asset is transferred. Where in any previous year, any block of assets is transferred by a holding company to its wholly owned subsidiary company or *vice versa*, then actual cost of block of assets in the case of transferee-company shall be written down value of block of assets of the transferor-company for the immediately preceding previous year as reduced by the depreciation actually allowed in relation to the said preceding previous year. This rule is, however, applicable only if the transferee-company is an Indian company.

Exemption under section 47

232. The following are not treated as transfer—

a. any transfer of a capital asset by a company to its wholly owned Indian subsidiary company [sec. 47(*iv*)]; and

b. any transfer of a capital asset by a wholly owned subsidiary company to its Indian holding company [sec. 47(*v*)].

■ The following points should be noted—

1. Provisions under section 47(*iv*)/(*v*) are not applicable in the case of transfer of a capital asset made after February 29, 1988 as stock-in-trade.

2. Section 47(*iv*) and (*v*) covers only the immediate subsidiary company of the holding company. There is no justification for transplanting the definition of 'holding company' under the Companies Act into the provisions of section 47 automatically—*Kalindi Investment (P.) Ltd.* v. *CIT* [2002] 120 Taxman 896 (Guj.).

Withdrawal of exemption

233. Any transfer of capital asset by a company to its wholly owned Indian subsidiary company or by a wholly owned subsidiary company to its Indian holding company is not treated as transfer by virtue of section 47(*iv*)/(*v*).

Cases when exemption is taken back

233.1 In the following two cases (*i.e. 1* and *2*), the above exemption shall be withdrawn and in the last case (*i.e., 3*) the exemption is not available —

1. If at any time before the expiry of eight years from the date of transfer of a capital asset between holding company and its wholly owned subsidiary company, such capital asset is converted by the transferee-company into (or is treated by it as) stock-in-trade of its business.

2. The holding company ceases to hold the whole of the share capital of the subsidiary company before the expiry of the period of eight years aforesaid.

3. The holding/subsidiary company transfers a capital asset as stock-in-trade after February 29, 1988. In such a case the transfer shall be regarded as "transfer" and will be taxed according to normal provisions of capital gains.

Consequences

233.2 In the above noted two cases (*i.e., 1* and *2*), transfer of capital asset between holding and subsidiary company is chargeable to tax by virtue of section 47A. In such a case cost of acquisition in the hands of the transferee-company will be the cost for which the asset was acquired by it.

H Ltd. is 100 per cent holding company of S Ltd., an Indian company. S Ltd. acquires a depreciable asset from H Ltd. on April 1, 2018 at market value of Rs. 120 crore. Written down value of the block of assets in the hands of H Ltd. on March 31, 2018 is Rs. 80 crore. As this is transfer between holding company and its 100 per cent subsidiary company, capital gain is not taxable in the hands of H Ltd. by virtue of section 47(*iv*). When capital gain is exempt under section 47(*iv*), written down value in the hands of S Ltd. for claiming depreciation will be Rs. 80 crore.

On May 10, 2019, H Ltd. transfers 10 per cent of its holding in S Ltd. for a specified consideration to an outsider. As the relationship 100 per cent holding company and subsidiary company is discontinued within 8 years from April 1, 2018, by virtue of section 47A, exemption provided to H Ltd. shall be withdrawn and short term capital gain will be taxable in the hands of H Ltd. When exemption is withdrawn, depreciation can be claimed by S Ltd. on purchase price of Rs. 120 crore with effect from date of acquisition, *i.e.,* April 1, 2018, although the event which is responsible for withdrawal of exemption (*i.e.,* transfer of shareholding in S Ltd. by H Ltd. to an outsider) takes place in the next year—*Essar Oil Ltd.* v. *CIT* [2007] 13 SOT 691 (Mum.) and depreciation (in the case of block of assets) will be available to the transferee-company at the cost for which the assets were acquired.

Case study

233-P1 *S Ltd. is a wholly owned subsidiary of A Ltd. (both are Indian companies and maintain books of account on the basis of financial year). On April 10,1984 (relevant to the assessment year 1985-86), S Ltd. transfers a capital asset (*i.e., *shares) to A Ltd. (acquired on April 6, 1981 for Rs. 50,000, fair market value on April 1, 2001 : Rs. 60,000) for Rs. 1,50,000. A Ltd. sells the asset on May 10, 2018 for Rs. 3,40,000. Determine the assessable profits of A Ltd. and S Ltd. under the following situations :*

1. *Before the sale of asset, A Ltd. has not converted it into stock-in-trade and it does not cease to hold entire share capital of S Ltd.*

2. *A Ltd. has converted the capital asset into stock-in-trade before its sale on May 10, 2018 (date of conversion : June 10,1987, fair market value : Rs. 3,10,000).*

3. *Though A Ltd. does not convert capital asset into stock-in-trade, it ceases to hold entire share capital of S Ltd. on June 10,1988 when 5 per cent shareholding in S Ltd. is transferred by way of sale to the public.*

■

Under situation (1), transfer between A Ltd. and S Ltd. will not be treated as transfer under section 47(*v*). Consequently, nothing will be taxable in the hands of S Ltd. A Ltd. will, however, be taxable in respect of capital gain computed as under :

	Rs.
Sale consideration	3,40,000
Less : Indexed cost of acquisition (*i.e.,* Rs. 60,000 × 280 ÷ 100)	1,68,000
	1,72,000

Under situation (*2*), the chargeable profit will be determined as under :

❑ *S Ltd.* : Since A Ltd. has converted the capital asset into stock-in-trade within eight years from April 10,1984, exemption granted by section 47(*v*) will not be available and, consequently, Rs. 1,00,000† (*i.e.,* Rs. 1,50,000 — Rs. 50,000) will be treated as long-term capital gain (by virtue of section 47A) of S Ltd. for the assessment year 1985-86.

If the assessment of S Ltd. is completed, the Assessing Officer has power to reopen the assessment for this purpose under section 155(7B) at any time before 4 years from the end of the previous year in which the capital asset is converted into stock-in trade (*i.e.,* up to March 31,1992).

❑ *A Ltd.* : Rs. 30,000 (*i.e.,* Rs. 3,40,000 — Rs. 3,10,000) will be chargeable to tax under section 28(*i*) as business profits for the assessment year 2019-20. Besides, capital gain will be determined as under :

†Long-term capital gain is computed by deducting indexed cost of acquisition only from the assessment year 1993-94 onwards.

	Rs.
Full value of consideration received [fair market value on the date of conversion of capital stock into stock-in-trade under section 45(2)]	3,10,000
Less : Indexed cost of acquisition (Rs. 1,50,000 × 150 ÷ 125)	1,80,000
Long-term capital gain for the assessment year 2019-20	1,30,000

Under situation (3), the chargeable profit will be determined as under :

❑ *S Ltd.* : Since A Ltd. has transferred shareholding in S Ltd. before the expiry of 8 years from April 10,1984, the exemption granted by section 47(*v*) will not be available and, consequently, Rs. 1,00,000† (*i.e.*, Rs. 1,50,000 *minus* Rs. 50,000) will be treated as long-term capital gain by virtue of section 47A for the assessment year 1985-86. If assessment of S Ltd. is completed, the Assessing Officer has power to reopen the assessment under section 155(7B) at any time up to March 31,1993 (*i.e.*, up to 4 years from the end of the previous year in which shareholding is transferred).

❑ *A Ltd.* : Capital gain will be determined as under :

	Rs.
Sale consideration	3,40,000
Less : Indexed cost of acquisition (*i.e.*, Rs. 1,50,000 × 280 ÷ 100)	4,20,000
Long-term capital gain	(–) 80,000

Case study

234. To have better understanding the following problems are given—

234-P1 *S Ltd. is a wholly-owned subsidiary of H Ltd. On April 22, 1987, it transfers the following assets to H Ltd.*

Block of assets	Rate of depreciation from the assessment year 1988-89	Written down value for the assessment year 1987-88 Rs.	Depreciation for assessment year 1987-88 Rs.	Agreed consideration Rs.
Plant	*50%*	*9,50,000*	*1,42,500*	*6,30,000*
Building	*10%*	*20,00,000*	*1,00,000*	*27,10,000*

What is the actual cost of assets to H Ltd.?

■

In the case of H Ltd. actual cost of block of assets would be as follows :

	Plant *Rs.*	*Building* *Rs.*
Written down value for the assessment year 1987-88	9,50,000	20,00,000
Less : Depreciation for the assessment year 1987-88	1,42,500	1,00,000
Actual cost of asset to H Ltd.		
❑ if it is an Indian company	8,07,500	19,00,000
❑ if it is a foreign company	6,30,000	27,10,000

234-P2 *H Ltd. owns the following asset on April 1, 2018 :*

Block of asset	Rate of depreciation	Written down value on April 1, 2018
Plant (consisting of Plants A, B and C)	*15%*	*20,50,000*

On June 30, 2018, it sells Plant A for Rs. 6,00,000. It, however, acquires Plant D for Rs. 15,00,000 on March 10, 2019. On April 16, 2019, Plants B, C and D are transferred by it to S Ltd. (a wholly-owned subsidiary of H Ltd.) for Rs. 3,50,000 or for Rs. 60,00,000. S Ltd. owns Plant P whose written down value on April 1, 2019 is Rs. 2,00,000; besides it purchases plant Q on May 10, 2019 for Rs.1,00,000, in either case the rate of depreciation is 15 per cent and new acquisition are not eligible for additional depreciation. Find out the tax consequences if S Ltd. is an Indian company or foreign company. Additional depreciation is not available.

■

H Ltd.	*Block 1 (Plant)* *Rs.*
Depreciated value of the block on April 1, 2018	20,50,000
Add : Actual cost of Plant D acquired on March 10, 2019	15,00,000

†Long-term capital gain is computed by deducting indexed cost of acquisition only from the assessment year 1993-94 onwards.

	Rs.
Less : Money payable in respect of Plant A sold during 2018-19	(-) 6,00,000
Written down value on March 31, 2019	29,50,000
Less : Depreciation for the previous year 2018-19	3,30,000
Depreciated value of the block on April 1, 2019	26,20,000

(Rs. in lakh)

	If S Ltd. is an Indian company		*If S Ltd. is a foreign company*	
	If the block is transferred for		*If the block is transferred for*	
	Rs. 3.50 lakh	*Rs. 60 lakh*	*Rs. 3.50 lakh*	*Rs. 60 lakh*
Depreciated value of the block consisting of Plants B, C and D on April 1, 2019	26.20	26.20	26.20	26.20
Less: Sale proceeds of Plants B, C and D transferred to S Ltd. (*cannot exceed the opening balance)	3.50	26.20*	3.50	26.20*
Written down value on March 31, 2020	20.70	*Nil*	22.70	*Nil*
Depreciation for the previous year 2019-20 (no depreciation is available as the block ceases to exist)	*Nil*	*Nil*	*Nil*	*Nil*
Capital gains				
Sale proceeds	3.50	60	3.50	60
Less: Cost of acquisition as per section 50	26.20	26.20	26.20	26.20
Short-term capital gain [* by virtue of section 47(*iv*), it is exempt from tax]	*Nil**	*Nil**	(-) 22.70	33.80
S Ltd.				
Depreciated value of the block consisting of Plant P on April 1, 2019	2	2	2	2
Add: Actual cost of Q acquired during 2019-20	1	1	1	1
Add : Actual cost of Plants B, C and D acquired from H Ltd.	26.20	26.20	3.50	60
Written down value of the block consisting of Plants B, C, D, P and Q on March 31, 2020	29.20	29.20	6.5	63
Depreciation for 2019-20	4.38	4.38	0.975	9.45

The following points should be noted—

1. The rule given by the fifth proviso to section 32(1) is not applicable in the case of a transfer between holding company and its hundred per cent subsidiary company.

2. In the above problem if Plant B, C, D or Q is put to use for less than 180 days, then S Ltd. will be entitled for one half of the normal depreciation.

234-P3 *S Ltd. is one hundred per cent subsidiary company of H Ltd. S Ltd. owns Plants A and B (depreciation rate 30 per cent, depreciated value of the block Rs. 3,00,000 on April 1, 2018). Plant B(old) was purchased and put to use on November 10, 2016 (cost being Rs. 70,000). Plant B is transferred by S Ltd. to H Ltd. on December 14, 2018 for (a) Rs. 8,000, (b) Rs. 2,70,000, (c) Rs. 4,10,000. It is put to use by H Ltd. on the same day. H Ltd. owns Plant C on April 1, 2018 (depreciation rate 30 per cent, depreciated value; Rs. 60,000). Find out the tax consequences if H Ltd. is an Indian company or if H Ltd. is a foreign company.*

■

(Rs. in thousand)

S Ltd.	*If H Ltd. is an Indian company*			*If H Ltd. is a foreign company*		
	Situation (a)	*Situation (b)*	*Situation (c)*	*Situation (a)*	*Situation (b)*	*Situation (c)*
Depreciated value of Plants A and B on April 1, 2018	300	300	300	300	300	300
Less : Money payable in respect of Plant B transferred to H Ltd. [*see* Note 1]	8	270	410	8	270	410
Written down value of the block on March 31, 2019	292	30	*Nil*	292	30	*Nil*
Depreciation for the block for the previous year 2018-19	87.6	9	*Nil*	87.6	9	*Nil*

S Ltd.	If H Ltd. is an Indian company Situation (a)	Situation (b)	Situation (c)	If H Ltd. is a foreign company Situation (a)	Situation (b)	Situation (c)
Capital gains in case of S Ltd.						
Sale proceeds of Plant B	8	270	410	8	270	410
Less : Cost of acquisition as per section 50	NA	NA	300	NA	NA	300
Short-term capital gain [*exempt by virtue of section 47(*v*)] [*see* Note 2]	NA	NA	*Nil**	NA	NA	110
H Ltd.						
Depreciated value of the block on April 1, 2018	60	60	60	60	60	60
Add : Actual cost of Plant B acquired from S Ltd. (*see* Note 3)	41.65	41.65	41.65	8	270	410
Written down value of the block on March 31, 2019	101.65	101.65	101.65	68	330	470
Depreciation						
- on Plant B @ ½ of 30%	6.25	6.25	6.25	1.2	40.5	61.5
- other asset @ 30%	18	18	18	18	18	18

Notes—

1. If the transferee-company, *i.e.*, H Ltd. is an Indian company, then "actual cost" shall be Rs. 41,650 [as is shown in Note 3]. However, in the hands of transferor, *i.e.*, S Ltd. "money payable" by H Ltd. shall be deducted from the block of asset (it is incorrect to deduct Rs. 41,650). Consequently, in Situations (*b*) and (*c*), quantum of depreciation available to S Ltd. will be quite low. It is advisable that in such transactions the sale consideration should be fixed keeping in view, the effect of it on the quantum of depreciation available in future.

2. In situations (*a*) and (*b*), section 50 is not applicable.

3. Actual cost of Plant B in the hands of H Ltd. if it is an Indian company.

	Rs.
Actual cost of Plant B in the hands of S Ltd. on November 10, 2016	70,000
Less : Depreciation for the previous year 2016-17 (1/2 of 30% of Rs. 70,000)	10,500
Balance on April 1, 2017	59,500
Less : Depreciation for the previous year 2017-18	17,850
Balance on April 1, 2018	41,650

MULTIPLE CHOICE QUESTIONS

Q1. An exemption is available under section 47—

a. A capital asset is transferred by holding company to its subsidiary company;

b. A capital asset is transferred by a subsidiary company to its holding company;

c. If a capital asset is transferred by a holding company to its 100 per cent subsidiary company and *vice versa* provided the transferee-company is an Indian company;

d. If a capital asset is transferred by a holding company to its 100 per cent subsidiary company and *vice versa* provided the transferor-company is an Indian company.

Q2. An Indian company transfers a capital asset to its 100 per cent Indian subsidiary company. By virtue of section 47, capital gain is exempted in the hands of holding company. However, within a few days after this transaction, the subsidiary company transfers this asset to an outsider. The exemption, which was availed by the holding company, will be taken back.

a. True;

b. False.

CONVERSION OF COMPANY INTO LIMITED LIABILITY PARTNERSHIP

25

CHAPTER

Conversion

238. The provisions regarding conversion of a private company/unlisted public company into LLP are given below—

Capital gain exemption in

239. Section 47(*xiiib*) provides capital gain exemption on transfer of assets at the time of conversion of a private limited company or unlisted public limited company into a LLP.

Conditions for claiming exemption

239.1 This exemption will be available only when the conversion of private company or unlisted public company (hereinafter referred to as "company") into limited liability partnership (LLP) takes place in accordance with the provisions of sections 56 and 57 of the Limited Liability Partnership Act, 2008. Besides, the conversion should satisfy the following six conditions—

1. All assets and liabilities of the company immediately before conversion should become the assets and liabilities of the LLP at the time of conversion.

2. All the shareholders of the company immediately before the conversion should become the partners of the LLP (however, it is not the requirement that all the partners should be the shareholders of the predecessor company). Shareholders of the predecessor company should become partners in LLP and their capital contribution and profit sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion.

3. No consideration will be paid by LLP to the company. The shareholders of the company do not receive any consideration or benefit (directly or indirectly) other than by way of share in profit and capital contribution in the LLP.

4. The aggregate of the profit sharing ratio of the shareholders of the predecessor company in the LLP shall not be less than 50 per cent immediately after conversion and at the time during the period of five years from the date of conversion.

5. The total sales, turnover or gross receipts in business of the company in any of the three previous years preceding the previous year in which the conversion takes place should not be more than Rs. 60 lakh. For instance, if conversion takes place on March 1, 2019, the turnover of any of the three preceding previous years (*i.e.*, 2015-16, 2016-17 and 2017-18) should not be more than Rs. 60 lakh. The quantum of turnover from April 1, 2018 to March 1, 2019 will not be considered.

6. The total value of the assets (as appearing in the books of account of the company) in any of the three previous years preceding the previous year in which the conversion takes place does not exceed Rs. 5 crore.

7. No amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.

■ If the above conditions are satisfied, capital gain, which arises on conversion of a company into LLP, will be exempt from tax in the hands of the company. Similarly, exemption will be available (if the above conditions are satisfied) to the shareholders of the company in respect of any capital gain which arises on transfer of shares in the company in lieu of becoming partners in the LLP.

When exemption will be taken back

239.2 Capital gain exemption is available only when the aforesaid 6 conditions are satisfied. These conditions should be satisfied at the time of conversion. Condition 4 requires that aggregate of the profit sharing ratio in the LLP of the shareholders of the predecessor company should not be lower than 50 per cent at any time during the period of 5 years commencing from the date of conversion. Similarly, condition 6 requires that accumulated profit of the company should not be distributed to the partners in next three years.

Suppose, a company takes the benefit of exemption under section 47(*xiiib*) by satisfying the aforesaid 6 conditions at the time of conversion into LLP and later on in a subsequent year, the LLP fails to comply with conditions 4 and/or 6. In such a case,—

a. the amount of capital gain exemption given to the predecessor company will become income by way of capital gain of the LLP of the year in which non-compliance takes place; and

b. the amount of capital gain exemption given to the shareholders of the predecessor company will become income by way of capital gain of the shareholders of the predecessor company of the year in which non-compliance takes place.

Carry forward of loss/ depreciation [Sec. 72A(6A)]

240. In the case of succession of business, whereby a company (*i.e.*, a private limited company or unlisted public limited company) is succeeded by a limited liability partnership fulfilling the conditions laid down in section 47(*xiiib*), the accumulated loss and the unabsorbed depreciation (including unadjusted capital expenditure on scientific research) of the predecessor company, shall be deemed to be the loss or as the case may be, allowance for depreciation of the successor limited liability partnership for the previous year in which business reorganisation was effected and the other provisions of the Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.

■ *When conditions of section 47(*xiiib*) are not complied* - When after adjusting loss, the successor limited liability partnership fails to comply with the conditions of section 47(*xiiib*), the amount of loss for depreciation adjusted by the limited liability partnership shall be deemed to be the income of the limited liability partnership chargeable to tax in the year in which such conditions are not complied with.

■ *Meaning of "unabsorbed depreciation" and "accumulated loss"* - "Accumulated loss" and "unabsorbed depreciation" mean so much of the loss/depreciation of the predecessor company (not being speculative business loss) which such company would have been entitled to carry forward and set off if the business re-organisation had not taken place.

Case study

X Ltd. [an unlisted company having two shareholders : X (40%) and Y (60%)] has brought forward business loss of Rs. 5 crore which remains due to be set off at the end of seventh year which falls on March 31, 2018. As per section 72, a loss cannot be allowed to be carried forward for more than 8 years. Thus, X Ltd. has one more year after which the unadjusted accumulated loss will lapse. The company is converted into a limited liability partnership with effect from April 1, 2018 by satisfying conditions of section 47(*xiiib*). The brought forward loss of X Ltd. can be set off by the limited liability partnership. The unadjusted loss will get a new lease of life for another 8 years. For this purpose, the brought forward loss shall be treated as loss of the previous year 2018-19 of the limited liability partnership and it can be set off against the income of the previous year 2018-19 and if it is not possible to set off, it can be carried forward up to the previous year 2026-27.

One of the conditions for carry forward of the loss of the company is that the aggregate of the profit sharing ratio of the shareholders X and Y in the limited liability partnership should not be less than 50 per cent at any time during 5 years immediately after conversion (*i.e.*, during April 1, 2018 and March 31, 2023). Suppose the loss of Rs. 5 crore is set off by the LLP during the previous years 2018-19 and 2019-20 and the constitution of the firm is changed on June 10, 2020 (Y retires from the firm and Z joins), then Rs. 5 crore will become income of the limited liability partnership for the previous year 2020-21.

Other points

240.1 The following other points should be noted—

■ The aggregate amount of depreciation allowable to the predecessor company and successor LLP shall not exceed, in any previous year, the depreciation calculated at the prescribed rates as if the conversion had not taken place.

■ The actual cost of the block of assets in the case of the successor LLP shall be the written down value of the block of assets as in the case of the predecessor company on the date of conversion.

■ The cost of acquisition of the capital asset for the successor LLP shall be deemed to be the cost for which the predecessor company acquired it. Similarly, cost of acquisition of the capital asset (being rights of a partner in the LLP) in the hands of the partner shall be deemed to be the cost of acquisition to him of the shares in the predecessor company. However, section 2(*42A*) has not been amended. Consequently, when a converted property is transferred by the successor LLP, cost of acquisition to the predecessor company will be taken as cost of acquisition in the hands of LLP but the period of holding by the predecessor company shall not be considered to find out whether (or not) in the hands of the successor LLP converted assets are long-term or short-term. Likewise, the period of holding of shares by the shareholders of the predecessor company shall not be considered to find out whether the capital asset (being rights of a partner in a LLP), is short-term or long-term.

■ Credit in respect of tax paid by a company under section 115JB is allowed only to such company under section 115JAA. The tax credit under section 115JAA shall not be allowed to the successor LLP.

BUSINESS TAX PROCEDURE AND MANAGEMENT

3

BOOK

UNIT I

ADVANCE TAX, TDS AND INTEREST

ADVANCE PAYMENT OF TAX

26 CHAPTER

Income liable for advance tax

251. Under the scheme of advance payment of tax, every income (including capital gains, winnings from lotteries, crossword puzzles, etc.) is liable for payment of advance tax.

Liability to advance tax - When arises

251.1 It is obligatory to pay advance tax in every case where the advance tax payable is Rs. 10,000 or more.

■ A senior citizen (*i.e.*, a resident individual who is at least 60 years of age at any time during the financial year) not having any income from business/profession is not liable to pay advance tax.

Due dates of payment of advance tax

251.2 Advance tax due dates are given below—

Due date of payment of advance tax	*For any assessee (except an eligible assessee given in Column 3)*	*An eligible assessee in respect of an eligible business referred to in section 44AD or 44ADA*
On or before June 15 of the previous year	Up to 15 per cent of advance tax payable	–
On or before September 15 of the previous year	Up to 45 per cent of advance tax payable	–
On or before December 15 of the previous year	Up to 75 per cent of advance tax payable	–
On or before March 15 of the previous year	Up to 100 per cent of advance tax payable	Up to 100 per cent of advance tax payable

■ Any payment of advance tax made on or before March 31 shall also be treated as advance tax paid during the financial year.

■ If the last day for payment of any instalment of advance tax is a day on which the receiving bank is closed, the assessee can make the payment on the next immediately following working day, and in such cases, the mandatory interest leviable under sections 234B and 234C would not be charged.

■ After March 31, 2008, all corporate assessees and other assessees (who are subject to compulsory audit under section 44AB) will have to make electronic payment of tax through internet banking facility offered by authorised banks. Alternatively, these taxpayers can make electronic payment of tax through internet by way of credit or debit cards. It is not necessary for the assessee to make payment of taxes from his own account in an authorized bank. An assessee can make electronic payment of taxes also from the account of any other person. However, the challan for making such payment must clearly indicate the Permanent Account Number (PAN) of the assessee on whose behalf the payment is made—Circular No. 5/2008, dated July 17, 2008.

Different situations

252. Advance tax liability can be computed as follows :

Payment of advance tax by the assessee of his own account [Sec. 210]

252.1 An assessee who is liable to pay advance tax is required to estimate his current income and pay advance tax thereon without having to submit any estimate or statement of income to the assessing authorities.

Revision of second and subsequent instalment - After making payment of first/second instalment of advance tax, an assessee can revise the remaining instalment(s) of advance tax in accordance with his revised estimate of current income and pay tax accordingly, without any requirement of filing the revised estimate of advance tax.

COMPUTATION OF TAX

252.1-1 Tax can be computed on the current income (estimated by the taxpayer) at the rates in force during the financial year. From the tax so computed, tax deducted* or collected* at source will be deducted. Calculation can be made on similar lines in the case of upward/downward revision of current income.

Payment of advance tax in pursuance of order of Assessing Officer [Sec. 210]

252.2 The provisions are given below—

■ *Order by the Assessing Officer* - The provisions are given below—

1. The taxpayer is one who had earlier been assessed to income-tax.

2. Inspite of the legal obligation, he has not paid advance tax.

3. The Assessing Officer may pass an order under section 210(3) requiring him to pay advance tax on his current year's income.

4. The order must specify the different instalments in which the advance tax should be paid.

5. Such order may be passed during the previous year but not later than last day of February.

■ *Lower estimate by assessee* - On receipt of the notice from the Assessing Officer to pay advance tax the assessee can submit his own estimate of lower current income/advance tax and pay tax accordingly. In such a case he has to send an intimation in Form No. 28A to the Assessing Officer.

An estimate furnished by assessee in Form No. 28A cannot be rejected by departmental authorities—*Punjab Tractors Ltd.* v. *CIT* [2004] 137 Taxman 211 (Punj. & Har.). However, care must be exercised by assessees in every such case to file such estimate in Form No. 28A (by the due date of making payment of advance tax) for any failure in this regard will prompt the Assessing Officer to make legally permissible coercive recovery under the law.

■ *Higher estimate by the assessee* - Alternatively, if the advance tax on current income as per own estimate of the assessee is likely to be higher than the amount estimated by the Assessing Officer, the assessee shall pay higher tax in accordance with his own calculation. In such case, no intimation to the Assessing Officer is required.

COMPUTATION OF TAX BY ASSESSING OFFICER

252.2-1 The provisions are given below—

■ First of all the Assessing Officer will have to find out income of the current year. Current year's income would be calculated on the following basis—

a. total income of the latest previous year in respect of which the assessee has been assessed by way of regular assessment; or

b. the total income returned by the assessee for any subsequent year,

whichever is higher.

■ Tax liability on the income of the current year would be calculated according to the rate applicable. Tax deducted/collected at source will be deducted.

■ Calculation can be made on the similar lines when the assessee wants to make upward/ downward revision of current income.

Payment of advance tax in pursuance of

252.3 The provisions are given below :

1. The order passed by the Assessing Officer under section 210(3) can be revised by him under section 210(4).

*Only tax actually deducted/collected shall be reduced. If tax is deductible or collectible but the payer or collector has not deducted/collected tax at source, such tax cannot be reduced.

2. Such revision is possible if subsequent to passing an order under section 210(3) but before March 1 of the relevant financial year, the assessee had furnished a return of income for a later year or any assessment for a later year has been completed at a higher figure. *revised order of Assessing Officer*

3. On receipt of revised order, the assessee will have to pay advance tax accordingly.

■ *Lower estimate by the assessee* - The assessee can submit his own estimate of lower current income/advance tax and pay tax accordingly. In such a case he has to send an intimation in Form No. 28A to the Assessing Officer.

■ *Higher estimate by the assessee* - If alternatively, the advance tax on current income as per own estimate is likely to be higher than the amount re-estimated by the Assessing Officer, the assessee shall pay higher tax in accordance with his own calculation. In such a case intimation to the Assessing Officer is not required.

COMPUTATION OF TAX

252.3-1 The total income declared in the return furnished by the assessee for the later previous year or total income in respect of which the regular assessment is made after passing an order by the Assessing Officer but before March 1, shall be taken and income-tax thereon shall be calculated at the rates in force in the financial year. From the tax so determined, tax deducted or collected at source will be deducted.

Interest

253. *See* paras 296 and 297.

Case study

254-P1 *The following are the particulars submitted by different taxpayers for the assessment year 2019-20 :*

	X (an individual) Rs.	Y (a Hindu undivided family) Rs.	Z (a firm) Rs.	A Ltd. (a company) Rs.
1	2	3	4	5
Salaries	*4,50,000*	—	—	—
Income from house property	*3,000*	*87,000*	*36,000*	*(-) 14,000*
Profits and gains of business or profession	—	*(-) 13,000*	*2,98,840*	*5,50,000*
Capital gains (short-term)	*16,000*	—	*24,000*	*67,000*
Income from other sources	*13,000*	*3,88,000*	*43,000*	*38,000*
Gross total income	*4,82,000*	*4,62,000*	*4,01,840*	*6,41,000*
Less : *Deductions under sections 80C to 80U*				
Under section 80C	*26,000*	*10,500*	—	—
Under section 80G	*2,000*	*3,000*	*2,000*	*3,000*
Net income	*4,54,000*	*4,48,500*	*3,99,840*	*6,38,000*
Tax liability	*10,200*	*9,925*	*1,19,952*	*1,91,400*
Less: Rebate under section 87A	*Nil*	*Nil*	*Nil*	*Nil*
Balance	*10,200*	*9,925*	*1,19,952*	*1,91,400*
Add: Surcharge	*Nil*	*Nil*	*Nil*	*Nil*
Tax and surcharge	*10,200*	*9,925*	*1,19,952*	*1,91,400*
Add : *Health and education cess*	*408*	*397*	*4,988*	*7,656*
Total	*10,608*	*10,322*	*1,24,750*	*1,99,056*
Less : *Tax deducted or collected at source*	*609*	*94*	*29,052*	*53,106*
Balance (a)	*9,999*	*10,228*	*95,698*	*1,45,950*

Determine the amount of advance tax payable during the financial year 2018-19.

■

Advance tax payable for the financial year 2018-19 will be as under :

	X *Rs.*	*Y* *Rs.*	*Z* *Rs.*	*A. Ltd.* *Rs.*
Advance tax payable on or before June 15, 2018	—	1,534	14,355	21,893
Advance tax payable after June 15, 2018 but on or before September 15, 2018	—*	3,068	28,709	43,785
Advance tax payable after September 15, 2018 but on or before December 15, 2018	—*	3,068	28,709	43,785
Advance tax payable after December 15, 2018 but on or before March 15, 2019	—*	2,557	23,925	36,487

*Since in the case of X, amount of tax as shown at (*a*) is less than Rs. 10,000, it is not necessary to pay advance tax.

254-P2 *X Ltd. is a company in which the public are not substantially interested. It was assessed for the first time in 1977. It does not pay any advance tax during April 1, 2018 and September 15, 2018. The concerned Assessing Officer (*vide *order dated September 20, 2018 in Form No. 28) requires the company to pay tax of Rs. 22,170 on current income of Rs. 71,060 as advance tax (Rs. 16,630 on or before December 15, 2018 and Rs. 5,540 on or before March 2019). What are the different alternatives before the company?*

■

On receipt of the demand notice the company has the following three alternatives :

Alternative 1 - It can pay advance tax as demanded by the Assessing Officer.

Alternative 2 - If it thinks that current income is lower than the income estimated by the Assessing Officer, it can intimate it to the concerned officer in Form No. 28A and pay tax accordingly. Suppose, as per the expectation of the company, the current income is Rs. 40,000, it can pay advance tax of Rs. 12,480 (*i.e.*, Rs. 9,360 on or before December 15, 2018 and Rs. 3,120 on or before March 15, 2019).

The company can revise advance tax liability even after payment of instalment on December 15, 2019. Suppose, the company pays Rs. 16,630, as per order of the Assessing Officer on December 15, 2018, and later on (say during January 2019) it suffers a loss of Rs. 10,000 (loss is unexpected and was not considered by the Assessing Officer), it can revise the advance tax payable on March 15, 2019 (after sending intimation in Form No. 28A to the Assessing Officer) as follows :

	Rs.
Current income (*i.e.*, Rs. 71,060—loss of Rs. 10,000)	61,060
Tax	19,051
Less : Advance tax paid on December 15, 2018	16,630
Advance tax payable on March 15, 2019	2,420

Alternative 3 : Under the third alternative, the company can make upward revision of the tax liability estimated by the Assessing Officer (if as per calculation of the company, tax on current income is higher) and pay tax accordingly. No intimation is required to be given to the Assessing Officer. Suppose, the company pays Rs. 16,630 on December 15, 2018 (as per order of the Assessing Officer). It gets unexpected profit of Rs. 45,000 due to a strike in the factory of a competitor. It can revise the tax payable on March 15, 2019 as follows :

	Rs.
Current income (Rs. 71,060 + Rs. 45,000)	1,16,060
Tax	36,211
Less : Tax paid on December 15, 2018	16,630
Tax payable on March 15, 2019	19,581

MULTIPLE CHOICE QUESTIONS

Q1. For the financial year 2018-19, advance tax is payable where tax payable is—

a. Rs. 5,000 or more;

b. More than Rs. 5,000;

c. More than Rs. 10,000;

d. Rs. 10,000 or more.

Q2. Any income (which is not subject to tax deduction at source) is subject to advance payment of tax—

a. True;

b. False.

Q3. Advance tax has to be paid in the following cases electronically through internet banking facility offered by authorized banks—

a. All corporate assessees;

b. Non-corporate assessees subject to tax audit under section 44AB;

c. Both of above;

d. None of above.

Q4. X Ltd. does not pay any advance tax till September 15, 2018. An order is passed by the Assessing Officer under section 210(3) requiring the company to pay advance tax of Rs. 40 lakh (Rs. 30 lakh before December 15, 2018 and another Rs. 10 lakh before March 15, 2019)—

a. X Ltd. may pay Rs. 40 lakh;

b. If X Ltd. wants to pay more than Rs. 40 lakh, it can do so without sending any intimation to the Assessing Officer;

c. If X Ltd. wants to pay lower than Rs. 40 lakh, it will have to intimate the Assessing Officer in Form No. 28A;

d. X Ltd. can select any of the above alternatives.

Q5. A limited liability partnership will have to pay at least 15 per cent of tax by way of advance tax on or before June 15 of the financial year.

a. True;

b. False.

27 CHAPTER

DEDUCTION/COLLECTION OF TAX AT SOURCE AND e-TDS RETURN

What is the scheme of tax deduction at source

269. The scheme of tax deduction at source can be explained with the help of the following example—

X (29 years) is a businessman. For the financial year 2019-20, his business income is Rs. 8,86,000. Besides, he has received Rs. 90,000 as interest on fixed deposit from Punjab National Bank on January 31, 2020 (gross interest earning on fixed deposit: Rs. 1,00,000, *less* tax deducted at source by bank : Rs. 10,000). He has deposited Rs. 60,000 in public provident fund.

At the time of assessment, the tax computation shall be made on the following lines—

	Rs.	*Rs.*
Business income		8,86,000
Bank fixed deposit interest		
Net interest received from bank	90,000	
Add : Tax deducted at source by bank	10,000	
Gross interest		1,00,000
Gross total income		9,86,000
Less : Deduction under section 80C		60,000
Net income		9,26,000
Tax on net income		97,700
Add : Health and education cess		3,908
Tax liability		1,01,608

It may be noted that net interest received from bank is Rs. 90,000, whereas amount included in gross total income is Rs. 1,00,000. Rs. 10,000 that is deducted by way of tax at source by the Punjab National Bank, is included in the gross interest, although it is not actually received by X. The final tax liability according to the above computation is Rs. 1,01,608.

Tax credit

269.1 X is not supposed to pay Rs. 1,01,608. He is entitled for a tax credit of Rs. 10,000, which has been deducted by the Punjab National Bank out of the interest earning. The bank will issue a certificate to X in Form No. 16A after downloading from TRACES Portal. The certificate in Form No. 16A will state the following—

	Rs.
Gross interest	1,00,000
Less : Tax deducted at source by Punjab National Bank	10,000
Net interest paid to X	90,000

The certificate in Form No. 16A will also indicate the date on which the tax deducted at source is paid by the Punjab National Bank to the Government of India. On submission of details of Form 16A, in the Income-tax return, he will get a tax credit of Rs. 10,000. Consequently, X will pay only Rs. 91,608 (*i.e.*, Rs. 1,01,608 – Rs. 10,000).

The provisions given below explain the payments, which are covered by the scheme of tax deduction at source and how to calculate such amount.

Payments covered by TDS scheme

269.2 TDS scheme covers payments like salary (to resident/non-resident), payment other than salary to residents (namely, interest, dividend, rent, commission/brokerage, lottery winnings, winnings of races, technical/professional fees, royalty, compensation, etc.) and payment to non-residents/foreign companies. These provisions are discussed in paras given below.

TDS rates during the financial year 2019-20

269.3 Normal TDS rates are summarized in Annex 1, para 0.6.

■ *When recipient does not furnish his/its PAN [Sec. 206AA]* - If the recipient does not furnish his PAN to the deductor, tax will be deducted by virtue of section 206AA at the normal rate or at the rate of 20 per cent, whichever is higher. However, this rule is subject to following modifications –

❑ *Case 1* - The provisions of section 206AA are not applicable in respect of payment of interest to a non-resident under section 194LC on long-term bonds including infrastructure bonds.

❑ *Case 2* - Where tax is deductible on the strength of the provisions of DTAAs which is lower than 20 per cent, the provisions of section 206AA cannot be invoked (to compel the assessee to deduct tax at the rate of 20 per cent) even if the recipient does not have PAN—*DIT* v. *Serum Institute of India Ltd.* [2015] 56 taxmann.com 1 (Pune - Trib.), *CIT (International Taxation)* v. *Infosys BPO Ltd.* [2015] 154 ITD 816 (Bang.).

❑ *Case 3* - If the recipient does not furnish PAN, tax will be deducted under section 192A at the maximum marginal rate of tax (*i.e.*, 42.744 per cent for the financial year 2019-20) and not at the rate of 20 per cent given by section 206AA.

❑ *Case 4* - With effect from June 1, 2016, provisions of section 206AA are not applicable, if conditions of rule 37BC are satisfied. The benefit of rule 37BC is available, if the recipient is non-resident, he/it does not have PAN and the payment/credit subject to TDS is interest, royalty, fees for technical service or payment on transfer of a capital asset. In such a case, tax will be deducted at the regular rate (and not at the rate of 20 per cent given by section 206AA), if the non-resident recipient furnishes the following details/documents to the payer –

- name, e-mail id, contact number;
- address in the home country;
- certificate of being a resident in the home country, if the law of the country provides such a certificate; and
- Tax Identification Number (TIN) in the home country. Where TIN is not available, a unique identification number through which the deductee is identified in the home country.

PAN of the deductee should be mentioned in any correspondence and document which is exchanged between the deductor and deductee.

■ *When recipient is located in a notified jurisdictional area [Sec. 94A(5)]*- Where any person located in a notified jurisdictional area† is entitled to receive any sum on which tax is deductible under any provision of the Act, the payer will deduct tax—

a. at the rates in force or at the rate specified in the relevant provision of the Act (*i.e.*, rates given in Annex 1); or

b. at the rate of 30 per cent (surcharge or education cess cannot be added), whichever is higher.

■ *Surcharge and health and education cess on TDS during the financial year 2019-20* - Surcharge is applicable for the purpose of TDS during the financial year 2019-20 in the following cases–

1. Payment of salary to a resident or non-resident (surcharge is applicable @ 10 per cent of TDS if amount subject to TDS during the financial year 2019-20 exceeds Rs. 50 lakh but does not exceed Rs. 1 crore, surcharge is 15 per cent of TDS if amount subject to TDS during the financial year 2019-20 exceeds Rs. 1 crore but does not exceed Rs. 2 crore, surcharge is 25 per cent of TDS if amount subject to TDS during the financial year 2019-20 exceeds Rs. 2 crore but does not exceed Rs. 5 crore and surcharge is 37 per cent of TDS if amount subject to TDS during the financial year 2019-20 exceeds Rs. 5 crore).

2. Payment/credit (other than salary) to a non-resident (individual, HUF, AOP, BOI or artificial juridical person) (surcharge is applicable @ 10 per cent of TDS if amount subject to TDS during the financial

† 'Cyprus' was specified as notified jurisdictional area for purposes of section 94A *vide* Notification No. SO 3307(E), dated November 1, 2013. However, this notification has been rescinded (except as respects things done or omitted to be done before such rescission) *vide* Notification No. SO 4033(E), dated December 14, 2016. *Vide* Circular No. 15/2017, dated April 21, 2017, CBDT clarified that Notification No. SO 3307(E), dated November 1, 2013 has been rescinded with effect from the date of issue of the said notification, thereby, removing Cyprus as a notified jurisdictional area with retrospective effect from November 1, 2013.

year 2019-20 exceeds Rs. 50 lakh but does not exceed Rs. 1 crore, surcharge is 15 per cent of TDS if amount subject to TDS during the financial year 2019-20 exceeds Rs. 1 crore but does not exceed Rs. 2 crore, surcharge is 25 per cent of TDS if amount subject to TDS during the financial year 2019-20 exceeds Rs. 2 crore but does not exceed Rs. 5 crore and surcharge is 37 per cent of TDS if amount subject to TDS during the financial year 2019-20 exceeds Rs. 5 crore).

3. Payment/credit (other than salary) to a non-resident (firm, LLP or co-operative society) (surcharge is applicable @ 12 per cent of TDS if amount subject to TDS during the financial year 2019-20 exceeds Rs. 1 crore).

4. Payment/credit (other than salary) to a foreign company (surcharge is applicable only if amount subject to TDS during the financial year 2019-20 exceeds Rs. 1 crore, surcharge is 2 per cent of TDS if the payment subject to TDS is more than Rs. 1 crore but not more than Rs. 10 crore, 5 per cent of TDS if payment subject to TDS exceeds Rs. 10 crore). In no other case, surcharge will be applicable for TDS purposes during the financial year 2019-20.

■ *Health and education cess* - During the financial year 2019-20, health and education cess (at the rate of 4 per cent) will be applicable only in the following cases—

1. Tax deduction from payment of salary (where recipient is resident or non-resident).

2. Tax deduction from payment/credit of any sum (other than salary) to a non-resident or a foreign company.

In the case of payment/credit (other than salary) to a resident, surcharge/health and education cess is not applicable for TDS purposes during the financial year 2019-20.

■ *Whether reimbursement to an agent/associate enterprise is again subject to TDS when tax was properly deducted by the agent/associate enterprise* - Where technical fees (or any other expenditure like rent, commission, royalty, professional fees, etc.) is paid by an agent or associate enterprise on behalf of the assessee and tax is deducted properly within the legal parameters by the agent/associate enterprise, reimbursement later on by the assessee of the expenditure to his agent/associate enterprise is not again subject to tax deduction at source.

■ *No TDS on service tax or GST* - The Central Board of Direct Taxes has decided that wherever in terms of the agreement/contract between the payer and the payee, the service tax/GST component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under any section on the amount paid/payable without including such service tax/GST component – Circular No. 1/2014, dated January 13, 2014, Circular No. 23/2017, dated July 19, 2017.

When and how tax is to be deducted at source from salary [Sec. 192]

270. The summarized provisions of section 192 are given below—

Who is the payer	Employer
Who is the recipient	Employee
Payment covered	Taxable salary of the employee
At what time tax has to be deducted at source	At the time of payment
Maximum amount which can be paid without tax deduction	The amount of exemption limit (*i.e.,* Rs. 3,00,000‡/ Rs. 5,00,000£/Rs. 2,50,000 for the financial year 2019-20)
Rate of tax deduction at source	Normal rates applicable to an individual [*see* Appendix 1]
When the provisions are not applicable	—
Is it possible to get the payment without tax deduction or with lower tax deduction	The employee can make an application in Form No. 13 to the Assessing Officer to get a certificate of lower tax deduction or no tax deduction.

The person responsible for paying salary may, at the time of deducting tax at source, increase or decrease the amount to be deducted for the purpose of adjusting any previous deficiency or excess deduction. [Sec. 192(3)]*

How to compute taxable salary and tax thereon

270.1 At the time of deducting tax at source, the person responsible for paying salary should keep the following points in consideration :

■ No tax is required to be deducted at source unless the estimated salary exceeds exemption limit (*i.e.,* Rs. 3,00,000‡/Rs. 5,00,000£/Rs. 2,50,000) during the financial year 2019-20.

‡ Resident senior citizen (60 years or more).

£Resident super senior citizen (80 years or more).

*Intention of section 192(3) is not that an employer can casually take deduction of tax from payments of salary in different months and resort to a lump sum deduction at the end of relevant financial year for making good deficiency.

■ House rent allowance qualifies for exemption, subject to the specified limits. Though incurring actual expenditure on payment of rent is a prerequisite for claiming deduction under section 10(*13A*), it has been decided as an administrative measure that salaried employees drawing house rent allowance up to Rs. 3,000 per month will be exempted from production of rent receipt. It may, however, be noted that this concession is only for the purpose of tax deduction at source, and, in the regular assessment of the employee, the Assessing Officer will be free to make such enquiry as he deems fit for the purpose of satisfying himself that the employee has incurred actual expenditure on payment of rent.

■ The value of the perquisites by way of free residential accommodation and other perquisites is determined under rule 3 [*see* Chapter 1] and should be taken into account for computing taxable salary.

■ The employer should not give any deduction in respect of donation given by an employee to a notified public charitable institute. The tax relief admissible under section 80G in respect of such donations will have to be claimed by the employee at the time of finalization of his assessment.

However, where donations/contributions are made to other funds (*e.g.*, the Jawaharlal Nehru Memorial Fund, the Prime Minister's Drought Relief Fund, the National Children's Fund, etc.) deduction should be allowed by the employer while calculating tax deductible from salary income.

■ The person responsible for making payment should also take into consideration amount deductible under sections 80C, 80CCC, 80CCD, 80CCG, 80D, 80DD, 80DDB, 80E, 80EE, 80GG, 80GGA, 80TTA, 80TTB and 80U.

■ The total salary should be rounded off to the nearest multiple of Rs. 10 by ignoring the fraction of less than five rupees and increasing the fraction of five rupees or more.

■ On the estimated taxable salary, tax during the financial year 2019-20 is to be calculated at the rates mentioned in Appendix 1.

Special cases

270.2 The following special cases are covered by section 192.

HOW TO DEDUCT TAX WHEN A PERSON IS EMPLOYED BY MORE THAN ONE EMPLOYER

270.2-1 Where an employee has more than one employer, he is required by section 192(2) to furnish in Form No. 12B to one of the employers (as selected by the employee having regard to the circumstances of the case) the details of salary due/received by him from other employers. Only after submission of information in Form No. 12B, it becomes the obligation of the employer (to whom Form No. 12B is submitted) to deduct tax at source after considering the information submitted by the employee. If information is submitted in the month of October, only from October onwards, tax shall be deducted at the average rate determined after considering the details submitted in Form No. 12B—*CIT* v. *Marubeni India (P.) Ltd.* [2007] 165 Taxman 467 (Delhi).

The following illustrations are given to have better understanding—

Case studies

1. During the previous year 2019-20, X is employed simultaneously by A Ltd. (salary: Rs. 30,000) and B Ltd. (salary: Rs. 42,000) on part-time basis. X may select any of the two companies for deducting tax at source on aggregate salary. Suppose, X selects B Ltd., then tax will be deducted as follows:

	Tax deduction by A Ltd. on salary paid by it Rs.
Taxable salary by A Ltd. (salary : Rs. 30,000 × 12 – standard deduction : Rs. 50,000)	3,10,000
Tax on taxable salary to be deducted at source by A Ltd.	*Nil*

The above information pertaining to A Ltd. will be submitted by X to B Ltd. in Form No. 12B. B Ltd. will deduct tax on the aggregate salary as follows:

	Tax deduction by B Ltd. Rs.
Taxable salary [salary : (Rs. 30,000 × 12 + Rs. 42,000 × 12) – standard deduction : Rs. 50,000]	8,14,000
Tax on taxable salary	78,312
Less: Tax deducted by A Ltd.	*Nil*
Tax to be deducted by B Ltd.	*Nil*

2. Y is employed by C Ltd. up to June 30, 2019 (salary being Rs. 80,000 per month). On July 1, 2019, he joins D Ltd. (salary being Rs. 95,000 per month). Tax will be deducted at source as follows:

	Tax deduction by C Ltd. on salary paid by it Rs.
Taxable salary by C Ltd. [(salary : Rs. 80,000 × 3 – standard deduction : Rs. 50,000)]	1,90,000
Tax on taxable salary deducted at source by C Ltd.	24,570

The above information pertaining to C Ltd. will be submitted by Y to D Ltd. in Form No. 12B. D Ltd. will deduct tax on the aggregate salary as follows (Y should not select the old employer for deducting tax in respect of aggregate salary):

	Tax deduction by D Ltd. Rs.
Taxable salary [salary : (Rs. 80,000 × 3 + Rs. 95,000 × 9) – standard deduction : Rs. 50,000]	10,45,000
Tax on taxable salary	1,31,040
Less: Tax deducted by C Ltd.	24,570
Tax to be deducted by B Ltd.	1,06,470

RELIEF UNDER SECTION 89

270.2-2 If the employee furnishes information in Form No. 10E† to the employer, relief under section 89 should be given to the concerned employee while deducting tax at source under section 192. However, this facility is available only if the employer is Government or public sector undertaking or company, co-operative society, local authority, university, institution or association or body.

Case study

X, an employee of a PSU furnishes the following particulars for the previous year ending March 31, 2020:

	Rs.
Salary income for the year	5,75,000
Salary for financial year 2006-07 received during the year	40,000
Assessed income for the financial year 2006-07	1,40,000

Computation of relief under section 89

	Taxable income and tax liability an receipt basis		*Taxable income and tax liability on accrual basis*	
	2020-21 Rs.	*2007-08 Rs.*	*2020-21 Rs.*	*2007-08 Rs.*
Salary	5,75,000	1,40,000	5,75,000	1,40,000
Arrears of salary	40,000	-	-	40,000
Gross salary	6,15,000	1,40,000	5,75,000	1,80,000
Less: Standard deduction	50,000	-	50,000	-
Total income	5,65,000	1,40,000	5,25,000	1,80,000
Tax on total income	25,500	4,000	17,500	11,000
Add: Surcharge	*Nil*	-	*Nil*	-
Tax and surcharge	25,500	4,000	17,500	11,000
Add: Education cess	1,020	80	700	220
Tax liability	26,520	4,080	18,200	11,220

	Rs.
Tax liability of the two assessment years on receipt basis	30,600
Tax liability of the two assessment years on accrual basis	29,420
Tax relief under section 89 for the assessment year 2020-21	1,180
Tax payable for the assessment year 2020-21 (*i.e.* Rs. 26,520 – Rs. 1,180)	25,340

† The Department insists that the concerned employee should submit electronically Form No. 10E along with his return of income to claim relief under section 89 (however, there is no such legal requirement under the Income-tax Act or Income-tax Rules).

CAN THE EMPLOYER DEDUCT TAX IN RESPECT OF OTHER INCOMES OF EMPLOYEE

270.2-3 The provisions are given below—

1. The employee may (or may not) declare his other incomes to the employer.

2. If the employee wants to declare his other incomes to the employer, then such information should be given on a plain paper to the employer.

3. The employee may declare details of his other incomes (including loss under the head "Income from house property" but not any other loss) and tax deducted thereon by others. If such information is not submitted by the employee to the employer, then employer cannot take into consideration other incomes of the employee (even if the quantum of other incomes is otherwise known to the employer).

4. After receipt of such information, the employer should deduct (out of salary payment) tax due on total income as follows—

*Computation one [on the basis of (*a*) salary and (b) other incomes* declared by the employee]*	*Computation two [on the basis of salary and ignoring the other incomes* declared by the employee]*
a. Find out salary income	*j.* Find out salary income
b. *Add* : Other incomes declared by the employee (in case of loss, only house property loss would be considered; no other loss would be taken into consideration)	*k.* *Less* : Loss under the head "Income from house property" as declared by the employee
c. Find out aggregate of (*a*) and (*b*)	*l.* Find out (*j*) – (*k*)
d. *Less* : Deduction under sections 80C to 80U	*m.* *Less* : Deduction under sections 80C to 80U
e. Find out (*c*) – (*d*)	*n.* Find out (*l*) – (*m*)
f. Find out tax on (*e*)	*o.* Find out tax on (*n*)
g. *Add* : Surcharge** and health and education cess‡	*p.* *Add* : Surcharge** and health and education cess‡
h. *Less*: Tax deducted by others as per information given by the employee	*q.* *Less:* Tax deducted from rent by others (if there is loss of house property) as per information given by the employee
i. Find out tax liability [(*f*) + (*g*) – (*h*)]	*r.* Find out tax liability [(*o*) + (*p*) – (*q*)]

*Only house property loss declared the assessee would be considered.

**Surcharge is applicable only if (*e*) or (*o*) exceeds Rs. 50 lakh.

‡ Health and education cess is 4 per cent of tax and surcharge.

The tax deductible at source from salary payment is amount determined at (*i*) or (*r*), whichever is higher.

CAN THE EMPLOYER PAY TAX ON PERQUISITE

270.2-4 The person responsible for paying any income in the nature of a perquisite (not provided for by way of monetary payment), may pay, at his option, tax on the whole (or part) of such income without making any deduction from salary payable to employee. For this purpose, tax shall be determined at the average of income-tax computed on the basis of the rates in force for the financial year, on the income chargeable under the head "Salaries". The tax so paid by employer is not taxable in the hands of the employee as a "perquisite".

EVIDENCE OR PROOF OF EXPENDITURE TO AVAIL EXEMPTION

270.2-5 Rule 26C has been inserted with effect from June 1, 2016. Under this rule, an employee shall furnish supporting evidence pertaining to the following in Form No. 12BB for the purpose of estimation of his income and tax deduction at source. This form should be submitted to the person responsible for tax deduction under section 192–

Nature of claim	*Evidence or particulars*
House rent allowance	- Name and address of landlord/landlords - Amount of rent paid/payable - PAN of landlord/landlords (where the aggregate rent paid during the financial year exceeds Rs. 1 lakh)
Leave travel concession or assistance	Expenditure and evidence pertaining to expenditure
Deduction of interest under the head "Income from house property"	Name, address, PAN of the lender and interest paid/ payable
Deduction under sections 80C, 80CCC, 80CCD, 80CCG, 80D, 80DD, 80DDB, 80E, 80EE, 80GG, 80GGA, 80TTA and 80U	Amount of investment/expenditure and evidence of investment/expenditure

Time-limit for submission of Form No. 12BB by employee to employer - No time-limit has been specified for submission of Form No. 12BB.

Submission of above information by employer to income-tax department - The above information collected by an employer in Form No. 12BB from his employees shall be retained by the employer. However, PAN and name of landlord (in the case of house rent allowance) and PAN and name of lender (in the case of interest on housing loan) shall be submitted by the employer in *Columns 357* and *358* in Form No. 24Q (Annexure II) every year in the TDS statements pertaining to the fourth quarter.

Particulars of perquisite and profit in lieu of salary

270.3 Section 192(1C) provides that any person responsible for paying salary shall furnish to the person who receives the salary a statement giving particulars of perquisites or profits in lieu of salary provided to him in Form 12BA.

Salary with lower TDS

270.4 *See* para 289.7.

Salary paid in foreign currency

270.5 For the purposes of deduction of tax on salary payable in foreign currency, the value in rupees of such salary shall be calculated at the "telegraphic transfer buying rate" of such currency as on the date on which tax is required to be deducted at source.

Case study

270-P1 *X is in employment of A Ltd., drawing salary of Rs. 8,20,670, during the financial year 2019-20. He contributes Rs. 40,000 towards public provident fund. The following information is submitted by X in respect of other income to his employer.*

	Rs.
Income from consultancy	*70,000*
Tax deducted by the payer under section 194J	*7,000*
Expenses on earning the above income	*68,250*
Short-term capital loss	*(-) 6,000*
Loss from self occupied house property	*(-) 40,000*
Loss from let out house property	*(-) 61,000*
Tax deducted by the payer of rent	*1,240*

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On receipt of the above information, A Ltd. will make the following two computations—

Computation 1 - Under this computation, all other income declared by the employee will be considered.

Computation 2 - Only salary income will be considered.

It may be noted that in the two computations, house property loss (from let out as well as self-occupied property) will be considered. However, no other loss will be considered.

	Computation 1 Rs.	*Computation 2 Rs.*
Salary (after standard deduction)	7,70,670	7,70,670
House property loss	(-) 1,01,000	(-) 1,01,000
Short-term capital loss	—	—
Consultancy income [Rs. 70,000 (–) Rs. 68,250]	1,750	*NA*
Gross total income	6,71,420	6,69,670
Less : Deduction under section 80C	40,000	40,000
Net income	6,31,420	6,29,670
Tax	40,335	39,971
Less : Tax deducted by others		
By tenant under section 194-I	1,240	1,240
By payer of consultancy fees under section 194J	7,000	—
Balance	32,095	38,731

Tax to be deducted by the employer is Rs. 38,731.

When and how tax is to be

270A. Section 192A has been inserted with effect from June 1, 2015. Under this section, tax is deductible (notwithstanding anything contained under other provisions of the Act) as follows –

deducted at source from withdrawal from employees provident fund scheme [Sec. 192A]

1. Who is deductor - Tax is to be deducted by the trustees of Employees' Provident Fund Scheme, 1952 or any other person authorised under the scheme to make payment of accumulated sum to employees.

2. Which amount is subject to tax deduction - Tax is deductible from "taxable premature withdrawal". In other words, tax is deductible from accumulated lump sum payment (at the time of retirement or at the time of leaving job) in case the employee has not rendered continuous service of 5 years and he does not fall in any of 4 cases given below –

- If the employee has rendered continuous service with his employer for a period of 5 years or more. For the purpose of calculating 5-year time-limit, service rendered with the previous employer shall be included, if the previous employer also maintained recognized provident fund and the provident fund balance of the employee was transferred by him to the current employer.
- If the employee has been terminated because of certain reasons which are beyond his control (*e.g.*, ill health of the employee, discontinuation of business by employer, completion of project for which the employee was employed, etc.).
- If the employee has resigned before completion of 5 years but he joins another employer (who maintains recognized provident fund and provident fund money with the current employer is transferred to the new employer).
- If the entire balance standing to the credit of the employee is transferred to his account under a pension scheme referred to in section 80CCD and notified by the Central Government (*i.e.*, NPS).

Out of the lump sum payment, only amount includible in the total income of the employee is subject to tax deduction at source.

3. Time of tax deduction - Tax is deductible at the time of payment.

4. Rate of TDS under section 192A - Tax is deductible under section 192A at the rate of 10 per cent of "taxable premature withdrawal". If recipient is a resident, surcharge/health and education cess are not applicable. If recipient is non-resident, the rate of 10 per cent will be increased by surcharge and health and education cess.

5. What is threshold limit - Tax is not deductible if "taxable premature withdrawal" is less than Rs. 50,000.

6. Is it possible to get lower TDS certificate under section 197 - Lower TDS certificate under section 197 is not possible.

7. Is it possible to avoid TDS by submitting Form No. 15G/15H under section 197A - The recipient can give a declaration in Form No. 15G to the effect that his total income including taxable premature withdrawal from provident fund does not exceed the maximum amount not chargeable to tax and on furnishing of such declaration, no tax will be deducted. Similar facility of filing self-declaration in Form No. 15H for non-deduction of tax under section 197A is available to a senior citizen receiving pre-mature withdrawal.

When and how tax is to be deducted at source from interest on securities [Sec. 193]

271. The provisions of section 193 are given below—

Who is the payer	Payer of interest on securities
Who is the recipient	A resident person holding securities
Payment covered	Interest on securities
At what time tax has to be deducted at source	At the time of payment or at the time of credit, whichever is earlier - *See* para 271.2
Maximum amount which can be paid without tax deduction	-
Rate of tax deduction at source	10%
When the provisions are not applicable	Interest on Central/State Government securities + a few more given in para 271.1
Is it possible to get the payment without tax deduction or with lower tax deduction	*See* paras 289.7 and 289.8

Securities interest which is not subject to tax deduction

271.1 No tax is deductible at source from the amount of interest payable on the following†:

a. debentures issued by any co-operative society (including a co-operative land mortgage bank or a co-operative land development bank) or any other institution or authority or a public sector company notified by the Central Government;

b. any security of the Central Government or a State Government [however, interest exceeding Rs. 10,000 (from June 1, 2007) on 8 per cent Savings (Taxable) Bonds, 2003 or (from April 1, 2018) on 7.75 per cent Savings (Taxable) Bonds, 2018 during the financial year, is subject to tax deduction under section 193];

c. securities beneficially owned by the Life Insurance Corporation of India or the General Insurance Corporation of India or to any of the four companies formed by virtue of the schemes framed under section 16(1) of the General Insurance Business (Nationalisation) Act, 1972 or any other insurer.

d. any listed Demat security.

Time of tax deduction

271.2 Tax has to be deducted at source at the time of payment or at the time of credit to the account of payee or transfer to interest payable account or suspense account, whichever comes earlier. However, tax cannot be deducted until identity of the person in whose hands it is includible as income can be ascertained—*Industrial Development Bank of India* v. *ITO* [2006] 10 SOT 497/104 TTJ 230 (Mum.).

When tax is not deductible at regular rates

271.3 In the following cases tax is not deducted at regular rates :

■ *Application to Assessing Officer in Form No. 13 - See* para 289.7.

■ *Declaration to the payer in form No. 15G - See* para 289.8.

■ *Debenture interest up to Rs. 5,000* - It is not necessary to deduct tax at source from any interest on debentures paid to a resident individual or a resident Hindu undivided family, if the following conditions are fulfilled :

a. the debentures have been issued by a company in which the public are substantially interested;

b. the interest is paid by the company by an account payee cheque ; and

c. the aggregate amount of interest paid or likely to be paid by the company to the holder of the debentures during the financial year does not exceed Rs. 5,000.

■ *Regimental fund* - The matter with regard to regimental fund or non-public fund established by Armed Forces has been examined in the Board. Since the income of these organisations is exempt under section 10(*23AA*), it has been decided that no tax may be deducted at source under sections 193 and 194-I from the income of such Fund—Circular No. 735, dated January 30, 1996.

■ *Deep discount bonds* - Tax is deductible at the time of redemption—Circular No. 4/2004, dated May 13, 2004. If the recipient has paid tax on interest on accrual basis, he can take relief under section 197 or 197A.

When and how tax is to be deducted at source from dividends [Sec. 194]

272. The provisions of section 194 are given below—

Who is the payer	Domestic company
Who is the recipient	Resident shareholder
Payment covered	Deemed dividend under section 2(*22*)(*e*) up to March 31, 2018
At what time tax has to be deducted at source	At the time of payment
Maximum amount which can be paid without tax deduction	—
Rate of tax deduction at source	10%
When the provisions are not applicable	Dividends covered by section 115-O‡
Is it possible to get the payment without tax deduction or with lower tax deduction	*See* paras 289.7 and 289.8

†Only the securities which are currently in force are printed in the book.

‡ With effect from April 1, 2018, even deemed dividend under section 2(*22*)(*e*) is covered by dividend distribution tax under section 115-O. Consequently, with effect from April 1, 2018, TDS provisions of section 194 do not have any practical utility.

When and how tax is to be deducted at source from interest other than interest on securities [Sec. 194A]

273. The provisions of section 194A are given below—

Who is the payer	Any person paying interest other than interest on securities (not being an individual or a Hindu undivided family whose books of account are not required to be audited under section 44AB in the immediately preceding financial year)
Who is the recipient	A resident person
Payment covered	Interest other than interest on securities
At what time tax has to be deducted at source	At the time of payment or at the time of credit*, whichever is earlier [*see* also para 271.2]
Maximum amount which can be paid without tax deduction	If the amount of payment or credit is Rs. 5,000 or less than Rs. 5,000 (in the case of bank interest : Rs. 10,000).
Rate of tax deduction at source	10%
When the provisions are not applicable	For a few cases, *see* para 273.1
Is it possible to get the payment without tax deduction or with lower tax deduction	*See* paras 289.7 and 289.8

When interest is not subject to tax deduction or subject to lower tax deduction

273.1 Tax is not deductible in the following cases—

a. where the amount of interest credited or paid (or likely to be credited or paid) during a financial year† does not exceed the amount given below –

	Interest paid or payable by –	
	Bank/co-operative bank/post office	*Any other person*
Up to March 31, 2018	Rs. 10,000	Rs. 5,000
During financial year 2018-19	Rs. 10,000 (Rs. 50,000 if recipient is senior citizen)	Rs. 5,000
From April 1, 2019	Rs. 40,000 (Rs. 50,000 if recipient is senior citizen)	Rs. 5,000

b. where interest is credited or paid to any banking company, co-operative bank, public financial institutions, the Life Insurance Corporation, the Unit Trust of India, an insurance company or a co-operative society carrying on the business of insurance, or notified institutions;

c. where interest is credited or paid by the firm to its partner(s);

d. where interest is credited or paid by a co-operative society (other than a co-operative bank) to its members or to any other co-operative society;

e. where interest is credited or paid in respect of deposits under the schemes of Post Office (Time Deposits), Post Office (Recurring Deposits), Post Office Monthly Income Account, Kisan Vikas Patra, National Savings Certificates VIII Issue, and Indira Vikas Patra;

f. where interest is credited or paid in respect of deposits (other than time deposit)‡ with a banking company or (interest to non-members on deposit) with a co-operative bank;

g. where interest is credited or paid in respect of deposit (by non-members) with a primary agricultural society, etc.;

h. where interest is credited or paid by the Central Government under different provisions of the direct taxes;

i. where the interest is paid (or, up to May 31, 2015, credited) on compensation awarded by the Motor Accidents Claims Tribunal if the amount of payment or the aggregate amount of such payment does not exceed Rs. 50,000;

j. income paid/payable by an infrastructure capital/fund or public sector company in relation to zero coupon bonds issued on or after June 1, 2005;

k. where interest is paid or credited by an offshore banking unit on deposits made (or borrowings given) after March 31, 2005 by a person who is resident but not ordinarily resident in India; and

l. interest referred to in section 10(*23FC*).

† The aforesaid limits shall be computed with reference to the income credited or paid by a branch of the banking company or the co-operative society, as the case may be. However, branch-wise computation system is discontinued from June 1, 2015. From June 1, 2015, section 194A has been amended to provide that for computing threshold limit (given above) interest credited or paid by the banking company/co-operative bank which has adopted core banking solutions (CBS), shall be considered.

‡ Interest on "time deposit" is subject to TDS under section 194A. "Time deposit" for this purpose includes recurring deposit.

Adjustment in the case of short deduction

273.2 The person responsible for making the payment at the time of making any deduction, may increase or reduce the amount to be deducted under section 194A for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.

Payment under a hire purchase agreement

273.3 When a part of purchase instalment is paid by a hirer to the owner under a higher purchase contract, the provisions of section 194A are not attracted—Instruction No. 1425, dated November 16, 1981.

When and how tax is to be deducted at source from winnings from lotteries or crossword puzzles [Sec. 194B]

274. The provisions of section 194B are given below—

Who is the payer	Any person paying winnings from lotteries/crossword puzzles/card games/other games
Who is the recipient	Any person
Payment covered	Winnings from lotteries/crossword puzzles/card games/other games
At what time tax has to be deducted at source	At the time of payment
Maximum amount which can be paid without tax deduction	If the amount of payment is Rs. 10,000 or less than Rs. 10,000
Rate of tax deduction at source	30%
When the provisions are not applicable	—
Is it possible to get the payment without tax deduction or with lower tax deduction	Not possible

Provisions illustrated - X wins a lottery prize of Rs. 2,00,000 on March 22, 2019, out of which Rs. 20,000 is payable to the agent. Out of Rs. 1,80,000 payable to the winner, Rs. 54,000 (being 30 per cent of Rs. 1,80,000) shall be tax deduction at source under section 194B. Unclaimed and/or undisbursed prize money is not a winning from lottery and, as such the provisions of section 194B for deduction of income-tax at source are not applicable in respect thereof—*Director of State Lotteries* v. *CIT* [1999] 238 ITR 1 (Gauhati).

Prize given partly in cash and partly in kind

274.1 Where the prize is given partly in cash and partly in kind, tax will be deductible from cash prize, with reference to the aggregate amount of cash prize and the value of the prize in kind. Where the winnings are wholly in kind or where they are partly in cash and partly in kind but the part in cash is not sufficient to meet the liability for tax deduction in respect of the whole of the winnings, the person responsible for paying shall, before releasing the winnings either in cash or in kind, ensure that tax has been paid in respect of the winnings.

For instance, X wins a Maruti-Zen on December 15, 2019 (value of Rs. 3.70 lakh) in a draw of lot organised by Maruti Udyog. Tax liability on the prize in kind comes to Rs. 1,11,000 (*i.e.,* 30 per cent of Rs. 3.70 lakh) which may be recovered by the Maruti Udyog from X and the same can be deposited with the Government on account of tax deduction.

When and how tax is to be deducted at source from winnings from horse races [Sec. 194BB]

275. The provisions of section 194BB are given below—

Who is the payer	Any person paying winnings from horse races
Who is the recipient	Any person
Payment covered	Winnings from horse races
At what time tax has to be deducted at source	At the time of payment
Maximum amount which can be paid without tax deduction	If the amount of payment is Rs. 10,000 or less
Rate of tax deduction at source	30%
When the provisions are not applicable	—
Is it possible to get the payment without tax deduction or with lower tax deduction	Not possible

Tax deductible from payments to

276. Provisions of section 194C are given below—

contractors or sub-contractors [Sec. 194C]

Who is deductor

276.1 Any of the following persons responsible for paying any sum to a resident contractor is supposed to deduct tax at source under section 194C, if the other conditions are satisfied—

a. the Central Government or any State Government; or

b. any local authority; or

c. any corporation established by or under a Central, State or Provincial Act; or

d. any company; or

e. any co-operative society; or

f. any authority, constituted in India by or under any law, engaged either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both; or

g. any society registered under the Societies Registration Act; or

h. any trust; or

i. any university or an institution declared to be a university; or

j. any Government of a foreign State or a foreign enterprise or any association or body established outside India; or

k. any firm; or

l. an individual or a Hindu undivided family (HUF) or an association of persons (AOP) or a body of individuals (BOI).

■ *Additional requirement if payer is an individual/HUF/AOP/BOI* - If the payer is an individual/ HUF/AOP/BOI, tax shall be deducted at source only if the following additional conditions are satisfied—

	Additional requirement in the case of an individual/HUF	*Additional requirement in the case of an AOP/BOI*
Payment/credit should be for business purposes	It should not be exclusively for personal purposes	No such requirement
Audit of books of account	Books of account are liable to be audited under section 44AB(*a*)/(*b*) during the financial year immediately preceding the financial year in which tax is deductible	Books of account are liable to be audited under section 44AB(*a*)/(*b*) during the financial year immediately preceding the financial year in which tax is deductible.

Who is recipient

276.2 Recipient should be a resident contractor.

Payments subject to tax deduction under section 194C

276.3 Section 194C is applicable in respect of consideration for carrying out any works contract (including supply of labour for carrying out any work). For this purpose, "contract" shall include sub-contract.

■ *"Work" as defined in section 194C* - The expression "work" shall also include the following—

a. advertising;

b. broadcasting and telecasting including production of programmes for such broadcasting or telecasting;

c. carriage of goods or passengers by any mode of transport other than by railways;

d. catering;

e. manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer.

It does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.

In other words, the provisions of section 194C are attracted only where any sum is paid for carrying out any work (manpower is *sine qua non* and without manpower it cannot be said that work has been carried out) including supply of labour and five services noted above - *Khaitan & Co.* v. *CIT* [2007] 12 SOT 120 (Delhi).

■ *Payments which are not subject to TDS under section 194C* - Even though the term 'work contract' as used in section 194C is inclusive, yet it does not include each and every work/service. It includes carrying out any "work" (where man power is essential requirement), supply of labour and five services (*i.e.*, advertising, broadcasting and telecasting, carriage of goods/passengers, catering and tailor-made manufacturing when raw material is supplied by buyer). Section 194C is not applicable in respect of the following contracts—

1. Other services (*i.e.*, other than 5 services noted above) where no work is performed by the service provider nor any labour is supplied or engaged to do any work as part of the services so provided or the work so performed, cannot be said to be covered under section 194C - *Khaitan & Co.* (*supra*).

2. "Work" shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person other than such customer, as such a contract is a contract for 'sale'. This will, however, not apply to a contract which does not entail manufacture or supply of an article or thing (*e.g.*, a construction contract).

3. Payment to transport operators (*i.e.*, in the course of business of plying, hiring or leasing goods carriages) is not subject to TDS under section 194C if the recipient furnishes his PAN to the payer. Deductors who make payments to transporters without deducting TDS (as they have quoted PAN) will be required to intimate these PAN details to the Income Tax Department in the prescribed format.

When tax has to be deducted at source

276.4 Tax is to be deducted either at the time of credit of such sum to the account of the payee, or at the time of payment thereof in cash or by issue of a cheque or by any other mode, whichever is earlier.

For this purpose, any sum credited to any account, whether called "Suspense account" or by any other name, in the books of account of the payer, is treated as credit of such income to the account of the payee.

Rate of TDS

276.5 The following TDS rate are applicable under section 194C—

If the recipient is an individual/HUF	1%
If the recipient is any other person	2%

■ *Other points* - The following points should be noted—

1. There is no surcharge, and health and education cess.

2. In the case of work contract being manufacturing or supplying product according to the specification of customer (by using material purchased from such customer), TDS shall be deducted on the invoice value excluding the value of material purchased from such customer, if such value is mentioned separately in the invoice. Where the material component has not been separately mentioned in the invoice, TDS shall be deducted on the whole of the invoice value.

276.6 In the following cases, tax is not deductible or deductible at lower rate under section 194C—

When tax is not deductible

■ *Petty cases* - To avoid tax deduction in petty cases, tax is required to be deducted at source where the amount credited or paid to a contractor exceeds Rs. 30,000 in a single payment or credit or Rs. 1,00,000 in the aggregate during a financial year. In other words, tax is not to be deductible under section 194C, if the following two conditions are satisfied—

a. the amount of any (single) sum credited or paid (or likely to be credited or paid) to the contractor does not exceed Rs. 30,000; and

b. the aggregate of the amount of such sums credited or paid (or likely to be credited or paid) during the financial year does not exceed Rs. 1,00,000.

■ *Payment or credit to transport operators* - If recipient (maybe an individual, firm, company, or any other person) is a transport contractor (who is in the business of plying, hiring or leasing goods carriages) and satisfies the following conditions, tax is not deductible –

- *During October 1, 2009 and May 31, 2015* - Recipient furnishes his PAN to the deductor.
- *From June 1, 2015* - Recipient owns 10 (or less than 10) goods carriages at any time during the financial year. He gives a declaration to this effect to the deductor. Besides, he furnishes his PAN to the deductor.

Deductors who make payments to transporters without deducting TDS (as they have quoted PAN) will be required to intimate these PAN details to the Income-tax Department in the prescribed format (*i.e.*, Form No. 26Q).

■ *Lower rate TDS certificate under section 197* - *See* para 289.7.

■ *Payments specified under section 197A(1F)* - In exercise of the powers conferred by section 197A(1F), the Central Government has notified that tax deduction shall not be applicable (on or after January 1, 2013) on the payment of the nature specified below, if such payment is made by a person to a bank (listed in the Second Schedule to the RBI Act, other than a foreign bank) –

a. bank guarantee commission;

b. cash management service charges;

c. depository charges on maintenance of DEMAT accounts;

d. charges for warehousing services for commodities;

e. underwriting service charges;

f. clearing charges (MICR charges) including interchange fee or any other similar charges by whatever name called charged at the time of settlement or for clearing activities under the Payment and Settlement Systems Act, 2007;

g. credit card or debit card commission for transaction between merchant establishment and acquirer bank– Notification No. SO 2143(E), dated June 17, 2016.

When and how tax is to be deducted at source from insurance commission [Sec. 194D]

277. The provisions of section 194D are given below—

Who is the payer	Any person paying insurance commission
Who is the recipient	A resident person
Payment covered	Insurance commission
At what time tax has to be deducted at source	At the time of payment or at the time of credit, whichever is earlier [*see* also para 271.2]
Maximum amount which can be paid without tax deduction	Any amount which is Rs. 15,000, or less (to be calculated on aggregate basis for the entire financial year)
Rate of tax deduction at source	5% (if recipient is a person other than company) 10% (if recipient is a company)
When the provisions are not applicable	—
Is it possible to get the payment without tax deduction or with lower tax deduction	The recipient can make an application in Form No. 13 to the Assessing Officer to get a certificate of lower tax deduction or no tax deduction [*see* para 289.7]

Adjustment not possible

277.1 At the time of deducting tax from the insurance commission credited to an agent's account, adjustment for any debits made in his account in respect of excess commission credited or paid to him earlier is not permissible and income-tax must be deducted from the full amount of commission credited to this account—Circular No. 277, dated July 21, 1980.

When tax is not deductible or deductible at lower rate

277.2 In the cases given below, tax is not deductible or deductible at lower rate—

1. No tax is required to be deducted at source if the insurance commission credited or paid (or likely to be credited or paid) during the financial year does not exceed Rs. 15,000.

2. The person receiving insurance commission can make an application in Form No. 13 [*see* para 289.7].

Reinsurance not covered by section 194D

277.3 Reinsurance differs from insurance in a number of ways and the most important is that there is no contractual relationship between the direct insured and the reinsurer. There are separate contracts involved - one between the insured and the insurer and another between the insurer and the reinsurer. Insurer has to pay all valid claims to the insured, irrespective of whether the insurer can recover the same from his reinsurer.

When an reinsurance company gets business from insurance company at premium less "commission", the "commission" is not subject to TDS under section 194D, as it is not payable to an agent for procuring insurance business. Similarly, when "profit commission" is payable by an reinsurance company to an insurance company, after the expiry of the term of insurance, in respect of such cases where there is no claim during the operation of the reinsurance treaty, TDS under section 194D is not required - *General Insurance Corpn. of India* v. *CIT* [2009] 28 SOT 453 (Mum.).

When and how tax is to be deducted at source from payment of life insurance policy [Sec. 194DA]

277A. The provisions of section 194DA are given below –

Who is payer	Any person responsible for paying to a resident any sum under a life insurance policy (including bonus)
Who is recipient	A resident person
Payment covered	Any payment pertaining to life insurance policy (whether at the time of maturity or otherwise)
At what time tax has to be deducted	At the time of payment
Maximum amount which can be paid without tax deduction	Any amount which is less than Rs. 1,00,000 (to be calculated on aggregate basis for the entire financial year)
Rate of tax deduction	1% of payment (applicable during June 1, 2016 and August 31, 2019). 5% of the amount of income comprised in payment (applicable with effect from September 1, 2019)
When the provisions are not applicable	If the payment is exempt in the hands of recipient under section 10(*10D*)
Is it possible to get the payment without tax deduction or with lower tax deduction	If the recipient submits Form No. 15G/15H under section 197A, tax is not deductible.

■ *Exemption under section 10(*10D*)* - If exemption is available to the recipient under section 10(*10D*), then the above TDS provisions are not applicable. Consequently, in the following cases TDS provisions of section 194DA are applicable –

a. any payment under a keyman insurance policy;

b. any payment under section 80DD(3) or section 80DDA(3);

c. any payment under insurance policy issued during April 1, 2003 to March 31, 2012 where annual insurance premium is more than 20 per cent of capital sum assured;

d. any payment under insurance policy issued after March 31, 2012 where annual insurance premium is more than 10 per cent of capital sum assured; or

e. any payment under insurance policy issued after March 31, 2013 to a person covered under section 80U or 80DDB where annual insurance premium is more than 15 per cent of capital sum assured.

In cases covered by (*c*), (*d*) or (*e*) (*supra*), tax is not deductible if the payment is made on the death of a person.

Any payment under a policy [not being a keyman insurance policy or a policy covered under section 80DD(3) or section 80DDA(3)] issued prior to April 1, 2003, will not be subject to TDS provisions of section 194DA.

TDS provisions of section 194DA will be applicable whether payment is made at the time of maturity or otherwise. Suppose an insurance company gives a loan of Rs. 1,00,000 (or more) to a policyholder against an insurance policy (which was issued on or after April 1, 2003 and annual insurance premium is more than 20 per cent of sum assured), TDS provisions of section 194DA would be applicable at the time of release of loan amount to policyholder.

278. The provisions of section 194E are given below—

When and how tax is deductible at source from payment to non-resident sportsmen or sports associations [Sec. 194E]

Who is the payer	Any person making payment to non-resident foreign citizen sportsman or non-resident sports association or institution
Who is the recipient	Non-resident foreign citizen sportsman or non-resident sports association or institution
Payment covered	Payment to non-resident foreign citizen sportsman or non-resident sports association or institution
At what time tax has to be deducted at source	At the time of payment or at the time of credit, whichever is earlier [*see* also para 271.2]
Maximum amount which can be paid without tax deduction	*Nil*
Rate of tax deduction at source	20%
When the provisions are not applicable	—
Is it possible to get the payment without tax deduction or with lower tax deduction	No provision

A person responsible for paying the following income to the following persons shall deduct tax at source—

Payee	*Nature of income*
1. Non-resident foreign citizen sportsman (including an athlete)	Income is by way of— *a.* participation in India in any game (other than card game or gambling, etc.); *b.* advertisement; or *c.* contribution of articles relating to any game or sport in India in newspapers, magazines or journals
2. Non-resident sports association or institution	Any amount guaranteed to be paid or payable in relation to any game (but other than card game, etc.) or sport played in India
3. Non-resident foreign citizen entertainer (such as theatre, radio or television artists and musicians)	Amount paid or payable for performance in India

279. The provisions of section 194EE are given below—

When and how tax is deductible from payments in respect of National Savings Scheme [Sec. 194EE]

Who is the payer	Post office
Who is the recipient	Any person
Payment covered	Payment (principal + interest) out of National Saving Scheme, 1987
At what time tax has to be deducted at source	At the time of payment
Maximum amount which can be paid without tax deduction	If the amount of payment is Rs. 2,500 or less than Rs. 2,500
Rate of tax deduction at source	10%
When the provisions are not applicable	The payment is made to legal heirs of the deceased depositor
Is it possible to get the payment without tax deduction or with lower tax deduction	*See* para 289.8.

The person responsible for paying any amount (*i.e.*, principal and interest) out of National Savings Scheme, 1987 should deduct tax at source. It may be noted that the payment out of National Savings Scheme, 1992 (which was eligible for the benefit of sections 80L and 88) is not subject to tax deduction at source.

279.1 No tax deduction shall be made in the following cases—

When tax is not deductible

■ *Payment below Rs. 2,500* - Where the amount of payment or the aggregate amount of payments in a financial year is less than two thousand five hundred rupees, no tax is deducted at source.

■ *Payment to heirs* - Where the payment is made to the heirs of the deceased assessee (depositor), no tax is deducted at source.

■ *Declaration to the payer in Form No. 15G or 15H* - *See* para 289.8.

When and how tax is deductible on payments on account of repurchase of units of Mutual Funds or UTI [Sec. 194F]

280. The provisions of section 194F are given below—

Who is the payer	Mutual fund or UTI
Who is the recipient	Unit holder under section 80CCB
Payment covered	Payment on account of repurchase of units referred to in section 80CCB
At what time tax has to be deducted at source	At the time of payment
Maximum amount which can be paid without tax deduction	—
Rate of tax deduction at source	20%
When the provisions are not applicable	—
Is it possible to get the payment without tax deduction or with lower tax deduction	No provision

It may be noted that section 80CCB is applicable if investment was made during the previous years 1990-91 and 1991-92 in the notified units of Equity Linked Saving Scheme of UTI or a mutual fund.

When tax is deductible from commission, etc., on sale of lottery tickets [Sec. 194G]

281. The provisions of section 194G are given below—

Who is the payer	Any person paying commission on sale of lottery tickets
Who is the recipient	Any person
Payment covered	Commission on sale of lottery tickets
At what time tax has to be deducted at source	At the time of payment or at the time of credit, whichever is earlier [*see* also para 271.2]
Maximum amount which can be paid without tax deduction	If the amount of payment is Rs. 15,000 or less
Rate of tax deduction at source	5%
When the provisions are not applicable	—
Is it possible to get the payment without tax deduction or with lower tax deduction	The recipient can make an application in Form No. 13 to the Assessing Officer to get a certificate of lower tax deduction or no tax deduction [*see* para 289.7]

If an authorised lottery ticket agent purchases lottery tickets in bulk at a discount from the State Government and sells the same at a price of his choice, section 194G is not applicable.

When and how to deduct tax at source from commission or brokerage [Sec. 194H]

282. The provisions of section 194H are given below—

Who is the payer	Any person paying commission or brokerage (not being an individual or a Hindu undivided family whose books of account are not required to be audited under section 44AB in the immediately preceding financial year)
Who is the recipient	Any resident person
Payment covered	Commission or brokerage (not being insurance commission)
At what time tax has to be deducted at source	At the time of payment or at the time of credit, whichever is earlier [*see* also para 271.2]
Maximum amount which can be paid without tax deduction	If the amount of payment is Rs. 15,000 or less
Rate of tax deduction at source	5%
When the provisions are not applicable	—
Is it possible to get the payment without tax deduction or with lower tax deduction	The recipient can make an application in Form No. 13 to the Assessing Officer to get a certificate of lower tax deduction or no tax deduction [*see* para 289.7]

When tax has to be deducted

282.1 Tax shall be deducted at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier. Where any income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee.

Meaning of commission or brokerage

282.2 "Commission or brokerage" for the purpose of section 194H includes any payment which satisfies the following conditions—

Condition 1	Payment is received or receivable by a person acting on behalf of the payer.
Condition 2	The aforesaid payment is received for services rendered (not being professional services) or for any service in the course of buying/selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities.
Condition 3	The above payment may be received or receivable directly or indirectly.
Condition 4	The above payment is not insurance commission covered by section 194D.

PROFESSIONAL SERVICES

282.2-1 The expression "professional services" means services rendered by a person in the course of carrying on a legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or such other profession as is notified by the Board for the purposes of section 44AA (*i.e.*, authorised representative, film artist, company secretary and information technology).

"INDIRECT PAYMENT" - WHEN COMMISSION IS RETAINED BY AGENT

282.2-2 A question may arise whether there would be deduction of tax under section 194H where commission or brokerage is retained by the consignee/agent and not remitted to the consignor/principal while remitting the sale consideration. Since the retention of commission by the consignee/agent amounts to constructive payment of the same to him by the consignor/principal, deduction of tax at source is required to be made from the amount of commission. Therefore, the consignor/principal will have to deposit the tax deductible on the amount of commission income—Circular No. 619, dated December 4, 1991.

No TDS in the case of amount payable by BSNL/MTNL to PCOs

282.3 Tax is not deductible in respect of commission or brokerage paid or payable by BSNL/MTNL to their PCO franchises.

When and how tax is deductible from rent [Sec. 194-I]

283. The provisions of section 194-I are given below—

Who is the payer	Any person paying rent (not being an individual or a Hindu undivided family whose books of account are not required to be audited under section 44AB in the immediately preceding financial year)
Who is the recipient	A resident person
Payment covered	Rent
At what time tax has to be deducted at source	At the time of payment or at the time of credit, whichever is earlier [*see* also para 271.2]
Maximum amount which can be paid without tax deduction	If the amount of payment during a financial year is Rs. 2,40,000 or less than Rs. 2,40,000
Rate of tax deduction at source	*See* para 283.1
When the provisions are not applicable	*See* paras 283.4 and 283.8
Is it possible to get the payment without tax deduction or with lower tax deduction	The recipient can make an application in Form No. 13 to Assessing Officer to obtain lower TDS certificate. Alternatively, recipient can submit Form No. 15G/15H to the payer of income [*see* paras 289.7 and 289.8].

TDS rates

283.1 Tax is deductible at source under section 194-I at the rates given below—

For the use of any machinery or plant or equipment	2%
For the use of any land or building or furniture or fittings for all persons.	10%

■ *Service tax or GST* - Tax is deductible in respect of payment/credit of rent (excluding service tax or GST)— Circular No. 4/2008, dated April 28, 2008, Circular No. 23/2017, dated July 19, 2017.

When tax has to be deducted

283.2 The person responsible for paying rent should deduct tax at source. Tax is to be deducted at source either :

a. at the time of credit of such income to the account of payee; or

b. at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode,

whichever is earlier :

Where any income by way of rent is credited to any account (whether called "Suspense account" or by any other name) in the books of account of the person liable to pay such rent, such crediting shall be deemed to be credit of such income to the account of the payee.

RENT AS DEFINED IN SECTION 194-I

283.2-1 The salient features of "rent" are as follows—

1. Payment is made under any lease, sub-lease, tenancy or any other agreement or arrangement.

2. Payment is made for use of land, building (including factory building), land appurtenant to a building, machinery, plant, equipment, furniture or fittings.

3. It is immaterial whether or not such building is owned by the person to whom rent is paid.

No tax deduction if payee is Government/ local authorities

283.3 There is no requirement to deduct income-tax at source on income by way of 'rent' if the payee is the Government. In the case of the local authorities and the statutory authorities referred to in section 10(*20A*)/10(*20*), there will be no requirement to deduct income-tax at source from income by way of rent if the person responsible for paying it is satisfied about their tax-exempt status under clause (*20*) or (*20A*) of section 10 on the basis of a certificate to this effect given by the said authorities—Circular No. 699, dated January 30, 1995.

No tax deduction when rent is paid/credited to real estate investment trust

283.4 No tax deduction shall be made under section 194-I where the income by way of rent is credited or paid to a business trust, being a real estate investment trust, in respect of any real estate asset, referred to in section 10(*23FCA*), owned directly by such business trust.

When tax is deducted at lower rate

283.5 *See* para 289.7.

Payment to cold store

283.6 The main function of the cold storage is to preserve perishable goods by means of a mechanical process, and storage of such goods is only incidental in nature. The customer is also not given any right to use any demarcated space/place or the machinery of the cold storage and thus does not become a tenant. Therefore, the provisions of section 194-I is not applicable to the cooling charges paid by the customers of the cold storage. Since the arrangement between the customers and cold storage owners are basically contractual in nature, the provision of section 194C will be applicable to the amounts paid as cooling charges by the customers of the cold storage—Circular No. 1/2008 dated January 10, 2008.

When and how tax is deductible on purchase of immovable property [Sec. 194-IA]

283A. Section 194-IA has been inserted with effect from June 1, 2013. Any person (being a transferee) responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land in rural area in India), is liable to deduct tax at source under section 194-IA.

■ *Time of deduction* - Tax shall be deducted at the time of payment (in cash or by issue of a cheque or draft or by any other mode) or at the time of giving credit to the transferor (in the books of account of the transferee), whichever is earlier.

■ *Rate of tax deduction* - Tax is deductible at the rate of 1 per cent**. However, no tax is deductible where the consideration‡ paid or payable is less than Rs. 50,00,000.

**If the recipient does not have PAN, tax will be deductible at the rate of 20 per cent.

‡ Consideration (with effect from September 1, 2019) for transfer of immovable property includes all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property.

■ *Provisions of TAN not applicable* - Provisions of section 203A (pertaining to TAN) shall not apply in respect of tax deducted under section 194-IA.

■ *Other points* - The following points should be noted –

1. The above provisions of section 194-IA are not applicable if a person acquires rural agricultural land in India. For this purpose, the definition of section 2(*14*) will apply.

2. Immovable property means any land or any building or part of the building. Such property may be situated in India or may be situated outside India. If the transferor is resident in India, TDS provisions of section 194-IA will apply.

Tax deduction from payment of rent by certain individuals/ HUFs [Sec. 194-IB]

283B. In order to widen the scope of tax deduction at source to cover such individuals (who are exempted from tax deduction under section 194-I), section 194-IB has been inserted with effect from June 1, 2017. The provisions of section 194-IB are given below –

■ *Who is responsible for tax deduction* - Any individual/HUF [whose books of account are not required to be audited under section 44AB(*a*)/(*b*) in the immediately preceding financial year] responsible for paying to a resident rent of land or building, is liable to deduct tax under section 194-IB. Tax is deductible under this section if the quantum of rent is more than Rs. 50,000 per month (or part of month).

■ *Time of deduction* - Tax shall be deducted only at the time of credit of rent (for the last month of the previous year or last month of tenancy if the property is vacated during the year) to the account of payee or at the time of payment thereof in cash or by cheque/draft, whichever is earlier.

■ *Rate of tax deduction* - Tax is deductible at the rate of 5 per cent of rent paid/credited during the financial year. However, no tax is deductible where rent is Rs. 50,000 per month (or less). If PAN of recipient is not available, tax is deductible at the rate of 20 per cent (however, in such case the amount of TDS cannot exceed rent payable for the last month of the previous year or last month of tenancy).

■ *Provisions of TAN not applicable* - Provisions of section 203A (pertaining to TAN) shall not apply in respect of tax deducted under section 194-IB.

Case Study

283B-P1 *X owns a building situated at T Nagar, Chennai. It is given on rent to Y (rent being Rs. 60,000 per month). Discuss whether TDS provisions are applicable for the financial year 2019-20 in the following three different situations–*

Situation 1 - *Y is a businessman and his annual turnover from business is more than Rs. 5 crore since 2005. However, building is used by him for his residential purposes.*

Situation 2 - *Y is a businessman. His turnover for the financial year 2018-19 is Rs. 90 lakh (compulsory tax audit under section 44AB is not required).*

Situation 3 - *Y is a salaried employee. He gets house rent allowance from the employer. On the basis of rent paid to X, he claims exemption under section 10(13A) pertaining to house rent allowance.*

■

In *Situation 1*, tax is deductible every month (at the time of payment/credit of rent) at the rate of 10% under section 194-I.

In *Situations 2* and *3*, section 194-I is not applicable. However, Y is required to deduct tax at source under section 194-IB. Tax is deductible at the time of payment/credit of rent for the last month during the financial year 2019-20. Suppose, rent of March is paid on March 5, 2020. Tax is deductible on March 5, 2020 [TDS being Rs. 36,000 (*i.e.*, 5% of Rs. 60,000 × 12 months)].

Tax deduction from payment under joint development agreement [Sec. 194-IC]

283C. Section 194-IC has been inserted with effect from April 1, 2017. It provides tax deduction in the case of joint development agreement [sec. 45(5A)] as follows –

■ *Who is responsible for tax deduction* - Any person responsible for paying to a resident any sum by way of consideration (not being consideration in kind) under a joint development agreement, is responsible for tax deduction under section 194-IC.

■ *Time of tax deduction* - Tax is deductible at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque/draft or by any other mode, whichever is earlier.

■ *Threshold limit - Nil.*

■ *Rate of tax deduction* - Tax is deductible at the rate of 10 per cent. If PAN of recipient is not available, tax is deductible at the rate of 20 per cent.

■ *Meaning of joint development agreement* - It is a registered agreement in which a land owner (*i.e.*, a person who owns land or building or both) agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share (being land or building or both) in such project, whether with or without payment of part of the consideration in cash.

When tax is deductible at source on fees for professional or technical services [Sec. 194J]

284. The provisions of section 194J are given below—

Who is the payer	Any person (not being an individual/HUF) who pays/credit fees for professional/technical service/royalty or director's fees, is responsible for tax deduction. However, an individual/HUF is responsible for tax deduction only if books of account of the payer is subject to audit under section 44AB in the immediately preceding year and payment/credit is of professional fees (not for personal purposes) or technical fees†
Who is the recipient	A resident person
Payment covered	Fees for professional/technical services/royalty (excluding service tax, or GST if shown separately in invoice).
At what time tax has to be deducted at source	At the time of payment or at the time of credit, whichever is earlier [*see* also para 271.2]
Maximum amount which can be paid without tax deduction	If the amount of profession fees during a financial year is Rs. 30,000 or less than Rs. 30,000. Similarly, if the amount of technical fees during a financial year is Rs. 30,000 or less. Further if the amount of royalty during a financial year is Rs. 30,000 or less or Rs. 30,000 in case of any sum referred to in section 28(*va*). No threshold limit is provided in the case of director's fees.
Rate of tax deduction at source	10% (with effect from June 1, 2017, it is 2% if the recipient is engaged only in the business of operation of call centre)
When the provisions are not applicable	-
Is it possible to get the payment without tax deduction or with lower tax deduction	The recipient can make an application in Form No. 13 [*see* para 289.7].

When tax is deductible at lower rate

284.1 *See* para 289.7.

Meaning of professional/ technical services

284.2 The expression "professional services" has been defined to mean services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising (*i.e.*, models, artists, photographers, providing services to an advertising agency) or such other profession as is notified by the Board for the purposes of section 44AA [*i.e.*, authorised representative, film artist or company secretary or information technology] or of this section.‡ The expression "fees for the technical services" has been given the same meaning as in *Explanation 2* below clause (*vii*) of sub-section (1) of section 9.

■ *Amount paid by non-resident* - Any fees paid through regular banking channels to any chartered accountant, lawyer, advocate or solicitor who is resident in India by the non-resident who do not have any agent or business connection or permanent establishment in India may not be subject to the provisions of tax deduction at source under section 194J— Circular No. 726, dated October 16, 1995.

†If payer is an individual/HUF and payment/credit is of royalty, tax is not deductible under section 194J, even if the books of the payer are required to be audited.

‡The Board has notified the following persons in relation to the sports activities as "professional services" for the purpose of section 194J, namely - (*a*) sports persons, (*b*) umpires and referees, (*c*) coaches and trainers, (*d*) team physicians and physiotherapists, (*e*) event managers, (*f*) commentators, (*g*) anchors and (*h*) sports columnists.

■ *Can payment for services provided by machines be taken as royalty* - After the amendment made by the Finance Act, 2012 in section 9, consideration for services provided by machines will become "royalty" and will be subject to the provisions of section 194J.

When and how to deduct tax at source from payment of compensation on acquisition of certain immovable property [Sec. 194LA]

284A. Section 194LA provides for deduction of tax at source in the case of payment of compensation on acquisition of immovable properties. The provisions of section 194LA are given below—

Who is the payer	Any person paying compensation/enhanced compensation/consideration/enhanced consideration on account of compulsory acquisition of any land (not being rural agricultural land) or building
Who is the recipient	A resident person
Payment covered	Compensation/enhanced compensation/consideration/enhanced consideration on account of compulsory acquisition of land (not being rural agricultural land) or building
At what time tax has to be deducted at source	At the time of payment or at the time of credit, whichever is earlier [*see* also para 271.2]
Maximum amount which can be paid without tax deduction	If the amount of payment/credit during the financial year does not exceed Rs. 2,50,000.
Rate of tax deduction at source	10%
When the provisions are not applicable	If award is exempt from levy of income-tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.
Is it possible to get the payment without tax deduction or with lower tax deduction	The recipient can make an application in Form No. 13 to the Assessing Officer to get a certificate of lower tax deduction or no tax deduction [*see* para 289.7]

When and how tax is to be deducted at source from interest payable on infrastructure debt fund [Sec. 194LB]

284B. Section 194LB provides for tax deduction at source as follows—

Who is payer/deductor	Any person responsible for paying income by way of interest by an infrastructure debt fund referred to in section 10(*47*)
Who is the recipient	A non-resident or a foreign company
Payment covered	Interest on infrastructure debt fund
At what time tax shall be deducted	At the time of credit of such income to the account of recipient or at the time of payment thereof in cash or by cheque/draft/any other mode, whichever is earlier
Maximum amount which can be paid without tax deduction	No threshold limit
Rate of tax deduction	5% [*See* para 269.3]
Is it possible to get payment without TDS or with lower TDS	Section 197 is not applicable

When and how tax is deductible from income from units of business trust [Sec. 194LBA]

284C. The provisions of section 194LBA, are given below –

■ *Time of tax deduction* - Tax deduction is applicable if a business trust distributes any income referred to in section 115UA [being of the nature referred to in section 10(*23FC*)(*a*) or section 10(*23FCA*)] to its unit holder. Tax is deductible at the time of credit of such payment to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier.

■ *Rate of TDS* - Tax is deductible at the following rates –

- *If the recipient is resident* - If the recipient unit holder is resident in India, tax is deductible at the rate of 10 per cent.
- *If the recipient is non-resident* - If the recipient unit holder is a non-resident or a foreign company, tax is deductible at the rate of 5 per cent. If, however, rental income (received by a real estate investment trust) is distributed to unitholders, tax shall be deducted at rate in force as applicable for deduction of tax on payment to the non-resident of any sum chargeable to tax.

If the recipient does not have PAN, tax is deductible at the rate of 20 per cent. Provisions of section 197 or section 197A are not applicable.

When and how tax is deductible from income in respect of units of investment fund [Sec. 194LBB]

284D. Provisions of section 194LBB are given below –

■ *Time of tax deduction* - Tax deduction is applicable if a business trust distributes any income referred to in section 115UB [not being business income of the nature referred to in section 10(*23FBB*)] to its unit holder. Tax is deductible at the time of credit of such payment to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier.

■ *Rate of TDS* - Tax is deductible at the rate of 10 per cent†. If the recipient does not have PAN, tax is deductible at the rate of 20 per cent.

■ *Lower TDS certificate* - Provisions of section 197 or section 197A are not applicable.

When and how tax is deductible from income in respect of investment in securitization fund [Sec. 194LBC]

284E. Provisions of section 194LBC are given below –

■ *Time of tax deduction* - Tax deduction is applicable if income is payable to an investor in respect of an investment in a securitization trust. Tax is deductible at the time of credit of such payment to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier.

■ *Rate of TDS* - Tax is deductible at the rates given below –

a. 25 per cent (where the payee is a resident individual/HUF);

b. 30 per cent (where the payee is a resident but other than an individual/HUF);

c. 40 per cent (where the payee is a foreign company);

d. 30 per cent (where the payee is a non-resident, not being a foreign company).

■ *Lower TDS certificate* - Provisions of section 197 are applicable. However, section 197A is not applicable.

When and how tax is to be deducted by an Indian company from interest to a non-resident/foreign citizen [Sec. 194LC]

284F. The provisions of section 194LC are given below –

Who is payer/deductor	Indian company or business trust
Who is the recipient	A non-resident or a foreign company
Payment covered	*See* Note
At what time tax shall be deducted	At the time of credit of such income to the account of recipient or at the time of payment thereof in cash or by cheque/draft/any other mode, whichever is earlier
Maximum amount which can be paid without tax deduction	No threshold limit
Rate of tax deduction	5%**
Is it possible to get payment without TDS or with lower TDS	Section 197 is not applicable

Note - Section 194LC is applicable if interest is paid or payable at approved rate. Interest should pertain to money borrowed in foreign currency from a source outside India—

a. under a loan agreement (at any time on or after July 1, 2012 but before July 1, 2020); or

b. by way of issue of long-term infrastructure bonds (at any time on or after July 1, 2012 but before October 1, 2014);

†With effect from June 1, 2016 tax is deductible at the rates in force, if the recipient is non-resident/foreign company.

**By virtue of section 206AA, if PAN of the recipient is not available, tax is deductible either at the normal rate or at the rate of 20 per cent, whichever is higher. Section 206AA has been amended with effect from June 1, 2013. Under the amended provisions, in respect of payment of interest on long-term infrastructure bonds to a non-resident as referred to in section 194LC, tax will be deducted at the normal rate of 5 per cent even if the recipient does not have PAN.

c. by way of issue of long-term bonds including long-term infrastructure bonds (at any time on or after October 1, 2014 but before July 1, 2020); or

d. in respect of monies borrowed from a source outside India by way of issue of rupee denominated bond before July 1, 2020.

When and how tax is deductible on interest on bonds/ Government securities [Sec. 194LD]

284G. Section 194LD provides as under —

Who is deductor - Any person who is responsible to for making payment (as given below) should deduct tax at source.

Who is deductee - A foreign institution investor or a qualified foreign investor*.

Payment covered by section 194LD - Interest on a rupee denominated bond of an Indian company (interest not to exceed notified rate of interest) or Government security which is payable after May 31, 2013 but before July 1, 2020.

Time of tax deduction - At the time of payment or at the time giving credit to the recipient, whichever is earlier.

Rate of TDS - 5 per cent. If recipient does not have PAN, tax is deductible at the rate of 20 per cent.

Lower TDS certificate under section 197 - Not possible.

Provisions of sections 195 and 196D - If tax is deductible under section 194LD, TDS under sections 195 and 196D will not be applicable.

When and how tax is deductible on certain payments by Individual/HUF [Sec. 194M]

284H. Section 194M has been inserted with effect from September 1, 2019. Provisions of this section are given below –

Who is deductor - An individual/HUF (who is not required to deduct tax at source under section 194C, 194H or 194J) is required to deduct tax under section 194M. Consequently, an individual/ HUF is required to deduct tax at source in respect of the following under section 194M –

- Payment/credit to a resident contractor or resident professional, when such payment is for personal use.
- Payment/credit to a resident contractor or resident professional or to a resident by way of commission (not being insurance commission) or brokerage [where payer is an individual/ HUF who carries on business or profession and books of account are not subject to tax audit under section 44AB(*a*)/(*b*) in the immediately preceding financial year].

Threshold limit - Tax is not deductible if aggregate amount paid or payable during the financial year to a resident does not exceed Rs. 50 lakh.

Payment covered - TDS under section 194M is applicable in respect of amount paid/payable to a resident for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract or by way of commission (not being insurance commission) or brokerage or by way of fees for professional services.

When deductible - Tax is deductible at the time of credit of aforesaid sum or at the time of payment of the aforesaid sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

Rate of TDS - Tax is deductible at the rate of 5 per cent of the aforesaid payment or credit.

Lower TDS certificate - Recipient can apply for *nil*/lower TDS certificate under section 197.

TAN not necessary - Individual/HUF (who is required to deduct tax under section 194M) shall be able to deposit the tax deducted using his PAN and shall not be required to obtain TAN.

When and how tax is deductible on

284-I. Section 194N has been inserted with effect from September 1, 2019. Provisions of section 194N are given below –

Who is deductor - A bank, co-operative bank or a post office, who is responsible for paying any sum in cash to an accountholder, is required to deduct tax at source under section 194N.

*"Qualified Foreign Investor" shall have the meaning assigned to it in the Circular No. Cir/IMD/DF/14/2011, dated August 9, 2011, as amended from time to time, issued by the SEBI under section 11 of the SEBI Act.

payment of certain amounts in cash [Sec. 194N]

Threshold limit - It is Rs. 1 crore. In other words, tax is deductible by a bank (or co-operative bank or post office) if aggregate payment in cash from one or more accounts during a previous year to an accountholder, exceeds Rs. 1 crore.

When deductible - Tax is deductible at the time of payment in cash.

Rate of TDS - Tax is deductible at the rate of 2 per cent of payment (or aggregate payment) in cash exceeding Rs. 1 crore.

Lower TDS certificate - Not possible.

Cash payment to certain recipients without TDS - Exemption is available, when cash payment is made to certain recipients, such as the Government, banking company, co-operative society engaged in carrying on the business of banking, post office. Exemption is also available when cash payment is made to the following persons –

- Any business correspondent of a banking company or co-operative bank in accordance with the guidelines issued in this regard by RBI.
- Any white label ATM operator of a banking company/co-operative bank in accordance with the authorisation issued by RBI under the Payment and Settlement Systems Act, 2007.
- Such other person or class of persons notified by the Central Government in consultation with RBI.

When and how tax is to be deducted at source from other sums [Sec. 195]

285. The provisions of section 195 are given below—

Who is the payer	Any person (resident or non-resident) responsible for making payment to a non-resident
Who is the recipient	A non-resident (non-corporate) person or a foreign company
Payment covered	Any payment to non-resident other than salary
At what time tax has to be deducted at source	At the time of payment or at the time of credit, whichever is earlier
Maximum amount which can be paid without tax deduction	—
Rate of tax deduction at source	*See* Appendix 1
When the provisions are not applicable	If in the hands of the recipients, the amount is not chargeable to tax in India
Is it possible to get the payment without tax deduction or with lower tax deduction	The recipient can make an application to the Assessing Officer to get a certificate of lower tax deduction or no tax deduction [*see* para 289.7]

■ *Remittance* - A person making remittance to a non-resident/foreign company is required to furnish an undertaking in digital mode in Form No. 15CA. In some cases, a certificate of a chartered accountant in Form No. 15CB has to be taken before uploading Form No. 15CA. The relevant provisions (applicable from April 1, 2016) are given below –

□ *Category A - Amount (which is to be remitted abroad) is not chargeable to tax in the hands of recipient in India*—

1. Undertaking in Form No. 15CA and certificate in Form No. 15CB is not required, if remittance pertains to 33 items specified in rule 37BB.

2. Undertaking in Form No. 15CA and certificate in Form No. 15CB is not required, if—

a. the remittance is made by an individual; and

b. prior RBI approval is not required† by virtue of section 5 of FEMA read with Schedule III to the Foreign Exchange (Current Account Transaction) Rules, 2000.

†Prior RBI approval is not required for remittance by an individual within the limit of US $ 5,00,000 for - (*a*) Private visits to any country (except Nepal and Bhutan); (*b*) Gift of donation; (*c*) Going abroad for employment; (*d*) Emigration; (*e*) Maintenance of close relatives abroad; (*f*) Travel for business/conference/specialised training/medical treatment/studies abroad; and (*g*) Any other current account transaction.

3. In any other case, certificate in Form No. 15CB is not required. However, undertaking in Form No. 15CA (Part D) should be uploaded.

□ *Category B - Amount (which is to be remitted abroad) is chargeable to tax in the hands of recipient in India—*

4. If remittance (or aggregate amount of remittance during the financial year) does not exceed Rs. 5,00,000, Form No. 15CB is not required. However, undertaking in Form No. 15CA (Part A) should be uploaded.

5. If lower TDS certificate is received under section 197 or order of the Assessing Officer is received under section 195(2)/(3), information is to be uploaded in Form No. 15CA (Part B). Certificate from a chartered accountant in Form No. 15CB is not required.

6. In any other case of remittance outside India, the person making remittance will have to take a chartered accountant certificate in Form No. 15CB and, subsequently, he/it will have to furnish an undertaking in Form No. 15CA (Part C).

■ No tax is deductible under section 195 in respect of dividends referred to in section 115-O or when tax is deductible under sections 194LB, 194LC and 194LD.

■ The person responsible for paying to a non-resident/foreign company, any sum (whether or not chargeable under the provisions of this Act in the hands of recipient) shall furnish the information relating to payment of such sum, in such form and manner, as may be prescribed.

TDS from units or long-term capital gain under section 196B

286. Where any income is payable in respect of units referred to in section 115AB or by way of long-term capital gain arising from the transfer of such units to an Offshore Fund, the person responsible for making the payment shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of 10 per cent.

TDS from income or long-term capital gain from foreign currency bonds/Global Depository Receipts [Sec. 196C]

287. The provisions of section 196C are given below—

Who is the payer	Any person responsible for paying income/long-term capital gain from GDR/bonds
Who is the recipient	A non-resident person
Payment covered	Income/long-term capital gain from GDR/bonds
At what time tax has to be deducted at source	At the time of payment or at the time of credit, whichever is earlier [*see* also para 271.2]
Maximum amount which can be paid without tax deduction	-
Rate of tax deduction at source	10%
When the provisions are not applicable	Dividend referred to in section 115-O
Is it possible to get the payment without tax deduction or with lower tax deduction	No provision

When tax is deductible at source from income of Foreign Institutional Investors from securities [Sec. 196D]

288. The provisions of section 196D are given below—

Who is the payer	Any person responsible for paying income in respect of securities referred to in section 115AD (not being income referred to in section 194LD)
Who is the recipient	Foreign Institutional Investor
Payment covered At what time tax has to be deducted at source	Income in respect of securities referred to in section 115AD At the time of payment or at the time of credit, whichever is earlier [*see* also para 271.2]
Maximum amount which can be paid without tax deduction	-
Rate of tax deduction at source	20%

When the provisions are not applicable	Dividend referred to in section 115-O; capital gain arising from transfer of securities referred to in section 115AD
Is it possible to get the payment without tax deduction or with lower tax deduction	No provision

What are other points for consideration

289. Apart from what has been discussed earlier, the following points merit consideration—

Amount payable to Government/ RBI/certain corporations not subject to tax deduction

289.1 By virtue of section 196, tax is not deductible under any provision of the Act in respect of amount payable to the following—

a. Central Government or State Government;

b. the Reserve Bank of India;

c. a statutory corporation whose income is exempt from income-tax; or

d. a mutual fund.

- *Section 197A(1D)* - Tax is not deductible by off-shore banking unit from interest paid to non-resident or not ordinarily resident.
- *Section 197A(1E)* - No deduction of tax is required from any payment to any person for, or on behalf of, the New Pension System Trust.
- *Section 197A(1F)* - Tax is not deductible from a specified payment to a notified institution, association or body or class of institutions, associations or bodies.

If any person makes payment to the aforesaid persons, no tax is deductible at source.

Tax deducted - To be treated as income of deductee and available for tax credit [Secs. 198 and 199]

289.2 Tax deducted at source is deemed as income of the deductee†. Further, the same amount is available as tax credit in the hands of deductee subject to the following propositions—

1. Credit for tax deducted at source and paid to the Central Government, shall be given to the deductee for the assessment year for which such income is assessable.

2. Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.

3. If the income on which tax has been deducted is assessable in the hands of a person other than the deductee, then tax credit will be given to such other person if—

a. the deductee files a declaration with the deductor (the declaration should contain the name, address, PAN of the person to whom credit is to be given and reasons for giving credit to such person);

b. the deductor shall keep the declaration in safe custody and reports the tax deduction in the name of such other person in Form Nos. 16A, 26Q, etc.

Time of deposit of tax deducted at source (TDS) or collected at source (TCS)

289.3 Tax deducted/collected by a person shall be deposited to Government account as follows—

Different situations	*Time of deposit of TDS/TCS (applicable in the case of tax deducted/collected on or after April 1, 2010)*	
	*Time of deposit of TDS**	*Time of deposit of TCS**
1. Tax is deducted/collected by an office of the Government and tax is paid without production of an income-tax challan	On the same day on which tax is deducted	On the same day on which tax is collected

*After March 31, 2008, all corporate assessees and other assessees (who are subject to compulsory audit under section 44AB) will have to make electronic payment of tax (including TDS) through internet banking facility offered by authorized banks.

† However, tax paid by an employer under section 192(1A) (*i.e.*, tax on non-monetary perquisites of the concerned employee) or tax deducted by a bank/co-operative bank/post office under section 194N (*i.e.*, TDS on cash payment exceeding Rs. 1 crore to an accountholder from one or more accounts) shall not be deemed to be income received for the purpose of computing income of the recipient.

Different situations	*Time of deposit of TDS/TCS (applicable in the case of tax deducted/collected on or after April 1, 2010)*	
	*Time of deposit of TDS**	*Time of deposit of TCS**
2. Tax is deducted/collected by an office of the Government and tax is accompanied by an income-tax challan [challan No. ITNS 281]	On or before 7 days from the end of the month in which tax is deducted	On or before 7 days from the end of the month in which tax is collected
3. Tax is deducted/collected by a person (not being an office of the Government) [challan No. ITNS 281]	■ *Where income or amount is paid or credited in the month of March* : Tax should be deposited by April 30 ■ *Where income or amount is paid or credited before March 1* : Tax should be deposited within 7 days from the end of the month in which tax is deducted	Within one week from the last day of the month in which tax is collected
4. Tax is deducted by a person (not being an office of the Government) and the Assessing Officer (with prior approval of Joint Commissioner) has permitted quarterly deposit of tax deducted under sections 192, 194A, 194D and 194H [challan No. ITNS 281]	■ *For the quarter ending June 30 :* Tax should be deposited by July 7 ■ *For the quarter ending September 30 :* Tax should be deposited by October 7 ■ *For the quarter ending December 31 :* Tax should be deposited by January 7 ■ *For the quarter ending March 31 :* Tax should be deposited by April 30	—
5. Tax is deducted by a person under section 194-IA [challan No. : Form 26QB]	Within 30 days from the last date of month in which tax is deducted	—
6. Tax is deducted by a person under section 194-IB [Challan No. : Form 26QC]	Within 30 days from the last date of month in which tax is deducted	—

How to obtain refund - A claim for refund for TDS paid to the credit of the Central Government shall be furnished by the deductor in Form No. 26B electronically under digital signature.

Quarterly statement of tax deduction/ collection

289.4 In respect of tax deducted/collected, quarterly TDS/TCS statements shall be submitted in the following forms—

	Form No.
Tax deduction from salary under section 192	24Q
Tax deduction when deductees are non-resident (not being a company), foreign company and persons who are resident but not ordinarily resident	27Q
Tax deduction under section 194-IA	26QB
Tax deduction under section 194-IB	26QC
Tax deduction in any other case	26Q
Tax collection	27EQ

Quarterly return cannot be submitted before deposit of TDS/TCS and interest for late deposit of TDS/TCS and late fee under section 234E.

■ *Correction statements* - A deductor is allowed to file correction statement for rectification/ updation of the information furnished in the original TDS statement as per the Centralised Processing of Statements of Tax Deducted at Source Scheme, 2013 notified *vide* Notification No.3/2013, dated January 15, 2013. With effect from October 1, 2014, sections 200 and 200A have been amended to allow deductors to file correction statements.

DUE DATE OF SUBMISSION OF QUARTERLY RETURNS

289.4-1 In respect of tax deducted/collected, the above quarterly returns shall be submitted within the time-limit given below—

*After March 31, 2008, all corporate assessees and other assessees (who are subject to compulsory audit under section 44AB) will have to make electronic payment of tax (including TDS) through internet banking facility offered by authorized banks.

For the quarter ending	*Due date of submission of quarterly statements*	
	TDS returns	*Quarterly TCS returns*
June 30	July 31	July 15
September 30	October 31	October 15
December 31	January 31	January 15
March 31	May 31†	May 15

Note - The time-limit given above is not applicable in the case of TDS under section 194-IA/194-IB. In these cases, challan of electronic deposit of TDS (*i.e.*, Form No. 26QB/26QC) is itself taken as quarterly statement of TDS (no separate statement of TDS is to be submitted).

MODE OF FURNISHING QUARTERLY RETURNS

289.4-2 These provisions are given below –

■ *Who is required to submit TDS/TCS statements electronically* - The following persons shall submit quarterly TDS/TCS returns electronically –

1. When deductor or collector is an office of the Government.

2. When deductor/collector is the principal officer of a company.

3. When deductor/collector is a person who is required to get his account audited under section 44AB in the immediately preceding financial year.

4. When the number of deductee's/collectee's records in a statement for any quarter of the financial year are 20 or more.

Barring the cases given above, any other deductor/collector can submit quarterly TDS/TCS returns either in paper format or electronically.

■ *Mode of uploading return* - The aforesaid electronic return can be submitted/uploaded under any one of the following options –

Option 1 - Uploading quarterly returns with digital signature.

Option 2 - Furnishing quarterly return electronically along with the verification of the statement in Form No. 27A.

Option 3 - Furnishing quarterly return electronically along with electronic verification of the statement in Form No. 27A.

Certificate of tax deduction/collection at source

289.5 TDS/TCS certificate shall be issued to deductees/collectees (Form No. 16 for TDS from salary, Form No. 16A for TDS from other than salary and Form No. 27D for TCS). In the case of tax deduction from the salary, a statement of perquisites/profits in lieu of salary should be separately given to employees in Form No. 12BA.

TIME-LIMIT FOR ISSUE OF TDS/TCS CERTIFICATE

289.5-1 Time-limits for issue of TDS/TCS certificates are given below—

<table>
<tr><th>Form No.</th><th>Periodicity</th><th colspan="3">Due date</th></tr>
<tr><td>Form Nos. 16 and 12BA</td><td>Annual</td><td colspan="3">On or before June 15‡ of the financial year immediately following the financial year in which tax is deducted.</td></tr>
<tr><td rowspan="4">Form No. 16A/Form No. 27D</td><td rowspan="4">Quarterly</td><td colspan="3">Within 15 days from the due date of furnishing quarterly TDS/TCS returns. In other words—</td></tr>
<tr><td rowspan="2">For the quarter ending</td><td colspan="2">TDS/TCS certificate should be given on or before</td></tr>
<tr><td>Form No. 16A</td><td>Form No. 27D</td></tr>
<tr><td>June 30
September 30
December 31
March 31</td><td>August 15
November 15
February 15
June 15</td><td>July 30
October 30
January 30
May 30</td></tr>
<tr><td>Form No. 16B</td><td>—</td><td colspan="3">Within 15 days of furnishing challan in Form No. 26QB</td></tr>
<tr><td>Form No. 16C</td><td>–</td><td colspan="3">Within 15 days of furnishing challan in Form No. 26QC</td></tr>
</table>

†Extended in the case of Form No. 24Q from May 31, 2019 to June 30, 2019.

‡Extended from June 15, 2019 to July 10, 2019.

■ *TDS salary certificate in Form No. 16* - Form No. 16 is divided into different parts as follows –

Form No. 16	*Contents*	*How to generate different parts of Form No. 16*
Part A (Form No. 16)	This part contains information of employer and employee summary of tax deduction at source, details of tax deducted and deposited with the Central Government (like, tax deposited, BSR code of bank, date of deposit, challan serial number, status of challan matching with OLTAS). In verification, the deductor will	All deductors (including Government deductors) shall issue the Part A of Form No. 16, by generating and subsequently downloading through TRACES Portal. Part A of Form No 16 shall have a unique TDS certificate number.
Part B (Form No. 16)	Part B includes details of salary paid, other incomes, amount deductible under Chapter VI-A, tax payable and relief under section 89. Part B also includes a separate verification. In verification the deductor will certify that salary/tax details are complete and correct on the basis of books of account and other available records/documents/statements.	All deductors (including Government deductors) shall issue Part B of Form No. 16 by generating and downloading through TRACES Portal)† in respect of all sums deducted on or after April 1, 2018 under section 192. The TRACES generated Form No. 16 shall have a unique TDS certificate number.

When a person is employed by more than one employer during a financial year - If a person is employed under more than one employer during the year, each of the employers shall issue Part A of Form No. 16 pertaining to the period for which such person was employed with each of the employers. Part B may be issued by each of the employers or the last employer at the option of the employee.

Form No. 16 with digital signature - Part A of Form No. 16 can be issued only by downloading it from the TRACES Portal. Part B of Form No. 16 shall be prepared by the deductor manually. Before issuing Part A and Part B to the deductee, deductor shall authenticate the correctness of contents of these parts separately. Authentication can be verified either by using manual signature or by using digital signature.

■ *TDS (non-salary) certificate in Form No. 16A* - TDS Certificates in Form No. 16A shall be issued by downloading from TRACES Portal by the following deductors –

a. any deductor (including a Government deductor who deposits TDS in the Central Government Account through book entry), if tax is deducted on or after April 1, 2012, and

b. any company (including a banking company), if tax is deducted on or after April 1, 2011.

Authentication of TDS certificate in Form No. 16A - Deductors, issuing the TDS certificates in Form No. 16A by downloading from TRACES Portal, can authenticate these certificates by either using digital signature or manual signature.

Tax deduction and collection account number [Sec. 203A]

289.6 Every person, deducting tax or collecting tax, who has not been allotted a tax deduction account number (TAN), shall apply for the allotment of TAN in Form No. 49B‡, within one month from the end of month in which tax is deducted or collected.

■ *Cases when TAN is not required* - For reporting of tax deducted under section 194-IA, the deductor is not required to obtain and quote TAN and he is allowed to report the tax deducted by quoting his PAN. Moreover, the above provisions have been amended (with effect from June 1, 2015) so as to provide that the requirement of obtaining and quoting of TAN shall not apply to the notified deductors or collectors.

Obtaining a certificate of lower rate from the Assessing Officer [Sec. 197]

289.7 The provisions of section 197 are given below—

1. Tax is deductible under section 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA, 194LBB, 194LBC, 194M or 195.

2. The recipient can apply in Form No. 13 to the Assessing Officer to get a certificate authorizing the payer to deduct tax at lower rate or deduct no tax as may be appropriate.

3. The certificate of lower tax shall be issued direct to the person responsible for deducting the tax under advice to the person who made the application for issue of such certificate. This

‡ A company (which is not registered under the Companies Act, 2013) can apply for TAN in Form No. INC-7 specified under section 7(1) of the Companies Act.

†However, Item Nos. 2(*f*) and 10(*k*) in Part B (Annexure) of Form No. 16 shall be filled in by the deductor manually and it should be printed at the bottom of the TRACES generated Form No. 16 (Part B) before furnishing it to employees.

certificate shall be valid only with regard to the person responsible for deducting tax and named therein. If the number of persons responsible for deducting the tax is likely to exceed 100, the certificate of lower tax may be issued to the person who made the application.

4. If the recipient does not have PAN, he cannot apply for the aforesaid certificate under section 197.

HOW LOWER RATE IS DETERMINED

289.7-1 The Assessing Officer will issue lower TDS certificate on the basis of "existing and estimated tax liability" of the recipient. Such liability shall be determined by the Assessing Officer on the basis of the following –

1. Tax payable on estimated income of the previous year relevant to the assessment year.

2. Tax payable on the assessed or returned income, as the case may be, of the last 4 previous years.

3. Existing liability of the recipient under the Income-tax Act and Wealth-tax Act.

4. Advance tax payment of the recipient relevant to the previous year till the date of making application in Form No. 13 for lower deduction or no deduction.

5. Tax deducted/collected at source by the recipient for the assessment year relevant to the previous year till the date of making application in Form No. 13.

Provisions of section 197A

289.8 If a declaration is submitted under section 197A by the recipient to the payer, then no tax is deductible in a few cases. The provisions of section 197A as are given in the table (*infra*) —

	Taxable pre-mature withdrawal from provident fund [Sec. 192A]	*Interest [Secs. 193 and 194A] or rent [Sec. 194-I] or insurance commission [Sec. 194D*	*Dividend [Sec. 194]*	*Payment in respect of life insurance policy [Sec. 194DA]*	*National Saving Scheme [Sec. 194EE]*
Condition 1 - Who is recipient	Individual	Other than a company or firm	Resident individual	Other than a company or firm	Resident individual
Condition 2 - What is tax on total income of the previous year	*Nil*	*Nil*	*Nil*	*Nil*	*Nil*
Condition 3 - How much is total of income covered by sections 192A, 193, 194, 194A, 194D, 194DA, 194-I and 194EE	Not exceeding the maximum amount not chargeable to tax*				

Notes—

1. If the above conditions are satisfied and the recipient gives a declaration to the payer of income along with his PAN, the payer will not deduct tax at source. Such declaration should be given in Form No. 15G (Form No. 15H for senior citizen of 60 years or more).

2. Condition 3 is not applicable up to May 31, 2002.

3. Condition 3 is not applicable from June 1, 2002 if the income of recipient is exempt under section 10(*20*), (*23AA*), (*23AAB*), (*23BB*), (*23BBA*), (*23BBC*), (*23BBD*), (*23BBE*), (*23C*), (*23EB*), (*25*), (*25A*), (*26BB*) and (*29A*)—Circular No. 4/2002, dated July 16, 2002.

4. Condition 3 is not applicable if the recipient is a senior citizen [senior citizen is a resident individual who is at least 60 years of age (65 years is applicable up to June 30, 2012) during the financial year].

5. The payer of the income is required to deliver to the Commissioner of Income-tax (to whom the Assessing Officer having jurisdiction to assess the payer is subordinate) one copy of the aforesaid declaration on or before seventh day of the month, next following the month in which the declaration is furnished to him. Where payments are to be made to the same person more than once in a year, the declaration in the relevant form may be furnished before the first payment in a year becomes due. It may also be noted that in the declaration in Form No. 15G or 15H particulars of only such securities are to be furnished the income from which is payable by a person to whom declaration is furnished—Circular No. 351, dated November 26, 1982.

*Exemption limit for the assessment year 2019-20 is Rs. 2,50,000 [higher exemption limit (*a*) in the case of a resident senior citizen born on or after April 2, 1939 but on or before April 1, 1959: Rs. 3,00,000; and (*b*) in the case of a resident super senior citizen born on or before April 1, 1939: Rs. 5,00,000].

Exemption limit for the assessment year 2020-21 is Rs. 2,50,000 [higher exemption limit (*a*) in the case of a resident senior citizen born on or after April 2, 1940 but on or before April 1, 1960: Rs. 3,00,000; and (*b*) in the case of a resident super senior citizen born on or before April 1, 1940: Rs. 5,00,000].

6. It is the duty of the Assessing Officer to give an opportunity to rectify the defects in the declarations in Form No. 15G or 15H.

Furnishing of quarterly returns regarding the details of non-deduction of tax by certain persons [Sec. 206A]

289.9 Section 206A has two sub-sections.

■ *Sub-section (1)* - Sub-section (1) is applicable if the following conditions are satisfied—

1. The person who is otherwise responsible for deducting tax at source is (*a*) any banking company, (*b*) a co-operative society, (*c*) a public company.

2. It is responsible for paying to a resident interest (other than interest on securities).

3. Such interest (other than interest on securities) paid or payable during the financial year does not exceed Rs. 10,000 where the payer is a banking company or co-operative society and Rs. 5,000 where payer is any other person.

If the above three conditions are satisfied, the person, responsible for making payment, is not required to deduct tax at source under section 194A. However, a banking company[£] shall prepare quarterly returns (*i.e.*, consolidated return for all branches) for the period ending on June 30, September 30, December 31 and March 31 in each financial year and deliver the same to the prescribed income-tax authority (or the person authorized by such authority). Such return should be submitted within one month from the end of each quarter (June 30 in the case of last quarter) in digital format on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media [Form No. 26QAA‡].

■ *Sub-section (2)* - Sub-section (2) is applicable if the following conditions are satisfied—

1. The payer is a person other than the person who is covered by sub-section (1).

2. Such person is responsible for paying to a resident any income which is liable for deduction of tax at source under sections 192 to 194LA.

If the above two conditions are satisfied, the Central Government may require (by notification in the Official Gazette) such person to prepare and deliver quarterly returns in the prescribed digital format[*]. Such return should be submitted to the prescribed income-tax authority (or the person authorised by such authority) on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media.

■ *Electronic filing of statement of aforesaid transactions (with effect from September 1, 2019)* - The above provisions have been modified to provide for electronic filing of statement (where tax has not been deducted on payment of interest to residents). Further, this modification also provides for correction of such statements for rectification of any mistake or to add, delete or update the information furnished.

Processing of statements of tax deducted at source [Sec. 200A]

289.10 Section 200A provides for processing of statements of tax deducted at source on computer so that liabilities on account of interest and other defaults in TDS payment are promptly calculated and intimated to the deductor.

The following adjustments can be made during the computerized processing of statements of tax deducted at source:

a. any arithmetical error in the statement; or

b. an incorrect claim, if such incorrect claim is apparent from any information in the statement, for example, in respect of rate of deduction of tax at source where such rate is not in accordance with the provisions of the Act.

After making adjustments, tax and interest would be calculated and sum payable by the deductor or refund due to the deductor will be determined. An intimation will be sent to the deductor informing him of his tax liability or granting him the refund due within one year from the end of the financial year in which the statement is filed. Further it is provided that the processing of these statements can be undertaken in a centralized processing centre.

■ Deductors/collectors can submit correction statements.

£Only a banking company is required to submit this return as per Rules 31AC and 31ACA.

‡Each branch of a banking company which is required to submit quarterly return under section 206A in respect of interest on time deposit without TDS shall keep and maintain the particular of such time deposit in Form No. 26QA.

[*] No such format is notified till the publication of this book. Consequently, sub-section (2) of section 206A does not have any practical utility.

Tax collection at source [Sec. 206C]

290. Under section 206C in some cases tax has to be collected at source.

In which case tax has to be collected at source

290.1 Under section 206C, tax has to be collected at source in the following cases –

Nature of goods	*Percentage rate of tax collection at source (TCS) applicable‡*
Category A (sale of the following) –	
A1. Alcoholic liquor for human consumption (other than Indian made foreign liquor)	1
A2. Indian made foreign liquor	1
A3. Tendu leaves	5
A4. Timber† obtained under a forest lease	2.50
A5. Timber† obtained by any mode other than under a forest lease	2.50
A6. Any other forest produce not being timber or tendu leaves	2.50
A7. Scrap	1
A8. Minerals, being coal or lignite or iron ore	1
Category B (grant of lease/license of the following) –	
B1. Parking lot, toll plaza, mining and quarrying (other than mining and quarrying of mineral oil, petroleum and natural gas)	2
Category D (sale of the following whether payment is received by cheque or by any other mode) –	
D1. Motor vehicle of the value exceeding Rs. 10 lakh	1

Note - In some cases, these rates are subject to surcharge and health and education cess. If the purchaser or the licensee is a foreign company and the amount subject to tax collection is more than Rs. 1 crore, but not more than Rs. 10 crore, surcharge is 2 per cent of TCS during 2019-20 (it is 5 per cent of TCS if such amount is more than Rs. 10 crore). If purchaser/licensee is non-resident firm/co-operative society, surcharge @ 12 per cent is applicable only if amount subject to TCS is more than Rs. 1 crore. If purchaser/licensee is non-resident individual/HUF/AOP/BOI, surcharge is 10 per cent of TCS (if amount subject to TCS is more than Rs. 50 lakh but not more than Rs. 1 crore), 15 per cent of TCS (if amount subject to TCS is more than Rs. 1 crore but not more than Rs. 2 crore), 25 per cent of TCS (if amount subject to TCS is more than Rs. 2 crore but not more than Rs. 5 crore) or 37 per cent of TCS (if amount subject to TCS is more than Rs. 5 crore). If purchaser or licensee is a non-resident or a foreign company, health and education cess of 4 per cent (of TCS+SC) is applicable. In no other case, surcharge and health and education cess shall be added.

TAX COLLECTION IN CATEGORY A

290.1-1 In *Category A* "seller" shall collect tax from the "buyer" of goods.

WHO IS SELLER IN CATEGORY A

290.1-1a For this purpose, "seller" means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm or co-operative society. "Seller" also includes an individual or a Hindu undivided family whose books of account are required to be audited under section 44AB(*a*)/(*b*) during the financial year immediately preceding the financial year in which goods are sold. Consequently, tax will be collected at source by such individuals/Hindu undivided families.

WHO IS BUYER IN CATEGORY A

290.1-1b "Buyer" means a person who obtains in any sales by way of auction, tender or any other mode, goods of the nature specified under *Category A* or the right to receive any such goods. It, however, does not include the following—

a. a public sector company, the Central Government, a State Government, and an Embassy, a High Commission, Legation, Commission, Consulate and the trade representation, of a foreign State and a club; or

b. a buyer in the retail sale of such goods purchased by him for personal consumption.

■ *Purchase for personal consumption from retailer* - A buyer in the retail sale of *Category A* goods purchased by him for 'personal consumption' shall be excluded from being treated as a 'buyer'.

‡ These rates are subject to the provisions of section 206CC [*see* para 290.7].

† Section 206C does not make any distinction between Indian timber and imported timber from abroad—*Hillwood Furniture (P.) Ltd.* v. *ITO* [2015] 59 taxmann.com 265 (Ker.).

This means that if a retailer sells *Category A* goods to a customer for personal consumption only (and not for any other purpose), the purchasing customer will not be treated as a 'buyer' and tax collection at source is not required.

290.1-1c In the case of sale of "scrap" tax shall be collected by the seller. "Scrap" for this purpose has been defined as waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons.

MEANING OF "SCRAP"

290.1-1d Tax has to be collected by the seller at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the buyer in cash or by issue of cheque/draft, or by any other mode, whichever is earlier.

WHEN TAX HAS TO BE COLLECTED IN CATEGORY A

290.1-1e No tax will be collected at source from a resident buyer who purchases goods for the purposes of manufacturing, processing or producing any article or thing or for the purpose of generation of power and not for the purpose of trading. This rule is applicable only in *Category A*, if the resident buyer gives a declaration in duplicate in Form No. 27C to the seller that the goods to be purchased are to be utilised in the carrying on of any of the activities referred to above, no tax will be collected under section 206C.

GOODS UTILISED FOR MANUFACTURING/PROCESSING IN CATEGORY A IS NOT SUBJECT TO TAX COLLECTION

290.1-2 In *Category B*, every person, who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest in any parking lot or toll plaza or mine or quarry, to another person (hereafter in this section referred to as "licensee or lessee") for the use of such parking lot or toll plaza or mine or quarry for the purpose of business, shall collect tax at source.

TAX COLLECTION IN CATEGORY B

- *Public sector company* - If the licensee or lessee is a public sector company tax is not collectible.

290.1-3 *Category C* is not applicable with effect from April 1, 2017.

TAX COLLECTION IN CATEGORY C

290.1-4 In *Category D*, tax is collected by seller who receives any amount as consideration for sale of motor vehicle of value exceeding Rs. 10,00,000. Tax is collected at the rate of 1 per cent of the sale consideration. This tax collection is required regardless of the fact whether consideration is received in cash or by cheque or by any other mode.

TAX COLLECTION IN CATEGORY D

- The following points should be noted –

1. The above tax collection provision is applicable only in the case of sale of motor vehicles in transactions of retail sales. In other words, the above provision is not applicable on sale of motor vehicles by manufacturers to dealers/distributors.

2. The above provision is applicable if the amount of sale consideration of a motor vehicle is more than Rs. 10 lakh (irrespective of the fact whether the motor vehicle is a luxury car or any other car).

3. The above provision is not applicable if buyer is the Central Government, a State Government, an Embassy/High Commission/consulate/trade representation of a Foreign Government, local authority or a public sector company which is engaged in the business of carrying of passengers.

4. The above provision is applicable on each sale of motor vehicle of value exceeding Rs. 10 lakh (not on aggregate value of sale made during the year). For instance, a car dealer sells a car to an individual for Rs. 24 lakh. Rs. 1 lakh is received at the time of booking and balance Rs. 23 lakh at the time of delivery. Tax will be collected at the rate of 1 per cent of Rs. 1 lakh at the time of booking and 1 per cent of Rs. 23 lakh at the time of delivery. This rule is applicable whether mode of payment is cash or by cheque. Suppose, at the time of delivery Rs. 5 lakh is received in cash and balance Rs. 18 lakh is received by cheque. Tax will be collected by the seller at the rate of 1 per cent of Rs. 23 lakh at the time of delivery under *Category D* (provisions of *Category C* are not applicable). If, however, sale price of a motor vehicle of Rs. 10 lakh (or less) (suppose sale price is Rs. 9 lakh) and consideration received in cash is more than Rs. 2 lakh, tax collection at the rate of 1 per cent of cash consideration will be applicable under *Category C*. (*Category C* is applicable only up to March 31, 2017).

Tax collection at lower rate

290.2 Where the Assessing Officer is satisfied that the total income of the buyer justifies the collection of the tax at any lower rate than the relevant rate specified in para 290.1 (*Category A*, *Category B* or *Category C*), he can give a certificate for collection of tax at lower rate. For obtaining this certificate, the buyer shall make an application in Form No. 13 (without PAN of the buyer, the application in Form No. 13 remains invalid). Where certificate of lower tax collection is given, the person responsible for collecting the tax shall, until such certificate is cancelled by the Assessing Officer, collect the tax at the rates specified in such certificate. The certificate shall be valid for the assessment year specified in that certificate, unless it is cancelled by the Assessing Officer at any time before the expiry of the specified period. An application for a fresh certificate may be made, if required, after the expiry of the period of validity of the earlier certificate. The certificate shall be valid only for the person named therein. The certificate shall be issued direct to the person responsible for collecting the tax under advice to the buyer who made an application for issue of such certificate.

Deposit of tax

290.3 *See* para 289.3.

Issue of certificate

290.4 *See* para 289.5.

Quarterly returns to Government

290.5 *See* para 289.4. Section 206CB has been inserted (with effect from June 1, 2015) to provide for processing of TCS statements on the line of existing provisions for processing of TDS statement contained in section 200A. This provision also incorporates the mechanism for computation of fee payable under section 234E. After processing of TCS statement, an intimation is generated specifying the amount payable or refundable. This intimation generated after processing of TCS statement will be (*i*) subject to rectification under section 154; (*ii*) appealable under section 246A; and (*iii*) deemed as notice of demand under section 156.

Tax collection account number

290.6 *See* para 289.6.

Requirement to furnish PAN by collectee [Sec. 206CC]

290.7 In order to strengthen the PAN mechanism, section 206CC has been inserted. The provisions of section 206CC are given below –

- *Tax collection at higher rate* - Collectee shall furnish his PAN to the person responsible for collecting such tax at source. If PAN is not intimated, tax shall be collected at the twice the normal rate or at the rate of 5 per cent, whichever is higher.
- *Declaration without PAN under section 206C(1A) not valid* - The declaration filed under section 206C(1A) shall not be valid unless the person filing the declaration furnishes his PAN in such declaration.
- *Lower tax collection certificate* - Lower tax collection certificate shall not be granted unless application in Form No. 13 by the collectee contains his PAN.
- *PAN to be quoted in all correspondence* - The collectee shall furnish his PAN to the collector and both shall indicate the same in all correspondence, bills and vouchers exchanged between them.
- *Invalid PAN* - Where the PAN provided by the collectee is invalid or it does not belong to the collectee, then it shall be deemed that PAN has not been furnished to the collector.
- *Not applicable if collectee is non-resident* - The above provisions of section 206CC shall not apply in the case of a non-resident collectee who does not have any permanent establishment in India.

MULTIPLE CHOICE QUESTIONS

Q1. X is an employee of A Ltd. (salary being Rs. 1,10,000 per month). He owns a house property which is let out. Taxable income from this property is (-) Rs. 2,30,000. He requests the employer to give deduction of Rs. 2,30,000 from his salary income for deducting tax at source from salary payment under section 192. For this purpose, a declaration is submitted in writing along with documentary evidence.

a. A Ltd. has an option to consider or not to consider loss declared by X;

b. X Ltd. cannot consider loss from house property;

c. X Ltd. will have to consider loss from house property;

d. X Ltd. will consider loss from house property only when a prior permission is given by the Assessing Officer.

Q2. Y is an employee of B Ltd. (salary being Rs. 80,000 per month). During the financial year 2019-20, he has incurred a loss of Rs. 40,000 on purchase of sale of capital assets being shares. He requests the employer to give deduction of Rs. 40,000 from his salary income for deducting tax at source from salary payment under section 192. For this purpose, a declaration is submitted in writing along with documentary evidence.

a. A Ltd. has an option to consider or not to consider loss declared by X;

b. X Ltd. cannot consider loss from shares;

c. X Ltd. will have to consider loss shares;

d. X Ltd. will consider loss from shares only when a prior permission is given by the Assessing Officer.

Q3. Section 194C is applicable in the case of a contract between a resident contractor and—

a. Any company;

b. Any firm;

c. Any co-operative society;

d. Any foreign Government;.

e. All of above.

f. All of above, but not foreign Government.

Q4. During the financial year 2019-20, X Ltd. will make payment of salary, rent, interest, technical fees and royalty. Persons resident in India will receive these payments. For the purpose of tax deduction at source,—

a. Surcharge is applicable only in the case of salary payment;

b. Surcharge is applicable in all cases;

c. Surcharge is not applicable in all cases;

d. Surcharge is not applicable in all cases if permission is granted by the Assessing Officer.

Q5. During the financial year 2019-20, Y Ltd. will make payment of salary, rent, interest, technical fees and royalty. Persons resident in India will receive these payments. For the purpose of tax deduction at source,—

a. Education cess is applicable only in the case of salary payment;

b. Education cess is applicable in all cases;

c. Education cess is not applicable in all cases;

d. Education cess is not applicable in all cases if permission is granted by the Assessing Officer.

Q6. Z Ltd. will make royalty payment of Rs. 1.5 crore to a foreign company in the month of January 2020. For the purpose of tax deduction at source,—

a. Surcharge is not applicable;

b. Surcharge at the rate of 12 per cent is applicable;

c. Surcharge at the rate of 2 per cent is applicable;

d. Surcharge at the rate of 2 per cent is applicable only in respect of payment exceeding Rs. 1 crore.

Q7. Z Ltd. will make royalty payment of Rs. 3.5 crore to a non-resident (not being a foreign company) in the month of April 2019. For the purpose of tax deduction at source,—

a. Surcharge is not applicable;

b. Surcharge at the rate of 12 per cent is applicable;

c. Surcharge at the rate of 2 per cent is applicable;

d. Surcharge at the rate of 12 per cent is applicable only in respect of payment exceeding Rs. 1 crore.

Q8. X Ltd. will make interest payment to a foreign company in the month of September 2019. Education cess is not applicable, for the purpose of tax deduction at source.

a. True;

b. False.

Q9. X Ltd. will make interest payment to a non-resident individual in the month of September 2019. Education cess is not applicable, for the purpose of tax deduction at source.

a. True;

b. False.

Q10. TDS rate under section 194C in respect of payment to an Indian company is—

a. 1 per cent;

b. 2 per cent;

c. 10 per cent;

d. 5 per cent.

Q11. On October 10, 2019, X Ltd. has given a contract to B Ltd. (which is a transport company having 250 trucks) for transporting its manufactured goods to different parts in the country. The aggregate consideration is Rs. 4.5 crore for the period ending March 31, 2020. A similar contract was given to B Ltd. in the financial year 2017-18 and at that time B Ltd. submitted its PAN to X Ltd. During the financial year 2019-20, tax is deductible at the rate of—

a. 1 per cent;

b. 2 per cent;

c. 0 per cent

d. 10 per cent.

Q12. X is a businessman. His books of account are required to be audited since 1990. During the financial year 2019-20, he pays a sum of Rs. 38,000 to an architect for getting his personal house constructed. Tax is deductible at the rate of—

a. 1 per cent;

b. 2 per cent;

c. 0 per cent;

d. 10 per cent.

Q13. X purchases shares in an Indian company from his non-resident friend Y. Before remittance of purchase consideration outside India,—

a. X will have to take a certificate from a chartered accountant in Form No. 15CB;

b. X will have to take a certificate from a chartered accountant in Form No. 15CA;

c. X will have to take a certificate from a chartered accountant in Form No. 15CB and will have to submit electronically an undertaking in Form No. 15CA;

d. These formalities are not required, as X is an individual and tax is not deductible under section 195.

Q14. A Ltd. takes a generator on rent from an Indian company. On March 1, 2020, the company will pay a sum of Rs. 1.5 lakh on account of rent of the generator. Tax will be deductible at source at the rate of—

a. 2 per cent;

b. 10 per cent;

c. 15 per cent;

d. 0 per cent.

Q15. Tax is not deductible at source if the recipient is a foreign company and out of such payment nothing is taxable in India in the hands of foreign company.

a. True;

b. False.

Q16. Tax is not deductible at source if the recipient of rent of Rs. 3,60,000 is a resident-individual and out of such payment nothing is taxable in the hands of recipient (as interest on borrowed capital of the recipient is more than Rs. 3,60,000).

a. True;

b. False.

INTEREST PAYABLE BY ASSESSEE/GOVERNMENT

28
CHAPTER

296. Interest is payable by the assessee under the Income-tax Act in the circumstances enumerated below :

When interest becomes payable by assessee

296.1 If the return of income is furnished after the due date or is not furnished, the assessee is liable to pay interest under section 234A.

For defaults in furnishing return of income [Sec. 234A]

296.1-1 Interest is calculated as under :

HOW TO CALCULATE INTEREST

1. Rate of interest	1 per cent per month or part of month (simple interest).
2. Period for which interest is payable	Commencing on the date immediately following the due date for filing the return of income and ending on— *a.* the date of furnishing the return (where return has been filed after the due date); or *b.* the date of completion of assessment under section 144 (where no return has been furnished).
3. Amount on which interest is payable	It is calculated as under : *1.* Find out the tax on total income as determined under section 143(1) or on assessment under section 143(3) or section 147 or 153A (if the assessment is made for the first time under section 147 or 153A)[1]. *2.* From the tax so determined, advance tax paid*, tax deducted or collected at source, relief under section 89/90/90A/91, MAT credit under section 115JAA and alternate minimum tax credit under section 115JD (but not tax paid under section 140A) shall be deducted.

296.1-2 The following points shall also be kept in view:

OTHER POINTS

296.1-2a In case of *CIT* v. *Pranoy Roy* [2009] 179 Taxman 53, the Apex Court held that –

SELF-ASSESSMENT TAX PAID BEFORE DUE DATE AND RETURN SUBMITTED AFTER DUE DATE

a. if self-assessment tax is paid before the due date of submission of return of income and return is submitted after the due date, interest under section 234A is not applicable [*Case* (*a*)]; and

b. if self-assessment tax is paid after the due date of submission of return of income, interest under section 234A is applicable [*Case* (*b*)].

1 If one has to calculate interest under section 234A for the purpose of self-assessment under section 140A, tax on returned income shall be taken [*see* problem 296.4-P3].

*Any instalment of advance fringe benefit tax paid in respect of fringe benefits for assessment year 2010-11 shall be treated as advance income-tax paid by the concerned assessee for assessment year 2010-11 - Circular No. 2/2010, dated January 29, 2010.

However, the Court's ruling is silent on the point whether in *Case* (*b*), interest is payable till the date of payment of self-assessment tax or till the date of submission of return of income. The Court's ruling gives consideration to the fact that when self-assessment tax is paid before submitting return of income [under *Case* (*a*)] interest should not be payable after the deposit of self-assessment tax (there being no loss to the revenue). A similar view should be taken in *Case* (*b*) as well. If self-assessment tax is paid after the due date of submission of return of income (assume date of payment is December 20, 2019) and return is submitted belatedly after payment of tax (say, return is submitted on January 20, 2020 for the assessment year 2019-20), interest under section 234A should be payable up to date of payment of self-assessment tax (*i.e.*, up to December 20, 2019).

WHEN ASSESSMENT IS MADE FOR THE FIRST TIME UNDER SECTION 147

296.1-2b A belated return cannot be submitted after the expiry of one year from the end of the assessment year. If an assessment is made for the first time under section 147, then the assessee cannot be made liable to pay interest for the period during which it was not possible on the part of the assessee to file return (*i.e.*, after one year from the end of the assessment year) till issuance of notice under section 148—*Priti Pithawala* v. *ITO* [2003] 129 Taxman 79 (Bom.) (Mag.).

INTEREST IN THE CASE OF REASSESSMENT

296.1-2c Section 234A(3) is applicable if return of income is not submitted or submitted belatedly in the course of reassessment proceedings. Interest in such a case is payable by the assessee at the rate of 1 per cent per month (for part thereof) for the period of default. The period of default commences on the date immediately following the expiry of time given by notice under section 148 or 153A and ends on the date of furnishing of return (or on the date of completion of reassessment under section 147 or 153A where no return has been furnished). Interest is payable on the amount by which the tax on the total income as reassessed exceeds the tax on the total income determined on the basis of the earlier assessment.

INCREASE/ REDUCTION IN INTEREST

296.1-2d If as a result of an order under sections 154, 155, 250, 254, 260, 262, 263, 264 and 245D(4), the interest payable is increased or reduced, as the case may be, the interest shall be increased/ reduced accordingly.

REDUCTION OF INTEREST

296.1-2e There is no provision for reduction or waiver of interest, [*see*, however paras 299 to 302].

DELAY DUE TO STRIKE

296.1-2f Interest should not be charged where delay in filing return is due to strike of personnel of Income-tax Department—*Income-tax Bar Association* v. *Chief CIT* [1990] 182 ITR 43 (Guj.).

NO OPPORTUNITY OF HEARING

296.1-2g The liability to pay interest under sections 234A, 234B and 234C is automatic and the question of granting opportunity of being heard does not arise—*CIT* v. *R. Ramalingair* [2000] 108 Taxman 1 (Ker.).

INTEREST MUST BE CHARGED IN THE ASSESSMENT ORDER

296.1-2h While charging interest under section 234A, 234B or 234C, the Assessing Officer is required to pass a specific order to this effect in its assessment order. When the assessment order is silent, as to whether any interest is leviable, the notice of demand under section 156 cannot be beyond the assessment order and the assessee cannot be served with any such notice demanding the interest. Interest cannot be charged by mere observation like charge interest as per law. It has to be by means of a speaking order—*CIT* v. *Inchcape India (P.) Ltd.* [2002] 124 Taxman 744 (Delhi), *CIT* v. *Ranchi Club Ltd.* [2001] 247 ITR 209/114 Taxman 414 (SC), *Tej Kumari* v. *CIT* [2001] 247 ITR 210/114 Taxman 404 (Pat.).

BOOKS OF ACCOUNT IN CUSTODY OF INCOME-TAX AUTHORITY

296.1-2i During the period when the books of account are in the custody of the concerned income-tax authorities, it is not possible for the taxpayer, to submit the return of income. Consequently, he cannot be saddled with liability to pay penal interest under section 234A for that period—*Paras Bansilal Patel* v. *B.M. Jindel* [2004] 135 Taxman 125 (Guj.).

Case study

296.1-P1 *Determine the amount of interest under section 234A in the following cases :*

	X (22 years)	Y (62 years)	X (P.) Ltd.	X(HUF)
Due date of filing return for the assessment year 2019-20	*July 31, 2019*	*July 31, 2019*	*September 30, 2019*	*September 30, 2019*
Date of filing return	*Not filed*	*September 4, 2019*	*March 10, 2020*	*December 17, 2019*
Date of payment of entire self assessment tax	*Not paid*	*September 1, 2019*	*January 3, 2020*	*November 20, 2019*

Date of completion of assessment	*January 7, 2020*	*September 4, 2019*	*April 15, 2020*	*December 17, 2020*
	Rs.	*Rs.*	*Rs.*	*Rs.*
Income declared	—	*9,80,070*	*3,50,100*	*21,87,170*
Income assessed	*7,07,540*	*9,95,100*	*3,61,560*	*21,95,000*
Advance tax paid during 2018-19	*26,400*	*26,500*	*95,000*	*1,000*
Tax deducted or collected at source	*220*	*300*	*1,100*	*500*

■ *Interest will be determined as under* :

Period of default (a part of month is taken as full month)	6 months	2 months	4 months	2 months
	Rs.	*Rs.*	*Rs.*	*Rs.*
Income assessed	7,07,540	9,95,100	3,61,560	21,95,000
Tax†	54,008	1,09,020	1,08,468	4,71,000
Add : Surcharge	*Nil*	*Nil*	*Nil*	*Nil*
Tax and surcharge	54,008	1,09,020	1,08,468	4,71,000
Add : Health and education cess	2,160	4,361	4,339	18,840
Tax payable on assessed income	56,168	1,13,381	1,12,807	4,89,840
Less : Advance tax paid and tax deducted or collected at source	26,620	26,800	96,100	1,500
Shortfall (tax paid under section 140A is not considered)	29,548	86,581	16,706	4,88,340
Shortfall (rounded off) (*c*)	29,500	86,500	16,700	4,88,300
Interest on (*c*) at the rate of 1% per month	1,770	1,730	668	9,766

For failure to deduct or collect and pay tax at source [Sec. 201(1A) or 206C(7)]

296.2 The provisions are given below—

■ *Default* - Interest is payable in respect of any of the following defaults—

1. If the person responsible for deducting/collecting tax at source does not deduct/collect tax at source, wholly or partly, under sections 192 to 196C and 206C.

2. After deducting/collecting tax, he fails to pay the same as required by the Act.

■ *Interest* - In the above two cases, the person responsible for deducting/collecting tax is liable to pay interest. Interest is calculated at the rate of 1 per cent per month (or part thereof). However, in the case of short deduction/non-deduction of tax at source, interest is payable as follows—

Rate of interest (per month or part)	*Period of which interest is payable*
1 per cent	From the date on which tax was deductible to the date on which tax is actually deducted
1.5 per cent	From the date on which tax was actually deducted to the date on which tax is actually paid

Interest is payable on short payment or non-payment. It is payable from the date on which such tax was deductible/collectible to the date on which the tax is actually paid.

■ *Quarterly return cannot be submitted before payment of interest* - Quarterly return of TDS/TCS cannot be submitted before payment of interest for late deposit tax deducted or collected at source.

Provisions applicable from July 1, 2012 - The Finance Act, 2012, amended the aforesaid provisions with effect from July 1, 2012. After this amendment, the payer shall not be deemed to be an assessee in default if –

a. the recipient has included such income in the return submitted under section 139 and the recipient has paid tax on such income; and

b. the payer uploads a certificate to this effect in Form No. 26A from a chartered accountant.

In such a case, interest shall be payable at the rate of 1 per cent from the date on which tax was deductible to the date of furnishing of return of income by the recipient.

Similar rule is applicable from July 1, 2012 in the case of non-collection of tax at source.

†Surcharge is applicable only if taxable income exceeds Rs. 50 lakh/1 crore.

■ *Date of applicability of relief* - The aforesaid relaxation is applicable only when the recipient (or the purchaser in the case of tax collection) is resident and the default pertains to the period commencing on or after July 1, 2012 (if recipient is a non-resident, the aforesaid relaxation is applicable with effect from September 1, 2019). For earlier period, the aforesaid relaxation is not applicable. In such cases, one can take shelter of judicial rulings where the Courts held that interest cannot be recovered for non-deduction or short-deduction from the payer for any period which falls after the date of payment of tax by the recipient – *CIT* v. *Rishikesh Apartments Co-op. Housing Society Ltd.* [2001] 119 Taxman 239 (Guj.), *CIT* v. *Eli Lilly & Co. (India) (P.) Ltd.* [2009] 178 Taxman 505 (SC), *S.A.A. Ispahani Trust* v. *ITO* [2013] 216 Taxman 1 (Mad.).

■ *Meaning of "month"* - For calculating interest under section 201(1A), term "month" must be given ordinary meaning of term of 30 days period and not British calendar month—*Navayuga Quazigund Expressway (P.) Ltd.* v. *CIT* [2015] 64 taxmann.com 212 (Hyd.). Consider this example—Date of tax deduction : July 12, 2018, due date of deposit : August 7, 2018, actual date of deposit : August 10, 2018, interest of only one month can be charged under section 201(1A).

*For default in payment of advance tax [Sec. 234B]**

296.3 Under section 234B(1), interest is payable as follows :

When interest is payable	*Amount on which interest is payable*	*Rate of interest*	*Period for which interest is payable*
An assessee who is liable to pay advance tax, has failed to pay such tax	Interest is payable on assessed tax	Simple interest @ 1 per cent for every month or part of month	From April 1 of the assessment year to the date of determination of income under section 143(1) or where regular assessment is made to the date of regular assessment†
An assessee who has paid advance tax but the amount of advance tax paid by him is less than 90 per cent of assessed tax‡	Assessed tax *minus* advance tax	Simple interest @ 1 per cent for every month or part of month	From April 1 of the assessment year to the date of determination of income under section 143(1) or where regular assessment is made to the date of regular assessment†

OTHER POINTS

296.3-1 One should keep in view the following points—

■ *Assessed tax - Meaning of* - "Assessed tax" means the tax on total income determined on the basis of summary assessment under section 143(1) or regular assessment as reduced by tax deducted or collected at source or relief under section 89/90/90A/91 or MAT credit on any income which is taken into account in computing such total income. If interest under section 234B is to be calculated for the purpose of self-assessment under section 140A, then "assessed tax" means tax on returned income.

■ *Adjustment when tax is paid before regular assessment under section 140A* - If before the date of determination of total income under section 143(1) or completion of a regular assessment, tax is paid on the basis of self-assessment under section 140A, the interest shall be calculated as under :

a. up to the date of payment of tax under section 140A, interest will be calculated as mentioned in the table above; and

b. from the date of payment of tax under section 140A, interest will be calculated on the amount by which advance tax and tax paid under section 140A falls short of assessed tax.

*For reduction or waiver of interest, *see* paras 299 to 302.

†Where an assessment is made for the first time under section 147 or 153A, the assessment so made is regarded as regular assessment. In case a regular assessment has been made, interest under section 234B has to be levied up to date of regular assessment and not up to date of determination of total income under section 143(1)—*Shadi Ram & Sons* v. *CIT* [2005] 142 Taxman 30 (Luck.), *Hindustan Sanitary Engineer* v. *ITO* [2005] 95 ITD 226 (Asr.)

‡The interest is chargeable as a result of the order of settlement even where the advance tax paid was more than 90 per cent of the tax on the total income shown in the return of income or that determined under sub-section (1) of section 143 or on regular assessment and it became less than 90 per cent of the tax found due on the basis of the Settlement Commission's order—*Sahitya Mudranalaya (P.) Ltd., In re* [1995] 79 Taxman 463 (ITSC-Bom.) (SB).

From the amount of interest computed above, amount paid under section 140A towards interest chargeable under section 234B shall be deducted.

■ *Reassessment/re-computation* - If as a result of reassessment/re-computation under section 147 or 153A, the amount on which interest was initially payable is increased, the taxpayer will be liable to pay additional interest at the rate of 1 per cent per month (or part of month). This additional interest is payable for the following period –

- *Up to May 31, 2015* - For the period starting from the date of determination of total income under section 143(1) or regular assessment and ending on the date of reassessment/re-computation.
- *From June 1, 2015* - For the period commencing on the first day of the assessment year and ending on the date of reassessment/ re-computation.

■ *Shipping business of non-residents* - The Board is of the opinion that non-resident assessees engaged in the business of carriage by shipping of passengers and goods, etc., shall be liable to pay interest under sections 234B and 234C or entitled to interest under section 244A in respect of their income attributable to the business of such carriage of passengers and goods, etc.—Circular No. 9/2001, dated July 9, 2001.

■ *Shortfall because of interpretation of law* - If short payment of advance tax is mainly because of a *bona fide* dispute regarding the interpretation of law, interest under section 234B is not applicable—*CIT* v. *Sedco Forex International Drilling Co. Ltd.* [2004] 134 Taxman 109 (Uttaranchal).

*For deferment of advance tax**

296.4 Interest is payable under section 234C if an assessee has not paid advance tax or underestimated instalments of advance tax. Interest is to be computed on the following basis :

CATEGORY A

296.4-1 This category covers the following assessees—

■ A corporate assessee.

■ A non-corporate assessee [but not being an eligible assessee covered by section 44AD or 44ADA and discussed in para 296.4-2].

When interest is payable under section 234C	*Rate of interest*	*Period of interest*	*Amount on which interest is payable*
(1)	*(2)*	*(3)*	*(4)*
If advance tax paid on or before June 15 is less than 12% (*a*—*b*)	Simple interest @ 1 per cent per month	3 months	15% (*a*—*b*)—*c*
If advance tax paid on or before September 15 is less than 36% (*a*—*b*)	Simple interest @ 1 per cent per month	3 months	45% (*a*—*b*)—*d*
If advance tax paid on or before December 15 is less than 75% (*a*—*b*)	Simple interest @ 1 per cent per month	3 months	75% (*a*—*b*)—*e*
If advance tax paid on or before March 15 is less than 100% (*a*—*b*)	Simple interest @ 1 per cent	—	100% (*a*—*b*)—*f*

Notes:

a. Tax on the total income declared in the return filed by the assessee.

b. Tax deducted or collected at source, relief under section 89/90/90A/91 and MAT/AMT credit under section 115JAA or 115JD.

c. Amount of advance tax paid on or before June 15 of the financial year immediately preceding the relevant assessment year.

d. Amount of advance tax paid on or before September 15 of the financial year immediately preceding the relevant assessment year.

e. Amount of advance tax paid on or before December 15 of the financial year immediately preceding the relevant assessment year.

f. Amount of advance tax paid on or before March 15 of the financial year immediately preceding the relevant assessment year.

*For reduction or waiver of interest, *see* paras 299 to 302.

CATEGORY B

296.4-2 This category covers the following assessees—

■ An eligible assessee covered by section 44AD or 44ADA.

In the case of an eligible assessee (covered under section 44AD), interest under section 234C is payable (in respect of non-payment or short payment of advance tax pertaining to eligible business) as follows—

When interest is payable under section 234C	*Rate of interest*	*Period of interest*	*Amount on which interest is payable*
If advance tax paid on or before March 15 is less than 100% (*a*—*b*)	Simple interest @ 1 per cent	—	100% (*a*—*b*)—*c*

Notes:

a. Tax on the total income declared in the return filed by the assessee.

b. Total of (*i*) tax deducted/collected at source on any income which is subject to such deduction or collection and which is taken into account in computing such total income, (*ii*) relief/deduction of tax claimed under section 89/90/90A/91; and (*iii*) tax credit under section 115JD.

c. Amount of advance tax paid on or before March 15 of the financial year immediately preceding the relevant assessment year.

SHORT PAYMENT OF ADVANCE TAX IN CASE OF CAPITAL GAINS/CASUAL INCOME/INCOME FROM NEW BUSINESS OR PROFESSION/ DIVIDEND INCOME [FIRST PROVISO TO SEC. 234C(1)]

296.4-4 No interest will be levied in respect of any shortfall in the payment of advance tax due on the returned income if—

a. the shortfall is on account of an underestimate or failure to estimate the amount of capital gains or income of the nature referred to in section 2(*24*)(*ix*) (*i.e.*, lottery income, gambling income, etc.) or (with effect from June 1, 2016) income from a new business/profession or dividend income ; and

b. the assessee has paid the whole of the amount of tax payable in respect of such income, as part of the remaining instalments of advance tax which are immediately due (after accrual of such income), or if no instalment is due, then such tax is paid before the end of the financial year.

Case studies

296.4-P1 *During the financial year 2018-19, X (36 years) pays the following instalments of advance tax :*

	Rs.
First instalment on June 15, 2018	*52,000*
Second instalment on September 15, 2018	*1,02,000*
Third instalment on December 10, 2018	*1,60,000*
Fourth instalment on March 13, 2019	*30,000*
Fifth instalment on March 20, 2019	*20,000*

The regular assessment for the assessment year 2019-20 is completed on January 10, 2020 and income determined by the Assessing Officer is Rs. 20,30,740 (income as per income-tax return : Rs. 20,18,140, addition made by the Assessing Officer : Rs. 12,600). He is also entitled to tax credit of Rs. 2,800 on account of tax deducted at source.

Self assessment tax is not paid. Is he liable for interest under section 234B or 234C ?

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Interest liability under section 234B :

	Rs.
Income computed by the Assessing Officer	20,30,740
Tax on Rs. 20,30,740 [for rates, *see* Annex 1]	4,38,590
Less : Tax deducted at source	2,800
Assessed tax	4,35,790
90% of assessed tax	3,92,211
Advance tax paid during the financial year 2018-19 (Rs. 52,000 + Rs. 1,02,000 + Rs. 1,60,000 + Rs. 30,000 + Rs. 20,000)	3,64,000

Since advance tax paid during the financial year is less than 90% of assessed tax, X is liable to pay interest under section 234B as follows –

Assessed tax	4,35,790
Less: Advance tax paid during the financial year 2018-19	3,64,000
Short fall	71,790
Short fall (rounded off)	71,700

	Rs.
Period for which interest is payable (from April 1, 2019 to January 10, 2020)	9 months (and a few days)
Period for which interest is payable (rounded off)	10 months
Rate of interest	1% per month
Amount of interest under section 234B (Rs. 71,700 × 1% × 10)	7,170
Interest liability under section 234C –	
Income as per return of income	20,18,140
Tax on Rs. 20,31,670 (for rates, *see* Appendix 1)	4,34,660
Less : Tax deducted at source	2,800
Assessed tax	4,31,860
First instalment (due date : June 15, 2018)	
15% of assessed tax	64,779
12% of assessed tax	51,823
Advance tax actually paid up to June 15, 2018	52,000
Since advance tax paid is not less than 12% of assessed tax, interest is not payable for short payment of first instalment of advance tax.	
Second instalment (due date : September 15, 2018)	
45% of assessed tax	1,94,337
36% of assessed tax	1,55,470
Advance tax actually paid up to September 15, 2018 (Rs. 52,000 + Rs. 1,02,000)	1,54,000
Since advance tax paid is less than 36% of assessed tax, interest is payable for short payment of second instalment of advance tax.	
Short fall (45% of assessed tax : Rs. 1,94,337 – advance tax paid up to September 15, 2018 : Rs. 1,54,000)	40,337
Short fall (rounded off)	40,300
Interest for short payment of second instalment (Rs. 40,300 × 1% × 3 months)	1,209
Third instalment (due date : December 15, 2018)	
75% of assessed tax	3,23,895
Advance tax actually paid up to December 15, 2018 (Rs. 52,000 + Rs. 1,02,000 + 1,60,000)	3,14,000
Since advance tax paid is less than 75% of assessed tax, interest is payable for short payment of third instalment of advance tax.	
Short fall (75% of assessed tax : Rs. 3,23,895 – advance tax paid up to December 15, 2018 : Rs. 3,14,000)	9,895
Short fall (rounded off)	9,800
Interest for short payment of third instalment (Rs. 9,800 × 1% × 3 months)	294
Fourth instalment (due date : March 15, 2019)	
100% of assessed tax	4,31,860
Advance tax actually paid up to March 15, 2019 (Rs. 52,000 + Rs. 1,02,000 + Rs. 1,60,000 + Rs. 30,000)	3,44,000
Since advance tax paid is less than 100% of assessed tax, interest is payable for short payment of fourth instalment of advance tax.	
Short fall (100% of assessed tax : Rs. 4,31,860 – advance tax paid up to March 15, 2019 : Rs. 3,14,000)	87,860
Short fall (rounded off)	87,800
Interest for short payment of fourth instalment (Rs. 87,800 × 1%)	878
Interest payable under section 234C (Rs. 1,209 + Rs. 294 + Rs. 878)	2,381

296.4-P2 *X Ltd., an Indian company, files return of income on December 10, 2019, though the due date is September 30, 2019 for the assessment year 2019-20. On the same day, it deposits Rs. 2,69,300 (being self-assessment tax) under section 140A computed as follows —*

	Rs.
Tax on income of Rs. 11,88,460 declared in the return	*3,70,800*
Less:	
Advance tax paid during 2018-19	*1,23,600*
Tax deducted at source	*16,572*
Balance	*2,30,628*

	Rs.
Add: Interest	
Under section 234A for late submission of return [@ 1% per month on Rs. 2,30,600 for 3 months]	*6,918*
Under section 234B for short deposit of advance tax [on Rs. 2,30,600 from April 1, 2019 to December 10, 2019 @ 1% per month]	*20,754*
Under section 234C [Rs. 11,000 is correctly computed under section 234C]	*11,000*
Total	*2,69,300*

Assessment is completed under section 143(3) on April 20, 2020 on income of Rs. 12,08,270. Find out the amount of tax payable.

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Interest liability under section 234A

Date of filing return	December 10, 2019
Due date of return	September 30, 2019
Period of default (a part of month is taken as full month)	3 months
	Rs.
Income	12,08,210
Tax on income [*i.e.*, 30% of Rs. 12,08,270 *plus* 4% health and education cess]	3,76,980
Less: Advance payment of tax	1,23,600
Less: Tax deducted at source	16,572
Assessed tax	2,36,808
Interest under section 234A on assessed tax (*i.e.*, Rs. 2,36,800) @ 1% per month for 3 months	7,104
Interest liability under section 234B :	
Assessed tax (*i.e.*, tax *minus* tax deducted at source; as computed above)	3,60,408
90% of assessed tax	3,24,367
Advance tax paid during 2018-19	1,23,600
It is liable to pay interest under section 234B as advance tax paid is shorter than Rs. 3,24,367	
Shortfall from April 1, 2019 to December 10, 2019	2,36,808
Period of default (April 1, 2019 to December 10, 2019)	9 months
Interest @ 1% per month for 9 months	21,312
Shortfall from December 10, 2019 to April 20, 2020 [*i.e.*, Rs. 2,36,808 — Rs. 2,30,628 (self-assessment tax under section 140A paid on December 10, 2019—*see* Note 1)]	6,180
Period of default January 1, 2020 to April 20, 2020 (in the shortfall of 9 months period up to December 31, 2019 is included)	4 months
Interest on Rs. 6,100 for 4 months @ 1% per month	244
Interest under section 234B	21,556

Notes :

1. In this example, X Ltd. has paid Rs. 2,69,300 on December 10, 2019 under section 140A. As per calculation given in the problem, Rs. 38,672 is adjusted towards payment of interest and the balance Rs. 2,30,628 is adjusted towards tax payable. If tax paid under section 140A (*i.e.*, self-assessment tax) is less than Rs. 2,69,300, then the amount paid under section 140A, shall be first adjusted towards interest payable and the balance if any, shall be adjusted towards tax payable.

2. Net tax and interest payable is to be computed as under :	*Rs.*
Tax on Rs. 12,08,270	3,76,980
Add: Interest	
Under section 234A	7,104
Under section 234B	21,556
Under section 234C	11,000
Total	4,16,640
Less: Prepaid tax	
Tax deduction at source	16,572
Advance tax	1,23,600
Self-assessment tax under section 140A	2,69,300
Balance payable (rounded off)	7,170

296.4-P3 *X (50 years) is a business person. For the previous year 2018-19, he reports the following transactions in his return of income –*

	Rs.
Income from brokerage and commission (business was established in 1982)	*14,64,970*
Long-term capital gain on sale of gold on September 18, 2018	*3,00,000*
Income from commission agency business (new business started on November 4, 2018)	*6,69,560*
Amount deposited in PPF on March 20, 2019	*1,50,000*
Prepaid tax –	
TDS/TCS	*23,400*
Advance tax paid on –	
- June 13, 2018	*21,000*
- September 15, 2018	*49,000*
- December 14, 2018	*1,50,000*
- March 15, 2019	*2,00,000*

Calculate the amount of interest payable under section 234C.

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Interest under section 234C for short payment of first instalment of advance tax (i.e., on or before June 15, 2018) - For this purpose, long-term capital gain generated after June 15, 2018 and new business started after June 15, 2018 shall not be considered. Short fall will be calculated as follows –

	Rs.
Income from brokerage and commission	14,64,970
Any other income	*Nil*
Gross total income	14,64,970
Less: Deduction under section 80C	1,50,000
Net income	13,14,970
Tax (including health and education cess)	2,15,270
Less: TDS/TCS	23,400
Assessed tax	1,91,870
15% of assessed tax	28,781
12% of assessed tax	23,025
Advance tax paid up to June 15, 2018	21,000
Short fall (for short payment of first instalment of advance tax, interest under section 234C is not applicable if advance tax paid up to June 15, 2018 is not less than 12% of assessed tax. In this case, X has paid advance tax of Rs. 21,000 which is less than 12% of assessed tax of Rs. 23,025. In such a case, interest is payable under section 234C. Short fall will be calculated as the difference between 15% of assessed tax and advance tax paid up to June 15, 2018, *i.e.*, Rs. 28,781 – Rs. 21,000. It comes to Rs. 7,781) (rounded off)	7,700
Interest under section 234C for short payment of first instalment of advance tax (interest on Rs. 7,700 @ 1% per month for 3 months)	231

Interest under section 234C for short payment of second instalment of advance tax (i.e., on or before September 15, 2018) - For this purpose, long-term capital gain generated after September 15, 2018 and new business started after September 15, 2018 shall not be considered. Short fall will be calculated as follows –

	Rs.
Assessed tax	1,91,870
45% of assessed tax	86,342
36% of assessed tax	69,074
Advance tax paid up to September 15, 2018 (Rs. 21,000 + Rs. 49,000)	70,000
Short fall (for short payment of second instalment of advance tax, interest under section 234C is not applicable if advance tax paid up to September 15, 2018 is not less than 36% of assessed tax. In this case, X has paid advance tax of Rs. 70,000 which is more than 36% of assessed tax of Rs. 69,074. If advance tax paid up to September 16, 2018 is shorter than Rs. 69,074, short fall will be calculated by taking the difference between 45% of assessed tax and advance tax paid up to September 15, 2018)	*Nil*
Interest under section 234C for short payment of second instalment of advance tax	*Nil*

Interest under section 234C for short payment of third instalment of advance tax (i.e., on or before December 15, 2018) - Short fall will be calculated as follows –

	Rs.
Income from brokerage and commission	14,64,970
Income from business newly set-up on November 4, 2018	6,69,560
Long-term capital gain	3,00,000
Gross total income	24,34,530
Less: Deduction under section 80C	1,50,000
Net income	22,84,530
Tax (including education cess)	4,86,573
Less: TDS/TCS	23,400
Assessed tax	4,63,173
75% of assessed tax	3,47,380
Advance tax paid up to December 15, 2018 (Rs. 21,000 + Rs. 49,000 + Rs. 1,50,000)	2,20,000
Short fall (rounded off)	1,27,300
Interest under section 234C for short payment of third instalment of advance tax (interest on Rs. 1,27,300 @ 1% per month for 3 months)	3,819

*Interest under section 234C for short payment of fourth instalment of advance tax (*i.e., *on or before March 15, 2019)* - Short fall will be calculated as follows –

	Rs.
Assessed tax	4,63,173
Advance tax paid up to March 15, 2019 (Rs. 21,000 + Rs. 49,000 + Rs. 1,50,000 + Rs. 2,00,000)	4,20,000
Short fall (rounded off)	43,100
Interest under section 234C for short payment of fourth instalment of advance tax (interest on Rs. 43,100 @ 1%)	431

Interest payable under section 234C : Rs. 4,481.

296.4-P4 *X (40 years) owns a manufacturing business. Turnover of the business for the previous year 2018-19 is Rs. 1,79,09,060 (Rs. 40,80,000 received by cheque and balance in cash). He does not maintain books of account. The following transactions are noted from his return of income (which he will upload in ITR-4) for the assessment year 2019-20 –*

	Rs.
Business income under section 44AD (6% of Rs. 40,80,000 + 8% of balance of Rs. 1,38,29,060) (TDS/TCS : Rs. 9,000)	*13,51,125*
Rental income from a commercial property purchased on December 18, 2018 (let out @ Rs. 3,00,000 per month from January 1, 2019, municipal tax : nil, interest : nil, tax deducted by tenant : Rs. 90,000 @ 10 per cent)	*9,00,000*
Interest on bank FD (tax deducted by bank : Rs. 4,00,000)	*40,00,000*
PPF deposit on March 20, 2019	*1,50,000*
Advance tax paid on –	
- June 14, 2018	*1,08,000*
- July 15, 2018	*1,62,000*
- December 15, 2018	*2,70,000*
- March 15, 2019	*4,00,000*
- March 31, 2019	*3,00,000*

Calculate the amount of interest payable under section 234C.

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	Rs.
Income from house property (Rs. 9,00,000 – deduction under section 24 @ 30%)	6,30,000
Business income under section 44AD	13,51,125
Bank interest	40,00,000
Gross total income	59,81,125
Less: Deduction under section 80C	1,50,000

	Rs.
Net income	58,31,130
Tax on net income	17,86,744

Section 234C does not provide method of calculating tax separately on business income (covered by section 44AD) and other incomes. In this case, business income is Rs. 13,51,125 and gross total income is Rs. 59,81,125. Tax pertaining to business income may be calculated on the basis of these figures which comes to Rs. 4,03,622 (*i.e.*, Rs. 17,86,744 × Rs. 13,51,125 ÷ Rs. 59,81,125).

	Tax pertaining to –	
	Income u/s 44AD	*Other incomes*
	Rs.	*Rs.*
Tax on income	4,03,622	13,83,122
Less: TDS/TCS	9,000	4,90,000
Assessed tax	3,94,622	8,93,122
15% of assessed tax (12% of assessed tax : Rs. 1,07,175)	–	1,33,968
45% of assessed tax (36% of assessed tax : Rs. 3,21,524)	–	4,01,905
75% of assessed tax	–	6,69,842
100% of assessed tax	3,94,622	8,93,122

Computation of interest under section 234C –

	Rs.
First instalment (advance tax paid up to June 15, 2018 is not less than 12% of assessed tax, interest under section 234C is not applicable for short payment of first instalment)	*Nil*
Second instalment (advance tax paid up to September 15, 2018 is less than 36% of assessed tax, interest under section 234C is applicable) (short-fall : Rs. 4,01,905 – Rs. 1,08,000 – Rs. 1,62,000 = Rs. 1,31,905) (Rs. 1,31,900 × 0.01 × 3 months)	3,957
Third instalment (short-fall : Rs. 6,69,842 – Rs. 1,08,000 – Rs. 1,62,000 – Rs. 2,70,000 = Rs. 1,29,842) (Rs. 1,29,800 × 0.01 × 3 months)	3,894
Fourth instalment (short-fall : Rs. 3,94,622 + Rs. 8,93,122 – Rs. 1,08,000 – Rs. 1,62,000 – Rs. 2,70,000 – Rs. 4,00,000 = Rs. 3,47,742) (Rs. 3,47,700 × 0.01)	3,477
Total	11,328

Interest on excess refund [Sec. 234D]

296.5 Section 234D is applicable to charge interest on excess refund granted at the time of summary assessment.

■ *Interest under section 234D(1)* - In any of the following two cases, interest is attracted under section 234D(1)—

Case one - If any refund is granted under section 143(1) but no refund is due on regular assessment.

Case two - If any refund is granted to the assessee under section 143(1) and the refund so granted exceeds the amount refundable on regular assessment.

For the aforesaid purpose, regular assessment means assessment under section 143(3) or 144. If an assessment is made for the first time under section 147 or section 153A, the assessment so made shall be regarded as a regular assessment.

Computation of interest - In any of the above two cases interest is payable under section 234D(1) as follows—

Rate of interest	0.5 per cent per month or part of a month
Period for which interest is payable	The period commencing from the date of grant of refund under section 143(1) to date of regular assessment
Amount on which interest is payable	In *Case One* on whole of the amount refunded; in *Case Two* on the excess of amount refunded under section 143(1) over the amount refundable on regular assessment.

■ *Adjustment under section 234D(2)* - Where, as a result of an order under section 154 or 155 or 250 or 254 or 260 or 262 or 263 or 264 or an order of the Settlement Commission under section 254D(4) the amount of refund granted under section 143(1) is held to be correctly allowed, either in whole or in part, as the case may be, then the interest chargeable under section 234D(1), shall be reduced accordingly.

296.5-P1 *For the assessment year 2019-20, X files return of income on September 30, 2019 (income declared in the return Rs. 4,55,000, advance tax : Rs. 47,940). The Assessing Officer refunds under section 143(1) the excess tax paid by X on July 20, 2020 as follows—*

	Rs.
Tax on Rs. 4,55,000	*10,250*
Add : *Health and education cess*	*410*
Tax	*10,660*
Add : *Interest under different sections*	*3,500*
Total	*14,160*
Less : *Prepaid tax*	*42,533*
Refund	*28,373*
Add : *Interest under section 244A*	*2,264*
Amount refunded (rounded off)	*30,640*

The Assessing Officer issues notice under section 143(2) on August 16, 2020. The assessment is completed under section 143(3) on March 26, 2021. Income assessed is (a) Rs. 4,55,000, (b) Rs. 4,80,000; or (c) Rs. 7,85,000. Assume that interest under section 234C etc., is (a) Rs. 3,500, (b) Rs. 3,630 or (c) Rs. 6,550, respectively in the three cases, find out interest under section 234D.

■

	If assessed income is		
	Rs. 4.55 lakh *Rs.*	*Rs. 4.8 lakh* *Rs.*	*Rs. 7.85 lakh* *Rs.*
Income-tax on assessed income	10,250	11,500	69,500
Add : Surcharge	—	—	—
Tax and surcharge	10,250	11,500	69,500
Add : Health and education cess	410	460	2,780
Tax payable	10,660	11,960	72,280
Add : Interest	3,500	3,630	6,550
Total	14,160	15,590	78,830
Less : Prepaid tax	42,533	42,533	42,533
Tax refund due	28,373	26,940	-
Add : Interest under section 244A	2,264	2,152	-
Refund (rounded off)	30,640	29,090	-
Amount refunded under section 143(1) on July 20, 2020 (*a*)	30,640	30,640	30,640
Amount of tax or refund as per assessment order under section 143(3) dated March 26, 2021 (*b*)	30,640	29,090	-
Excess refund given earlier [*a* - *b*]	-	1,550	30,640
Rounded off	-	1,500	30,600
Period from July 20, 2020 to March 26, 2021	-	9 months	9 months
Interest @ 0.5 per cent per month under section 234D	-	67.50	1,377

For making late payment of income-tax [Sec. 220(2)]

296.6 If any assessee fails to pay any tax (other than advance tax) specified in a demand notice within 30 days of the service of notice of demand, he is liable to pay interest at the rate of 1 per cent for every month or part of month from the expiry of 30 days of the service of demand notice.

Fees for defaults in furnishing quarterly returns [Sec. 234E]

296.7 Section 234E is applicable in respect of quarterly TDS/TCS return which is to be submitted on or after July 1, 2012. Under this section, if a person fails to deliver (or cause to be delivered) a quarterly TDS/TCS return within the time prescribed in section 200(3) or the proviso to section 206C(3), he shall be liable to pay, by way of fee, a sum of Rs. 200 for everyday during which the failure continues.

This fees will be in addition to other consequences under the Act. However, the fees shall not exceed the amount of tax deductible/collectible. After July 1, 2012, it will not be possible to submit belated quarterly TDS/TCS returns without payment of fees under section 234E.

Fee for default in furnishing return of income [Sec. 234F, applicable from the assessment year 2018-19]

296.8 A fee for delay in furnishing of return shall be levied for assessment year 2018-19 under section 234F where the return is not filed within the due dates given under section 139(1). The amount of fee under section 234F is as follows –

1. A fee of Rs. 5,000 shall be payable, if the return is furnished after the due date but on or before December 31 of the assessment year.

2. A fee of Rs. 10,000 shall be payable in any other case.

3. However, in a case where the total income does not exceed Rs. 5 lakh, the fee amount shall not exceed Rs. 1,000.

Interest payable to assessee [Sec. 244A]

297. Interest is payable where any refund arises due to any excess payment of tax. There is no need for making claim for refund.

How to compute interest up to May 31, 2016

297.1 Interest is payable by the Government as follows—

	Refund of advance income-tax, tax deducted or collected at source, advance fringe benefit tax	*Refund in any other case*
(1)	*(2)*	*(3)*
Whether any application for obtaining refund is required	No	No
Rate of interest	0.5 per cent per month (or part of month)	0.5 per cent per month (or part of month)
Period	From the first day of the assessment year to the date of grant of refund (*i.e.*, the date of signing of the refund order)	From the date of payment of tax to the date of grant of refund (*i.e.*, the date of signing of the refund order)

Provisions applicable from June 1, 2016

297.2 The above mode of computation of interest under section 244A has been modified with effect from June 1, 2016 on the following lines -

- *Category 1 - Refund out of TDS, TCS and advance tax* - Where refund arises out of TDS, TCS or advance tax paid during the financial year immediately prior to the assessment year, interest shall be calculated at the rate of 0.5 per cent per month (or part thereof) for the following period—

Situation 1 [if return of income is submitted on or before the due date of submission of return of income given under section 139(1)] - In this case, interest is payable from the first day of the assessment year to the date on which refund is granted.

Situation 2 [in any other case] - In this case, interest is payable from the date of furnishing of return of income to the date on which refund is granted.

- *Category 2 - Refund out of self-assessment tax paid under section 140A* - Where the refund is out of self-assessment tax paid under section 140A, such interest shall be calculated at the rate of 0.5 per cent per month (or part thereof) from the date of furnishing of return of income or the date of payment of self-assessment tax, whichever is later, to the date on which the refund is granted.
- *Category 3 - Refund which arises out of appeal effect* - Where a refund arises out of appeal effect being delayed beyond the time prescribed under section 153(5) (*i.e.*, 3 months from the end of the month in which appellate order is received by CIT), the assessee shall be entitled to receive an additional interest (over and above interest given under *Category 1* or *Category 2*). Additional interest on such refund shall be calculated at the rate of 3 per cent per annum, for the period beginning from the date following the date of expiry of the time allowed under section 153(5) to the date on which the refund is granted. Where extension is granted by the Principal CIT/CIT by invoking proviso to section 153(5), the period of additional interest, if any, shall begin from the expiry of such extended period.

■ *Category 4 - Refund of TDS to deductor (applicable from April 1, 2017)* - Section 244A(1B) has been inserted from April 1, 2017†. It provides that where refund of any amount becomes due to the deductor, such person shall be entitled to receive, in addition to the refund, simple interest on such refund. Interest will be calculated at the rate of 0.5 per cent per month (or part of a month). Interest will be available from the date on which claim for refund is made in the prescribed form to the date on which the refund is granted. Where refund arises on account of giving effect to an appellate order under section 250/254/260/262, interest will be available from the date of deposit of TDS to the date on which refund is granted. However, interest shall not be allowed for the period for which the delay (in the proceedings resulting in the refund) is attributable to the deductor.

Other points

297.3 One should also keep in view the following points—

■ *No interest on excess payment of advance tax/TDS/TCS/advance fringe benefit tax in some cases* - In the case of refund of advance income-tax/fringe benefit tax, tax deduction/collection at source no interest is payable if the excess payment is less than 10 per cent of tax determined under section 143(1) or on regular assessment.

■ *When assessee is responsible for delay in refund* - If the proceedings (resulting in the refund) are delayed for reasons attributable to the assessee (whether wholly or in part), the period of the delay so attributable to him shall be excluded from the period for which interest is payable.

■ *When assessment is reframed* - If as a result of an order under section 115W(1), 143(1), 143(3), 147, 154, 155, 250, 254, 260, 262, 263, 264 or 245D(4), the amount on which interest was payable has been increased/reduced, the interest shall be increased/reduced accordingly. If interest is reduced, the Assessing Officer will send a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount.

■ *Interest with refund is a must* - *Vide* Instruction No. 2/2007, dated March 28, 2007, the Board has reminded all Assessing Officers that while granting refund to the assessees, care should be taken to ensure that any interest payable under section 244A on the amount of refund due should be granted simultaneously with the grant of refund and there should, in no case, be any omission or delay in the grant of such interest. Failure to do so will be viewed adversely and the officer concerned will be held personally accountable, inviting appropriate action.

Procedure to be followed in calculation of interest [Rule 119A]

298. In calculating interest payable by the assessee or interest payable by the Central Government to the assessee, the amount of tax, penalty or other sum in respect of which interest is to be calculated will be rounded off to the nearest multiple of Rs. 100 ignoring any fraction of Rs. 100.

■ Where interest is to be calculated on annual basis, the period for which such interest is to be calculated shall be rounded off to a whole month/months and for this purpose any fraction of a month shall be ignored. Where, however, the interest is to be calculated for every month or part of a month comprised in a period, any fraction of a month shall be deemed to be a full month.

Is it possible to reduce/ waive interest

299. Where as a result of any order of a Court, statutory authority or of the Government (other than an order of assessment, appeal, reference or revision passed under the provisions of the Income-tax Act) passed after the close of the said previous year (such income and the order hereinafter referred to as the "relevant income" and the "relevant order", respectively) interest under sections 234A, 234B and 234C shall be reduced or waived by the Chief Commissioner/ Director-General subject to certain conditions.

Conditions

299.1 The following conditions shall be satisfied—

Condition 1	The relevant income is disclosed in a return of income furnished for the said previous year or is otherwise disclosed to the Assessing Officer.
Condition 2	The tax attributable to such income has been paid.

Period

299.2 Reduction/waiver of interest is given in respect of the following period—

Section	*Period in respect of which reduction or waiver is allowed*
Section 234A	From the date immediately following the due date for furnishing the return of income for the relevant assessment year till the end of the month in which the relevant order giving rise to the relevant income is passed.

†For earlier period, one can claim interest under Circular No. 11/2016, dated April 26, 2016.

Section	*Period in respect of which reduction or waiver is allowed*
Section 234B	From the first day of April of the relevant assessment year till the end of the month in which the relevant order giving rise to the relevant income is passed.
Section 234C	For the period mentioned in that section.

Extent of interest to be reduced or waived

299.3 The quantum of interest to be reduced or waived shall be the difference between :

a. the interest computed for the period mentioned in para 299.2 above with reference to the tax on the total income inclusive of the relevant income; and

b. the interest computed for the same period with reference to the tax on the total income as reduced by the relevant income.

Discretion should be exercised in judicial manner

299.4 It is true that the waiver of interest is at the discretion of the concerned official. But the discretion must be exercised in a judicial manner and cannot be *ipse dixit* of the officer and the result of any whim—*J.D. Properties Ltd.* v. *Chief CIT* [2001] 118 Taxman 592 (Delhi). Application for waiver of interest under sections 234A, 234B and 234C cannot be rejected in laconic and mechanical manner—*Tushaar Mehta* v. *CIT* [2004] 189 CTR (Mad.) 550.

Is it possible for Chief Commissioner/ Director General (Investigation) to reduce penal interest in certain cases

300. The Central Board of Direct Taxes (*vide* order, dated June 26, 2006) has decided to authorise Chief Commissioners and Director General (Investigation) to reduce or waive penal interest under sections 234A, 234B and 234C subject to certain specified conditions. Penal interest charged under the aforesaid sections may be reduced or waived in the following circumstances, namely :

1. Where, in the course of search and seizure operation, books of account have been taken over by the Department and were not available to the taxpayer to prepare his return of income.

2. Any income other than capital gains which was received or accrued after the date of first or subsequent instalment of advance tax, which was neither anticipated nor contemplated by the taxpayer and on which advance tax was paid by the taxpayer after the receipt of such income.

3. Where, as a result of any retrospective amendment of law or the decisions of the Supreme Court, certain receipts which were hitherto treated as exempt, become taxable. Since no advance tax would normally be paid in respect of such receipts during the relevant financial year, penal interest is levied for the default in payment of advance tax.

4. Where return of income is filed voluntarily without detection by the Income-tax Department and due to circumstances beyond control of the taxpayer such return of income was not filed within the stipulated time-limit or advance tax was not paid at the relevant time.

Other points

300.1 The following points should be noted—

■ Where return is filed after search proceedings, the petition for waiver of interest should be rejected - *K.G. Prasad* v. *CIT* [2004] 134 Taxman 51 (Kar.).

■ Instances given above may be taken as illustrative and not exhaustive — *Dr. Mahesh D. Singhvi,* In re [1998] 97 Taxman 58 (ITSC).

Can Central Board of Direct Taxes make relaxation

301. The Board has power to make relaxation in cases covered by sections 234A, 234B and 234C and where assessee makes an application for waiver of interest under said sections, Board cannot decline assessee's request by a cryptic order that it was unable to interfere in matter—*Sant Lal* v. *UOI* [1996] 89 Taxman 272 (Punj. & Har.).

Writ petition - Is it maintainable against levy of interest

302. Since no appeal is provided by statute against levy of interest under sections 234A, 234B and 234C, writ petition is maintainable against such levy—*Uday Mistanna Bhandar & Complex* v. *Tej Kumari Devi* [1996] 222 ITR 44 (Pat.).

MULTIPLE CHOICE QUESTIONS

Q1. X Ltd. files its return of income on October 6, 2019 for the assessment year 2019-20. Immediately before submission it pays a sum of Rs. 2.5 crore by way of self-assessment tax. For late submission of return, it is liable for interest under section—

a. 234A;

b. 234B;

c. 234C;

d. None of above.

Q2. In the above case, rate of interest is—

a. 1 per cent only for 6 days.

b. 1 per cent for 1 month;

c. 2 per cent for 1 month;

d. 1/2 per cent for 1 month.

Q3. Interest under section 234B is applicable in case of—

a. Failure to deduct and pay tax at source;

b. Default in payment of advance tax;

c. Deferment of advance tax;

d. All of above;

e. None of above.

Q4. Interest under section 234B is payable if—

a. Advance tax actually paid is less than 90 per cent;

b. Advance tax actually paid is less than 95 per cent;

c. Advance tax actually paid is less than 100 per cent;

d. Advance tax payable is Rs. 10,000 or more but actual amount of payment of advance tax is less than 90 per cent.

Q5. X had to pay Rs. 7.5 lakh as advance tax on September 15, 2019 for the assessment year 2020-21. He actually paid the amount on September 30, 2019. He is liable to pay interest under section 234C for—

a. 1/2 month;

b. 1 month;

c. 3 month;

d. *Nil.*

Q6. X pays all instalments of advance tax on time except for the last instalment of Rs. 24,000 payable on March 15, 2019. The instalment was paid by him on April 5, 2019. In this case—

a. Rs. 24,000 paid by X will be treated as advance tax and no interest will be payable under section 234C;

b. Rs. 24,000 paid by X will be treated as advance tax and interest shall be payable under section 234C;

c. Rs. 24,000 shall not be treated as advance tax and interest shall be payable under section 234C;

d. None of above.

29 CHAPTER

REFUND OF EXCESS PAYMENTS

Right to claim refund - When arises [Sec. 237]

305. Refund means "to pay back". If, therefore any person satisfies the Assessing Officer that the amount of tax paid by him or on his behalf for any assessment year exceeds the amount with which he is properly chargeable under the Act for that year, he is entitled to a refund of the excess amount paid.

Who can claim refund [Sec. 238]

306. Generally refund can be claimed only by a person who has made excess payment of tax. Where, however, income of a person is included in the total income of another person under sections 60 to 64, the refund can be claimed by the latter and not by the former. Likewise, if a person is unable to claim any refund due to him because of his death, incapacity, insolvency, liquidation or other cause, his legal representative or the trustee or guardian or receiver, as the case may be, is entitled to claim and receive such refund for the benefit of such person or his estate.

How to claim refund [Sec. 239]

307. The provisions pertaining to section 239 are given below –

Applicable from September 1, 2019

307.1 Every claim for refund shall be made by furnishing return of income in accordance with the provisions of section 139.

Applicable up to August 31, 2019

307.2 Claim for refund should be in Form No. 30 and verified in the prescribed manner. The refund should be claimed within one year from the last day of the assessment year.

Claim after the statutory time limit - The Board has directed that in all cases where an otherwise valid refund claim under section 237 is filed by an assessee after the expiry of the aforesaid statutory time, the Assessing Officer having jurisdiction over the case, may admit the said refund claim and dispose of the same on merits and in accordance with law provided the following conditions are satisfied :

- It has been decided that cases where delayed claims of refund are being considered would be taken up for scrutiny.
- The refund has arisen as a result of excess tax deducted/collected at source and payments of advance tax and the amount of refund does not exceed Rs. 5,00,000 for one assessment year.
- The income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act.
- No interest will be admissible on the belated refund claims.
- No claims under this provision will be entertained where a period of more than 6 assessment years has elapsed.

Board have also decided that in such cases—

a. where the refund does not exceed Rs. 1,00,000 for any assessment year, the Assessing Officer shall obtain the prior approval of the Commissioner of Income-tax before entertaining a belated refund claim;

b. where the refund exceeds Rs. 1,00,000 but does not exceed Rs. 5,00,000 for any assessment year, the Assessing Officer shall obtain the prior approval of CCIT or DGIT before entertaining a belated refund claim; and

c. where the refund exceeds Rs. 5,00,000, approval of the Board is required.

Other points

308. One should also keep in view the following points :

Refund on appeal [Sec. 240]

308.1 Where refund arises as a result of any order passed in appeal or other proceedings under the Act, no formal application from the assessee is required. The Assessing Officer is bound to grant refund *suo motu*.

WHEN REFUND BECOMES DUE

308.1-1 Under section 240, refund becomes due as follows—

Situations	*Due date*
1. An assessment is set aside or cancelled and an order of fresh assessment is directed to be made	The refund becomes due only on the making of such fresh assessment
2. Assessment is annulled	The refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee.

Power to withhold refund

308.2 Section 241 has been omitted from June 1, 2001.

Interest on delayed refunds

308.3 *See* para 297.

Set-off of refunds against tax remaining payable [Sec. 245]

308.4 If a refund is found to be due to any person, the tax authorities may, in lieu of payment of the refunds, set-off the amount to be refunded against the sum payable under the Act. No adjustment of refund due to assessee can be made against outstanding demand without service of a proper notice under provisions of section 245 and without giving proper opportunity of hearing to the petitioner—*Shiv Narain Shivhare* v. *Asstt. CIT* [1996] 88 Taxman 93/222 ITR 620 (MP).

UNIT II

RETURN, ASSESSMENT, PENALTIES, SETTLEMENT COMMISSION AND SEARCH

RETURN/ASSESSMENT OF INCOME

30 CHAPTER

When return is to be filed as statutory obligation [Sec. 139(1), (4A), (4B), (4C), (4D)]

314. The following persons are under statutory obligation to file return of income by virtue of section 139—

Section	*Different situations*		
139(1)(*a*)	A company/firm is required to submit its return of income (regardless of the quantum of income or loss).		
139(1)(*b*)	A person (other than an individual/HUF/AOP/BOI/artificial juridical person/company/firm) is required to submit his/its return of income, if income exceeds exemption limit‡.		
139(1)(*b*), read with sixth proviso	Individual/HUF/AOP/BOI/artificial juridical person is required to submit his/its return of income, if income [without claiming deduction under sections 10A, 10B, 10BA, 80C to 80U, (for the assessment years 2017-18 and 2018-19) under section 10(*38*) and (from the assessment year 2020-21) under section 54/54B/54D/54EC/54F/54G/54GA/54GB] exceeds the amount of exemption limit†.		
139(1)(*b*), read with seventh proviso (applicable with effect from the assessment year 2020-21)	Any person (other than a company or a firm) who is not required to furnish the return of income under any other provision of section 139(1) and who during the previous year – *a.* has deposited an amount (or aggregate of the amounts) exceeding Rs. 1 crore in one (or more) current account(s) in a bank/co-operative bank; or *b.* has incurred expenditure of an amount (or aggregate of the amounts) exceeding Rs. 2 lakh for himself (or any other person) for travel to a foreign country; or *c.* has incurred expenditure of an amount (or aggregate of the amounts) exceeding Rs. 1 lakh towards consumption of electricity; or *d.* fulfils such other conditions as may be prescribed.		
139(4A)	A person in receipt of income derived from property held under a trust for charitable or religious purposes is required to submit return of income if its income (without giving exemption under section 11 or 12) exceeds exemption limit‡.		
139(4B)	Chief executive officer of every political party is required to submit income-tax return if income of the political party (without giving exemption under section 13A) exceeds exemption limit‡.		
139(4C)	If total income (without claiming any exemption given below) of the assessee (who is qualified to claim exemption under the following sections) exceeds the exemption limit‡ –		
	- Section 10(*21*)	- Section 10(*23D*)	- Section 10(*23FB*)
	- Section 10(*22B*)	- Section 10(*23DA*)	- Section 10(*24*)(*a*)/(*b*)
	- Section 10(*23A*)	- Section 10(*23EC*)	- Section 10(*29A*)
	- Section 10(*23AAA*)	- Section 10(*23ED*)	- Section 10(*46*)
	- Section 10(*23B*)	- Section 10(*23EE*)	- Section 10(*47*)
	- Section 10(*23C*)(*iiiab*)/(*iiiac*)/(*iiiad*)/(*iiiae*)/(*iv*)/(*v*)/(*vi*)/(*via*)		

† Exemption limit for the assessment year 2019-20 is Rs. 2,50,000 [higher exemption limit (*a*) in the case of a resident senior citizen born on or after April 2, 1939 but on or before April 1, 1959: Rs. 3,00,000; and (*b*) in the case of a resident super senior citizen born on or before April 1, 1939: Rs. 5,00,000].

Exemption limit for the assessment year 2020-21 is Rs. 2,50,000 [higher exemption limit (*a*) in the case of a resident senior citizen born on or after April 2, 1940 but on or before April 1, 1960: Rs. 3,00,000; and (*b*) in the case of a resident super senior citizen born on or before April 1, 1940: Rs. 5,00,000].

‡ Exemption limit for the assessment years 2018-19 and 2019-20 is Rs. 2,50,000.

Section	*Different situations*
139(4D)	Any university/college/other institution referred to in section 35(1)(*ii*)/(*iii*) is required to submit return of income (return has to be submitted whether there is income or loss. Such return has to be submitted even if it is not required by any other provision).
139(4E)/(4F)	These sub-sections cover submission of return by business trust/investment fund.

■ *Compulsory filing of income-tax return in relation to assets located outside India* - In the case of a resident person (but other than not ordinarily resident), it is mandatory to furnish return of income (from the assessment year 2016-17) if he/it at any time during the previous year, –

a. holds (as a beneficial owner or otherwise) any asset (including financial interest in any entity) located outside India or has signing authority in any account located outside India, or

b. is a beneficiary in any asset (including any financial interest in any entity) located outside India.

For any person (maybe individual or a person other than individual) who satisfies the above two conditions, furnishing of return has become mandatory, irrespective of the fact whether the person has taxable income or not.

Exception - The above provisions shall not apply to an individual, being a beneficiary of any asset (including any financial interest in any entity) located outside India where, income, if any, arising from such asset is includible in the income of the person referred to in (*a*) (*supra*).

Beneficial owner - In respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person.

Beneficiary - In respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary.

■ *Political parties* - Political parties are under a statutory obligation to file return of income in respect of each assessment year in accordance with the provisions of the Income-tax Act and total income for this purpose has to be computed without giving effect to provisions of section 13A—*Common Cause A Registered Society* v. *Union of India* [1996] 85 Taxman 600/222 ITR 260 (SC).

Exemption provided by the Government when taxable income of an individual is up to Rs. 5,00,000

314.1 This exemption is available only for the assessment year 2012-13.

Return form

314.2 These forms are given below—

ITR Forms	*Subject*
ITR-1 (i.e., *SAHAJ)*	For a resident and ordinarily resident individual who has income from salary/family pension/one house property (not being brought forward loss or loss to be carried forward)/income from other sources (not being loss and, not being winning from lottery/income from race horses) and who has not claimed any deduction under section 57 (except standard deduction pertaining to family pension) [*see* Note 1]
ITR-2	For an individual/HUF where the total income does not include income under the head business or profession
ITR-3	For an individual/HUF having income under the head business or profession
ITR-4 (i.e., *Sugam)*	For an individual or a resident and ordinarily resident HUF or a resident firm (non being LLP) deriving business income and such income is computed in accordance with special provisions referred to in section 44AD, 44ADA or 44AE [*see* Note 2]
ITR-5	For firms, AOPs and BOIs or any other person (not being individual or HUF or company or to whom ITR-7 is applicable)
ITR-6	For companies other than companies claiming exemption under section 11
ITR-7	For persons including companies required to furnish return under section 139(4A)/(4B)/(4C)/(4D)

ITR Forms	*Subject*
ITR-V	Where the data of the return of income in Forms ITR-1, ITR-2, ITR-3, ITR-4, ITR-5 and ITR-7 transmitted electronically without digital signature

Note 1 - ITR-1 is not applicable in the case of a person who, –

- has assets (including financial interest in any entity) located outside India;
- has signing authority in any account located outside India;
- has income from any source outside India;
- has income to be apportioned in accordance with provisions of section 5A;
- is a director in any company;
- has held any unlisted equity share at any time during the previous year;
- is assessable for the whole (or any part) of the income on which tax has been deducted at source in the hands of a person other than the assessee;
- has claimed any relief of tax under section 90/90A/91;
- has agricultural income, exceeding Rs. 5,000;
- has total income, exceeding Rs. 50 lakh;
- has income taxable under section 115BBDA; or
- has income of the nature referred to in section 115BBE.

Note 2 - ITR-4 is not applicable in the case of a person mentioned in *Note 1* given above. Besides, ITR-4 is not applicable in the case of a person who, –

- owns more than one house property, the income of which is chargeable under the head "Income from house property";
- has any brought forward loss or loss to be carried forward under any head of income.

314.2-1 Mode of submission of income-tax return for the assessment year 2019-20 is as follows– *MODE OF SUBMISSION*

Person	*Conditions*	*Mode of furnishing return*
Individual/ HUF	■ *Case 1* - Accounts are required to be audited under section 44AB	Electronically with digital signature
	■ *Case 2* - Return submitted by an individual (who was born before April 2, 1939) in ITR-1 or ITR-4	- Electronic mode given in *Case 3*; or - Paper format
	■ *Case 3* - Any other case	Return can be submitted by using any one of the following electronic modes – *A.* Electronically under digital signature; or *B.* Transmitting the data in the return electronically under electronic verification code; or *C.* Transmitting the data in the return electronically and thereafter submitting the verification of the return in Form ITR-V†.
Company	■ *Case 4* - Any company	Electronically with digital signature
Person required to furnish return in ITR-7	■ *Case 5* - Political party	Electronically with digital signature
	■ *Case 6* - Any other case	Electronic mode given in *Case 3*
Firm, LLP or any person (not mentioned above) required to furnish return in ITR-5	■ *Case 7* - Accounts are required to be audited under section 44AB	Electronically with digital signature
	■ *Case 8* - Any other case	Electronic mode given in *Case 3*

† ITR-V should be sent within "specified period" by ordinary post (or speed post) to "Income-tax Department-CPC, Post Box No. 1, Electronic City Post Office, Bengaluru - 560100, Karnataka". "Specified period" for this purpose is 120 days from the date of uploading the electronic return. However, this period has been extended from time to time in past. If ITR-V is not furnished within the "specified period", then it will be deemed that the assessee has not submitted his return of income. In such a case, the assessee will have to re-submit the return.

Note - For the aforesaid table "electronic verification code" means a code generated for the purpose of electronic verification of the person furnishing the return of income as per the data structure and standards specified by Principal Director General (Systems) or Director General (Systems).

MODE OF SUBMISSION OF AUDIT REPORT

314.2-2 No document, audit report, statement, accounts, etc., can be attached with return forms. However, where an assessee is required to furnish a report of audit specified under section 10(*23C*)(*iv*)/(*v*)/(*vi*)/(*via*), section 10A, section 10AA, section 12A(1)(*b*), section 44AB, section 44DA, section 50B, section 80-IA, section 80-IB, section 80-IC, section 80-ID, section 80JJAA, section 80LA, section 92E, section 115JB or section 115VW or to give a notice under section 11(2)(*a*), he shall furnish the same electronically.

Time for filing return of income [Sec. 139(1)]

314.3 The due dates for filing returns of income are given below :

Different situations	*Due date of submission of return [see also Note]*
1. Where the assessee is required to furnish a report under section 92E pertaining to international or specified domestic transaction(s)	November 30
2. Where the assessee is a company [not having international or specified domestic transaction(s)]	September 30
3. Where the assessee is a person other than a company [not having international or specified domestic transaction(s)]	
3.1 In case where accounts of the assessee are required to be audited under any law	September 30
3.2 Where the assessee is a "working partner" in a firm whose accounts are required to be audited under any law	September 30
3.3 In any other case	July 31

When return of loss should be filed [Sec. 139(3)]

315. The return of loss should be filed in the prescribed form* and within the time allowed under section 139(1)†. The following losses cannot be carried forward if the return of loss is not submitted in time —

a. business loss (speculative or otherwise) ;

b. capital loss ; and

c. loss from the activity of owning and maintaining race horses.

However, the delay may be condoned if a few conditions are satisfied—Circular No. 8/2001, dated May 16, 2001.

Belated return [Sec. 139(4)]

316. If return is not furnished within the time allowed under section 139(1) or within the time allowed under notice issued under section 142(1), the person may furnish the return of any previous year at any time before the end of relevant assessment year or the completion of assessment#, whichever is earlier.

For instance, a corporate-assessee is supposed to file return for the assessment year 2019-20 by September 30, 2019. If it does not file return up to September 30, 2019, then such return, if submitted after the said date, will be belated return. Such belated return may be submitted before the end of assessment year (*i.e.*, up to March 31, 2020). If, however, the assessment is completed before March 31, 2020, then such return should be submitted before the completion of assessment.

Other points

316.1 The following propositions should also be kept in view :

■ If an assessee files belated return, he would be liable for penal interest under section 234A.

■ The assessee shall be liable for late filing fee under section 234F. Late filing fee under section 234F is Rs. 5,000 (if the return is furnished after the due date but on or before December 31 of the assessment year) or Rs. 10,000 (if return is furnished after December 31 of the assessment year). However, in a case where the total income does not exceed Rs. 5 lakh, the late filing fee amount shall not exceed Rs. 1,000.

**See* para 314.2.

†*See* para 314.3.

Assessment refers to assessment made under section 143(3) or 144. An intimation under section 143(1) is not assessment.

■ If return of loss is submitted after the due date, a few losses cannot be carried forward. However, CBDT has power under section 119(2) to condone delay in case of a return which is filed late and where a claim for carry forward of losses is made.

■ If return is submittedly belated, deduction under sections 10A, 10B, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID and 80-IE is not be available.

■ If a return is filed after the completion of assessment but before service of demand notice, such return is not a valid return—*Dhaniram Dharam Pal* v. *CIT* [1936] 4 ITR 114 (Lahore). For instance, the best judgment assessment is made on February 11, 2019 for the assessee's failure to file return (for the assessment year 2017-18) despite notice under section 142. But before the assessment order is served on February 23, 2019, the assessee files a return on February 15, 2019. It is not a valid return—*see Bhaskaran* v. *ITO* [1963] 47 ITR 334 (Ker.). Return in this case can be filed before February 11, 2019. If, however, the best judgment assessment is made after March 31, 2018, then return of income can be filed up to March 31, 2018.

Revised return [Sec. 139(5)]

317. If certain conditions are satisfied, a person may furnish a revised return of income under section 139(5).

Conditions

317.1 The following conditions one has to satisfy :

1. Which return can be revised - For different assessment years, relevant rules are given below –

Up to the assessment year 2016-17	A return can be revised only if such return is furnished under section 139(1) or in pursuance of a notice under section 142(1). A belated return filed under section 139(4) cannot be revised — *Kumar Jagdish Chandra Sinha* v. *CIT* [1996] 86 Taxman 122 (SC).
From the assessment year 2017-18	If any person, having furnished a return under section 139(1)/(4), discovers any omission or any wrong statement therein, he may furnish a revised return. From the assessment year 2017-18, even a belated return submitted under section 139(4) can be revised.

2. Any omission/wrong statement can be corrected - Revised return can be filed under section 139(5) only if the assessee discovers any omission or wrong statement in return originally filed. The benefit of filing a revised return cannot be claimed by a person who has initially filed a return, knowing it to be false. Omission or wrong statement in the original return must be due to a *bona fide* inadvertence or mistake on the part of the assessee.

Where omission or wrong statement in original return is discovered by the department as a result of enquiry and thereafter a revised return is furnished making amendment, that would not amount to a revised return as contemplated under section 139(5) - *CIT* v. *Grey Cast Foundry Works* [2006] 99 ITD 515 (Ahd.).

3. Revised return should be filed within the time-limit given under section 139(5) - Revised return under section 139 can be filed –

- Up to the assessment year 2017-18	At any time before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier.
- From the assessment year 2018-19	At any time before the end of the relevant assessment year or before the completion of assessment, whichever is earlier.

For the assessment year 2019-20, a revised return can be filed up to March 31, 2020. If, however, the assessment is completed before March 31, 2020 (say on December 15, 2019), then revised return can be filed before December 15, 2019.

Other points

317.2 The following broad propositions taken from different judicial pronouncements should be kept in view while understanding the implications of section 139(5):

■ A second revised return can be filed under section 139(5) for correcting any omission or wrong statement made in the first revised return. However, it should be submitted within the time stated above, *i.e.*, within one year from the end of the assessment year or before completion of the assessment, whichever is earlier.

The period of limitation prescribed under section 153(1) will run from the date of filing of second revised return, if the assessee has filed two revised returns—*Niranjan Lal Ram Chandra* v. *CIT* [1982] 134 ITR 352 (All.).

■ There is no provision in the Income-tax Act to seek permission to revise a return. It is a right of the assessee to submit such return. However, an application purporting to be under section 139(5), seeking permission to revise the return as originally filed, cannot be treated as a revised return—*Waman Padmanabh Dande* v. *CIT* [1952] 22 ITR 339 (Nag.).

■ "Assessment" refers to the assessment made under section 143(3) or 144. An intimation served to the assessee under section 143(1) will not constitute an "assessment". Consequently, if an assessee files a revised return after the service of an intimation under section 143(1) (but before the time given above), it will be duly considered by the Assessing Officer.

What is a defective or incomplete return [Sec. 139(9)]

318. Section 139(9) is applicable as follows—

1. Defective return - The Assessing Officer considers that the return of income furnished by the assessee is defective [when a return becomes defective - *see* para 318.1].

2. Intimation of defect - The Assessing Officer may intimate the defect to the assessee.

3. Time-limit for rectification of defect - The Assessing Officer may give the assessee an opportunity to rectify the defect within a period of 15 days from the date of such intimation. This time-limit may be extended by the Assessing Officer on an application by the assessee. If, however, an application filed by an assessee for extension of time is not disposed of (*i.e.*, no action is taken and the Assessing Officer remains silent), then only conclusion is that time asked for by the assessee has been granted by the Assessing Officer—*Indus Motor Co. Ltd.* v. *CIT* [2009] 116 ITD 207 (Coch.).

4. If defect is not rectified within the given time - If the defect is not rectified by the assessee within the period of 15 days (or such further extended period), then the Assessing Officer shall treat the return as an invalid return and the other provisions of the Act will apply as if the taxpayer had failed to furnish the return.

5. If defect is rectified after the given time but before the completion of assessment - Where the assessee rectifies the defect after the expiry of the period of 15 days (or such further extended period) but before assessment is made, the Assessing Officer may condone the delay and treat the return as a valid return.

When a return is defective

318.1 A return of income is regarded as defective in the following cases—

RETURN FORM HAS NOT BEEN DULY FILLED

318.1-1 All items in income-tax return form (*i.e.*, ITR-1 to ITR-8) must be filled in the manner indicated in the return form. If any schedule of the relevant form is not applicable in the case of an assessee, it should be scored across as "——NA——". If any item is inapplicable, one should write "NA" against it. One should write "NIL" to denote *nil* figure. No column or row should be left blank. Otherwise the return may be liable to be held defective or even invalid.

RETURN WITHOUT SELF-ASSESSMENT TAX

318.1-2 The return of income shall be regarded as defective unless the tax together with interest, if any, payable in accordance with the provisions of section 140A has been paid on or before the date of furnishing of the return.

This provision has been amended by the Finance Act, 2016 from the assessment year 2017-18. After this modification, a return (which is otherwise valid) would not be treated defective merely because self-assessment tax and interest payable in accordance with the provisions of section 140A, have not been paid on or before the date of furnishing of the return.

ANNEXURES, STATEMENTS, ACCOUNTS, ETC.

318.1-3 Under section 139(9), a few statements, reports, proof of pre-paid taxes, accounts*, etc., should accompany the return of income, otherwise the return will become defective. However, it is not possible to attach any certificate or report or computation or final accounts with new income-tax return forms. Likewise, it is not possible to attach proof of pre-paid taxes (like tax deducted/collected at source, advance payment of tax, self-assessment tax). The assessee should, therefore, retain these certificates, report, computation, final accounts, proof of pre-paid taxes

**See* Next page.

with him. These may be furnished whenever the Assessing Officer wants to examine them in assessment proceedings or otherwise. Return of income will not become defective because of non-fulfilment of this requirement.

Clarification from the Board

318.2 The following points (*vide* Circular No. 281, dated September 22, 1980) may be carefully noted in regard to the aforesaid provision in section 139(9) :

■ *Defects other than the specified defects* - The provisions in section 139(9) are not applicable in the case of returns which do not contain any defects specified above. However, the Calcutta High Court in *CIT* v. *Rai Bahadur Bissesswarlal Motilal Malwasie Trust* [1992] 195 ITR 825 has held that the defects specified in section 139(9) are only illustrative and not exhaustive. The Assessing Officer cannot ignore the specified defects and must get them rectified but to contend that only the defects specified can be got rectified and no other defects would be putting unnecessary restrictions on the power of the Assessing Officer, leading to inconvenient consequences and absurd results not intended by the Legislature. The Assessing Officer has the power to ask the assessee to remove all defects in the return other than the defects making the return invalid.

■ *Invalid return* - The provision makes a distinction between a defective return and an invalid return. A defective return is not always regarded as an invalid return. When a return contains any of the defects given by section 139(9), it is treated as defective return. If the assessee fails to rectify the same within the specified period the return will be treated as an invalid return. In this connection, a reference may be made to section 292B which, *inter alia,* provides that no return of income will be invalid merely by reason of mistake, defect or omission in such return of income. The provision in section 139(9), however, overrides other provisions of the Income-tax Act (including section 292B) in this regard and in a case where any of the specified defects are not removed within the time allowed, the return will be treated as invalid return and the provisions of the Income-tax Act will apply as if the assessee had failed to furnish the return.

What is permanent account number (PAN) [Sec. 139A]

319. The following persons are required to obtain a PAN [application should be submitted in Form No. 49A† (in case of foreign citizen : Form No. 49AA)] –

■ *If income exceeds exemption limit or turnover exceeds Rs. 5,00,000* - Application should be submitted to obtain PAN before May 31 of the assessment year for which the income exceeds the maximum amount chargeable to tax or before the end of the accounting year for which the gross turnover or receipts exceed Rs. 5,00,000.

■ *Charitable trust* - A person who is required to furnish return of income under section 139(4A) (*i.e.*, charitable trust) is required to obtain PAN.

■ *Financial transaction in aggregate of Rs. 2,50,000 or more* - Any resident person (not being an individual) who enters into a financial transaction of an amount aggregating to Rs. 2,50,000 or more during a financial year (as well as managing director, director, partner, trustee, author,

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*These are as follows—

a. a statement showing the computation of tax payable on the basis of the return ;

b. the report of audit obtained under section 44AB (or where the report has been submitted prior to furnishing of return, a copy of audit report together with proof of furnishing the report) ;

c. the proof of pre-paid taxes (*i.e.*, tax deducted/collected at source, advance tax, etc.);

d. where regular books of account are maintained by an assessee :

   i. copies of manufacturing account, trading account, profit and loss account or income and expenditure account, or any other similar account and balance sheet ;

   ii. in the case of a proprietary business or profession, the personal account of the proprietor; in the case of a firm, association of persons or body of individuals, personal accounts of the partners or members; and in the case of a partner or member of a firm, association of persons or body of individuals, his personal account in the firm, association of persons or body of individuals ;

e. where the accounts of the assessee have been audited, copies of the audited profit and loss account and balance sheet and a copy of the auditor's report and cost audit report under section 233B of the Companies Act ;

f. where regular books of account are not maintained by the assessee, a statement indicating the amount of turnover or gross receipts, gross profit, expenses and net profit of the business or profession and the basis on which such amount have been computed, as also of the amount of total sundry debtors, sundry creditors, stock-in-trade and cash balance as at the end of the previous year.

† A company (which is not registered under the Companies Act, 2013) can apply for Permanent Account Number in Form No. INC-7 specified under section 7(1) of the Companies Act.

founder, karta, chief executive officer, principal officer or office bearer of such person or any person competent to act on behalf of such person) is required to obtain permanent account number with effect from April 1, 2018.

■ *When payment is received after tax deduction* - In the case of a person who is entitled to receive any sum or income or amount, on which tax is deductible in any financial year, shall apply for allotment of permanent account number before the end of such financial year.

■ *Notified transactions* - Any person who intends to enter into such transaction as may be prescribed by the Board in the interest of revenue, is required to obtain permanent account number (applicable with effect from September 1, 2019).

■ *Person specified by the Central Government* - From June 1, 2006, the Central Government has power to notify (for collection of any information) any person to apply for PAN. For this purpose, the following persons have been notified by the Central Government and these persons shall apply to the Assessing Officer for PAN – exporters/importers, assessees under central excise/service tax/sales tax.

■ *Allotment by Assessing Officer of his own* - Besides above cases, the Assessing Officer may also allot a PAN to any other person by whom tax is payable. Any other person may also apply for a PAN.

Where the PAN should be quoted or to whom PAN should be intimated

319.1 PAN should be quoted or intimated as follows –

■ *Intimation of PAN by a deductee to person deducting tax at source* - Every person receiving any income from which tax has been deducted shall intimate his PAN to the person responsible for deducting tax (however, a non-resident Indian referred to in section 115G is an exception).

■ *Intimation of PAN to person collecting tax at source* - Every "buyer" or "licensee" or "lessee" under section 206C shall intimate his PAN to the "seller".

■ *Quote own PAN in returns, certificates, correspondence* - It shall be the duty of every person who has been allotted PAN to quote such number in all his returns or correspondence with income-tax authorities, quote such numbers in all challans for the payment of any sum, quote such number in all documents pertaining to such transactions as may be prescribed by the Board in the interest of the revenue.

If a person does not have PAN he will have to submit a declaration in Form No. 60. However, a person having only agricultural income (if Form No. 61 is submitted) or a non-resident or if the payers are the Central Government/State Government/Consular Offices, are not subject to the aforesaid provisions.

■ *Quote PAN of recipient/purchaser in tax deduction/collection at source* - Persons who are responsible for deducting/collecting tax at source should mention PAN of the recipient/purchaser in Form Nos. 16, 16A, 24Q, 26Q, 27D, 27Q and 27EQ.

Other points

319.2 The following points should be noted—

1. Every person, receiving any document relating to the prescribed transactions shall ensure that the permanent account number has been duly quoted in the document.

2. Every person shall intimate the Assessing Officer any change in his address or in the name and nature of his business on the basis of which the permanent account number was allotted to him.

3. No person who has already been allotted a permanent account number shall apply to obtain or possess another permanent account number.

4. In case of issuance of PAN number and card the maximum period should be three months from the date of application—*Chandrakant Kandlal Sheth* v. *Union of India* [2002] 125 Taxman 975 (Cal.).

Quoting of Aadhaar number [Sec. 139AA]

319A. Section 139AA has been inserted with effect from April 1, 2017. Provisions of this section are given below –

■ *Category A* - Every person who is eligible to obtain Aadhaar number shall (on or after July 1, 2017) quote Aadhaar number –

a. in the application for the allotment of PAN;

b. in the income-tax return.

Where, however, the person does not possess the Aadhaar number, the Enrolment ID (of Aadhaar application form issued to him at the time of enrolment) shall be quoted in the application for PAN or in the return of income.

■ *Category B* -Every person who has been allotted PAN as on the July 1, 2017, and who is eligible to obtain Aadhaar number, shall intimate his Aadhaar number to the prescribed authority in prescribed form on or before a date to be notified by the Central Government (*i.e.,* September 30, 2019)‡.

■ *Consequences of non-intimation of Aadhaar* - In case of failure to intimate Aadhaar number –

- the PAN allotted to the person shall be deemed to be invalid and the other provisions of the Act shall apply (as if the concerned person had not been applied for allotment of PAN) (applicable up to August 31, 2019).
- the PAN allotted to such person shall be made inoperative (in the prescribed manner) (applicable with effect from September 1, 2019).

■ *When provisions of section 139AA not applicable* -The provisions of section 139AA shall not apply to such person or class of classes of persons or any State or part of any State, as may be notified by the Central Government.

The Central Government has notified that the provisions of section 139AA shall not apply to an individual who does not possess the Aadhaar number or the Enrolment ID and is –

a. residing in Assam, Jammu and Kashmir and Meghalaya;

b. a non-resident as per the Income-tax Act;

c. of the age of 80 years or more at any time during the previous year (*i.e.*, super-senior citizen);

d. not a citizen of India.

It is not mandatory for an individual (as notified above) to quote his/her Aadhaar Number in return of income.

Scheme to facilitate submission of returns through Tax Return Preparers [Sec. 139B]

320. Section 139B provides as follows—

■ For the purpose of enabling any specified class or classes of persons to prepare and furnish returns of income, the Board may, by way of notification, frame a scheme providing that such persons may furnish their returns of income through a Tax Return Preparer authorised to act as such under the scheme.

■ The Scheme framed under the above provisions shall specify the manner in which the Tax Return Preparer shall assist the persons furnishing the return of income, and shall also affix his signature on such return.

■ A Tax Return Preparer may be an individual other than a person referred to in section 288(2)(*ii*)/(*iv*) or an employee of the specified class or classes of persons, who has been authorised to act as a Tax Return Preparer under the above scheme.

■ The above scheme shall also provide the manner in which a Tax Return Preparer shall be authorised, the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Tax Return Preparer, the code of conduct for the Tax Return Preparer, the duties and obligations of the Tax Return Preparer, the manner in which the authorisation may be withdrawn, and any other matter which is required to be or may be specified.

Power of Board to dispense with Furnishing of document

320A. Section 139C provides that the Board may make rules providing for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificate, audited reports or any other documents, which are otherwise under any other provisions of this Act, except section 139D, required to be furnished, along with the return. However, such documents shall be produced on demand before the Assessing Officer.

Filing of return in

320B. Section 139D provides that the Board may make rules providing for the class or classes of persons who shall be required to furnish the return of income in electronic form; the form and

‡ However, notwithstanding the last date of linking of Aadhaar number with PAN being extended to September 30, 2019, with effect from April 1, 2019, it is mandatory to quote Aadhaar number while filing the return of income as required under section 139AA(1)(*ii*) unless specifically exempted from the operation of section 139AA. Returns (whether submitted electronically or manually) cannot be filed without quoting the Aadhaar number – Notification No. 31/2019, dated March 31, 2019.

electronic form [Sec. 139D]

the manner in which the return of income in electronic form may be furnished; the documents, statements, receipts, certificates or audited reports which may not be furnished along with the return of income in electronic form but shall be produced before the Assessing Officer on demand; the computer resource or the electronic record to which the return of income in electronic form may be transmitted.

Return by whom to be verified [Sec. 140]

321. The return of income is required to be verified :

Different assessees	*Who should verify the return*
Individual	By the individual himself or where the individual concerned is absent from India by the individual himself or by some person duly authorised by him on his behalf* and, where the individual is mentally incapacitated from attending to his affairs, by his guardian or a person competent to act on his behalf, and where for any other reason, it is not possible for the individual to verify the return, by any person duly authorised by him in this behalf.
Hindu undivided family	By the karta, or where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of the family.
Company	By the managing director thereof, or where, for any unavoidable reason, such managing director is not able to verify, or where there is no managing director, by any director of the company.
Firm	By the managing partner thereof or where, for any unavoidable reason, such managing partner is not able to verify or where there is no managing partner, by any partner thereof, not being a minor.
Limited liability partnership	By the designated partner thereof, or where for any unavoidable reason such designated partner is not able to verify or where there is no designated partner, by any partner thereof.
Local authority	By the principal officer thereof.
Political party	By the chief executive officer of such party.
Any other association	By any member of the association or the principal officer thereof.
Any other person	By that person or by some other person competent to act on his behalf.

What is self-assessment [Sec. 140A]

322. The provisions of section 140A are given below—

■ An assessee is required to submit his return of income under section 139 or 142 or 148 or 153A or 158BC.

■ Before submitting the aforesaid return, he is supposed to find it whether any tax and/or interest is payable. For this purpose tax and/or interest shall be calculated as follows:

Find out income-tax, surcharge and education cess as per return of income		xxxx
Add: Interest and fee—		
Interest under section 234A or 115WK for late submissions of return of income*	xxxx	
Interest under section 234B for non-payment or short payment of advance tax*	xxxx	
Interest under section 234C for non-payment or short payment of different instalments of advance tax*	xxxx	
Fee under section 234F for late submission of return of income	xxxx	xxxx
Total tax, interest and fee		xxxx
Less: Advance tax, tax deducted at source, tax collected at source, MAT credit under section 115JAA, alternate minimum tax credit under section 115JD and relief under section 89/90/90A/91A		xxxx
Self-assessment tax payable under section 140A		xxxx

*Interest under sections 234A, 234B and 234C shall be calculated on the basis of income declared in the return of income.

■ Self-assessment tax so determined shall be deposited by the assessee before submitting return of income. After March 31, 2008, all corporate assessees and other assessees (who are subject to compulsory audit under section 44AB) will have to make electronic payment of tax through internet banking facility offered by authorized banks. Alternatively, these taxpayers can make electronic payment of tax through internet by way of credit or debit cards. It is not necessary for the assessee to make payment of taxes from his own account in an authorized bank. An assessee can make electronic payment of taxes also from the account of any other person. However, the

*Such person shall be holding a valid power of attorney and such power of attorney shall be attached to the return.

challan for making such payment must clearly indicate the Permanent Account Number (PAN) of the assessee on whose behalf the payment is made—Circular No. 5/2008, dated July 17, 2008.

■ The proof of deposit should be submitted in the return of income (*i.e.*, BSR code/bank, serial No. of challan, amount of deposit and dates of deposit).

■ Where the amount paid by the assessee falls short of the aggregate of tax, interest and fee, the amount so paid shall first be adjusted towards interest and fee payable and the balance, if any, shall be adjusted towards tax payable.

Case study

Tax liability of X for the assessment year 2019-20 is Rs. 2,40,000. He is liable to pay interest under sections 234A, 234B and 234C of Rs. 4,340, Rs. 12,000 and Rs. 10,000, respectively. He is liable to pay a late fee of Rs. 5,000 under section 234F. He is entitled for tax credit on account of pre-paid taxes (*i.e.*, advance tax paid during the financial year 2018-19 : Rs. 17,000 and tax deducted/collected at source : Rs. 6,000). At the time of filing of return of income for the assessment year 2019-20 on December 12, 2019, the tax payable under section 140A shall be determined as under :

	Rs.	*Rs.*
Income-tax		2,40,000
Add : Interest/fees		
Under section 234A	4,340	
Under section 234B	12,000	
Under section 234C	10,000	
Under section 234F	5,000	31,340
Total		2,71,340
Less : Prepaid taxes		
Advance tax	17,000	
Tax deducted, collected at source, MAT credit and double taxation relief under section 90/90A/91	6,000	23,000
Self-assessment tax under section 140A		2,48,340

If the amount of tax paid under section 140A is less than Rs. 2,48,340, then the amount paid under section 140A, shall be first adjusted towards interest and fee payable and the balance if any, shall be adjusted towards tax payable. Suppose in the above case X pays (*a*) Rs. 1,69,000 or (*b*) Rs. 25,000 under section 140A, then tax so paid shall be adjusted as under :

	Situation (a) *Rs.*	*Situation (b)* *Rs.*
Tax paid under section 140A	1,69,000	25,000
Amount treated as payment of interest under sections 234A, 234B and 234C or fee under section 234F	31,340	25,000
Amount treated as payment of tax (Rs. 1,69,000 — Rs. 31,340)	1,37,660	*Nil*

Other points

322.1 The following should also be kept in view :

■ After a regular assessment of income has been made, any amount paid under section 140A shall be deemed to have paid towards such regular assessment.

■ If any assessee fails to pay whole or any part of such tax or interest or fee in accordance with the provisions of section 140A, he shall (without prejudice to any other consequences which he may incur) be deemed to be an assessee in default in respect of the tax or interest or fee remaining unpaid, and all the provisions of the Act shall apply accordingly.

What is inquiry before assessment under section 142 or 142A

323. Sections 142 and 142A deals with the following :

1. Giving notice to the assessee to submit return (if not submitted earlier), produce accounts, documents, etc.	Sec. 142(1)
2. Making inquiry and giving opportunity to assessee	Sec. 142(2), (3)
3. Giving direction to get books of account audited	Sec. 142(2A) to (2D)
4. Valuation Officer	Sec. 142A

Giving notice to the assessee [Sec. 142(1)]

323.1 For the purpose of making assessment, the Assessing Officer may serve on any person a notice under section 142(1), for the following purposes :

■ *Return of income* - If the assessee has not submitted a return of income within the time allowed under section 139(1) or before the end of the relevant assessment year the Assessing Officer may require him to submit the return of income in the prescribed form on or before a date specified in the notice. Such notice can be served during the assessment or even after the end of the assessment year.

■ *Time limit* - If a person has not submitted his return of income within the due date given under section 139(1), the Assessing Officer may serve a notice under section 142(1)(*i*) on such person requiring him to furnish the return of his income in the prescribed form and manner. Such notice can be issued at any time after the expiry of time-limit given under section 139(1).

■ *Document and accounts* - The Assessing Officer may ask the assessee to produce (or cause to be produced), such documents/accounts as he may require. However, the Assessing Officer shall not require the production of any accounts pertaining to a period more than 3 years prior to the previous year.

■ *Furnishing information* - The Assessing Officer may require the assessee to furnish in writing (and verified in the prescribed manner) information in such form and on such points or matters (including a statement of all assets and liabilities of the assessee, whether included in the accounts or not) as he may require. However, the previous approval of the Joint Commissioner shall be obtained before requiring the assessee to furnish a statement of all assets and liabilities not included in the accounts.

Making inquiry [Sec. 142(2), (3)]

323.2 For the purpose of obtaining full information in respect of the income (or loss) of any person, the Assessing Officer may make such inquiry as he considers necessary. However, the assessee shall (except where the assessment is made under section 144) be given an opportunity of being heard in respect of any material gathered on the basis of any inquiry or any audit under section 142(2A) and proposed to be utilised for the purpose of the assessment.

Giving direction for audit [Sec. 142(2A) to (2D)]

323.3 If the following conditions are satisfied the Assessing Officer may direct the assessee to get his accounts audited by an accountant nominated by the Chief Commissioner/Commissioner. Such direction can be issued under section 142(2A) even if accounts of the assessee have been audited under any other provision.

■ *Conditions* - The conditions are :

a. such direction can be issued at any stage of proceeding before the Assessing Officer (in other words, no such direction can be issued after the completion of proceedings before the Assessing Officer) ;

b. such direction can be issued only if having regard to the nature and complexity of the accounts† of the assessee and interest of revenue, the Assessing Officer is of opinion that it is necessary so to do ; and

c. such direction can be issued only with the previous approval of the Chief Commissioner/ Commissioner; and

d. (from June 1, 2007) such direction shall be issued only if the assessee has been given a reasonable opportunity of being heard.

WITHIN THE PRESCRIBED TIME AUDIT REPORT SHOULD BE SUBMITTED‡

323.3-1 The audit report shall be furnished by the assessee within the period specified by the Assessing Officer.

EXTENSION OF TIME ON AN APPLICATION MADE BY THE ASSESSEE

323.3-2 The Assessing Officer has power to extend the time for furnishing audit report on an application made by the assessee.

■ *Extension of time by the Assessing Officer* suo motu - The Assessing Officer has power to grant extension on an application made by the assessee (and when there are good and sufficient reasons for such extension). He can also grant such extension on his own.

■ *Aggregate period not to exceed 180 days* - The aggregate period (fixed originally or extended) shall not exceed 180 days.

†The Assessing Officer can order for special audit not only for the reason of complexity of accounts but also in the cases given below –

a. volume of the accounts;

b. doubts about the correctness of accounts;

c. multiplicity of transactions in the accounts; or

d. specialized nature of business activity of assessee.

‡ To be uploaded.

AUDIT FEES

323.3-3 Where any direction is issued (on or after June 1, 2007) under section 142(2A) by the Assessing Officer to an assessee to get the accounts audited, the expenses of, and incidental to, such audit (including the remuneration of the chartered accountant) shall be determined by the Chief Commissioner or Commissioner in accordance with prescribed guidelines. The expenses so determined shall be paid by the Central Government.

■ Every Chief Commissioner shall maintain a panel of chartered accountants.

■ Where the Assessing Officer directs for audit on or after June 1, 2007, the expenses of, and incidental to, audit (including the remuneration of the Accountant, qualified Assistants, semi-qualified and other Assistants who may be engaged by such Accountant) shall not be less than Rs. 3,750 and not more than Rs. 7,500 for every hour of the period as specified by the Assessing Officer.

■ The period referred shall be specified in terms of the number of hours required for completing the report.

■ The Chartered Accountant shall maintain a time-sheet and shall submit it to the Chief Commissioner or Commissioner, along with the bill.

■ The Chief Commissioner or the Commissioner shall ensure that the number of hours claimed for billing purposes is commensurate with the size and quality of the report submitted by the accountant.

CONSEQUENCES OF FAILURE TO GET BOOKS AUDITED

323.3-4 Failure to comply with direction under section 142(2A) to get books of account audited entails a best judgment assessment under section 144. Besides, it attracts penalty under section 271 and prosecution under section 276D. These provisions are attracted only if there is a default by the assessee. If accountant nominated by the Commissioner refuses to audit the accounts, the assessee cannot be held responsible— *Swadesh Polytex Ltd.* v. *CIT* [1983] 144 ITR 171 (SC).

NO OVERLAPPING BETWEEN SECTIONS 44AB AND 142(2A)

323.3-5 There is no merit in the submission that section 44AB has replaced and rendered redundant section 142(2A) to the extent of the cases covered by the former provision—*Super Cassettes Industries Ltd.* v. *CIT* [1999] 102 Taxman 202 (Delhi).

AUDIT REPORT IS NOT BINDING ON ASSESSING OFFICER

323.3-6 Special audit report under section 142(2A) is not binding upon the Assessing Officer. Where the Assessing Officer neither rejects the report on its receipt nor directs the assessee to obtain a further report nor provides any opportunity to the assessee or to the auditor to meet out the defects, the Assessing Officer is not justified in discarding the report while passing the assessment order by observing that the same is incomplete and is demonstrative only. This is equally applicable even if he has mentioned that report has been utilized for the purpose of assessment wherever it is considered relevant and necessary—*CIT* v. *Sahara India Financial Corpn. Ltd.* [2004] 135 Taxman 154 (Mag.).

PAST HISTORY - NOT GUIDING FACTOR

323.3-7 Merely because no special audit under section 142(2A) is directed in the past or even thereafter for the assessment years subsequent to the assessment year in question, it cannot be said that the assessing authority is denuded of its power to order such special audit if the facts and circumstances warrant a special audit under section 142(2A)—*Bata India Ltd.* v. *CIT* [2002] 257 ITR 622/125 Taxman 808 (Cal.).

CONCLUSION

323.3-8 From the above decisions, the following principles emerge which have to be kept in mind while exercising the powers under section 142(2A)—

1. The Assessing Officer should form an opinion that the nature of the accounts of the assessee is complex.

2. The interest of the revenue will be adversely affected if the special audit is not directed.

3. The opinion should be formed objectively on the basis of materials before him and should be based on relevant consideration.

4. The Chief Commissioner of Income-tax or the Commissioner of Income-tax should grant approval of such a proposal after applying his mind to all the materials placed before him.

5. The guidelines issued by the Central Board of Direct Taxes contained in Instruction No. 1076, dated July 12, 1977 is binding on the authorities and a special auditor can be appointed only if the case falls under any of clauses mentioned therein provided the conditions mentioned in section 142(2A) are fulfilled.

6. No show-cause notice or opportunity of hearing is required to be given to the assessee before appointing special auditor, as it does not involve civil consequences. The order appointing special auditor is an administrative order—*UP Financial Corpn.* v. *CIT* [2005] 147 Taxman 21 (All.). However, from June 1, 2007, the Assessing Officer shall not direct the assessee to get the books of account audited unless the assessee has been given a reasonable opportunity of being heard.

Estimate by Valuation Officer in certain cases [Sec. 142A]

323.4 Section 142A has been inserted to supersede the ruling given in *Amiya Bala Paul* v. *CIT* [2003] 262 ITR 407 (SC) with retrospective effect from November 15, 1972. It provides as follows—

1. Where an estimate of the value of any investment referred to in section 69 or section 69B or the value of any bullion, jewellery or other valuable article referred to in section 69A or section 69B or fair market value of any property referred to in section 56(2) is required for the purposes of making any assessment or re-assessment, the Assessing Officer may require the Valuation Officer to make an estimate of the same and report to the Assessing Officer.

2. The Valuation Officer to whom such a reference is made shall, for the purpose of dealing with such reference, have all the powers that he has under section 38A of the Wealth-tax Act.

3. On receipt of the report from the Valuation Officer, the Assessing Officer may (after giving the assessee an opportunity of being heard) take into account such report for making assessment or reassessment.

Summary assessment

324. Under section 143(1), the Assessing Officer can complete the assessment without passing a regular assessment order. The assessment is completed on the basis of return submitted by the assessee. The provisions of section 143(1) are explained in the paras given below :

Intimation

324.1 Generally, tax administrations across countries adopt a two-stage procedure of assessment as part of risk management strategy.

- *First stage (generation of intimation through computerised processing)* - In the first stage, all tax returns are processed to correct arithmetical mistakes, internal inconsistencies, tax calculation and verification of tax payment. At this stage, no verification of the income is undertaken. This stage is completed through computerised processing and it is known as intimation under section 143(1).
- *Second stage (scrutiny assessment)* - In the second stage, certain percentage of the tax returns are selected for scrutiny/audit on the basis of the probability of detecting tax evasion. At this stage, the tax administration is concerned with the verification of the income. This stage is completed by passing an order under section 143(3).

INTIMATION UNDER SECTION 143(1)

324.1-1 Under the provisions of section 143(1) total income of an assessee shall be computed under section 143(1) after making the following adjustments* to the total income in the return—

a. any arithmetical error in the return; or

b. an "incorrect claim", if such incorrect claim is apparent from any information in the return;

c. disallowance of loss claimed, if return of the previous year for which set off of loss is claimed is furnished beyond the due date specified under section 139(1);

d. disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return; or

e. disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under section 139(1).

- *Opportunity* - Before making any adjustment, an opportunity shall be provided to the assessee to explain and rectify the same within 30 days of issuance of such intimation and the response so received shall be considered before making such adjustments. In case no response is received within such time, the adjustment of the amount indicated in the intimation to be made.
- *Intimation* - After the aforesaid adjustments/corrections, an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee. The amount of refund due to the assessee shall be granted to him. No intimation shall be sent after the expiry of one year from the end of the financial year in which the return is made. The acknowledgement of the return shall be deemed to be the intimation in

*These adjustments are not possible in the case of debatable issues—*CIT* v. *Haryana Telecom Ltd.* [2011] 14 taxmann.com 122 (Delhi - Trib.), *Abhishek Cement Ltd.* v. *UOI* [2012] 349 ITR 1 (Delhi).

a case where no sum is payable by, or refundable to, the assessee, and where no adjustment has been made.

■ *What is "incorrect claim"* - The term "an incorrect claim apparent from any information in the return" has been defined. It means such claim, on the basis of an entry, in the return—

a. of an item, which is inconsistent with another entry of the same or some other item in such return;

b. in respect of which, information required to be furnished to substantiate such entry, has not been furnished under the Act; or

c. in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction.

■ *Time-limit for intimation* - An intimation under section 143(1) should not be sent after the expiry of one year from the end of the financial year in which return of income is made.

For instance, for the assessment year 2017-18, return is submitted by a taxpayer on July 6, 2017. An intimation may be sent up to March 31, 2019 (even if it is received by the assessee after March 31, 2019).

■ *Summary assessment and withholding of refund [Sec. 241A]* - For the returns furnished for assessment year 2017-18 (or any subsequent year), where refund of any amount becomes due to the assessee under section 143(1) and the Assessing Officer is of the opinion that grant of refund may adversely affect the recovery of revenue, he may, for the reasons recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, withhold the refund up to the date on which the assessment is made.

Scrutiny assessment

325. Assessment under section 143(3) may be broadly grouped under the following two categories—

Scrutiny under section 143(3)

325.1 The scheme of scrutiny is applicable as follows—

1. A return of income (or loss) has been made under section 139 or in response to notice under section 142(1).

2. The Assessing Officer (or the prescribed authority) considers it necessary (or expedient) to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner.

3. A notice shall be served on the assessee under section 143(2). The notice requires the assessee to produce any evidence which the assessee may rely in support of the return.

4. Such notice should be served on or before the expiry of 6 months from the end of the financial year in which return is furnished.

For instance, if return is submitted on November 2, 2017, notice under section 143(2) can be served on the assessee up to September 30, 2018. If such notice is issued on September 29, 2018 but is received by the assessee after September 30, 2018, it is not a valid notice.

5. After hearing such evidence as the assessee may produce in response to the notice under section 143(2) and such other evidence as the Assessing Officer may require and after taking into account all relevant materials which the Assessing Officer has gathered, he shall pass an assessment order in writing determining (*a*) the total income or loss of the assessee, and (*b*) the sum payable by (or refundable to) the assessee on the basis of such assessment order [*see* para 330 for time limit for completion of assessment].

The following points should be noted—

■ *New scheme for scrutiny assessment* - A new scheme for the purpose of making assessments will be notified by the Central Government under section 143(3A) so as to impart greater transparency and accountability, by eliminating the interface between the Assessing Officer and the assessee, optimal utilization of the resources, and introduction of team-based assessment. Under this scheme, the Central Government will direct, by notification in the Official Gazette, that any of the provisions of the Act relating to assessment shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified therein. However, no such direction shall be issued after March 31, 2020. Each notification under this scheme shall be laid before each House of Parliament (applicable from April 1, 2018).

■ *Authentication of notice* - Section 282A provides that where any notice or other document is required to be issued, served or given, it shall be deemed to have been authenticated if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon.

■ *Notice deemed to be valid in certain circumstances* - Section 292BB provides that where an assessee has appeared in any proceeding or cooperated in any inquiry related to an assessment or reassessment, it shall be deemed that any notice under any provision of the Act has been duly served upon him in time in accordance with the relevant provision of the Act. Further, such an assessee shall be precluded from taking any objection in any proceeding or inquiry under the Act that the notice was not served upon him or not served upon him in time or served upon him in an improper manner. However, the provisions of section 292BB shall not be applicable where the assessee has raised the aforesaid objections before the completion of such assessment or reassessment.

The Allahabad High Court in the case of *CIT* v. *Salarpur Cold Storage (P.) Ltd.* [2015] 228 Taxman 48 examined the scope of section 292BB and concluded as follows –

> "Where the Assessing Officer fails to issue a notice within the period of 6 months as spelt out in section 143(2), the assumption of jurisdiction under section 143(3) would be invalid. This defect in regard to the assumption of jurisdiction cannot be cured by taking recourse to the deeming fiction under section 292BB. The fiction in section 292BB overcomes a procedural defect in regard to the non-service of a notice on the assessee, and obviates a challenge that the notice was either not served or that it was not served in time or that it was served in an improper manner, where the assessee has appeared in a proceeding or co-operated in an enquiry without raising an objection. Section 292BB cannot come to the aid of the revenue in a situation where the issuance of a notice itself was not within the prescribed period, in which event the question of whether it was served correctly or otherwise, would be of no relevance whatsoever. Failure to issue a notice within the prescribed period would result in the Assessing Officer assuming jurisdiction contrary to law."

■ *Notice served after the prescribed time* - If a notice under section 143(2) is sent to the assessee by registered post on last day of the period of limitation and it is served on the assessee a few days later, beyond period of limitation, it cannot be said to be validly served - *Adarsh Traders* v. *CIT* [2003] SOT 12 (Delhi) (SMC II).

Special procedure for assessment in the case of scientific research association, news agency, notified trust, etc. [Proviso to sec. 143(3)]

325.2 The special procedure is as follows—

1. The special procedure is applicable in the case of following taxpayers who are required to submit return of income under section 139(4C)[1] or 139(4D)

a. scientific research association (or research association from the assessment year 2011-12) or fund or trust referred to in section 10(*21*);

b. news agency referred to in section 10(*22B*);

c. association or institution referred to in section 10(*23A*);

d. institution referred to in section 10(*23B*);

e. fund or institution or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in section 10(*23C*)(*iv*)/(*v*)/(*vi*)/(*viia*).

f. university, college, etc., mentioned in section 35(1)(*ii*)/(*iii*).

2. In the aforesaid cases, assessment order can be passed after giving exemption under section 10. If, however, the Assessing Officer wants to assess these taxpayers without giving effect to provisions of section 10, then he has to follow the following steps—

a. the Assessing Officer should intimate the Central Government or the prescribed authority the contravention of the provisions of clause (*21*) or clause (*22B*) or clause (*23A*) or clause (*23B*) or clause (*23C*)(*iv*), (*v*), (*vi*), (*via*) of section 10, as the case may be, by such scientific research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, where in his view such contravention has taken place; and

b. the approval granted to such scientific research association or other association or institution or university or other educational institution or hospital or other medical institution has been withdrawn or notification issued in respect of such news agency or fund or trust or institution has been rescinded.

1. Though section 139(4C) is applicable in the case of a trade union referred to in section 10(*24*), proviso to section 143(3) does not include the same.

3. Since there would be a time-lag in the process of sending the intimation to the Central Government and receipt of the order rescinding the notification or withdrawing the approval, the period commencing from the date on which the Assessing Officer intimates to the Central Government or the prescribed authority the contravention, of the provisions of section 10 [as mention in 2(*a*) *supra*] and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, under those clauses is received by the Assessing Officer [as mention in 2(*b*) *supra*], shall be excluded in computing the period of limitation for completion of assessment under section 153.

What is best judgment assessment [Sec. 144]

326. The Assessing Officer, after considering all relevant material which he has gathered, is under an obligation to make an assessment of the total income or loss to the best of his judgment in the following cases :

Case 1	If the person fails to make the return required under section 139(1) and has not made a return or a revised return under sub-section (4) or (5) of that section.
Case 2	If any person fails to comply with all the terms of a notice under section 142(1) or fails to comply with the direction requiring him to get his accounts audited in terms of section 142(2A).
Case 3	If any person, after having filed a return, fails to comply with the terms of a notice under section 143(2), requiring his presence or production of evidence and documents.
Case 4	If the Assessing Officer is not satisfied about the correctness or the completeness of the accounts of the assessee or if no method of accounting has been regularly employed by the assessee.

■ *Other points* - One should also keep in view the following points —

1. In the case of best judgment assessment, an assessee has a right to file an appeal under section 246A or to make an application for revision under section 264 to the Commissioner.

2. The best judgment assessment can only be made after giving the assessee an opportunity of being heard. Such opportunity shall be given by issue of notice to the assessee to show cause why the assessment should not be completed to the best of judgment and that opportunity for hearing will not be necessary where notice under section 142(1) has already been issued.

3. A refund cannot be granted under section 144.

Time limit completion

326.1 *See* para 330.

Reference to Dispute Resolution Panel [Sec. 144C]

326A. The dispute resolution mechanism presently in place is time consuming and finality to high demand cases is attained only after a long drawn litigation till the Supreme Court. An alternate dispute resolution mechanism has been provided. It will facilitate expeditious resolution of disputes on a fast track basis. The salient features of the alternate dispute resolution mechanism are as under :—

1. The Assessing Officer shall forward a draft of the proposed order of assessment (hereinafter referred to as the draft order) to the eligible assessee if he proposes to make, on or after October 1, 2009, any variation in the income or loss returned which is prejudicial to the interest of such an assessee. For this purpose, an “eligible assessee” means—

a. any person in whose case the variation arises as a consequence of the order of the Transfer Pricing Officer passed under section 92CA(3); and

b. any foreign company.

2. On receipt of the draft order, the eligible assessee shall, within 30 days of the receipt by him of the draft order, file his acceptance of the variations to the Assessing Officer. Alternatively, within the said period of 30 days, the assessee can file his objections, if any, to such variation [Form No. 35A] with the Dispute Resolution Panel and to the Assessing Officer.

3. The Assessing Officer shall complete the assessment on the basis of the draft order, if—

a. the assessee shall intimate to the Assessing Officer the acceptance of the variation; or

b. no objections are received within the period of 30 days as stated above.

4. The Assessing Officer shall (notwithstanding anything contained in section 153 or 153B), pass the assessment order within one month from the end of the month in which,—

a. the acceptance is received; or

b. the period of 30 days for filing of objections expires.

5. The Dispute Resolution Panel shall, in a case where any objections are received from the assessee, issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

6. The Dispute Resolution Panel shall issue the directions referred to above after considering the following, namely :—

a. draft order;

b. objections filed by the assessee;

c. evidence furnished by the assessee;

d. report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;

e. records relating to the draft order;

f. evidence collected by, or caused to be collected by it; and

g. result of any enquiry made by, or caused to be made by it.

7. The Dispute Resolution Panel may, before issuing any directions referred to above—

a. make such further enquiry, as it thinks fit; or

b. cause any further enquiry to be made by any income-tax authority and report the result of the same to it.

8. The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order. Moreover, the Dispute Resolution Panel has power to consider any matter arising out of the assessment proceedings relating to the draft order, even if such matter was raised (or not) by the eligible assessee. However, it shall not issue any direction to set aside any proposed variation or issue any direction for further enquiry and for passing of the assessment order.

9. If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

10. Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

11. No direction under the above provisions can be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.

12. No direction under the above provisions shall be issued after 9 months from the end of the month in which the draft order is forwarded to the eligible assessee.

13. Upon receipt of the directions issued by Dispute Resolution Panel, the Assessing Officer shall, in conformity with the directions, complete (notwithstanding anything to the contrary contained in section 153 or 153B), the assessment within one month from the end of the month in which the direction is received. For this purpose, no further opportunity of being heard will be provided to the assessee.

■ Further, the following points should be noted—

1. "Dispute Resolution Panel" shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908.

2. Order passed by the Assessing Officer under section 143(3) or under section 154 in conformity with the directions of the Dispute Resolution Panel shall be appealable to the Tribunal [Form No. 36B] and not to the Commissioner (Appeals).

3. Provisions of section 144C will not be applicable in the case of any order passed by the Assessing Officer with the prior approval of the Commissioner under section 144BA(12).

What is income escaping assessment [Sec. 147]

327. The provisions of section 147 are given below—

1. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year.

2. He may assess/reassess such income.

3. Once an assessment has been reopened, any other income which has escaped assessment and which comes to the notice of the Assessing Officer subsequently in the course of the proceeding under section 147, can also be included in the assessment, even if the reason for such issue has not been included in the reasons recorded under section 148(2).

Two conditions

327.1 There are two conditions—

Condition one	The Assessing Officer must have reason to believe that income or profits or gains chargeable to income-tax had escaped assessment.
Condition two	The Assessing Officer must also have reason to believe that such escapement had occurred by reason of either omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year or failure on the part of the assessee to make a return of income under section 139 or in response to notice issued under section 142(1) or 148.

WHEN BOTH THESE CONDITIONS SHOULD BE SATISFIED TO TAKE ACTION UNDER SECTION 147

327.1-1 Both these conditions should be satisfied if the original assessment was made under section 143(3)/147 and the Assessing Officer wants to take action after the expiry of 4 years from the end of the assessment year [proviso to section 147].
However, the rules stated in this para will not be applicable where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year.

WHEN ONLY CONDITION ONE SHOULD BE SATISFIED TO TAKE ACTION UNDER SECTION 147

327.1-2 In the following cases, only *Condition one* should be satisfied—

a. if the Assessing Officer wants to take action within 4 years (from the end of the assessment year) and the original assessment was completed under section 143(1), 143(3), 144 or 147; or

b. if the Assessing Officer wants to take action after the expiry of 4 years and the original assessment was completed under section 143(1) or 144.

Cases of income escaping assessment

327.2 *Explanation 2* to section 147 clarifies that the following shall also be deemed to be cases of income escaping assessment —

a. where no return of income has been furnished by an assessee, although total income is above the taxable limit ;

b. where a return of income has been furnished, but no assessment has been made, and the assessee is found to have understated his income or claimed excessive loss, deduction, etc., in the return ;

c. where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E,

d. where an assessment has been made, but income chargeable to tax has been under-assessed or has been assessed at too low a rate or any excessive loss or relief or depreciation allowance or any other allowance under the Act has been allowed.

e. where a return of income has been (or has not been) furnished and on the basis of information or document received from the prescribed income-tax authority under section 133C(2), it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

f. where a person is found to have any asset (including financial interest in any entity) located outside India.

Notice for reassessment

328. Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer should serve on the assessee a notice requiring him to furnish a return of income. Before issuing a notice, the Assessing Officer is required to record reasons for doing so.

Time-limit and other conditions for issue of notice [Secs. 149 and 151]

328.1 Time-limit and other conditions for issue† of notice under section 148 are given below :

	Up to four years from the end of the relevant assessment year	*Beyond four years but up to six years from the end of the relevant assessment year*	*Beyond 4 years but up to 16 years from the end of the relevant assessment year*
■ In cases subject to scrutiny by way of assessment under section 143(3) or 147	Assessment can be reopened what-ever is the amount of income escaped[1]	If the escaped income is Rs. 1,00,000 or more for that year[2]	If income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment
■ In other cases	Assessment can be reopened what-ever is the amount of income escaped[3]	If the escaped income is Rs. 1,00,000 or more for that year[4]	

†These time-limits are applicable for "issue of notice" and not for "service of notice". In other words, if the Assessing Officer issues notice within the time-limit, it is a valid notice even if "service of notice" takes place after the time-limit—*R.K. Upadhyaya* v. *Shanabhai P. Patel* [1987] 166 ITR 163 (SC).

Notes :

1. Any Assessing Officer who is not below the rank of Assistant Commissioner or Deputy Commissioner can issue notice. An Assessing Officer who is below the rank of Assistant Commissioner or Deputy Commissioner can issue notice only if the Joint Commissioner (or Additional Commissioner) is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for issue of such notice. However, if the Assessing Officer is the Additional Commissioner or the Joint Commissioner, then the prior approval of any higher officer is not required in case he has recorded the reasons for issuing notice. From June 1, 2015, no notice shall be issued by an Assessing Officer (who is below the rank of Joint Commissioner) unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

2. Notice mentioned in point 1 *supra* can be issued only if the Chief Commissioner/Commissioner is satisfied on the reasons recorded by the Assessing Officer that it is a fit case for issue of notice. From June 1, 2015, no notice shall be issued by an Assessing Officer unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

3. Notice can be issued by the Assessing Officer. From June 1, 2015, no notice shall be issued by an Assessing Officer (who is below the rank of Joint Commissioner) unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

4. No notice can be issued by an Assessing Officer who is below the rank of Joint Commissioner (or Additional Commissioner) unless the Joint Commissioner (or Additional Commissioner) is satisfied that on the reason recorded by Assessing Officer that it is a fit case for issue of such notice. From June 1, 2015, no notice shall be issued by an Assessing Officer unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

5. A notice issued without obtaining the prior sanction of the authority mentioned above would be invalid and the entire proceeding taken in pursuance thereof is liable to be quashed as the same would be without jurisdiction—*Dr. Shashi Kant Garg* v. *CIT* [2006] 152 Taxman 312 (All.). The Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue the notice himself.

When can mistakes be rectified

329. The provisions of section 154 are given below—

Which order can be rectified [Sec. 154(1)]

329.1 To rectify any mistake apparent from record, an income-tax authority may amend the following orders—

a. an order passed under any provision of the Act;

b. an intimation or deemed intimation under section 143(1); or

c. amend any intimation under section 200A(1).

If any of the abovementioned order has been subject-matter of an appeal/revision, then it cannot be amended by the Assessing Officer under section 154.

A mistake which can be rectified under section 154 is one which is patent, which is obvious and whose discovery is not dependent on argument or elaboration. For example an error of law or fact, a clerical or arithmetical mistake, error in determining written down value, overlooking the obligatory provisions of the Legislature, and mistake arising as a result of subsequent retrospective amendment of law.

■ An order to rectify mistake can be made within the time-limit given below—

□ No amendment under section 154 can be made after the expiry of 4 years from the end of the financial year in which the order sought to be amended was passed. The point at which the period of limitation commences is 4 years from the date of order sought to be amended (and not the date of original order).

□ Where an application for amendment under section 154 is made by the assessee on or after June 1, 2001 to an income-tax authority, the authority shall pass an order within 6 months from the end of the month in which the application is received by it, either making the amendment or refusing to allow the claim.

Certain technical formalities need to be fulfilled.

■ Where an application for amendment under section 154 is made by the assessee to an income-tax authority, the authority shall pass an order within 6 months from the end of the month in which the application is received by it, either making the amendment or refusing to allow the claim. The Central Board of Direct Taxes (CBDT) has directed that time-limit of 6 months shall be strictly followed by Assessing Officers while disposing of applications under section 154.

■ CBDT has directed that all rectification applications must be disposed of after passing an order in writing, to be duly served upon the taxpayer concerned and not merely by making necessary rectification on the AST System.

What is the time-limit for completion of assessments/ reassessments [Sec. 153]

330. Section 153 prescribes time-limit for completion of assessment/reassessment.

Different situations	*Time-limit for completion*
■ Sec. 153(1) - Passing assessment order under section 143 or 144	■ *Assessment year 2017-18 (or earlier)* - Within 21 months†† from end of the assessment year in which income was first assessable ■ *Assessment year 2018-19* - Within 18 months†† from end of the assessment year in which income was first assessable ■ *Assessment year 2019-20 (or later)* - Within 12 months†† from end of the assessment year in which income was first assessable
■ Sec. 153(2) - Making assessment/reassessment, etc., under section 147	■ *Notice under section 148 issued before April 1, 2019* - Within 9 months†† from end of the financial year in which notice under section 148 is served ■ *Such notice issued on or after April 1, 2019* - Within 12 months†† from end of the financial year in which notice under section 148 is served
■ Sec. 153(3) - Making an order of fresh assessment in pursuance of an order under section 254/263/264, setting aside or cancelling an assessment	■ *Order under section 254 is received/order under section 263/264 is passed before April 1, 2019* - Within 9 months†† from the end of the financial year in which the order under section 254 is received by the Principal Chief CIT/Chief CIT/ Principal CIT/CIT or, as the case may be, the order under section 263/264 is passed by the Principal CIT/CIT ■ *Order under section 254 is received/order under section 263/264 is passed on or after April 1, 2019* - Within 12 months†† from the end of the financial year in which the order under section 254 is received by the Principal Chief CIT/Chief CIT/Principal CIT/CIT or, as the case may be, the order under section 263/264 is passed by the Principal CIT/CIT
■ *Sec. 153(5)* - Giving effect to an order under section 250/254/260/262/263/264 by Assessing Officer, wholly or partly, otherwise than making a fresh assessment/re-assessment	Within a period of 3 months‡‡ from the end of the month in which order under section 250/254/260/262 is received by the Principal Chief CIT/Chief CIT/Principal CIT/CIT, as the case may be, the order under section 263/264 is passed by the Principal CIT/CIT#
■ *Second proviso to sec. 153(5)* - Where an order under section 250/254/260/262/263/264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee	Time-limit of section 153(3) will apply
■ *Sec. 153(6)(*i*)* - Making an order of assessment/ reassessment/recomputation on assessee (or any person) in consequence of or to give effect to any finding/direction contained in an order under section 250/254/260/262/263/264 or an order of any court in a proceeding (not by way of appeal/reference under the Act)	Within 12 months from the end of the month in which such order is received/passed by Principal CIT/CIT#
■ *Sec. 153(6)(*ii*)* - Making an order of assessment on the partners of a firm in consequence of the assessment made on the firm under section 147	Within 12 months from the end of the month in which the assessment order in the case of firm is passed#

TIME-LIMIT UNDER SECTION 153B (FOR ASSESSMENT ORDER UNDER SECTION 153A)		
Date when last of authorisations under section 132/132A was executed	*Time-limit (to be determined from the end of the financial year in which last of the authorisations under section 132/132A was executed)*	*Alternate time-limit for action under section 153C (to be determined from the end of the financial year in which books of account, etc., are handed over under section 153C to the concerned AO)*
Prior to April 1, 2018	21 months††	9 months††
During FY 2018-19	18 months††	12 months††
On or after April 1, 2019	12 months††	12 months††

■ Moreover, section 153(9) has been amended (with effect from June 1, 2016) to provide that where a notice under section 142(1)/143(2)/148 has been issued prior to June 1, 2016 and the assessment or reassessment has not been completed by such date due to exclusion of time referred to in *Explanation 1*, such assessment or reassessment shall be completed in accordance with the provisions of section 153 as it stood immediately before its substitution by the Finance Act, 2016.

†† Where a reference is made under section 92CA(1) to TPO during assessment/re-assessment proceedings, the period available for assessment/re-assessment shall be extended by 12 months.

‡‡ May be extended for an additional period of 6 months by Principal CIT/CIT on receipt of written request from Assessing Officer.

However, pending assessment as on June 1, 2016, the time-limit for passing the relevant order is March 31, 2017.

Case study

331-P1 *Discuss whether the following persons are required to submit return of income for the assessment year 2018-19 [indicate form number, mode of submission and due date] —*

Discuss whether the following persons are required to submit return of income for the assessment year 2019-20 [indicate form number, mode of submission and due date] —

Assessee	Net income Rs.	Deduction claimed under sections 10A, 10B, 10BA, 80C to 80U	Sources of income	Turnover/ gross receipt Rs.
*X Ltd.**	*41,000*	—	*Business*	*60,80,000*
Y (24 years)	*3,60,000*	*4,000*	*Salary and income from two properties*	-
Z (47 years)	*5,37,000*	*64,500*	*Rent from a plot of land*	-
*A Ltd.**	*(-)30,000*	—	*Business*	*70,00,000*
B (60 years)	*(-)20,000*	*3,71,000*	*Profession*	*35,00,000*
C (31 years)	*(-)22,000*	*2,73,000*	*Capital gain and agricultural income*	-
D (65 years)	*2,53,000*	*41,000*	*Salary, pension and income from one house property*	-
*E (82 years)**	*1,60,000*	*3,40,000*	*Business*	*58,00,000*
Mrs. F (29 years) (having international transactions)	*65,000*	*1,94,000*	*Business*	*1,05,00,000*
*G (18 years)**	*1,65,000*	*86,000*	*Business*	*1,09,00,000*
H (59 years)	*1,80,000*	*70,100*	*Partner in a firm*	-
*I (30 years)**	*2,47,000*	*83,000*	*Business*	*35,00,000*
J Ltd. (having international transactions)	*8,00,000*	-	*Business*	*90,00,000*
K (Firm) (having international transactions)	*(-) 10,000*	-	*Business*	*65,00,000*

■

*Not having international and specified domestic transactions.

Assessee	*Is it necessary to submit return under section 139(1) [see para 244]*				*Due date*
	Yes or No	*Form No.*	*Is it compulsory to submit return in electronic format*	*Is it compulsory to submit return with digital signature*	
X Ltd.	*Yes*	ITR-6	Yes	Yes	September 30, 2019
Y	*Yes*	ITR-2	Optional	Optional	July 31, 2019
Z	*Yes*	ITR-1**	Yes	Optional	July 31, 2019
A Ltd.	*Yes*	ITR-6	Yes	Yes	September 30, 2019
B	*Yes*	ITR-3	Yes	Yes	September 30, 2019
C	*Yes*	ITR-2	Optional	Optional	July 31, 2019
D	*No*	ITR-1**	Optional	Optional	—
E	*No*	ITR-4***	Optional	Optional	—
Mrs. F	*Yes*	ITR-3	Yes	Yes	November 30, 2019
G	*Yes*	ITR-3	Yes	Yes	September 30, 2019
H	*Yes*	ITR-2	Optional	Optional	July 31†, 2019
I	Yes	ITR-4***	Optional	Optional	July 31, 2019
J Ltd.	Yes	ITR-6	Yes	Yes	November 30, 2019
K (Firm)	Yes	ITR-5	Yes	Yes	November 30, 2019

Notes :

1. Audit under section 44AB is compulsory when turnover exceeds Rs. 1 crore, even if taxable income is lower than the amount of exemption limit.

2. If return of income is not submitted in time, loss cannot be carried forward.

3. If a taxpayer is an individual/HUF/AOP/BOI and his income (before giving any deduction under sections 10A, 10B, 10BA, 80C to 80U) exceeds the exemption limit, he will have to submit his return of income. This rule is applicable even if his taxable income (after giving aforesaid deductions) is equal to or less than exemption limit and his tax liability is zero. Income of E (before giving deduction under aforesaid sections) is Rs. 5,00,000, he may not submit his return of income (E being super senior citizen, exemption limit is Rs. 5,00,000). Conversely, income of Mrs. F is Rs. 65,000 (tax liability is zero). She will have to submit her return of income because income (before giving aforesaid deductions) exceeds the exemption limit of Rs. 2,50,000.

What is Annual information return pertaining to financial transactions [Sec. 285BA]

332. The provisions of section 285BA are given below—

Transactions covered

332.1 Statement of financial transactions shall be furnished by every person mentioned in the Table (*infra*) in respect of all transactions of the nature/value specified in the Table (*infra*) which are recorded or registered by him during the financial year 2016-17 (or any subsequent year) -

	Nature and value of transaction	*Class of person (reporting person)*
1.	(*a*) Payment made in cash for purchase of bank drafts/pay orders/banker's cheque of an amount aggregating to Rs. 10 lakh or more in a financial year (*b*) Payments made in cash aggregating to Rs. 10 lakh or more during the financial year for purchase of pre-paid instruments issued by RBI (*c*) Cash deposits/cash withdrawals (including through bearer's cheque) aggregating to Rs. 50 lakh or more in a financial year, in or from one or more current accounts of a person	A bank/co-operative bank

†September 30, 2019, if the firm (in which H is a partner) is subject to audit under provisions of any law.

**ITR-1 is also known as *Sahaj*.

***ITR-4 is also known as *Sugam*.

	Nature and value of transaction	*Class of person (reporting person)*
2.	Cash deposits aggregating to Rs. 10 lakh or more in a financial year, in one or more accounts (other than a current account and time deposit) of a person	A bank/co-operative bank/Post Master General
3.	One or more time deposits (other than a time deposit made through renewal of another time deposit) of a person aggregating to Rs. 10 lakh or more in a financial year of a person	A bank/co-operative bank/Post Master General/Nidhi/non-banking financial company
4	Payments made by any person of an amount aggregating to— (*i*) Rs. 1 lakh or more in cash; or (*ii*) Rs. 10 lakh or more by any other mode, against bills raised in respect of one or more credit cards issued to that person, in a financial year	A bank/co-operative bank/any other company or institution issuing credit card
5.	Receipt from any person of an amount aggregating to Rs. 10 lakh or more in a financial year for acquiring bonds/debentures issued by the company or institution (other than the amount received on account of renewal of the bond or debenture issued by that company)	A company or institution issuing bonds or debentures
6.	Receipt from any person of an amount aggregating to Rs. 10 lakh or more in a financial year for acquiring shares (including share application money) issued by the company	A company issuing shares
7.	Buy back of shares from any person (other than the shares bought in the open market) for an amount or value aggregating to Rs. 10 lakh or more in a financial year.	A company listed on a recognised stock exchange purchasing its own securities under section 68 of the Companies Act, 2013
8.	Receipt from any person of an amount aggregating to Rs. 10 lakh or more in a financial year for acquiring units of one or more schemes of a Mutual Fund (other than the amount received on account of transfer from one scheme to another scheme of that Mutual Fund)	A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund
9.	Receipt from any person for sale of foreign currency including any credit of such currency to foreign exchange card or expense in such currency through a debit or credit card or through issue of travellers cheque or draft or any other instrument of an amount aggregating to Rs. 10 lakh or more during a financial year.	Authorised person under FEMA
10.	Purchase or sale by any person of immovable property for an amount of Rs. 30 lakh or more or valued by the stamp valuation authority referred to in section 50C at Rs. 30 lakh or more	Inspector-General/Registrar/Sub-Registrar under the Registration Act, 1908
11.	Receipt of cash payment exceeding Rs. 2 lakh for sale, by any person, of goods or services of any nature (other than those specified above)	Any person who is liable for audit under section 44AB
12.	Cash deposits during November 9, 2016 and December 30, 2016 aggregating to— - Rs. 12,50,000 or more, in one or more current account of a person - Rs. 2,50,000 or more, in one or more accounts (other than a current account) of a person.	A bank/Post Master General
13.	Cash deposits during April 1, 2016 to November 9, 2016 in respect of accounts that are reportable under Sl.No.12.	A bank/Post Master General

■ *How to calculate threshold limit given above* - The reporting person mentioned in *Column 3* of the Table (*supra*) (other than the person at Sl. No. 10 or 11) shall, while aggregating the amounts for determining the threshold amount for reporting in respect of any person,—

a. take into account all the accounts of the same nature as specified in *Column 2* of the Table (*supra*) maintained in respect of that person during the financial year;

b. aggregate all the transactions of the same nature as specified in *Column 2* of the Table (*supra*) recorded in respect of that person during the financial year;

c. attribute the entire value of the transaction or the aggregated value of all the transactions to all the persons, in a case where the account is maintained or transaction is recorded in the name of more than one person;

d. apply the threshold limit separately to deposits and withdrawals in respect of transaction specified in item 1(*c*) under *Column 2*, of the Table (*supra*).

■ *Form No.* - Statement of financial transactions return shall be furnished in Form No. 61A to the Director of Income-tax (Intelligence and Criminal Investigation) or the Joint Director of Income-tax (Intelligence and Criminal Investigation) through online transmission of electronic data to a server designated for this purpose under the digital signature. However, a Post Master General or a Registrar or an Inspector General can furnish the return in Form No. 61A in a computer readable media (*i.e.*, CD/DVD), alongwith the verification in Form-V on paper.

■ *Time-limit* - Statement of financial transactions return shall be furnished on or before May 31, immediately following the financial year in which the transaction is registered or recorded. However, the statement of financial transaction in respect of the transactions listed at serial number (*12*) and (*13*) in the Table (*supra*) shall be furnished on or before January 31, 2017.

■ *Registration* - Every reporting person mentioned in *Column 3* of the Table (*supra*) shall communicate to the Principal Director General of Income-tax (Systems) the name, designation, address and telephone number of the Designated Director and the Principal Officer and obtain a registration number. "Designated Director" means a person designated by the reporting person to ensure overall compliance with the obligations imposed under section 285BA and rules 114B to 114E and includes—

a. the Managing Director/whole-time Director duly authorised by the Board of Directors, if the reporting person is a company;

b. the managing partner, if the reporting person is a partnership firm;

c. the proprietor, if the reporting person is a proprietorship concern;

d. the managing trustee, if the reporting person is a trust;

e. a person/individual, who controls and manages the affairs of the reporting entity, if the reporting person is AOP/BOI/any other.

Report by a reporting financial institution in respect of reportable account

332.2 With a view to facilitate effective exchange of information in respect of residents and non-residents, the scheme of section 285BA has been amended as to also provide for furnishing of statement by a prescribed reporting financial institution in respect of a specified financial transaction or reportable account to the prescribed income-tax authority. The statement of information shall be uploaded electronically for each calendar year in Form No. 61B on or before May 31 of the next year [*see* rules 114F, 114G and 114H].

Where any person, who has furnished a statement of information comes to know or discovers any inaccuracy in the information provided in the statement, then, he shall, within a period of 10 days, inform the income-tax authority or other authority or agency referred to in section 285BA(1) the inaccuracy in such statement and furnish the correct information in the manner as may be prescribed.

Submission of statement by a non-resident having liaison office in India [Sec. 285]

333. Foreign companies or firms or associations of individuals operate in India through a branch or a liaison office after approval by the RBI. The branch constitutes a permanent establishment of the foreign entity and is, therefore, required to file a return of income along with requisite details. A non-resident does not file a return of income with regard to its liaison office on the ground that no business activity is allowed to be carried out in India.

To seek regular information from non-residents regarding the activities of their liaison offices in India, section 285 has been inserted with effect from June 1, 2011. Under this section, every person having a liaison office in India will have to file an online a statement in Form No. 49C pertaining to the liaison office within 60 days from the end of the financial year (*i.e.*, on or before May 30 after the end of the financial year).

Furnishing of information or document by an Indian concern [Sec. 285A]

334. Section 285A has been inserted with effect from the assessment year 2016-17. It provides that where any share or interest in a company or entity registered or incorporated outside India derives, directly or indirectly, its value substantially from the assets located in India as referred to in the *Explanation 5* to section 9(1)(*i*), and such company or, as the case may be, entity holds such assets in India through or in an Indian concern, then, any such Indian concern shall, for the purposes of determination of income accruing or arising in India, under section 9(1)(*i*), furnish Form No. 49D. Form No. 49D shall be furnished electronically under digital signature to the Assessing Officer having jurisdiction over the Indian concern within a period of 90 days from the end of the financial year in which any transfer of the share of, or interest in, a company or entity incorporated outside India referred to in *Explanation 5* to section 9(1)(*i*) has taken place. Where, however, the transaction in respect of the share or the interest has the effect of directly or indirectly transferring the rights of management or control in relation to the Indian concern, the information shall be furnished in Form No. 49D within 90 days of the transaction.

The transferor of the share of, or interest in, a company or an entity that derives its value substantially from assets located in India, shall obtain and furnish along with the return of income a report from a chartered accountant in Form No. 3CT providing the basis of the apportionment in accordance with the formula and certifying that the income attributable to assets located in India has been correctly computed.

MULTIPLE CHOICE QUESTIONS

Q1. A company does not submit its return of income till the due date of submission of return of income. The following losses cannot be carried forward—

a. Speculative loss;

b. Non-speculative loss;

c. Capital loss;

d. All of above.

Q2. X has house property income of Rs. 8.5 lakh for the previous year 2016-17. His business loss for the same year is Rs. 9.5 lakh. He files his return of income for the assessment year 2017-18 on November 1, 2017—

a. He cannot set off business loss against house property income but the loss will be carried forward;

b. He cannot set off business loss against house property income and the loss will not be carried forward;

c. He can set off business loss against house property income and the remaining loss of Rs. 2 lakh will not be carried forward;

d. He can set off business loss against house property income and the remaining loss of Rs. 2 lakh will be carried forward, if it is permitted by the Chief Commissioner.

Q3. The time-limit of filing belated return under section 139(4)—

a. Before the end of the relevant assessment year;

b. Before the assessment is complete;

c. Before the end of one year from the end of the relevant assessment year;

d. Before the assessment is complete or before the end of one year from the end of the relevant assessment year, whichever is earlier.

Q4. In the case of limited liability partnership, return of income should be signed by—

a. Any partner;

b. The accountant;

c. Designated partner;

d. Designated partner (if designated partner is not available by any partner).

Q5. Under section 144C, the Assessing Officer will forward a draft of proposed order of assessment to an eligible assessee, if he purposes to make any variation, prejudicial to the interest of assessee, in the returned income. For this purpose, "eligible assessee" is—

a. An Indian company;

b. Any person in whose case variation arises because of an order by Transfer Pricing Officer and a foreign company;

c. Any person in whose case variation arises because of an order by Transfer Pricing Officer;

d. A foreign company in whose case variation arises because of an order by Transfer Pricing Officer.

Q6. Reassessment notice can never be issued after the expiry of 6 years.

a. True;

b. False.

Q7. A disputed matter in respect of which two views are possible can be rectified within 4 years.

a. True;

b. False.

Q8. An assessment under section 143 can be completed within—

a. 2 years from the end of the assessment year;

b. 18 months from the end of the assessment year;

c. 21 months from the end of the assessment year;

d. 6 years from the end of the assessment year.

Q9. A reassessment under section 147 can be completed within—

a. 21 months from the end of the assessment year;

b. 6 years from the end of the assessment year;

c. 9 months from the end of the financial year in which notice under section 148 was served;

d. 9 months from the end of the financial year in which notice under section 148 was issued.

Q10. X is a sole proprietor. His books of account are audited, as annual turnover is more than Rs. 5 crore.

a. He can submit his return in ITR-5 in paper format or through e-filing;

b. He can submit his return in ITR-5 through e-filing (with or without digital signature);

c. He can submit his return in ITR-4 in paper format or through e-filing;

d. He can submit his return in ITR-4 through e-filing (with or without digital signature).

APPEALS, REVISIONS, REFERENCES

31 CHAPTER

What is appeal

342. The expression "appeal" has been defined in Mozley and Whiteley's *Law Dictionary* as a complaint to a superior Court for an injustice done by an inferior one. The party complaining is styled as appellant, the other party is known as respondent. The right to appeal must be given by express enactment in the Act and it cannot be implied—*Sri Mahant Harihar Gir* v. *CIT* [1941] 9 ITR 246 (Pat.).

Who are appellate authorities

343. Appeal against the order of the Assessing Officer lies with the Commissioner (Appeals), or the assessee can file revision petition to Commissioner of Income-tax. Appeal against the order of the Commissioner (Appeals) can be preferred by the assessee or the Income-tax Department and such appeal lies with the Appellate Tribunal. The assessee or the Commissioner of Income-tax may prefer an appeal against the order of the Appellate Tribunal to the High Court on any substantial question of law arising out of order of the Tribunal.

Order of the High Court can be challenged either by the assessee or by the income-tax department by preferring an appeal to the Supreme Court which is the final appellate authority.

The table given below highlights the provisions of appeal and revision in brief—

Alternative One - Appeal

Nature of action	*To whom it should be filed*	*Against which order it can be preferred*	*Who can prefer*
First appeal	Commissioner (Appeals) [CIT(A)]	Against the order of Assessing Officer [*see* para 344]	Taxpayer
Second appeal	The Income-tax Appellate Tribunal [ITAT]	Against the order of the CIT(A) [*see* para 346.1]	Taxpayer or Commissioner of Income-tax
Appeal to High Court	High Court	Substantial question of law arising out of ITAT order	Taxpayer or Commissioner of Income-tax
Appeal to Supreme Court	Supreme Court	Judgment of High Court	Taxpayer or the Commissioner of Income-tax

Alternative Two - Revision under section 263

Nature of action	*Against which order it can be taken*	*Who can prefer*
Revision under section 263	Order of the Assessing Officer if it is prejudicial to the interest of revenue [*see* para 345.1-1]	Action can be taken by the Commissioner of Income-tax himself
First appeal to ITAT	Appeal against the revision order under section 263	Taxpayer
Appeal to High Court	*See* under Alternative one	

Nature of action	*Against which order it can be taken*	*Who can prefer*
Appeal to Supreme Court	*See* under Alternative one	

Alternative Three - Revision under section 264

Nature of action	*Against which order it can be taken*	*Who can prefer*
Revision under section 264	Order of the Assessing Officer [*see* paras 345.2-1 and 345.2-2]	The taxpayer may apply the Commissioner for revision under section 264 or the Commissioner can *suo motu* take action
No further action is generally required, as no order can be passed under section 264 which is prejudicial to the assessee. However, writ petition under article 226 to High Court is maintainable.		

When and against what orders appeal lies to Commissioner (Appeals) [Sec. 246A]

344. First appeal against the order of the Assessing Officer lies with the Commissioner (Appeals). An assessee or deductor or collector, aggrieved by any of the following orders of Assessing Officer may appeal to the Commissioner (Appeals) against such order :

■ Order passed by a Joint Commissioner under section 115VP(3)(*ii*) or an order against assessee where assessee denies liability to be assessed or order under section 143(3)* or section 144 where assessee objects to amount of income assessed or amount of tax determined or amount of loss computed or status under which he is assessed.

■ Intimation under section 143(1) where the assessee objects to the making of adjustments [or an order under section 200A(1) where the deductor or collector objects to the making of adjustments].

■ Order of assessment under section 115WE(3)/115WF where the employer objects to the value of fringe benefits** assessed.

■ Order of assessment or reassessment under section 115WG.

■ Order of the assessment, reassessment or recomputation under section 147* or section 150.

■ Order of assessment or reassessment under section 153A*.

■ An order of made under section 92CD(3).

■ Order of rectification of mistake under section 154 or section 155 having effect of enhancing assessment or reducing refund or order refusing to allow claim made by assessee under these sections***.

■ Order under section 163 treating assessee as an agent of non-resident.

■ Order under section 170(2) or 170(3) relating to succession to business otherwise on death.

■ Order under section 171 regarding assessment after partition of a HUF.

■ Order made under section 201.

■ Order made under section 206C(6A).

■ Order under section 237 relating to refund.

■ Order imposing penalty under section 221, 271, 271A, 271AAA, 271AAB, 271F, 271FB, 272AA or 272BB.

■ An order of assessment made by an Assessing Officer under section 158BC(*c*) in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the January 1, 1997.

■ An order imposing a penalty under section 158BFA(2).

■ An order imposing penalty under section 271B or section 271BB;

■ An order made by a Joint Commissioner imposing a penalty under section 271C, section 271CA, section 271D or section 271E.

■ An order made by a Joint Commissioner or a Joint Director imposing a penalty under section 272A.

■ An order made by a Joint Commissioner imposing a penalty under section 272AA.

■ An order imposing a penalty under Chapter XXI (*i.e.*, under sections 270 to 275).

*Except an order passed in pursuance of directions of Dispute Resolution Panel or an order referred to in section 144BA(12) (*i.e.*, assessment order after invocation of GAAR).

**Fringe benefit tax is not applicable from the assessment year 2010-11 onwards.

***Except an order referred to in section 144BA(12) (*i.e.*, assessment order after invocation of GAAR).

■ An order made by an Assessing Officer (other than a Joint Commissioner) under the provisions of the Act in the case of such person or classes of person, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations direct.

Appeal by a person denying liability to deduct tax [Sec. 248]

344.1 From June 1, 2007 where under an agreement or other arrangement, the tax deductible on any income (not being interest) under section 195 is to be borne by the payer (*i.e.*, "net of tax" arrangement) and such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.

Procedure for filing appeal

344.2 Appeal under section 246A shall be in Form No. 35 and should be verified in the manner prescribed therein.

WHO HAS TO SIGN THE APPEAL

344.2-1 Form No. 35, the grounds of appeal and the form of verification appended thereto relating to an assessee shall be signed and verified by the person who is authorised to sign the return of income under section 140 as applicable to the assessee[1].

■ *Fees* - The appeal should be accompanied by a fees as follows—

	Fees in Rs.
• Assessed total income of Rs. 1 lakh or less	250
• Assessed total income of more than Rs. 1 lakh but less than Rs. 2 lakh	500
• Assessed total income of more than Rs. 2 lakh	1,000
• In any other case	250

DOCUMENTS TO BE SUBMITTED ALONG WITH APPEAL

344.2-2 Appeal is required to be made in duplicate. The memorandum of appeal, statement of facts and the grounds of appeal must be in duplicate and should be accompanied by a copy of the order appealed against and the notice of demand in original, if any.

TIME-LIMIT

344.2-3 The appeal shall be presented within 30 days of the following date—

a. where the appeal relates to any tax deducted under section 195(1), the date of payment of the tax (or where appeal is under section 248, the payment of tax); or

b. where the appeal relates to any assessment or penalty, the date of service of the notice of demand relating to the assessment or penalty; or

c. in any other case, the date on which intimation of the order sought to be appealed against is served.

HOW TO COMPUTE THE TIME-LIMIT

344.2-3a In computing the aforesaid time-limit of 30 days, the day on which the order complained of was served shall be excluded. Moreover, if the assessee was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order, shall be excluded.

■ If the assessee makes an application under section 270AA (seeking immunity from penalty and prosecution), then the period beginning from the date on which such application is made to the date on which the order rejecting the application is served on the assessee, shall be excluded for calculation of the aforesaid 30 days period (applicable with effect from the assessment year 2017-18).

ADMISSION OF APPEAL AFTER THE EXPIRY OF TIME-LIMIT

344.2-3b The Commissioner (Appeals) may admit an appeal after the expiration of the said period of 30 days if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

Payment of tax before filing appeal [Sec. 249(4)]

344.3 An appeal under section 246A (or under any other provision of Chapter XX) shall not be admitted unless tax is paid by the assessee as follows—

Situations	*Payment of tax*	*Power to stay*
1. If a return has been filed by the assessee	Tax due on the returned income should be paid before filing appeal [*see* Note]	Tax due on return should be paid before filing the appeal (no power to stay collection of demand).
2. If no return has been filed	The assessee should pay tax (before filing an appeal) of an amount equal to the amount of advance tax which was payable by him [*see* Note]	On application made by the appellant, the Commissioner (Appeals) may exempt from payment of tax for any good and sufficient reason to be recorded in writing [*see* para 344.3-2]

Note - Under section 249(4), there is no condition that interest, if any, payable under sections 234A, 234B and 234C should also be paid before the appeal could be admitted—*Subbiah Nadar & Sons* v. *Asstt. CIT* [2003] 84 ITD 55 (Chennai).

1. *See* para 321.

Power of Commissioner (Appeals) under section 251

344.4 The Commissioner (Appeals) enjoys the following powers :

■ In an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment*.

■ In an appeal against an order imposing a penalty, he may confirm or cancel such order or make a variation to reduce or enhance the amount of penalty.

■ In an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, the Commissioner (Appeals) can confirm, reduce, enhance or annul the assessment after taking into consideration the following—

1. The material and other information produced by the assessee before the Settlement Commission.

2. The results of the inquiry held by the Settlement Commission.

3. The evidence recorded by the Settlement Commission in the course of proceedings before it.

4. Such other material as may be brought on his record.

■ In any other case, he can pass such orders as he thinks fit.

■ According to *Explanation* to section 251, in disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.

■ The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction. Section 251(2) requires that the assessee must be made aware of the proposed action of the Commissioner (Appeals) for enhancement of income and explanation be obtained and considered. There is no statutory notice prescribed under the Act for issuing show-cause notice for enhancement of income — *Honda Siel Cars India Ltd.* v. *CIT* [2006] 157 Taxman 76 ITAT Delhi Bench.

Revision by Commissioner

Revision of orders prejudicial to revenue [Sec. 263]

345. In the following cases, the Commissioner of Income-tax can revise an order passed by the Assessing Officer :

345.1 The following points should be noted—

1. The Commissioner may call for and examine the "record" of the proceedings under the Act.

2. If he thinks that any order passed by the Assessing Officer is erroneous insofar as it is prejudicial to the interest of the revenue, he may pass such revisional order thereon as the circumstances of the case justify.

3. He can also pass an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment.

4. Before passing an order, the Commissioner should give a reasonable opportunity to the assessee of being heard.

ORDERS WHICH CAN BE REVISED BY THE COMMISSIONER UNDER SECTION 263

345.1-1 Apart from orders passed by an Assessing Officer [including an order under section 143(1)], the following orders can also be revised by the Commissioner—

a. an order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A ;

b. an order made by the Joint Commissioner in exercise of the powers (or in the performance of the functions) of an Assessing Officer conferred on, (or assigned to), him under the orders (or directions) issued by the Board or by the Chief Commissioner or Director General (or Commissioner authorised by the Board in this behalf) under section 120.

"RECORD" MEANING OF

345.1-2 The Commissioner may call for and examine the "record" of any proceeding under the Act. The term "record" means record as it stands at the time of examination by the Commissioner. In other words, the materials which were not in existence at the time the assessment was made and came into existence afterwards can be taken into consideration by the Commissioner for the purpose of invoking his jurisdiction under section 263(1).

*In an appeal filed before the Commissioner (Appeals) against an order of assessment, the Commissioner (Appeals) may not set aside the assessment or refer the case back to the Assessing Officer for making fresh assessment. It will be applicable to appellate orders passed by the Commissioner (Appeals) on or after June 1, 2001.

PREJUDICIAL TO THE INTEREST OF REVENUE

345.1-3 The Finance Act, 2015 has inserted *Explanation 2* in section 263(1) with effect from June 1, 2015. This *Explanation* provides that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,—

a. the order is passed without making inquiries or verification which should have been made;

b. the order is passed allowing any relief without inquiring into the claim;

c. the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

d. the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

■ *Judicial rulings* - If due to an erroneous order of the Assessing Officer, the revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the revenue.

ORDER WHICH IS SUBJECT-MATTER OF APPEAL CANNOT BE REVISED

345.1-4 If an order passed by the Assessing Officer has been subject-matter of any appeal, it cannot be revised by the Commissioner. However, the powers of the Commissioner under section 263(1) shall extend to such matters as had not been considered and decided in such appeal.

For instance, in the case of assessment of X Ltd., the Assessing Officer (*i.e.,* Assistant Commissioner) allows and disallows the following expenses :

	Amount *Rs.*	*Allowed by Assessing Officer* *Rs.*	*Disallowed by Assessing Officer* *Rs.*
1. Interest paid to A	40,000	—	40,000
2. Salary paid to B	50,000	20,000	30,000
3. Salary paid to C	60,000	60,000	—

X Ltd. files appeal to the Commissioner (Appeals) in respect of disallowance of Rs. 40,000 (*i.e.,* interest paid to A) and partial disallowance of Rs. 30,000 (*i.e.,* salary paid to B). The Commissioner (Appeals) allows the entire interest paid to A as deduction, though he refuses to interfere with the order of Assessing Officer on partial disallowance of salary paid to B. In this case, Commissioner can revise the order of the Assessing Officer only on point 3 (*i.e.,* salary paid to C). He cannot revise the Assessing Officer's order on points *1* and *2* as these points have been the subject-matter of appeal under section 246A.

TIME-LIMIT

345.1-5 The Commissioner can pass revisional order within the period of two years from the end of financial year in which order sought to be revised was made. The time-limit is, however, not applicable in the case of revisional order passed on the direction of the Appellate Tribunal, the High Court or the Supreme Court.

In computing the aforesaid period of limitation, the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under section 263 is stayed by an order or injunction of any Court shall be excluded.

Revision in favour of assessee [Sec. 264]

345.2 The following points should be noted—

1. An assessee can file an appeal against an order passed by the Assessing Officer to the Commissioner (Appeals).

2. Alternatively, he can prefer an application to the Commissioner of Income-tax for revising orders passed by the Assessing Officer.

3. Moreover, those cases which are not appealable before the Commissioner (Appeals), can be referred by the assessee to the Commissioner for seeking revision or modification.

4. Revision under section 264 can be made by the Commissioner, either on his own motion or on an application by the assessee, in all cases, which are not covered by section 263 [*see* para 345.1].

5. No order under section 264 can be passed which is prejudicial to the assessee.

ORDERS WHICH CAN BE REVISED BY THE COMMISSIONER UNDER SECTION 264

345.2-1 Under section 264, the Commissioner can take action only on an order passed by the following authorities subordinate to him—

1. The Assessing Officer is subordinate to the Commissioner.

2. By virtue of *Explanation 2* to section 264, the Deputy Commissioner (Appeals) is deemed to be an authority subordinate to the Commissioner. It may be noted that the Commissioner (Appeals) is not subordinate to the Commissioner.

ORDERS WHICH CANNOT BE REVISED BY COMMISSIONER UNDER SECTION 264

345.2-2 The following orders cannot be revised by the Commissioner :

■ If the order is appealable (but appeal is not made) to the Commissioner (Appeals) or the Tribunal, the Commissioner cannot revise the order till the time within which the appeal may be made, expires. Moreover, if the appeal lies to the Commissioner (Appeals), Tribunal and the right of appeal is waived by the assessee, the Commissioner may revise the order even before the time for appeal has expired.

■ Where the order has been made the subject of an appeal to the Commissioner (Appeals) or the Tribunal (whether appeal to the Tribunal is by the assessee or Department), the revisional power of the Commissioner under section 264 comes to an end. In other words, it cannot be exercised at all during the pendency, or even after disposal of the appeal by the Commissioner (Appeals) or Tribunal.

TIME-LIMIT

345.2-3 The following points should be noted —

1. If the Commissioner acts *suo motu* under section 264, he must revise the order within one year from the date of original order.

2. If application is made by the assessee, the application must be made within one year from the date of communication of order, or the date on which he otherwise came to know of it, whichever is earlier. The Commissioner may condone delay if the assessee is prevented by "sufficient cause" from making an application within the specified period.

TIME-LIMIT FOR PASSING THE ORDER ON ASSESSEE'S APPLICATION

345.2-3a It has been made obligatory on the Commissioner to pass an order under section 264 within a period of 1 year from the end of the financial year in which the application is made for revision.

■ *Exception* - The abovestated time-limit shall not apply in cases where an order could not be passed within the prescribed time-limit, in order to give effect to any finding or direction contained in an order of the Appellate Tribunal, High Court or the Supreme Court. Moreover, in computing the period of limitation for this purpose, the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding of section 264 is stayed by an order or injunction of any Court shall be excluded.

SCOPE OF COMMISSIONER'S POWER UNDER SECTION 264

345.2-4 Section 264 does not place any limitation on the extent of the exercise of power by the Commissioner. Hence, the power of the Commissioner is co-extensive with that of the original and the first appellate authority under the Act which means that he can interfere both on questions of fact and law.

OTHER POINTS

345.2-5 The following points one should also keep in mind :

1. Every application by an assessee for revision under this section shall be accompanied by a fee of Rs. 500.

2. An order by the Commissioner declining to interfere shall, for the purposes of section 264, be deemed not to be an order prejudicial to the assessee.

3. An order of the Commissioner under section 264 is not appealable to the Tribunal under section 253. Moreover, appeal does not lie against such order to the High Court, as an appeal under section 256 to the High Court lies only from an order passed by the Tribunal under section 254. However, the orders passed by the Commissioner under section 264 should satisfy the well-settled tests of "judicial act".

Appeal to Tribunal

346. The Appellate Tribunal, constituted by the Central Government, functions under the Ministry of Law. It consists of two classes of members—judicial and accountant.

Appealable orders

346.1 The following orders are appealable to the Appellate Tribunal :

■ The following orders passed by the Deputy Commissioner (Appeals) or the Commissioner (Appeals):

a. an order rectifying any mistake under section 154;

b. order passed under section 250; and

c. order imposing penalty under section 270A, 271, 271A, 271J or 272A.

■ An order passed by an Assessing Officer under section 158BC(*c*) in respect of search initiated under section 132 or books of account, other documents or any other assets requisitioned under section 132A after June 30, 1995 but before January 1, 1997.

■ Order passed by the Principal CIT/CIT under sections 12AA, 80G(5)(*vi*), 263, 270A, 271, 272A or an order passed by him under section 154 amending his order under section 263 or an order passed by a Chief Commissioner, Director General or Director under section 272A.

■ An order passed by an Assessing Officer under section 143(3) or under section 147 or under section 153A or under section 153C in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order.

■ An order passed by the Assessing Officer under section 143(3) or 147 or 153A or 153C with the approval of Commissioner as referred to in section 144BA(12) (*i.e.*, assessment order after invocation of GAAR) or an order passed under section 154 or 155 in respect of such order.

■ An order passed by the prescribed authority under section 10(*23C*)(*vi*)/(*via*)/(*iv*)/(*v*).

APPEAL TO THE TRIBUNAL BY COMMISSIONER

346.1-1 The Commissioner may, if he objects to any order passed by a Commissioner (Appeals) under section 154 or section 250, direct the Assessing Officer to appeal to the Tribunal against the order. However, such direction shall be given only in those cases where tax effect exceeds the specified amount [*see* Table *infra*].

"TAX EFFECT" SHOULD EXCEED MINIMUM AMOUNT - IN CASE APPEAL IS TO BE FILED BY THE REVENUE

346.1-2 Appeals will be filed by the Commissioner of Income-tax only in cases where the tax effect exceeds monetary limits† given hereunder—

Appeals in income-tax matters	*Monetary limit (†in Rs.)*
Appeal before Appellate Tribunal	50,00,000
Appeal under section 260A before High Court	1,00,00,000
Appeal before Supreme Court	2,00,00,000

■ The Board has clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided *on merits* of the case.

Procedure for filing appeal

346.2 The aggrieved party (*i.e.*, the assessee, or the Commissioner of Income-tax) can submit the appeal within 60 days* of the date on which order sought to be appealed is communicated to him.

■ The appeal should be filed in Form No. 36 and should be verified in the prescribed manner.

■ The memorandum of appeal must be in triplicate and should be accompanied by two copies (at least one of which should be a certified copy) of the order appealed against, two copies of the relevant order of the Assessing Officer, two copies of the grounds of appeal before the first appellate authority, two copies of the statement of facts, if any, filed before the said appellate authority, and also—

a. in the case of an appeal against an order levying penalty, two copies of the relevant assessment order;

b. in the case of an appeal against an order under section 143(3) read with section 144A, two copies of the directions of the Deputy Commissioner under section 144A;

c. in the case of an appeal against an order under section 143 read with section 147, two copies of the original assessment order, if any.

■ It should be accompanied by a fee as follows—

Particulars	*Rs.*
Assessed total income : Rs. 1 lakh or less	500
Assessed total income is more than Rs. 1 lakh but not more than Rs. 2 lakh	1,500
Appeals involving total income more than Rs. 2 lakh	1% of the assessed income subject to a maximum of Rs. 10,000
Miscellaneous applications under section 254(2)	50
Stay petitions (Note 1)	500
Any other case (Note 2)	500

The above fees will not be payable in the case of an appeal filed by the Assessing Officer against any order passed by a Commissioner (Appeals) under section 154 or section 250.

■ The Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Commissioner (Appeals) has been preferred by the other party, may (even if he may not have appealed against such order or any part thereof) within 30 days of the receipt of the notice, file a memorandum of cross-objections.

*30 days in the case of appeal against order passed under section 158BC(*c*).

† These monetary limits are applicable with effect from August 8, 2019. These limits will apply retrospectively to pending appeals and to appeals to be filed henceforth in High Courts/Tribunals. Pending appeals below the specified tax limits given above may be withdrawn/not pressed.

■ Such memorandum of cross-objections shall be filed in Form No. 36A in triplicate. No fee is required to be paid for filing the memorandum of cross-objections. Such memorandum of cross-objections shall be disposed of by the Tribunal as if it were an appeal presented within period of 60 days as prescribed by section 254(3).

■ The Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period of 60 or 30 days, if it is satisfied that there was sufficient cause for not presenting it within that period.

Order of the Tribunal

346.3 The Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The Tribunal where it is possible may hear and decide every appeal within a period of four years from the end of the financial year in which the appeal is filed. The Tribunal shall send a copy of any orders to the assessee and to the Commissioner.

GROUNDS WHICH MAY BE TAKEN IN APPEAL BEFORE TRIBUNAL

346.3-1 The following points should be noted—

1. The appellant shall not (except by leave of the Tribunal) urge or be heard in support of any ground not set forth in the memorandum of appeal.

2. But the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal.

3. However, the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground.

Appeal to High Court

347. An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law. An appeal can be filed by the Chief Commissioner† or the Commissioner† or an assessee aggrieved by any order passed by the Tribunal.

What is a substantial question of law

347.1 Appeal under section 260A can be only in respect of a 'substantial question of law'. The expression 'substantial question of law' has not been defined anywhere in the Act. But it has acquired a definite meaning through various judicial pronouncements.

In *Sir Chunilal V. Mehta & Sons Ltd.* v. *Century Spinning & Mfg. Co. Ltd.* AIR 1962 SC 1314, the Apex Court laid down the following tests to determine whether a substantial question of law is involved. The tests are :

a. whether directly or indirectly it affects substantial rights of the parties, or

b. the question is of general public importance, or

c. whether it is an open question in the sense that issue is not settled by the pronouncement of the Supreme Court or Privy Council or by the Federal Court, or

d. the issue is not free from difficulty, and

e. it calls for a discussion for alternative view.

Memorandum of appeal

347.2 In an appeal the Memorandum of Appeal shall precisely state the substantial question of law involving the appeal.

Fees

347.3 Where the appeal is made by the assessee, the appeal shall be accompanied by such fees as is specified in the relevant law relating to Court fees for filing appeals to High Court.

Time-limit

347.4 The appeal shall be filed within 120 days of the date on which order is communicated to the assessee or the Commissioner.

Formulation of question of law

347.5 Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. The appeal shall be heard only on the question so formulated. The respondents shall at the hearing of appeal, be allowed to argue that the case does not involve such question.

The Court has the power (after recording reasons) to hear the appeal on any other substantial question of law (not formulated by it), if it is satisfied that the case involves such questions.

Issue which may be determined by High Court

347.6 The High Court may determine any issue which has not been determined by the Tribunal or has been wrongly determined by the Tribunal, by reason of a decision on such question of law.

†Appeal will be filed by the Commissioner/Chief Commissioner only in those cases where revenue effect exceeds Rs. 10,00,000.

Case to be heard by not less than two Judges

347.7 Section 260B provides that an appeal filed under section 260A shall be heard by a bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or the majority, if any. Where, however, there is no such majority, the point of law upon which they differ shall be referred to one or more of the Judges of the High Court and shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it.

Stay of recovery proceeding where appeal is pending in High Court

347.8 Section 265 states that tax shall be payable in accordance with the assessment made in the case even if reference is pending in the High Court under section 256 or the Supreme Court under section 257 or an appeal is pending in the Supreme Court under section 261.

Section 265 is not applicable if an appeal is pending in the High Court under section 260A.

Decision of High Court

347.9 The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

When appeal lies to Supreme Court

348. The aggrieved party (*i.e.*, the assessee or the Commissioner†) can prefer an appeal to the Supreme Court against the judgment delivered by the High Court, provided that the High Court certifies the case fit for appeal to the Supreme Court. The right of appeal to the Supreme Court can, therefore, be availed only if the High Court gives a certificate of fitness.

If, however, the High Court refuses to certify a case to be fit for appeal to the Supreme Court, the aggrieved party may make an application to the Supreme Court under article 136 of the Constitution for special leave to appeal against the decision of the High Court.

The Supreme Court upon hearing any such case should decide the questions of law raised therein. It should deliver its judgment thereon containing the grounds on which such decision is founded. Where the judgment of the High Court is varied or reversed by the Supreme Court, the Appellate Tribunal should pass such orders as are necessary to dispose of the case conformably to such judgment.

What are the provisions for avoiding repetitive appeals [Sec. 158A]

349. The provisions of section 158A are given below—

1. The case of the assessee in respect of a question of law pertaining to an earlier assessment year is pending in an appeal/reference before the High Court or Supreme Court (hereinafter referred to as "earlier case").

2. An identical question of law arises in a later assessment year before the Assessing Officer or the appellate authority (hereinafter referred to as "later case").

3. The assessee may give an online declaration in Form No. 8 to the Assessing Officer/appellate authority that—

a. if the Assessing Officer or the appellate authority agrees to apply in the "later case" the final decision of High Court or Supreme Court on question of law in the "earlier case";

b. the assessee shall not raise such question of law in the "later case" in appeal before any appellate authority/High Court/Supreme Court.

4. If the aforesaid declaration is given to any appellate authority, a report shall be called from the Assessing Officer by the appellate authority on the correctness of the claim made by the assessee. An opportunity of being heard may be given by the appellate authority to the Assessing Officer.

5. The Assessing Officer or the appellate authority may pass the following order under section 158A(3)—

Different situations	*Admission or rejection of claim [see Note]*	*Action by the Assessing Officer/appellate authority*
If the Assessing Officer/appellate authority is satisfied about the correctness of the contention of the assessee as mentioned in *3* (*supra*)	The Assessing Officer or the appellate authority may admit the claim of the assessee	The Assessing Officer/appellate authority will make an order disposing of "later case" without awaiting the final decision on question of law in the "earlier case". The assessee will not be able to raise such question of law in appeal in the "later case" [*see point 6* given below].
If the Assessing Officer/appellate authority is not so satisfied	He may reject the claim of the assessee	

†Commissioner can prefer an appeal only if tax effect exceeds, Rs. 25,00,000.

Note: The order of admission/rejection of the claim of the assessee shall be final and shall not be appealable.

6. When the decision on the question of law in the "earlier case" becomes final, it shall be applied to the "later case" and the Assessing Officer or the appellate authority will (if necessary), amend the order passed in the "later case" conformably to such decision.

When an identical question of law is pending before Supreme Court - Procedure for appeal by revenue [Sec. 158AA]

350. Special provisions for avoiding repetitive appeals are given by section 158A. However, these provisions are not applicable if revenue has to file appeal for subsequent years on the same question of law. For this purpose, section 158AA has been inserted with effect from June 1, 2015. It is applicable when department is in appeal before the Supreme Court. It provides that where any question of law arising in the case of an assessee for any assessment year is identical with a question of law arising in his case for another assessment year which is pending before the Supreme Court (in an appeal or in a special leave petition) filed by the revenue, against the order of the High Court in favour of the assessee, the Commissioner or Principal Commissioner may (instead of directing the Assessing Officer to appeal to the Appellate Tribunal), direct the Assessing Officer to make an application to the Appellate Tribunal in the prescribed form within 60 days from the date of receipt of order of the Commissioner (Appeals) stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the earlier case.

The Commissioner or Principal Commissioner shall proceed under above provisions only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case. However, in case no such acceptance is received the Commissioner or Principal Commissioner shall proceed in accordance with the provisions contained in section 253(2)/(2A) and, accordingly, may, if he objects to the order passed by the Commissioner (Appeals), direct the Assessing Officer to appeal to the Appellate Tribunal.

Where the order of the Commissioner (Appeals) is not in conformity with the final decision on the question of law in the other case (if the Supreme Court decides the earlier case in favour of the Department), the Commissioner or Principal Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal against such order within 60 days from the date on which the order of the Supreme Court is communicated to the Commissioner or Principal Commissioner.

MULTIPLE CHOICE QUESTIONS

Q1. Appeal to Commissioner (Appeals) can be submitted by the Assessing Officer in—

a. Form No. 35;
b. Form No. 36;
c. Form No. 38;
d. None of above.

Q2. Appeal to Commissioner (Appeals) can be submitted by the assessee in—

a. Form No. 35;
b. Form No. 36;
c. Form No. 38;
d. None of above.

Q3. Appeal to Commissioner (Appeals) shall be presented within—

a. 60 days;
b. 90 days;
c. 30 days;
d. 120 days.

Q4. Appeal to Tribunal shall be presented within—

a. 60 days;
b. 90 days;
c. 30 days;
d. 120 days.

Q5. Appeal to High Court shall be presented within—

a. 60 days;
b. 90 days;
c. 30 days;
d. 120 days.

PENALTIES AND PROSECUTIONS

32

CHAPTER

Penalties for defaults in brief

373. An assessee has been made liable to penalty for the different defaults committed by him under the different provisions of the Act.

Section	*Nature of default*	*Minimum penalty*	*Maximum penalty*
1	*2*	*3*	*4*
140A(3)	Failure to pay whole or any part of income-tax and/or interest in accordance with the provisions of section 140A(1)	Such amount as the Assessing Officer may impose [Sec. 221(1)]	Tax in arrears
221(1)	Default in making payment of tax within prescribed time	Such amount as the Assessing Officer may impose**	Tax in arrears
270A	Penalty for under-reporting and misreporting of income (applicable from the assessment year 2017-18)	50 per cent of tax payable on under-reported income (200 per cent of such tax in the case of misreporting of income	—
271(1)(*b*)	Failure to comply with a notice under section 142(1) or 143(2) or with a direction issued under section 142(2A) (applicable up to the assessment year 2016-17)	Rs. 10,000 for each failure	Rs. 10,000 for each failure
271(1)(*c*)/(*d*)	Concealment of the particulars of income or furnishing inaccurate particulars of income or concealment of particulars of fringe benefits* (applicable up to the assessment year 2016-17)	100% of tax sought to be evaded	300% of tax sought to be evaded
271A	Failure to keep or maintain books of account, documents, etc., as required under section 44AA	Rs. 25,000	Rs. 25,000
271AA(1)	Failure to keep and maintain information and documents in respect of international or specified domestic transaction or failure to report international or specified domestic transaction or furnishing of incorrect information	2% of value of each international transaction	—
271AA(2)	Failure to furnish information and document as required under section 92D(4)	Rs. 5,00,000	—
271AAA	Undisclosed income in the case of search (applicable if search is initiated on or after June 1, 2007 but before July 1, 2012)	10 per cent of undisclosed income of specified previous year	—
271AAB	Undisclosed income in the case of search (applicable if search is initiated on or after July 1, 2012)	*See* para 374.3-3	
271AAC	Income determined by Assessing Officer includes any income referred to in sections 68 to 69D (if such income is not included by the assessee in his return of income or tax in accordance with section 115BBE has not been paid)	10% of tax payable under section 115BBE	—

*Fringe benefit tax is not applicable from the assessment year 2010-11 onwards.

**There is nothing in section 221 to restrict levy of penalty only once. Section 221(1) rather empowers the Assessing Officer in the case of a continuing default to impose penalty of such further amount or amounts as he may, from time to time, direct—*CIT* v. *Catmoss Retail Ltd.* [2011] 133 ITD 397 (Delhi).

1	*2*	*3*	*4*
271B	Failure to get accounts audited under section 44AB or furnish such report as is required under section 44AB	½% of the total sales, turnover, or gross receipts	Rs. 1,50,000
271BA	Failure to submit report under section 92E	Rs. 1,00,000	—
271C	Failure to deduct the whole or any part of tax as required under sections 192 to 195 or failure to pay the whole or any part of tax as required under section 115-O(2) or second proviso to section 194B	Amount of tax such person has failed to deduct or pay	—
271CA	Failure to collect tax at source	100% of tax which a person has failed to collect	—
271D	Taking or accepting any loan or deposit or specified sum† in contravention of the provisions of section 269SS	Amount of loan/deposit so taken or accepted***	—
271DA	Receiving an amount of Rs. 2 lakh or more otherwise than by an account payee cheque/draft/use of electronic clearing system through a bank account (or through prescribed electronic mode) in contravention of the provisions of section 269ST	100% of the amount of such receipt	—
271DB	Failure to provide facility for accepting payment through the prescribed electronic modes of payment referred to in section 269SU	Rs. 5,000 for every day during which such failure continues (applicable with effect from November 1, 2019)	—
271E	Repaying any deposit or loan or specified advance† referred to in section 269T otherwise than in accordance with the provisions of section 269T	Amount of deposit so repaid	—
271F	Failure to furnish return of income as required by section 139(1) before the end of relevant assessment year (applicable up to the assessment year 2017-18)	Rs. 5,000	—
271FA	Failure to furnish annual information return (or statement of financial transaction or reportable account) under section 285BA(1) within the prescribed time under section 285BA(1)	Rs. 500 for every day during the failure continues	—
271FA, proviso	Failure to furnish annual information return (or statement of financial transaction or reportable account) within period specified in notice under section 285BA(5)	Rs. 1,000 for each day of default commencing from the day immediately following the day on which the time specified in notice for furnishing the return expires	—
271FAA	Failure to furnish accurate statement of financial transaction or reportable account – - under section 285BA(1)(*k*) [applicable during April 1, 2015 and August 31, 2019]; - under section 285BA(1) [applicable with effect from September 1, 2019];	Rs. 50,000	—
271FAB	Failure to furnish statement or information or document by an eligible investment fund as required by section 9A(5)	Rs. 5,00,000	—
271G‡	Failure to furnish information or documents under section 92D(3)	2% of value of the international transaction or specified domestic transaction for each failure	—
271GA	Failure to furnish information or document under section 285A	*In the case of transferring right of management or control in relation to the Indian concern* : 2 per cent of value of transaction *In any other case* : Rs. 5,00,000	—

***In excess of Rs. 20,000—*CIT* v. *Ajanta Dyeing & Printing Mills* [2003] 130 Taxman 442 (Raj.).

‡Provisions of section 271G are quite different from provisions of section 271(1) and, therefore, no satisfaction need be recorded before initiating proceedings under section 271G—*Cargill India (P.) Ltd.* v. *CIT* [2008] 167 Taxman 114 (Delhi).

† "Specified advance" means any sum of money in the nature of an advance, by whatever name called, in relation to transfer of an immovable property whether or not the transfer takes place.

1	*2*	*3*	*4*
271GB(1)	Failure to furnish report under section 286(2) in respect of international group	Rs. 5,000 per day (if period of default does not exceed 1 month). Rs. 15,000 per day (for the period of default beyond 1 month)	—
271GB(2)	Failure to produce information/document to the prescribed authority under section 286(6)	Rs. 5,000 per day (beginning immediately following the day on which the period for furnishing the information expires)	—
271GB(3)	Continuity of failure referred to in section 271GB(1)/(2) after the order directing to pay penalty under section 271GB(1)/(2) has been served	Rs. 50,000 per day from the date of service of penalty order	—
271GB(4)	Furnishing inaccurate report under section 286(2) in respect of international group	Rs. 5,00,000	—
271H	Failure to submit (or furnishing incorrect statement) in quarterly TDS/TCS returns	Rs. 1,00,000	Rs. 1,00,000
271-I	Failure to furnish information or furnishing inaccurate information under section 195(6)	Rs. 1,00,000	—
271J	Furnishing incorrect information in reports or certificates by chartered accountant, merchant banker or registered valuer	Rs. 10,000 for each report/ certificate	—
272A(1)(*a*)	Failure to answer any question put to a person (who is legally bound to state the truth of any matter touching the subject to his assessment) by an income-tax authority	Rs. 10,000 for each default	Rs. 10,000 for each default
272A(1)(*b*)	Failure to sign any statement made by a person in course of income-tax proceeding	Rs. 10,000 for each default	Rs. 10,000 for each default
272A(1)(*c*)	Failure to comply with summons issued under section 131(1) to attend office to give evidence and produce books of account or other documents	Rs. 10,000 for each default	Rs. 10,000 for each default
272A(1)(*d*)	Failure to comply with a notice under section 142(1),143(2) or failure to comply a direction issued under section 142(2A)	Rs. 10,000 for each default	—
272A(2)	Failure to comply with a notice issued under section 94 ; to give notice of discontinuance of business/profession under section 176(3); to furnish returns/statement mentioned in section 133, 206, 206C or 285B ; to allow inspection of register referred in section 134 (or of any entry in such register or to allow copies of such register to be taken) ; to furnish return of income under section 139(4A) or 139(4C) or to deliver in due time a declaration mentioned in section 197A or 206C(1A) ; to furnish a certificate as required in section 203 or 206C ; to deduct and pay tax under section 226; to furnish a statement as required by section 192(2C) ; to deliver a copy of statement of TDS/TCS under section 200(3)/206C(3); to deliver return under section 206A or to deliver a statement in section 200(2A) or section 206C(3A)	Rs. 100 for every day during which default continues	Rs. 100 for every day during which default continues (the amount of penalty in relation to declaration under section 197A, certificate in Form No. 16/16A/16AA as required under section 203 and the amount of penalty for default under sections 200(3), 206 and 206C and for failure in relation to section 200(2A)/206C(3A), shall not exceed the amount of tax deductible or collectible)
272AA	Failure to comply with the provision of section 133B	Any amount up to Rs. 1,000	Rs. 1,000
272B	Failure to comply with the provisions of section 139A	Rs. 10,000 (with effect from September 1, 2019, Rs. 10,000 for each such default)	—
272BB(1)	Failure to comply with the provisions of section 203A	Up to Rs. 10,000	Rs. 10,000
272BB(1A)	Failure to quote tax deduction or collection number (from June 1, 2006)	Rs. 10,000	—

Penalty cannot be imposed if there was a reasonable cause

373.1 By virtue of section 273B, penalty is not leviable under section 271, 271A, 271AA, 271B, 271BA, 271BB, 271C, 271CA, 271D, 271DA, 271DB, 271E, 271F, 271FA, 271FAB, 271FB, 271G, 271GA, 271GB, 271H, 271-I, 271J, 272A(1)(*c*)/(*d*), 272A(2), 272AA(1), 272B, 272BB or 272BBB(1) if the assessee proves that there was reasonable cause for failure – *Kalakrithi* v. *ITO* [2002] 125 Taxman 97 (Mad.).

Penalty for concealment/ under-reporting of income

374. Penalty in concealment/under-reporting of income is applicable as follows –

Section	*Nature*	*Applicability*	*Para No.*
A. ***Penalty where search has not been initiated***			
■ Section 271(1)(*c*)	Concealment of income	Applicable up to the assessment year 2016-17	374.1
■ Section 270A	Under-reported income and misreporting of income	Applicable from the assessment year 2017-18	374.2
■ Section 271AAC	Unexplained cash credit/ unexplained investment/ undisclosed investment/ unexplained expenditure taxable under sections 68 to 69D	Applicable from the assessment year 2017-18 (amount of penalty is 6 per cent of unexplained cash credit/ unexplained investment, etc. Penalty can be avoided, if the assessee pays advance tax during the previous year and submits return of income after including unexplained cash credit, etc.)	–
B. ***Penalty where search has been initiated***			
■ *Expln. 5* to section 271(1)	Undisclosed income/ asset found in search	Search is initiated before June 1, 2007	374.3-1
■ *Expln. 5A* to section 271(1) and section 271AAA	Undisclosed income/ asset found in search	Search is initiated on or after June 1, 2007 but before July 1, 2012	374.3-2
■ Section 271AAB	Undisclosed income/ asset found in search	Search is initiated on or after July 1, 2012	374.3-3

Concealment penalty up to the assessment year 2016-17

374.1 Up to the assessment year 2016-17, concealment penalty under section 271(1)(*c*) is applicable if the following conditions are satisfied –

a. the penalty can be imposed by the Assessing Officer, Commissioner (Appeals) or Commissioner;

b. it can be imposed in the course of proceedings under the Act; and

c. the taxpayer has concealed particulars of his income or furnished inaccurate particulars of such income.

If the aforesaid conditions are satisfied, then the Assessing Officer, Commissioner (Appeals) or Commissioner may direct that such person shall pay penalty which shall not be less than the amount of tax sought to be evaded, but which shall not exceed three times the amount of tax sought to be evaded. The penalty is in addition to the tax payable by the assessee.

Penalty on the basis of misreporting of income applicable from the assessment year 2017-18 [Sec. 270A]

374.2 Section 270A has been inserted from the assessment year 2017-18. Under this section, the Assessing Officer, CIT (Appeals) or Principal CIT or CIT may, during the course of any proceedings under the Act, levy penalty if a person has under-reported his income.

CASES OF UNDER-REPORTED INCOME

374.2-1 A person shall be considered to have under-reported his income if, —

a. the income assessed is greater than the maximum amount not chargeable to tax, where no return of income is filed or where return has been furnished for the first time under section 148;

b. the assessed income is greater than the income determined upon processing under section 143(1)(*a*), where return is filed;

c. the income assessed is greater than the income assessed or reassessed immediately before such reassessment;

d. the income assessed or reassessed has the effect of reducing the loss or converting such loss into income;

e. the amount of deemed total income assessed or reassessed under section 115JB/115JC is greater than the deemed total income determined in the return processed under section 143(1)(*a*);

f. the amount of deemed total income assessed as per the provisions of section 115JB/115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed or where return has been furnished for the first time under section 148;

g. the amount of deemed total income reassessed as per the provisions of section 115JB/115JC is greater than the deemed total income assessed or reassessed immediately before such reassessment.

QUANTUM OF UNDER-REPORTED INCOME

374.2-2 The amount of under-reported income shall be determined as follows –

Different situations	*Quantum of under-reported income*
Return has not been furnished (or where return has been furnished for the first time under section 148) and income has been assessed for the first time	The difference between the amount of income assessed and the income determined under section 143(1)(*a*)
Return has not been furnished and income has been assessed for the first time	■ *In the case of company/firm/local authority* - Income assessed ■ *In any other case* - The difference between the amount of income assessed and the maximum amount not chargeable to tax
Where income is not assessed for the first time	The difference between the amount of income assessed/reassessed/recomputed and the amount of income assessed/reassessed/recomputed in a preceding order
Where an assessment/reassessment has the effect of reducing the loss declared in the return or converting that loss into income	The difference between the loss claimed and the income (or loss) as assessed/reassessed
Where under-reported income arises out of determination of deemed income in accordance with the provisions of section 115JB/115JC	$(A - B) + (C - D)$

■ *Calculation of under-reported income in case of applicability of provisions of section 115JB/115JC* - It shall be determined on the basis of the following formula –

Under-reported income = $(A - B) + (C - D)$

A = The total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (herein called general provisions).

B = The total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under-reported income.

C = The total income assessed as per the provisions contained in section 115JB or section 115JC.

D = The total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under-reported income.

Note - Where the amount of under-reported income on any issue is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

■ *Negative list* - Under-reported income shall not include the following –

a. where the assessee offers an explanation and the income-tax authority is satisfied that the explanation is *bona fide* and all the material facts have been disclosed;

b. where such under-reported income is determined on the basis of an estimate, if the accounts are correct and complete but the method employed is such that the income cannot properly be deducted therefrom;

c. where the assessee has, on his own, estimated a lower amount of addition or disallowance on the issue and has included such amount in the computation of his income and disclosed all the facts material to the addition or disallowance;

d. where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction and disclosed all the material facts relating to the transaction;

e. where the undisclosed income is on account of a search operation and penalty is leviable under section 271AAB.

RATE OF PENALTY

374.2-3 The rate of penalty shall be 50 per cent of the tax payable on under-reported income. However, in cases of under-reported income falling under misreporting of income, penalty shall be 200 per cent of the tax payable on such misreporting of income.

■ *Misreporting of income [Sec. 270A(9)]* - Cases of misreporting of income shall be the following –

a. misrepresentation or suppression of facts;

b. failure to record investments in the books of account;

c. claim of expenditure not substantiated by any evidence;

d. recording of any false entry in the books of account;

e. failure to record any receipt in the books of account having a bearing on total income; and

f. failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.

Income of the nature covered by second proviso to section 56(2)(*viib*) shall be deemed to be misreporting of income for the purpose of section 270A(9) (applicable from the assessment year 2020-21).

■ *How to calculate tax on under-reported income* - The tax payable on under-reported income shall be calculated as follows –

Different situations	*Mode of computation of tax on under-reported income*
Case 1 - Where no return has been furnished (or where return has been furnished for the first time under section 148) and the income has been assessed for the first time.	Amount of tax computed on (under-reported income + exemption limit)
Case 2 - Where total income determined under section 143(1)(*a*) or assessed/re-assessed/recomputed in a preceding order is a loss	Amount of tax computed on under-reported income, as if it were total income
Case 3 - In any other case	Tax on under-reported income is (x – y) x = Amount of tax computed on [under-reported income + total income determined under section 143(1)(*a*) or total income assessed/reassessed/recomputed in a preceding order] y = Amount of tax computed on total income determined under section 143(1)(*a*) or total income assessed/reassessed/recomputed in a preceding order

■ *Double penalty not possible* - No addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year.

Case Study

374.2-3P1 *X (61 years) does not furnish his return of income for the assessment year 2019-20. The Assessing Officer completes assessment under section 144. Income assessed by the Assessing Officer is Rs. 1,14,00,000. It includes an unrecorded/unexplained investment of Rs. 40,00,000 in gold during the year. Income of Rs. 1,14,00,000 includes a short-term capital gain of Rs. 18,00,000 on transfer of shares in the National Stock Exchange (as per documents made available by the assessee). Determine the amount of penalty under section 270A.*

■

	Rs.
Income as per section 144	1,14,00,000
Less: Exemption limit	3,00,000
Under-reported income (out of which Rs. 40,00,000 is misreporting of income)	1,11,00,000

Computation of tax on under-reported income - In this case, return is not furnished and income is assessed for the first time. Mode of computation of tax on under-reported income as per *Case 1* (*supra*) is as follows –

	Rs.
Under-reported income	1,11,00,000
Add: Exemption limit	3,00,000
Total	1,14,00,000
Tax on Rs. 1,14,00,000 –	
Income-tax (15% of Rs. 18,00,000 and normal tax on balance of Rs. 96,00,000)	29,60,000
Add: Surcharge @ 15%	4,44,000
Add: Health and education cess	1,36,160
Tax on under-reported income	35,40,160

Computation of penalty –

	Under-reported income Rs.	*Misreporting of income Rs.*	*Total Rs.*
Under-reported income/misreporting of income	71,00,000	40,00,000	1,11,00,000
Tax on under-reported income/misreporting of income	22,64,427*	12,75,733**	35,40,160
Penalty leviable under section 270A (50% of tax on under-reported income, 200% of tax on misreporting income)	11,32,214	25,51,466	36,83,680

*71/111 of Rs. 35,40,160, **40/111 of Rs. 35,40,160.

374.2-3P2 *X Ltd. is a domestic company. Its turnover for the previous year 2016-17 is Rs. 240 crore. For the assessment year 2019-20, tax is payable at the rate of 25 per cent on the income which is determined as follows –*

	Income as per assessment order under section–		
	143(1) Rs.	143(3) Rs.	147 Rs.
Income	*(–) 1,10,00,000*	*(–) 90,00,000*	*(–) 72,50,000*
Add: Arithmetical error corrected while processing u/s 143(1)	*20,00,000*	–	–
Total	*(–) 90,00,000*	*(–) 90,00,000*	*(–) 72,50,000*
Add: Adjustment at the time of assessment/reassessment –			
- *Addition because of misrepresentation or suppression of facts* (a)	–	*13,00,000*	*43,00,000*
- *Addition on estimation basis (accounts are correct and complete but method employed is such that income cannot be properly deduced therefrom)* (b)	–	*50,000*	*7,60,000*
- *Addition on account of under-reported income* (c)	–	*4,00,000*	*26,00,000*
Assessed income	–	*(–) 72,50,000*	*4,10,000*

Determine the amount of penalty under section 270A.

■

In this case, addition (*a*) is on account of misreporting of income as per section 270A(9). Addition (*b*) is not treated as under-reported income. Addition (*c*) is treated as under-reported income. Tax on under-reported income/misreporting of income will be calculated as per *Case 2* given above. Penalty under section 270A may be calculated as follows –

	Order under section 143(3)		*Order under section 147*	
	Under-reported income Rs.	*Misre-porting of income Rs.*	*Under-reported income Rs.*	*Misre-porting of income Rs.*
Under-reported income/misreporting of income	4,00,000	13,00,000	26,00,000	43,00,000
Tax payable on the above income @ 25% (applicable rate) + HEC	1,04,000	3,38,000	6,76,000	11,18,000
Penalty leviable under section 270A				
- 50% of tax payable (under-reported income) [*see* Note]	52,000	–	3,38,000	–
- 200% of tax payable (misreporting of income)	–	6,76,000	–	22,36,000

Note - X Ltd. may apply under section 270AA for grant of immunity from imposition of penalty.

374.2-3P3 *Recompute penalty under section 270A in the above problem after making the following two alterations –*

1. Under-reported income includes Rs. 50,000 on account of short-term capital gain chargeable under section 111A.

2. The assessee is X (born on August 31, 1976).

■

Penalty under section 270A may be calculated as follows –

	Order under section 143(3)		*Order under section 147*		*Total*
	Under-reported income Rs.	*Misre-porting of income Rs.*	*Under-reported income Rs.*	*Misre-porting of income Rs.*	*Rs.*
Under-reported income/misreporting of income	4,00,000	13,00,000	26,00,000	43,00,000	86,00,000
Tax payable on Rs. 86,00,000 (15% of Rs. 50,000 + normal tax on balance) + SC + SHEC	1,26,904[a]	4,12,439[b]	8,24,877[c]	13,64,220[d]	27,28,440
Penalty leviable under section 270A					
- 50% of tax payable (under-reported income) [*see* Note]	63,452	–	4,12,439	–	
- 200% of tax payable (misreporting of income)	–	8,24,878	–	27,28,440	

a. 4/86 of Rs. 27,28,440, *b.* 13/86 of Rs. 27,28,440, *c.* 26/86 of Rs. 27,28,440, *d.* 43/86 of Rs. 27,28,440

Note - X may apply under section 270AA for grant of immunity from imposition of penalty.

374.2-3P4 *X (42 years) is a sole trader of a business. His income for the assessment year 2019-20 is determined as follows –*

	Income as per assessment order under section –		
	143(1) Rs.	143(3) Rs.	147 Rs.
Income	*4,90,000*	*8,66,000*	*81,58,000*
Add: Arithmetical error corrected while processing u/s 143(1)	*3,76,000*	–	–
Total	*8,66,000*	*8,66,000*	*81,58,000*
Add: Adjustment at the time of assessment/ reassessment –			
- Addition because of misrepresentation or suppression of facts (a)	–	*70,00,000*	*23,00,000*
- Addition on estimation basis (accounts are correct and complete but method employed is such that income cannot be properly deduced therefrom) (b)	–	*12,000*	*22,000*
- Addition on account of under-reported income (c)	–	*2,80,000*	*6,10,000*
Assessed income	–	*81,58,000*	*1,10,90,000*

Penalty proceeding has been initiated by the Assessing Officer in scrutiny assessment under section 143(3). Determine the amount of penalty under section 270A.

■

In this case, addition (*a*) is on account of misreporting of income as per section 270A(9). Addition (*b*) is not treated as under-reported income. Addition (*c*) is treated as under-reported income. Under-reported income is Rs. 72,80,000 (out of which Rs. 70,00,000 is misreporting of income). Tax on under-reported income/misreporting of income will be calculated as per *Case 3* given above. Penalty under section 270A may be calculated as follows –

	Rs.
x = Amount of tax computed on [under-reported income + total income determined under section 143(1)(*a*) or total income assessed/reassessed/recomputed in a preceding order] Tax on [under-reported income : Rs. 72,80,000 + total income as per intimation under section 143(1) : Rs. 8,66,000], *i.e.*, tax on Rs. 81,46,000 + SC + HEC	25,81,207
y = Amount of tax computed on total income determined under section 143(1)(*a*) or total income assessed/reassessed/recomputed in a preceding order Tax on total income as per intimation under section 143(1) : Rs. 8,66,000, *i.e.*, tax on Rs. 8,66,000 + HEC	89,128
Tax on under-reported income [*x* – *y*]	24,92,079
Computation of penalty –	

	Under-reported income Rs.	*Misreporting of income Rs.*	*Total Rs.*
Under-reported income/misreporting of income	2,80,000	70,00,000	72,80,000
Tax on under-reported income/misreporting of income	95,849*	23,96,230**	24,92,079
Penalty leviable under section 270A (50% of tax on under-reported income, 200% of tax on misreporting income)	47,925***	47,92,460	48,40,385

* 2,80,000/72,80,000 × Rs. 24,92,079, **70,00,000/72,80,000 × Rs. 24,92,079.

***X may apply under section 270AA for grant of immunity from imposition of penalty.

374.2-3P5 *In the above problem, the Assessing Officer in reassessment initiated penalty proceedings under section 270A. Determine the amount of penalty which can be imposed.*

■

In this case, addition (*a*) is on account of misreporting of income as per section 270A(9). Addition (*b*) is not treated as under-reported income. Addition (*c*) is treated as under-reported income. Under-reported income is Rs. 29,10,000 (out of which Rs. 23,00,000 is misreporting of income). Tax on under-reported income/misreporting of income will be calculated as per *Case 3* given in para 374.2-3. Penalty under section 270A may be calculated as follows –

	Rs.
x = Amount of tax computed on [under-reported income + total income determined under section 143(1)(*a*) or total income assessed/reassessed/ recomputed in a preceding order] Tax on [under-reported income : Rs. 29,10,000 + total income as per assessment under section 143(3) : Rs. 81,58,000], *i.e.*, tax on Rs. 1,10,68,000 + SC+HEC	37,46,948
y = Amount of tax computed on total income determined under section 143(1)(*a*) or total income assessed/reassessed/recomputed in a preceding order Tax on total income as per assessment under section 143(3) : Rs. 81,58,000, *i.e.*, tax on Rs. 81,58,000 + SC + HEC	25,85,326
Tax on under-reported income [*x* – *y*]	11,61,623
Computation of penalty –	

	Under-reported income Rs.	*Misreporting of income Rs.*	*Total Rs.*
Under-reported income/misreporting of income	6,10,000	23,00,000	29,10,000
Tax on under-reported income/misreporting of income	2,43,502*	9,18,121**	11,61,623
Penalty leviable under section 270A (50% of tax on under-reported income, 200% of tax on misreporting income)	1,21,751***	18,36,242	19,57,993

* 6,10,000/29,10,000 × Rs. 11,61,623, ** 23,00,000/29,10,000 × Rs. 11,61,623.

***X may apply under section 270AA for grant of immunity from imposition of penalty.

374.2-3P6 *The following information is noted from the records of X Ltd. for the assessment year 2019-20 (annual turnover of X Ltd. is more than Rs. 250 crore since 2009-10) –*

	General provisions Rs.	*MAT Rs.*
Income/book profit as per return of income	*9,00,000*	*21,00,000*
Add: Addition on estimated basis (not representing under-reported income)	*20,000*	*Nil*
Add: Misreporting of income (sale to D Ltd. not recorded correctly in books of account as discovered by the Assessing Officer) (as per assessment order)	*40,000*	*40,000*
Add: Under-reported income (weighted deduction is wrongly claimed under section 35) (as per assessment order)	*50,000*	*Nil*
Add: Under-reported income (deferred tax which appeared on the debit side of profit and loss account, not added by X Ltd.) (as per assessment order)	*Nil*	*60,000*
Net income/book profit (as per assessment order)	*10,10,000*	*22,00,000*

Determine the amount of penalty under section 270A.

■

Under-reported income will be calculated as follows –

	Rs.
A = Total income assessed under general provisions	10,10,000
B = A – under-reported income – misreporting of income (Rs. 10,10,000 – Rs. 40,000 – Rs. 50,000)	9,20,000
C = Book profit	22,00,000
D = Book profit – under-reported income – misreporting of income (Rs. 22,00,000 – Rs. 60,000) (Rs. 40,000 which is deducted under B will not be deducted again from D)	21,40,000
Under-reported income = (*A* – *B*) + (*C* – *D*) (out of which Rs. 40,000 is misreporting of income)	1,50,000

Tax on under-reported income -Tax on under-reported income/misreporting of income will be calculated as per *Case 3* given above. As the assessee is a company, tax on under-reported income is calculated at the applicable rate without separately calculating value of *x* and *y* –

Computation of penalty under section 270A –	
Tax on under-reported income –	
- 31.2% of Rs. 1,10,000	34,320
- 31.2% of Rs. 40,000	12,480
Penalty leviable under section 270A	
- 50% of tax payable (under-reported income) [*see* Note]	17,160
- 200% of tax payable (misreporting of income)	24,960

Note : X Ltd. may apply under section 270AA for grant of immunity from imposition of penalty.

374.2-3P7 *In the assessment of X for the assessment year 2018-19 (previous year 2017-18), the Assessing Officer makes the following observations in his assessment order under section 143(3) –*

- *X has purchased diamonds for Rs. 18 lakh on September 6, 2017 for which he is unable to offer any explanation (investment not recorded in books of account).*
- *Car maintenance expenses debited in the books of account is Rs. 7,18,000. X has declared that 10 per cent of the expenditure pertains to personal use of car (and the same is added to net profit to calculate taxable income as submitted in the return of income). The Assessing Officer, however, does not agree to it and he treats 30 per cent of Rs. 7,18,000 on account of personal use of the car.*

1. Can the Assessing Officer levy penalty under section 270A ?

2. Is it possible for the assessee to argue in the penalty proceedings that the aforesaid investment in diamonds has been made out of following additions made by the Department in earlier years —

Assessment years	*Additions made (in Rs.)*	*Whether penalty was levied earlier*
2017-18	*5,00,000*	*Misreporting of income penalty levied under section 270A on Rs. 5,00,000*
2016-17	*2,00,000*	*Concealment penalty levied under section 271(1)(c) on Rs. 2,00,000*
2015-16	Nil	—
2014-15	*8,00,000*	*Concealment penalty levied on Rs. 8,00,000*
2013-14	*4,15,000*	*Concealment penalty levied under section 271(1)(c) on Rs. 3,00,000*

■

The Assessing Officer cannot levy penalty under section 270A on account of disallowance of car expenditure on an estimated basis. Moreover, unexplained/unrecorded investment in diamond attracts provision of section 69. When income is taxed under sections 68 to 69D, tax is calculated as per provisions of section 115BBE. Under section 115BBE(1), Rs. 18,00,000 will be taxable @ 60%. The amount of tax shall be increased by surcharge (@ 25% of tax) and education cess. The effective amount of tax is 77.25%† of Rs. 18,00,000. When income is taxed under sections 68 to 69D, penalty under section 270A cannot be imposed. However, penalty can be imposed under section 271AAC. The amount of tax and penalty pertaining to unexplained/ unrecorded investment of Rs. 18,00,000 will be calculated as follows –

	Rs.
Tax on Rs. 18,00,000 under section 115BBE(1) (60% of Rs. 18,00,000)	10,80,000
Add: Surcharge @ 25% of Rs. 10,80,000	2,70,000
Tax and surcharge	13,50,000
Add: Education cess @ 3% of 13,50,000	40,500
Tax liability	13,90,500
Penalty under section 271AAC [10% of tax under section 115BBE(1)] (*i.e.* 10% of Rs. 10,80,000)	1,08,000
Tax and penalty payable on unexplained investment	14,98,500

Penalty under section 271AAC cannot be levied, if the assessee pays advance tax during the previous year and submits return of income under section 139 after including the aforesaid income.

374.2-3P8 *X does not agree with the calculation of penalty given above. He insists that penalty is not leviable because of the following reasons –*

1. *Investment in diamond was made out of additions made to his taxable income by the Assessing Officer in earlier years, as given in the table in the problem 374.2-3P7. No penalty in the current year should be levied when unrecorded investment was financed by income in respect of which concealment penalty was levied by the department in preceding years* – Anantharam Veerasinghaiah & Co. *v.* CIT *[1980] 123 ITR 457 (SC).*

2. *The scheme of section 270A(4)/(5) permits levy of penalty only if investment of the current year was financed out of additions made in earlier years and on those additions concealment penalty was not imposed. As given in the data above, the entire investment of Rs. 18,00,000 was made out of additions of earlier years and in respect of these additions concealment penalty was imposed.*

■

Section 271AAC has been inserted by Taxation Laws (Second Amendment) Act, 2016. It is applicable from the assessment year 2017-18. By virtue of this amendment, penalty under section 270A cannot be imposed if income is taxable under sections 68 to 69D. In such cases, tax is payable within the parameters of section 115BBE and penalty can be imposed only under section 271AAC. The contention of X is, therefore, not tenable in law. The scheme of adjustment given under section 270A(4)/(5) does not have role to play in the case of unexplained cash credit/unexplained investment/investment not recorded in the books of account/ unexplained expenditure.

IMMUNITY FROM IMPOSITION OF PENALTY [SEC. 270AA]

374.2-4 An assessee may make an application under section 270AA (applicable from the assessment year 2017-18) to the Assessing Officer for grant of immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C/276CC. The benefit of section 270AA is available only if the assessee pays tax and interest payable [as per the order of assessment/reassessment order under section 143(3) or 147] within the period specified in such notice of demand and does not prefer an appeal against such assessment order. The assessee can make such application in Form No. 68 within 1 month from the end of the month in which the order of assessment or reassessment is received.

■ The Assessing Officer shall, on fulfilment of the above conditions and after the expiry of period of filing appeal as specified in section 249(2), grant immunity from penalty/prosecution, where the penalty proceedings under section 270A have not been initiated on account of the circumstances of misreporting of income [as laid in section 270A(9)].

■ The Assessing Officer is required to pass an order accepting (or rejecting) such application, within a period of 1 month from the end of the month in which such application is received. However, the Assessing Officer shall pass no order rejecting the application unless the assessee has been given an opportunity of being heard and the said order shall be final.

■ No appeal under section 246A or an application for revision under section 264 shall be admissible against the order of the assessment/reassessment in a case where the order granting immunity is passed.

† It is 78 per cent for the assessment years 2019-20 and 2020-21.

Concealment penalty in search cases

374.3 If search is initiated on or after June 1, 2007, the provisions are applicable as follows—

■ *If search is initiated on or after June 1, 2007 but before July 1, 2012 - Explanation 5A* to section 271(1) and section 271AAA is applicable.

■ *If search is initiated on or after July 1, 2012 - Explanation 5A* to section 271(1) and section 271AAB is applicable.

SECTION 271AAA

374.3-1 Section 271AAA is applicable if—

a. a search is initiated under section 132 on or after June 1, 2007;

b. there is some "undisclosed income"; and

c. undisclosed income pertains to a "specified previous year".

■ *What is the quantum of concealment penalty* - If the above conditions are satisfied, 10 per cent of "undisclosed income" of the "specified previous year" is concealment penalty which can be imposed by the Assessing Officer in addition to tax. If section 271AAA is applicable, penalty under section 271(1)(*c*) cannot be imposed.

■ *Is it possible to avoid the aforesaid penalty [Sec. 271AAA(2)]* - The aforesaid penalty of 10 per cent of "undisclosed income" of the "specified previous year" can be avoided if the following conditions are satisfied—

1. If the assessee in a statement under section 132(4) in the course of the search, admits the undisclosed income.

2. Further, he specifies the manner in which such income has been derived.

3. He substantiates the manner in which the undisclosed income was derived.

4. He pays the tax, together with interest, if any, in respect of the undisclosed income.

If the above 4 conditions are satisfied penalty under section 271AAA (*i.e.*, 10 per cent of "undisclosed income" of the "specified previous year") can be avoided.

■ *What is "specified previous year"* - The aforesaid provisions of imposition of 10 per cent concealment penalty and the manner of avoiding it are applicable only when "undisclosed income" pertains to a "specified previous year". For this purpose "specified previous year" is any one or both of the following—

"Specified previous year" one	It is a previous year which satisfies all the following conditions— *a.* it ends before the date of search; *b.* the due date of filing return of income under section 139(1) has not expired before the date of search; *c.* before the date of search, the assessee has not submitted return of income for the above previous year
"Specified previous year" two	It is the previous year in which search is conducted.

It may be noted that in the cases given below, section 271AAA is not applicable as the previous year does not fall in any of the abovestated "specified previous year". Consequently, in the cases given below, the normal provisions of section 271(1)(*c*) will be applicable—

Case 1 - Undisclosed income pertains to a previous year which has ended before the date of search and on the date of search the due date of filing return of income has expired. For instance, search is conducted on December 1, 2014 and undisclosed income pertains to the previous year 2013-14.

Case 2 - Undisclosed income pertains to a previous year which has ended before the date of search, on the date of search return of income has been submitted without disclosing undisclosed income, though due date of filing of return of income has not expired on the date of search. For instance, search is conducted on June 25, 2014. Undisclosed income pertains to previous year 2013-14. Return of income for the previous year 2013-14 has been submitted without disclosing undisclosed income on June 24, 2014.

■ *What is undisclosed income* - For the purposes of section 271AAA, "undisclosed income" has been defined so as to mean—

1. Any income of the "specified previous years" represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or which has otherwise not been disclosed to the Commissioner before the date of the search.

2. Any income of the "specified previous years" represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted.

374.3-2 If the following conditions are satisfied it will be assumed that the taxpayer has concealed the particulars of his income or furnished inaccurate particulars of income. In other words, if these conditions are satisfied normal concealment penalty (*i.e.*, 100 per cent - 300 per cent of tax sought to be evaded) can be imposed— *EXPLANATION 5A TO SECTION 271*

1. Search is conducted on or after June 1, 2007.

2. In the course of search the assessee is found to be the owner of (*a*) any money, bullion, jewellery or other valuable article or thing (referred to as "assets" in the *Explanation 5A*); or (*b*) any income based on any entry in any books of account or other documents or transactions and he claims that such assets or entry in the books of account or other documents or transactions represents his income (wholly or in part) for a previous year given below.

3. The above "assets" or income pertains to a previous year which has ended before the date of the search, the due date for filing the return of income for such year has expired and the assessee has not filed the return or return has been furnished without disclosing "undisclosed income".

If the above conditions are satisfied *Explanation 5A* will assume that the taxpayer has concealed the particulars of his income or furnished inaccurate particulars of his income and concealment penalty (100 per cent - 300 per cent of tax sought to be evaded) can be imposed under section 271(1)(*c*) even if such income is declared by the taxpayer in any return of income which is furnished on or after the date of search.

Provisions Illustrated - Consider the following examples—

Date of initiation of search	*"Undisclosed income" pertains to the previous year given below*	*Due date of submission of return of income for the previous year given in Column 2*	*Date of submission of return of income*	*Penalty*
June 10, 2011	2009-10	September 30, 2010	No return	*Explanation 5A* is applicable
June 5, 2011	2009-10	July 31, 2010	July 31, 2010, "undisclosed income" not disclosed	*Explanation 5A* is applicable
June 5, 2011	2009-10	July 31, 2010	December 1, 2010, "undisclosed income" not disclosed	*Explanation 5A* is applicable
June 5, 2011	2009-10	July 31, 2010	April 10, 2011, "undisclosed income" not disclosed	*Explanation 5A* is applicable
June 5, 2011	2009-10	October 31, 2010	April 10, 2011, "undisclosed income" not disclosed	*Explanation 5A* is applicable
November 3, 2011	2010-11	September 30, 2011	No return	*Explanation 5A* is applicable

Date of initiation of search	*"Undisclosed income" pertains to the previous year given below*	*Due date of submission of return of income for the previous year given in Column 2*	*Date of submission of return of income*	*Penalty*
November 3, 2011	2010-11	September 30, 2011	Return submitted on November 4, 2011 disclosing the quantum of income	*Explanation 5A* is applicable even if return is submitted on or after the date of search disclosing the quantum of income
September 3, 2011	2010-11	September 30, 2011	September 10, 2011 disclosing the "undisclosed income"	Section 271AAA is applicable. Penalty can be avoided if conditions given in section 271AAA(2) are satisfied
October 8, 2011	2010-11	September 30, 2011	October 7, 2011 without disclosing "undisclosed income"	*Explanation 5A* is applicable

PENALTY PROVISIONS WHERE SEARCH IS INITIATED ON OR AFTER JULY 1, 2012

374.3-3 Section 271AAB has been inserted by the Finance Act, 2012. It is applicable if search is initiated on or after July 1, 2012, there is some "undisclosed income" and it pertains to a "specified previous year".† In such a case, the assessee shall pay a penalty under section 271AAB in addition to tax as follows –

■ *Quantum of penalty* - The quantum of penalty under section 271AAB is as follows –

<table>
<tr><th>Search is initiated on or after July 1, 2012 before but December 15, 2016 [Sec. 271AAB(1)]</th><th>Search is initiated on or after December 15, 2016 [Sec. 271AAB(1A)]</th></tr>
<tr><td>Case 1 - If undisclosed income is admitted during the course of search, the taxpayer will be liable for penalty at the rate of 10 per cent of undisclosed income provided the following conditions are satisfied—
a. the assessee in the course of the search, in a statement under section 132(4) admits the undisclosed income and specifies the manner in which such income has been derived;
b. he substantiates the manner in which the undisclosed income was derived;
c. he pays the tax, together with interest, if any, in respect of the undisclosed income; and
d. he furnishes the return of income for the specified previous year declaring such undisclosed income therein.
Case 2 - If undisclosed income is not admitted during the course of search but he satisfies conditions (c) and (d) (supra), he will be liable for penalty at the rate of 20 per cent of undisclosed income.
Case 3 - In a case not covered under (1) and (2) (supra), the taxpayer will be liable for penalty as follows –
- Not less than 30 per cent (but not more than 90 per cent) of the "undisclosed income" of the "specified previous year" (up to the assessment year 2016-17).
- 60 per cent of the "undisclosed income" of the "specified previous year" (with effect from the assessment year 2017-18).</td><td>Case 1 - If the assessee satisfies conditions (a), (b), (c) and (d) given in Column 1, the penalty will be levied @ 30 per cent.
Case 2 - In any other case, penalty will be levied @ 60 per cent.</td></tr>
</table>

■ *Is it possible to avoid penalty* - Unlike section 271AAA, penalty under section 271AAB cannot be avoided.

■ *Specified previous year* - "Specified previous year" means the previous year in which search is conducted. It also includes the previous year which has ended before the date of search but the due date of furnishing return of income under section 139(1) has not expired before the date of search and the assessee has not furnished his return of income for the previous year.

† If these conditions are satisfied, penalty will be imposed under section 271AAB. In such a case, penalty under section 271(1)(*c*) or section 270A is not applicable.

Consider the following cases—

Case study

Date of initiation of search	*"Undisclosed income" pertains to the previous year given below*	*Due date of submission of return of income for the previous year given in Column 2*	*Date of submission of return of income*	*Penalty*
June 30, 2012	2011-12	November 30, 2012	September 10, 2012 disclosing the "undisclosed income"	Penalty of 10 per cent can be levied under section 271AAA. Penalty can, however, be avoided if conditions given in section 271AAA(2) are satisfied.
July 1, 2012	2011-12	November 30, 2012	September 10, 2012 disclosing the "undisclosed income"	Section 271AAB is applicable. If undisclosed income is admitted under section 132(4) in the course of such search, and the other conditions are satisfied, penalty will be 10 per cent. If undisclosed income is not admitted in the course of such search but tax is paid and it is disclosed in the return of income submitted on September 10, 2012, penalty will be 20 per cent. In any other case, penalty will be in the range of 30 per cent to 90 per cent.

Power of the Commissioner

375. Under section 273A, penalty may be reduced or waived by the Commissioner in the two cases given in paras 375.1 and 375.2 *infra*.

Power to reduce or waive penalty under section 271(1)(c) [Sec. 273A(1)]

375.1 The Commissioner has been empowered to reduce or waive the penalty imposed or imposable under section 271(1)(*c*) for concealment of income if the conditions given in para 375.1-1 are satisfied.

CONDITIONS

375.1-1 The following conditions must be satisfied—

FULL AND TRUE DISCLOSURE BEFORE DETECTION

375.1-1a The Commissioner can exercise this power only in the cases where he is satisfied that the assessee has (prior to the detection by the Assessing Officer of the concealment of particulars of income), voluntarily and in good faith, made full and true disclosure of such particulars. However, such disclosure will be treated as full and true disclosure only if the additions made to the returned income are of such a nature so as not to attract penalty under section 270A or section 271(1)(*c*).

CO-OPERATION BY THE ASSESSEE

375.1-1b The Commissioner should be satisfied that the assessee has co-operated in tax proceedings with the department. The expression "co-operation" in any enquiry relating to the assessment in section 273A should be held to mean that the assessee did not resort to litigation, obstruction or evasive tactics in concluding the assessment and no more—*Mahalakshmi Rice Mills* v. *CIT* [1981] 129 ITR 53 (Kar.).

PAYMENT OF TAX/ INTEREST

375.1-1c The assessee has either paid or made satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under the Act in respect of the relevant assessment year.

RELIEF CAN BE GIVEN ONLY ONCE [SEC. 273A(3)]

375.1-1d Where an order has been made under section 273A(1) in favour of any person (whether such order relates to one or more assessment years), he shall not be entitled to any relief under section 273A [under sub-section (1) or (4)] in relation to any other assessment year at any time after the making of such order. To put it differently, the power under section 273A shall be exercised only once in the case of a given person (whether it relates to one assessment year or more than one assessment year) and not more than once.

PREVIOUS APPROVAL OF CHIEF COMMISSIONER OR DIRECTOR-GENERAL IN SOME CASES

375.1-1e If the amount of income in respect of which penalty is imposed (or imposable) for the relevant assessment year, or where such disclosure relates to more than one assessment year, the aggregate amount of income for those years exceeds Rs. 5,00,000, the Commissioner can reduce or waive penalty only with the previous approval of the Chief Commissioner or Director-General.

FINAL ORDER

375.1-1f Every order under section 273A is final and cannot be called into question by a Court or authority.

Power to reduce or waive any penalty [Sec. 273A(4)]

375.2 Power to reduce or waive penalty is available under section 273A(4) without prejudice to the powers conferred on the Commissioner by any other provision [including section 273A(1)] of the Act. Relief under section 273A(4) is given by the Commissioner on an application made by the assessee. If the conditions mentioned in para 375.3-1 are satisfied, the Commissioner (after recording his reasons in writing for doing so) can —

a. reduce or waive the amount of penalty payable under the Act ; or

b. stay or compound any proceedings for the recovery of such amount.

Conditions

375.3 The following conditions must be satisfied :

1. Genuine hardship - The Commissioner can give relief under section 273A(4) if he is satisfied that to do otherwise would cause genuine hardship to the assessee, having regard to the circumstances of the case.

2. Co-operation - The assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him [*see* para 375.2-5].

3. Previous approval of Chief Commissioner or Director-General - Where the amount of any penalty payable under the Act (or where such application relates to more than one penalty, the aggregate amount of such penalties) exceeds Rs. 1,00,000, no order reducing or waiving the amount of compounding any proceeding for its recovery under section 273A(4) shall be made by the Commissioner except with the previous approval of the Chief Commissioner or Director-General, as the case may be.

4. No relief if the assessee has availed the benefit under section 273A(1) - See para 375.1-1d.

5. No time-limit for making application by assessee - No limitation of time is prescribed for making an application—*Indra & Co.* v. *CIT* [1980] 122 ITR 510 (Raj.).

6. Time-limit for passing order - An order accepting or rejecting application of an assessee for reduction or waiving of penalty shall be passed under section 273A(4) by the concerned Principal CIT/CIT within a period of 12 months from the end of the month in which such application is received. However, in respect of applications pending as on June 1, 2016, the order shall be passed on or before May 31, 2017. Moreover, no order shall be passed without giving the assessee an opportunity of being heard.

7. Final order - Every order made under section 273A is final and cannot be called into question by any Court or authority.

Power of Commissioner to grant immunity from penalty [Sec. 273AA]

375.4 There are various issues that may arise in the event of abatement of proceedings before the Settlement Commission. Section 273AA, which has been inserted by the Finance Act, 2008 amends the power of the Commissioner to grant immunity from penalty in cases which abate.

The salient features of the scheme for granting immunity from penalty are as under—

WHO CAN MAKE AN APPLICATION FOR GRANT OF IMMUNITY FROM PENALTY

375.4-1 A person may make an application to the Commissioner for granting immunity from penalty, if the following two conditions are satisfied—

a. he has made an application for settlement under section 245C and the proceedings for settlement have abated; and

b. penalty proceeding have been initiated under this Act.

WHEN THE APPLICATION SHOULD BE MADE

375.4-2 If penalty was levied before or during the pendency of settlement proceedings, then the assessee can approach the Commissioner for immunity at any time. If no penalty was levied till the time of abatement of proceedings before the Settlement Commission, then the assessee must make an application for immunity before the imposition of penalty by the income-tax authority. However, the application for grant of immunity from penalty shall not be made after the imposition of penalty after abatement.

GRANT OF IMMUNITY BY THE COMMISSIONER

375.4-3 The Commissioner may, subject to such conditions as he may think fit to impose, grant to the person immunity from the imposition of any penalty under the Act, if he is satisfied that the person has, after abatement, co-operated with the income-tax authority in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived.

375.4-4 The immunity granted to a person shall stand withdrawn, if such person fails to comply with any condition subject to which the immunity was granted and thereupon the provisions of the Act shall apply as if such immunity had not been granted. *WITHDRAWAL OF IMMUNITY*

Further, the immunity granted to a person may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of any proceeding, after abatement, concealed any particulars, material to the assessment, from the income-tax authority or had given false evidence, and thereupon such person shall become liable to the imposition of any penalty under the Act to which such person would have been liable, had such immunity not been granted.

375.4-5 The concerned Principal CIT/CIT shall pass an order accepting or rejecting the application of an assessee within a period of 12 months from the end of the month in which such application is received. However, in respect of applications pending as on June 1, 2016, the aforesaid order can be passed on or before May 31, 2017. Moreover, no order rejecting the application shall be passed without giving the assessee an opportunity of being heard. *TIME-LIMIT FOR PASSING ORDER*

Procedure

376. Section 274 provides the following procedure :

376.1 No order imposing a penalty shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard. *Opportunity of being heard*

376.2 In the following cases penalty can be imposed only with the prior approval of the Joint Commissioner : *Previous approval of Joint Commissioner*

1. Penalty by the Income-tax Officer where the penalty exceeds Rs. 10,000.

2. Penalty by the Assistant Commissioner or Deputy Commissioner where the penalty exceeds Rs. 20,000.

376.3 An income-tax authority on making an order imposing a penalty shall send a copy of such order to the Assessing Officer. *Copy of order*

Time-limit for completion of penalty proceedings

377. Time-limit for making an order imposing a penalty is given below —

	Time-limit One *From the end of the financial year in which proceedings, in the course of which action for the imposition of penalty has been initiated, are completed*	***Time-limit Two*** *From the end of month/ financial year in which the appellate order is received by the Commissioner or revision order is passed by the Commissioner or action for imposition of penalty has been initiated*	*Effective time-limit*
Situation 1 - The relevant assessment order is subject-matter of an appeal before Commissioner (Appeals) [appellate order is passed before June 1, 2003] or Tribunal	Before the expiry of financial year given above	Before the expiry of 6 months from the end of the month in which the above order is received or passed by the Commissioner	Time-limit One, or Time-limit Two, whichever expires later
Situation 2 - The relevant assessment order is subject-matter of an appeal before Commissioner (Appeals) [appellate order is passed on or after June 1, 2003]	Before the expiry of financial year given above	Before the expiry of 1 year from the end of the financial year in which the above order is received or passed by the Commissioner	Time-limit One, or Time-limit Two, whichever expires later
Situation 3 - The relevant assessment order is subject-matter of revision under section 263 or 264	NA	Before the expiry of 6 months from the end of the month in which the above order is passed by the Commissioner	Time-limit two

	Time-limit One *From the end of the financial year in which proceedings, in the course of which action for the imposition of penalty has been initiated, are completed*	***Time-limit Two*** *From the end of month/ financial year in which the appellate order is received by the Commissioner or revision order is passed by the Commissioner or action for imposition of penalty has been initiated*	*Effective time-limit*
Situation 4 - Case given in section 275(1A) [*see* para 378.1]		Before the expiry of 6 months from the end of the month in which appellate order of Commissioner (Appeals)/ Tribunal/High Court/Supreme Court is received by the Commissioner/Chief Commissioner or the order of revision is passed by the Commissioner.	Time-limit two
Situation 5 - Any other case	Before the expiry of financial year given above	Within 6 months from the end of month in which action for imposition of penalty is initiated	Time-limit One, or Time-limit Two, whichever expires later

Note - In *Situation 5* a six-month period of limitation is with reference to initiation of proceedings and not with reference to date of completion of assessment.

Where initiation of penalty proceedings is done on June 8, 2005 (when penalty notice was issued) and the penalty is levied on December 15, 2005, it is within six months from the date of initiation of penalty proceedings and the date of completion of assessment, *i.e.*, March 25, 2004 was not relevant—*CIT* v. *Tam Tam Pedda Guruva Reddy* [2006] 287 ITR 72/206 CTR 30 (Kar.).

Take another case, the Authority to impose penalty under provisions of sections 271D and 271E is Joint Commissioner; having regard to provisions of sections 271D and 271E, period of limitation for the purpose of section 275 is to be reckoned from date when penalty proceedings are initiated by Joint Commissioner and not from date on which assessment proceedings are completed—*Dewan Chand Amrit Lal* v. *CIT* [2006] 98 ITD 200/[2005] 98 TTJ 947 (Chd.)(SB).

If the Assessing Officer has not been able to impose penalty within period of limitation due to certain practical difficulties, the period of limitation cannot be extended. If penalty is not levied within time prescribed under section 275, it is barred by limitation and existence of reasonable cause for failure of the Assessing Officer to levy penalty is immaterial—*Paharpur Cooling Towers Ltd.* v. *CIT* [2007] 109 ITD 69 (Kol.).

Time-limit for passing penalty order under sec. 275(1A)

377.1 The provisions are given below —

1. An assessment/order is subject-matter of an appeal to the Commissioner (Appeals), Appellate Tribunal, High Court, Supreme Court or revision before Commissioner.

2. An order of imposing/enhancing/reducing/dropping penalty has been passed before the authorities given above pass the appellate order/revision order.

3. After passing the appellate/revision order by the aforesaid authorities, penalty can be imposed/ enhanced/reduced/dropped on the basis of assessment as revised by giving effect to said appellate/revision order.

4. Such order cannot be passed without giving the assessee a reasonable opportunity of being heard.

5. Such order cannot be passed after the expiry of six months from the end of the month in which appellate order of Commissioner (Appeals)/Tribunal/High Court/Supreme Court is received by the Commissioner/Chief Commissioner or the order of revision is passed by the Commissioner.

6. Provisions of section 274(2) shall be applicable.

Exclusion of certain period

377.2 In computing the period of limitation as given above, the following shall be excluded—

a. the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129;

b. any period during which the immunity granted under section 245H remained in force ; and *c.* any period during which a proceeding for the levy of penalty is stayed by an order or injunction of any Court.

Case study

377.2-P1 *Find out the time-limit for imposition of penalty in the following cases :*

*1. On February 10, 2014, the Assessing Officer completes the assessment for the assessment year 2012-13 under section 143(3). For imposing concealment penalty under section 271(1)(*c*), the Assessing Officer initiates penalty proceedings on February 10, 2014.*

2. In the aforesaid case suppose the assessee files an appeal to the Commissioner (Appeals). The Commissioner (Appeals) passes the order on April 17, 2015 and which is received by the assessee and the Commissioner on April 28, 2015 and May 2, 2015, respectively.

3. Suppose in (1) supra, *the Commissioner revises the assessment under section 263 by his order dated August 16, 2014 which is received by the assessee on September 3, 2014.*

4. Suppose in (1) supra *penalty proceedings have been stayed by the Bombay High Court on August 29, 2014. The Supreme Court, however, vacates the stay order on November 6, 2014.*

5. Suppose in (2) supra, *the Bombay High Court has stayed penalty proceeding from August 18, 2015 to September 20, 2015.*

■

The time-limit for completion of penalty proceeding is as follows :

	Case 1	*Case 2*	*Case 3*	*Case 4*	*Case 5*
1. Last day of the financial year in which penalty proceeding was initiated	March 31, 2014	March 31, 2014	—	March 31, 2014	March 31, 2014
2. Six months† from the end of the month					
2.1 in which penalty proceeding was initiated	August 31, 2014	—	—	August 31, 2014	—
2.2 in which order of the Commissioner (Appeals) is received by the Commissioner	—	March 31, 2017	—	—	March 31, 2017
2.3 in which order under section 263 is passed by the Commissioner	—	—	February 28, 2015	—	—
3. Date by which order of penalty order shall be passed [(*1*) or (*2*), whichever is later]	August 31, 2014	March 31, 2017	February 28, 2015	August 31, 2014	March 31, 2017
4. Date by which penalty order shall be passed after excluding the time during which proceedings were stayed by the Court in the case of stay order :					
4.1 in *case 4* from August 29, 2014 to November 6, 2014 [*i.e.*, 69 days]	—	—	—	November 8, 2014	—
4.2 in *case 5* from August 18, 2015 to September 20, 2015 (*i.e.*, 33 days)	—	—	—	—	May 3, 2017

Offences and prosecutions

378. Besides penalties imposable for different defaults, the Income-tax Department is empowered to start prosecution proceedings for offences committed by taxpayers. The Table given below highlights different offences which invite prosecution under different provisions of the Act :

Section	*Nature of offence*	*Rigorous imprisonment*	
		Minimum period	*Maximum period*
(1)	*(2)*	*(3)*	*(4)*
275A	Dealing with seized assets in contravention of the order made by the officer conducting search	Any period up to 2 years (and fine)	2 years (and fine)
275B	Failure to comply with the provisions of section 132(1)(*iib*)	Any period up to 2 years (and fine)	2 years (and fine)
276	Removal, concealment, transfer or delivery of property to thwart tax recovery		
276A	Failure to comply with the provisions of section 178(1), (3) by liquidator of a company	Any period up to 2 years (and fine)	2 years (and fine)
276B	Failure to pay tax to the Government's treasury or failure to pay to the Government tax payable by him as required by section 115-O(2) or second proviso to section 194B	3 months (and fine)	7 years (and fine)

†One year from the end of the financial year in which the order of Commissioner (Appeals) is received by the Commissioner in Case No. 2.2.

Section	*Nature of offence*	*Rigorous imprisonment*	
		Minimum period	*Maximum period*
(1)	*(2)*	*(3)*	*(4)*
276BB	Failure to pay to the credit of Central Government tax collected under section 206C	3 months (and fine)	7 years (and fine)
276C(1)	Wilful attempt to evade tax, penalty or interest chargeable or imposable, or under-report his income under the Act	If amount of tax sought to be evaded or tax on under-reported income exceeds Rs. 25,00,000 : 6 months; otherwise : 3 months (and fine)	If amount of tax sought to be evaded or tax on under-reported income exceeds Rs. 25,00,000 : 7 years ; otherwise : 2 years (and fine)
276C(2)	Wilful attempt to evade the payment of any tax, penalty or interest	3 months (and fine)	3 years (and fine)
276CC‡	Wilful failure to file return of income in time under section 139(1) or section 148 or section 153A or wilful failure to file in time return of fringe benefit under section 115WD(1) or in response to notice under section 115WH(2)	If tax evaded exceeds Rs. 25,00,000 : 6 months; otherwise : 3 months (and fine)	If tax evaded exceeds Rs. 25,00,000 : 7 years ; otherwise : 2 years (and fine)
276D	Wilful failure to produce books of account and documents or wilful failure to comply with a direction to get the accounts audited	■ *Up to September 30, 2014* - Any period up to one year (and fine of Rs. 4 to Rs. 10 for every day of default) ■ *From October 1, 2014* - Any period up to one year and with fine	1 year (and fine of Rs. 4 to Rs. 10 for every day of default)
277	Making a false statement in verification or delivering a false account or statement	If tax evaded exceeds Rs. 25,00,000 : 6 months; otherwise : 3 months (and fine)	If tax evaded exceeds Rs. 25,00,000 : 7 years ; otherwise : 2 years (and fine)
277A	Falsification of books of account or documents, etc.	3 months (and with fine)	2 years (and with fine)
278	Abetment to make a false statement or declaration	If tax evaded exceeds Rs. 25,00,000 : 6 months; otherwise : 3 months (and fine)	If tax evaded exceeds Rs. 25,00,000 : 7 years ; otherwise : 2 years (and fine)
278A	Punishment for second and subsequent offences under section 276B, 276C(1), 276CC, 277 or 278	6 months for every offence	7 years for every offence
278B and 278C	Offences committed by companies/firms/HUFs —criminal liability of managing director, managing partner, karta or any such officer, who wilfully committed the offence for the company/firm or HUF	Same as in the case of the company/firm/HUF	Same as in the case of the company/firm/HUF
280(1)	Disclosure by public servants in contravention of section 138(2) [maybe prosecuted with previous sanction of Central Government]	Up to 6 months (and fine)	6 months (and fine)

Amendment made by the Finance Act, 2012 to expedite prosecution proceedings under the Act

378.1 Sections 280A, 280B, 280C and 280D have been inserted with effect from July 1, 2012.

■ Under these sections the Central Government may constitute Special Courts for trial of offences punishable under the Act. One or more Courts of Magistrates of the first class may be designated as Special Courts for such area or areas or for such cases or class or group of cases as may be specified in the notification.

■ While trying an offence under the Act, a Special Court shall also try an offence with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

‡By virtue of proviso to section 276CC, action under this section cannot be taken in the following cases –

- If return is voluntarily furnished before the end of the assessment year.
- If tax payable by any assessee (as reduced by advance tax and TDS) does not exceed Rs. 3,000 (applicable up to the assessment year 2017-18).
- If tax payable by a non-corporate assessee (as reduced by advance tax and TDS) does not exceed Rs. 3,000 (applicable for the assessment years 2018-19 and 2019-20).
- If tax payable by a non-corporate assessee (as reduced by self-assessment tax, advance tax, TDS and TCS) does not exceed Rs. 10,000 (applicable from the assessment year 2020-21).

If return is furnished after detection of failure to file return and after a notice under section 142(1)(*i*) or section 148 is issued calling for filing of return of income, the benefit of proviso is not available. Moreover, pendency of appellate proceedings relating to assessment is not a bar for initiating prosecution proceedings under section 276CC—*Sasi Enterprises* v. *CIT* [2014] 222 Taxman 78 (SC).

■ The offences punishable under the Act shall be triable only by the Special Court if so designated for the area or areas or for cases or class or group of cases, as the case may be, in which the offence has been committed.

■ Notwithstanding anything contained in the Code of Criminal Procedure, the Special Court shall try an offence under the Act punishable with imprisonment not exceeding 2 years or with fine or with both as a summons case.

■ The provisions of the Code of Criminal Procedure (including the provisions as to bails or bonds) shall apply to the proceedings before a Special Court and the person conducting the prosecution before the Special Court shall be deemed to be a Public Prosecutor.

■ A person shall not qualify to be appointed as a Public Prosecutor or a Special Public Prosecutor unless he has been in practice as an advocate for not less than 7 years requiring special knowledge of law.

Other points

378.2 The following points should also be kept in view :

■ *Issue of instructions* - Proceeding against the aforesaid offences can be started only at the instance of the Commissioner, Commissioner (Appeals) or the appropriate authority. The Chief Commissioner or Director-General may issue such instructions to the aforesaid authorities as he may deem fit for institution of proceedings.

■ *Trial by Court* - The aforesaid offences can be tried by a Court of law. By virtue of section 292, no Court inferior to that of a Presidency Magistrate of the first class can try any offence under the Act.

■ *Bar on subsequent prosecution* - In view of section 279(1A), if the Commissioner has reduced or waived penalty for concealment of income under section 273A, no prosecution proceedings can be initiated for the same assessment year in respect of the following offences :

a. wilful attempt to evade tax [sec. 276C(1)] ;

b. wilful attempt to evade the payment of tax [sec. 276C(2)] ; or

c. making false statement in verification or delivering a false account or statement [sec. 277].

■ *Offence committed by companies* - In respect of the some of the offences, it is provided that the person found guilty shall be punishable with rigorous imprisonment and with fine. A company being a juristic person cannot be punished with imprisonment, it can be punished with fine only—*CIT* v. *Velliappa Textiles Ltd.* [2003] 263 ITR 550 (SC). To supersede this ruling of Supreme Court, sub-section (3) was inserted in section 278B. Thus sub-section provides that if an offence under the Act has been committed by a person being a company, it shall be punished with fine and any other person who was in charge of and was responsible for the conduct of business of the company, or any director, manager, secretary or other officer of the company shall be liable for punishment of imprisonment and fine, whatever so provided.

Immunity

378.3 The salient features of the scheme of section 278AB are given below—

WHO CAN MAKE AN APPLICATION FOR GRANT OF IMMUNITY FROM PROSECUTION

378.3-1 A person may make an application to the Commissioner for granting immunity from prosecution, if he has made an application for settlement under section 245C and the proceedings for settlement have abated.

WHEN THE APPLICATION SHOULD BE MADE

378.3-2 The application for the immunity must be made by the assessee to the Commissioner before institution of the prosecution proceedings after abatement.

If prosecution proceedings were instituted before or during the pendency of settlement proceedings, then the assessee can approach the Commissioner for immunity at any time. However if the assessee has received any notice, etc., from the income-tax authority for institution of prosecution, then he must apply to the Commissioner for immunity, before actual institution of prosecution.

GRANT OF IMMUNITY BY THE COMMISSIONER

378.3-3 The Commissioner may grant to such person, subject to such conditions as he may think fit to impose, immunity from prosecution for any offence under the Income-tax Act, if he is satisfied that the person has, after abatement, co-operated with the income-tax authority in the proceedings before him and has made a full and true disclosure of his income and the manner in which such income has been derived:

Where, however, the application for settlement under section 245C is made before June 1, 2007, the Commissioner may grant immunity from prosecution for any offence under the Income-tax Act or under the Indian Penal Code or under any Central Act for the time being in force.

WITHDRAWAL OF IMMUNITY

378.3-4 The immunity granted to a person shall stand withdrawn, if such person fails to comply with any condition subject to which the immunity was granted and thereupon the provisions of the Act shall apply as if such immunity had not been granted.

Further, the immunity granted to a person may, at any time, be withdrawn by the Commissioner, if he is satisfied that such person had, in the course of any proceeding, after abatement, concealed any particular material to the assessment, from the income-tax authority or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the proceedings.

Onus of proof

379. With the insertion of sections 273B, 278AA and 278E, the onus of proof has been shifted from department to the assessee.

Sections 273B and 278AA

379.1 An assessee will have to prove that the omission or commission is with "reasonable cause" or it is without the existence of culpable mental state. The Department had so far been unsuccessful in levying penalty and of prosecuting the defaulters due to onus of proof being casted upon the department. By deleting the words "without reasonable cause" from penalty provisions, it has been provided that the default of an assessee by itself would attract penalty. On the same line it has been provided in sections 273B and 278AA that notwithstanding anything contained in penalty provision [*i.e.*, sections 271(1), 271A, 271B, 271BB, 271C, 271D, 271E, 271F, 272A(1)(*c*)/(*d*), 272A(2), 272AA(1), 272BB, 273] and provision of prosecution (*i.e.*, sections 276A, 276AB, 276B) respectively, no penalty or prosecution shall be imposed or launched on the assessee for any failure referred to in the said sections if he proves that there was a reasonable cause for the said failure. Thus, aforesaid amendments have overruled the decision of the Supreme Court in *CIT* v. *Anwar Ali* [1970] 76 ITR 696. In context of penalty provisions words 'reasonable cause' would mean a cause which is beyond control of the assessee - *OMEC Engineers* v. *CIT* [2008] 169 Taxman 158 (Jharkhand).

Section 278E

379.2 Section 278E provides that in any prosecution proceedings under the Act requiring a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state. However, it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged against him. A fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a mere preponderance of probability.

SECTION 278E FAILS TEST OF REASONABLENESS

379.2-1 In England, Parliament is sovereign and an Act of Parliament is immune from being challenged. Conversely, in India every statute of Parliament or a State Legislature is subject to the test of fundamental rights provided in the Constitution. A statute cannot violate any of the fundamental rights guaranteed under the Constitution. Article 21 of the Constitution states : "No person shall be deprived of his life or personal liberty except by the procedure established by law". In *Maneka Gandhi* v. *Union of India* AIR 1998 SC 597, it was laid down that the procedure prescribed by law must be reasonable, fair and just and that it can never be arbitrary. This approach has been reiterated in a number of cases and it is now well-settled in the constitutional law that every law that deprives a person of his life and personal liberty must be fair, reasonable and just.

By virtue of section 278E in a criminal trial for an offence under the Act, mental culpability required by the offence is presumed. The onus is put on the accused to prove the absence of such mental culpability and that too beyond reasonable doubt. Usually, when in a criminal proceeding, onus is on the accused to prove a particular defence, the standard of proof is never 'beyond reasonable doubt'. Section 278E, however, imposes much greater burden on the accused. It requires the accused to establish 'beyond reasonable doubt' the absence of the culpable mental state required by the offences under the Act. Even if the accused creates a reasonable doubt as to his mental guilt, he will have to face conviction, if he does not disprove the existence of culpable mental state beyond reasonable doubt. It cannot be said with certainty that those who fail to disprove the culpable mental state beyond reasonable doubt did actually possess such mental state. It is extremely unfair to punish a person by raising a presumption as to his guilt, when actually there is a reasonable probability of his being innocent.

MULTIPLE CHOICE QUESTIONS

Q1. If an employer has made a fair and honest estimate of taxable salary and deducted/paid tax thereon, he can be treated as an assessee-in-default if the Assessing Officer has ultimately assessed salary income at a higher figure.

a. True;

b. False.

Q2. Amount of penalty under section 271C for failure to deduct tax at source under section 194C is—

a. 10 per cent of tax which is otherwise deductible under section 194C;

b. 100 per cent of tax which is otherwise deductible under section 194C;

c. 200 per cent of tax which is otherwise deductible under section 194C;

d. 300 per cent of tax which is otherwise deductible under section 194C.

Q3. X does not file his return of income for the assessment year 2017-18 on or before the due date of July 31, 2017. However, he submits his return of income belatedly on March 31, 2018. Penalty can be imposed under section 271F and the minimum amount of penalty is—

a. Rs. 10,000;

b. Rs. 1,000;

c. Rs. 5,000;

d. *Nil.*

Q4. X does not file his return of income for the assessment year 2016-17 on or before the due date of July 31, 2016. However, he submits his return of income belatedly on April 1, 2017. Penalty can be imposed under section 271F and the minimum amount of penalty is—

a. Rs. 10,000;

b. Rs. 1,000;

c. Rs. 5,000;

d. *Nil.*

Q5. For failure to quote tax deduction or collection number, penalty under section 272BB(1A) is—

a. Rs. 10,000;

b. Rs. 1,000;

c. Rs. 5,000;

d. *Nil.*

Q6. For failure to give TDS certificate to deductees, penalty under section 272A is—

a. Rs. 1,000 for each day of default;

b. Rs. 100 for each day of default;

c. Rs. 100 for each day of default (but subject to maximum of tax deducted);

d. None of above.

Q7. Addition on estimated basis by the Assessing Officer does not represent any concealment of income.

a. True;

b. False.

Q8. Under section 273A penalty can be reduced or waived by the Commissioner of Income-tax in a few cases. For this purpose, an application should be made by the assessee within—

a. 30 days from the date of receipt of penalty order;

b. 90 days from the date of receipt of penalty order;

c. 120 days from the date of receipt of penalty order;

d. No time-limit.

Q9. Every order under section 273A is final and cannot be called into question by a court or authority.

a. True;

b. False.

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CHAPTER

SETTLEMENT OF CASES

Introduction

388. Based on the recommendation of the Wanchoo Commission, the Central Government constituted Settlement Commission. Instead of the cumbersome procedure of issuing notice, calling for details and personal hearing before completion of assessment and the final outcome subject to appellate proceedings, settlement of cases provides an easy solution to the taxpayer to come out clean by offering the taxable income for assessment. The provisions are contained in Chapter XIX-A consisting of sections 245A to 245M.

Meaning of case [Sec. 245A(*b*)]

389. An assessee can make an application to the Settlement Commission at any stage of a "case" relating to him. The Finance Act, 2007 substituted clause (*b*) of section 245A which has changed the meaning of the term "case" and reduced the scope for settlement of cases to a great extent. However, the Finance (No. 2) Act, 2014 and Finance Act, 2015 further amended section 245A to increase the scope of settlement of cases.

A pending proceeding is a "case"

389.1 An assessee can make an application to the Settlement Commission at any stage of a "case" relating to him. A "case" means any proceeding for assessment under the Act of any person, in respect of any assessment year which may be pending before the Assessing Officer on the date on which an application under section 245C(1) is made. In respect of all pending cases, one can have recourse to the Commission for settlement –

Taken as pending proceeding and, consequently, settlement is possible in the cases given below—	*During the period given below settlement application can be filed*
1. *Income escaping assessment* - A proceeding for assessment or reassessment or re-computation under section 147	Period commencing on the date of issue of notice under section 148 and ending with the date of assessment/reassessment order
2. *Fresh assessment* - A proceeding for making fresh assessment in pursuance of an order under section 254 or section 263 or section 264, setting aside or cancelling an assessment	Period commencing on the date on which order under section 254 or 263 or 264, setting aside or cancelling the assessment is passed and ending with the date on which fresh assessment is made
3. *Search assessment* - A proceeding for assessment/reassessment for any assessment year referred to in section 153A(1)(*b*) in the case of a searched person (section 153A) or other person (section 153C)	Period commencing on the date of issue of notice initiating search proceedings and concluded on the date on which the assessment is made
4. *Regular assessment* - A regular assessment (other than proceedings of assessment/reassessment given above)	■ *Up to May 31, 2015* - Period commencing on first day of the assessment year and ending on the date on which assessment is made† ■ *From June 1, 2015* - Period commencing on the date on which return of income is furnished under section 139 (or in response to a notice under section 142) and ending on the date on which assessment is made† [or the time specified under section 153(1)‡ if no assessment is made].

† Intimation under section 143(1) is not an assessment for this purpose – Circular No. 17/2014, dated December 10, 2014.

‡*See* para 330.2.

Case study

Consider the following cases –

1. In the case of X Ltd., assessment is completed under section 143(3) for the assessment year 2011-12 on April 20, 2013 (order is passed on April 20, 2013 but it is served on the assessee on April 26, 2013). Reassessment notice under section 148 is issued on November 13, 2014 (date of service : November 20, 2014). Reassessment is completed on December 4, 2015 (order dated December 4, 2015 is served on December 10, 2015). In this case, X Ltd. can have recourse to the Settlement Commission on or after April 1, 2011 but before April 20, 2013. Further, Settlement Commission can be approached on or after November 13, 2014 but before December 4, 2015.

2. For the assessment year 2016-17, Y Ltd. submits return of income under section 139 on December 2, 2016. The Assessing Officer completes the assessment under section 143(3) on February 15, 2018 (date of service of assessment order February 19, 2018). In this case, Y Ltd. can have recourse to the Settlement Commission on or after December 2, 2016 but before February 15, 2018. If, however, no assessment is made, Y Ltd. cannot have recourse to the Settlement Commission after March 31, 2019.

Amendment by the Finance Act, 2015

The proceeding for assessment or reassessment under section 147 is deemed to commence from the date of issue of notice under section 148. Issue relating to escapement of income is often involved in more than one assessment year. In such a case the assessee becomes eligible to approach Settlement Commission only for the assessment year for which notice under section 148 has been issued. Therefore, to take the proceeding for all other assessment years where there is escapement, the assessee becomes eligible only after notice under section 148 has been issued for all such assessment years.

In order to obviate the need for issue of notice in all such assessment years for commencement of pendency, *Explanation* (*i*) to section 245A(*b*) has been amended by the Finance Act, 2015 (with effect from June 1, 2015). After the amendment, a proceeding for assessment or reassessment or recomputation under section 147 shall be deemed to have commenced—

a. from the date on which a notice under section 148 is issued for any assessment year;

b. from the date of issuance of such notice referred to in (*a*) (*supra*), for any other assessment year(s) for which a notice under section 148 has not been issued but such notice could have been issued on such date, if the return of income for the other assessment year(s) has been furnished under section 139 or in response to a notice under section 142.

In other words, where a notice under section 148 is issued for any assessment year, the assessee can approach Settlement Commission for other assessment years as well (for which notice could have been issued on such date) even if notice under section 148 for such other assessment years has not been issued. However, a return of income for such other assessment years should have been furnished under section 139 or in response to notice under section 142.

Settlement Commission [Sec. 245B]

390. Section 245B describes the constitution of the Income-tax Settlement Commission and the qualifications and mode of appointment of its Chairman and members. It provides that the Settlement Commission shall consist of a Chairman and as many Vice-Chairmen and other members as the Central Government thinks fit.

The Chairman, Vice-Chairman and other members of the Settlement Commission shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, problems relating to direct taxes and business accounts. Where a member of the Board is appointed as the Chairman, Vice-Chairman or as a member of the Settlement Commission, he shall cease to be a member of the Board.

Application for settlement of cases [Sec. 245C]

391. An application for settlement of cases can be made by an assessee within the parameters given below—

■ *Application only in respect of "case"* - An application for settlement can be filed only in respect of a "case".

■ *Tax on undisclosed income should exceed specified amount* - An application cannot be made for the settlement of a case unless the income-tax payable on the income disclosed in the application exceeds the amount given below—

Different situations	*Application can be filed only if the additional amount of income-tax payable on the income disclosed in the application exceeds the amount of tax given below*		
	Up to May 31, 2010	*From June 1, 2010 to May 31, 2011*	*With effect from June 1, 2011*
Case 1 - When an application is filed before the Settlement Commission, in cases where proceedings for assessment or reassessment have been initiated as a result of search or as a result of requisition of books of account or other documents or any assets	Settlement not possible	Rs. 50 lakh	Rs. 50 lakh
Case 2 - Where the applicant— *a.* is "related"† to the person [referred to in *Case 1* above] in whose case proceedings have been initiated as a result of search and who has filed an application; and *b.* is a person in whose case proceedings have also been initiated as a result of search	Settlement not possible	Rs. 50 lakh	Rs. 10 lakh
Case 3 - Where an application is filed in any other case	Rs. 3 lakh	Rs. 10 lakh	Rs. 10 lakh

■ *Tax should be paid* - Tax on income disclosed and interest thereon should be paid on or before the date of making such application‡ and the proof of such payment should be attached with the application.

■ *Prescribed form* - An application for settlement of a case shall be made in quintuplicate in Form No. 34B and shall be verified in the manner indicated therein.

■ *Signature* - The application, the verification appended thereto, the Annexure to the said application and the statements and documents accompanying the Annexure shall be signed by the person who is authorised to sign return of income under section 140.

■ *Fees* - Every application in connection with the settlement of a case shall be accompanied by a fee of Rs. 500.

■ *Full and true disclosure* - The application in Form No. 34B should contain a full and true disclosure of income which has not been disclosed before the Assessing Officer, the manner in which such income has been derived and the additional amount of income-tax payable on such income.

Additional tax - How computed

391.1 Additional tax shall be computed as follows —

Situations	*Additional tax (it should be above Rs. 3 lakh otherwise settlement application cannot be made)*
1. Where the income disclosed in the application relates to only one previous year	
1.1 If the applicant has not furnished a return of income of that year	Tax on income disclosed in the application as if such income were the total income
1.2 If the applicant has furnished a return in respect of total income of that year	Tax on the aggregate of the total income returned and income disclosed in the application for settlement *minus* tax calculated on returned income†
2. Where the income disclosed relates to more than one previous year	Aggregate of the amount of tax determined for each year according to rules mentioned in *1.1* and *1.2 supra*.

†Suppose there is a brought forward loss of Rs. 40,000 of the assessment year 2006-07 and undisclosed income for the assessment year 2007-08 is Rs. 15 lakh which is disclosed in the settlement application. The additional tax will be tax on Rs. 14.60 lakh and it should be paid before making the application - *Gobind Builders & Developers* v. *ITSC* [2008] 170 Taxman 618 (Bom.).

Meaning of "related" for the purpose of Case

391.2 The business and residential premises of X are searched on November 4, 2011. After completion of search, the income-tax authorities have started assessment/reassessment proceedings in the case of X (as well as in the case of Y) under sections 153A to 153C. In this case, X

†For meaning of "related", please refer to para 391.2.

‡ Where an assessee files application before the Settlement Commission for 7 assessment years but pays additional tax with interest only for 5 assessment years due to financial difficulties, settlement application would abate only with respect to years for which payment is not made – *Ashish Prafulbhai Patel* v. *ITSC* [2017] 251 Taxman 441 (Guj.).

can approach the Settlement Commission if the additional amount of income-tax payable on the income disclosed in the application exceeds Rs. 50 lakh. Y can also approach the Settlement Commission if the following conditions are satisfied— *2 mentioned in para 391*

1. If Y is "related" to X (meaning of the expression "related" is given below).

2. X has filed an application before the Settlement Commission (as mentioned earlier, X can approach the Settlement Commission only if the additional amount of income-tax payable on the income disclosed in the application exceeds Rs. 50 lakh).

3. Assessment/reassessment proceedings have been started in the case of Y under sections 153A to 153C.

4. The additional amount of income-tax payable on the income disclosed in the settlement application by Y exceeds Rs. 10 lakh.

Meaning of the expression "related" - In the above case, Y can approach the Settlement Commission if the above conditions are satisfied. To satisfy the requirement of *Condition 1*, Y should be "related" to X. The table given below explains the meaning of "related"—

Status of X	*Status of Y*
Situation 1 - X is an individual.	Y is a "relative" of X (*e.g.*, if Y is the husband, wife, brother or sister or any lineal ascendant or descendant of X
Situation 2 - If X is a company, firm, AOP, HUF	Y is any director of the company, partner of the firm, or member of AOP/HUF or any "relative" of such director, partner or member
Situation 3 - X has a business/profession	Y has a "substantial interest" in the business/profession of X or Y is a "relative" of a person who has a "substantial interest" in the business/profession of X
Situation 4 - X has a business/profession	Y is a company, firm, AOP or HUF having a "substantial interest" in the business/profession of X. Alternatively, Y is a director, partner or member of such company, firm, AOP or family or any "relative" of such director, partner or member.
Situation 5 - X has a business/profession	Y is a company, firm, AOP or HUF and a director, partner or member of Y has a "substantial interest" in the business/profession of X
Situation 6 - X is an individual	Any "relative" of X has a "substantial interest" in the business/profession of Y
Situation 7 - If X is a company, firm, AOP, HUF	Any director of X, partner of X, member of X or any "relative" of such director/partner/member has a "substantial interest" in the business/profession of Y

Notes—

1. "Relative" means the husband, wife, brother or sister or any lineal ascendant or descendant of that person.

2. "Substantial interest" means beneficial ownership of 20 per cent (or more) of voting power in a company or beneficial entitlement to 20 per cent (or more) of profit in the case of any other person, at any time during the previous year.

Procedure on receipt of application

392. The following procedure is followed by the Settlement Commission :

Application

392.1 A settlement application shall be presented in Form No. 34B by the applicant (or by his agent) to the Secretary at the Headquarters of the Commission at New Delhi (or of the Bench within whose jurisdiction his case falls or to any Officer authorized in this behalf by the Secretary) or shall be sent by registered post to the Secretary (or to such Officer). A settlement application sent by post shall be deemed to have been presented to the Secretary or the Officer authorized by the Secretary on the day on which it is received in the Office of the Commission.

Notice to the applicant

392.2 On receipt of application, the Settlement Commission shall within 7 days from the date of receipt of application issue a notice to the applicant requiring him to explain as to why the application made by him is to be allowed to be proceeded with.

Settlement Commission can allow the application to proceed or outrightly reject it [Sec. 245D(1)]

392.3 Settlement Commission within a period of 14 days from the date of application by an order in writing allow or reject the application. Where the Settlement Commission makes no order within 14 days from the date of application it shall be deemed that the application is allowed to be proceeded with.

Where an application is made before June 1, 2007 but an order under section 245D(1) has not been made before June 1, 2007 such application shall be deemed as allowed if the additional tax on the income and interest thereon is paid on or before July 31, 2007. July 31, 2007 shall be deemed to be the date of the order of rejection or allowing the application for settlement of the case.

Report from the Commissioner of Income-tax [Sec. 245D(2B)/(2C)]

392.4 If the application is allowed to be proceeded with by the Settlement Commission, the Commission shall call for a report from the Commissioner of Income-tax within 30 days from the date on which the application was made—

The law requires that Commissioner of Income-tax should submit the report within 30 days of the receipt of communication from the Settlement Commission and the report is submitted by the Commissioner of Income-tax within 30 days	The Settlement Commission on the basis of the report of the Commissioner of Income-tax within a period of 15 days of the receipt of the report declare the application as invalid and shall send a copy of such order to the applicant and the Commissioner. However, before declaring the application as invalid, an opportunity of hearing must be given to the applicant
If the report is not submitted by the Commissioner within 30 days	The Settlement Commission shall proceed further in the matter without the report of the Commissioner.

A second report from the Commissioner of Income-tax [Sec. 245D(3)]

392.5 Where an application has not been declared invalid [under section 245D(2C)] or an application has been allowed to be further proceeded with [under section 245D(2D)], the information contained in the annexure and in the statements and other documents accompanying such annexure, shall be sent to the Commissioner of Income-tax by the Settlement Commission. Such communication will be sent with the direction that the Commissioner of Income-tax shall furnish a further report in 7 copies within 45 days† of the receipt of said annexure (or within such extended period as may be allowed by the Commission on a request made by the Commissioner of Income-tax).

If the Commissioner of Income-tax fails to furnish his report on or before the expiry of the specified period given above, the Settlement Commission may proceed to hear the case without such report.

A copy of the second report of the Commissioner of Income-tax shall be sent to the applicant by the Settlement Commission. The applicant may furnish comments on the Commissioner's second report within 15 days of the receipt of the copy of the second report by him (or within such extended period as may be allowed by the Settlement Commission on a written request made by the applicant).

If the applicant fails to furnish comments on the second report before the expiry of the specified period of 15 days (or the extended period), the Settlement Commission may proceed further with the case without such comments.

Order of Settlement Commission

392.6 After examination of the records and the reports of the Commissioner, and after giving an opportunity to the applicant and to the Commissioner to be heard (either in person or through a representative), and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of the Act, pass such order as it thinks fit on (*a*) the matters covered by the application, and (*b*) any other matter relating to the case not covered by the application, but referred to in the report or reports of the Commissioner. Tax payable in pursuance of the order shall be paid within 35 days of the receipt of a copy of order by the applicant. The assessee shall be liable for simple interest under section 245D(6A) at the rate of 1.25 per cent per month (or part of month) on the amount remaining unpaid after the expiry of 35 days. Interest is payable even if Settlement Commission has extended the time for payment.

†Under section 245D(3), the time-limit given for this purpose is 90 days without any provision for extension. However, under rule 9 of Settlement Commission Procedure Rules, 1997, the prescribed time-limit is 45 days (which may be extended by the Settlement Commission on the request of the Commissioner).

■ In respect of application made for settlement of the case before June 1, 2007, the Settlement Commission shall pass an order on or before March 31, 2008*. In respect of application for settlement of the case made on or after June 1, 2007, the time-limit is given below—

If an application is filed on or after June 1, 2007 but before June 1, 2010	12 months from the end of the month in which application was made
If an application is filed on or after June 1, 2010	18 months from the end of the month in which application was made

■ Every order passed by the Settlement Commission shall provide (*a*) for the terms of settlement including any demand by way of tax, penalty, or interest, (*b*) for the manner in which any sum due under the settlement shall be paid, (*c*) for all other matters to make the settlement effective, and (*d*) for that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

■ The proceedings before the Commission shall not be open to the public and no person (other than the applicant, his employee, the concerned officers of the Commission or the Income-tax Department or the authorised representatives) shall, without the permission of the Commission, remain present during such proceedings.

Consequences if settlement order is obtained by fraud or misrepresentation

392.7 In case the settlement becomes void on being found to have been obtained by fraud or misrepresentation of facts, the proceedings with regard to the matters covered by the settlement will be deemed to have been revived from the stage at which the application was allowed to be proceeded with.

■ The following points should be noted—

1. The provision relating to period of limitation laid down by section 153 will not be applicable to such a case and a period of two years from the end of the financial year in which the settlement became void will be available to the income-tax authority concerned to complete the relevant proceedings.

2. The plea of the assessee that the initiation of proceeding to find out as to whether the order had been obtained by fraud or misrepresentation of facts had to be initiated by the Commission *suo motu* is not spelt out in section 245D(6). The decision, whether the order has been obtained by fraud or misrepresentation of facts, is that of the Commission. But it is not a requirement that the Commission must *suo motu* initiate the action—*CIT* v. *Om Prakash Mittal* [2005] 143 Taxman 373 (SC).

Section 153 time-limit not to apply

392.8 The time-limits under section 153 shall not apply to the order of the Settlement Commission or any order of assessment, reassessment or recomputation required to be made by the Assessing Officer if the Settlement Commission directs the Assessing Officer in its order to make assessment, reassessment or recomputation.

Power of the Settlement Commission to rectify its orders [Sec. 245D(6B)]

392.9 The Settlement Commission may amend any order passed by it under section 245D(4). It is, however, subject to the following propositions -

1. Rectification can be done with a view to rectifying any mistake apparent from the record.

2. A rectification which has the effect of modifying the liability of the applicant shall not be made unless the Settlement Commission has given notice to the applicant and the Commissioner of its intention to do so and has allowed the applicant and the Commissioner an opportunity of being heard.

■ *Time-limit for rectification order* - A rectification order can be passed –

a. at any time within a period of 6 months from the end of the month in which the order was passed; or

b. at any time within the period of 6 months from the end of the month in which an application for rectification has been made by the Principal Commissioner/Commissioner or the applicant, as the case may be.

*Requirement that the settlement application shall abate if an order under section 245D(4) is not made by March 31, 2008 is unfair, unjust and arbitrary and the application for settlement would not abate on March 31, 2008 — *Vatika Farms (P.) Ltd.* v. *Union of India* [2008] 169 Taxman 366 (Delhi).

■ *Time-limit for application for rectification* - No application for rectification shall be made by the Principal Commissioner/Commissioner or the applicant after the expiry of 6 months from the end of the month in which an order is passed by the Settlement Commission

Power to order provisional attachment to protect revenue [Sec. 245DD]

393. If (during the pendency of any proceeding before it) the Settlement Commission is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, it may, by order, attach provisionally any property belonging to the applicant in the manner provided in the Second Schedule.

Every provisional attachment shall cease to have effect after the expiry of a period of 6 months.

The Settlement Commission may, however, extend the aforesaid period by such further period or periods as it thinks fit.

Power to reopen completed proceedings [Sec. 245E]

394. The Settlement Commission does not have any power to reopen completed proceedings if settlement application is made on or after June 1, 2007. If, however, such application was made before June 1, 2007, then completed proceedings may be reopened by the Settlement Commission but only subject to the following limitations—

Power can be exercised only with the concurrence of applicant

394.1 The Settlement Commission is empowered to reopen completed proceedings with the concurrence of the applicant, if it is of the opinion that it is necessary or expedient to do so for the proper disposal of the case pending before it. The reasons for such an opinion will have to be recorded in writing.

Time-limit of 9 years

394.2 No proceeding can be reopened by the Settlement Commission if period between the end of the assessment year to which such a proceeding relates and the date of application for settlement under section 245C exceeds 9 years.

■ *Provisions illustrated* - On July 10, 2001 a company files an application for settlement of its pending cases for the assessment years 1996-97, 1997-98 and 1998-99. Cases of the company up to the assessment year 1995-96 have already been completed. With the concurrence of the assessee-company, the Settlement Commission wants to re-open cases for the assessment year 1989-90 onwards. In this case, the Settlement Commission has no power to open completed assessment for the years 1989-90 to 1991-92. In other words, the cases for the assessment year 1992-93 onwards can be reopened by the Settlement Commission, as the time between March 31, 1992 (*i.e.,* the last day of the assessment year 1991-92) and July 10, 2001 (date of application for settlement) exceeds 9 years.

Power to reopen is limited for which concurrence is given by applicant

394.3 In *CIT* v. *Paharpur Cooling Towers (P.) Ltd.* [1996] 85 Taxman 357 (SC), the assessee requested for spread over of the enhanced value of opening stock in six years 1970-71 to 1975-76 because, doing so would have reduced his overall tax liability. It was for this purpose that the assessee gave his consent/concurrence for reopening the assessment of the earlier years. It, therefore, followed that the Commission could re-open the assessment proceedings for the said earlier assessment years only for the aforesaid limited purpose, *i.e.,* for spreading over the said enhanced value. Under the guise of re-opening the said assessments for the aforementioned limited purpose, the Commission could not, settle the other matters relating to the said earlier assessment years. It was not permissible for the Commission to say that since it had reopend the assessments of earlier assessment years for the limited purpose of giving relief for the assessment year before it, it got full command and total jurisdiction over all the said earlier assessment years and that it could pass such orders as it thought fit in respect of all the matters (relating to the said assessment years including the penalty proceedings for some other concealments). This would amount to doing indirectly what could not be done directly. The ultimate orders passed by the Commission should relate to the case before it. It is only for the purpose of effectively setting the case before it that the Commission can reopen concluded proceedings.

Powers and procedure of Settlement

395. In addition to the specific powers given to the Settlement Commission, all the powers that are available to an income-tax authority under the Income-tax Act are also exercisable by the Settlement Commission. After an application for settlement is made, the Settlement Commission will have exclusive jurisdiction over the case until the order under section 245D(4) is passed (or if the application is not allowed to be proceeded with or rejected, the jurisdiction of the Commissioner expires on that date). In relation to the matters before the Settlement Commission, it will be competent during the period for the Settlement Commission to exercise the powers and perform the functions of any income-tax authority under the Income-tax Act. However, in the absence of any express direction to the contrary, this will not affect the operation of the provisions of the Income-tax Act insofar as they relate to any other matter or to the operation of the provisions relating to the payment of tax on self-assessment in respect of the matters before the Settlement Commission. The Settlement Commission has power to regulate its own procedure and the procedure of Benches in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

Commission [Sec. 245F]

Inspection, etc., of reports [Sec. 245G]

396. Although no person is entitled to inspect or obtain copies of any reports given by any income-tax authority to the Settlement Commission, the Settlement Commission has been given full discretion to allow inspection of such reports or to furnish copies thereof to the applicant on an application and on payment of the prescribed fee. In case, however, some evidence has been brought on record against the applicant in any report furnished by the income-tax authority, he will be entitled to obtain a certified copy of any such report or part thereof on making an application to the Commission and on payment of the prescribed fee. The provision is intended to enable the applicant to rebut the evidence against him.

Powers of Settlement Commission to grant immunity from prosecution, etc. [Sec. 245H]

397. The Settlement Commission has been given the power to grant immunity to the applicant from prosecution as also (either wholly or partly) from imposition of penalty. The immunity from prosecution may relate to any offence under the Income-tax Act or Wealth-tax Act, for the time being in force. Such an immunity can be granted if the Settlement Commission is satisfied that the applicant has extended full co-operation in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived. While granting immunity, the Settlement Commission is competent to impose (for the reasons to be recorded in writing) such conditions as it may think fit. The provision stated above is subject to the following propositions :

1. Mere co-operation of an assessee cannot be a basis or criteria for granting immunity from prosecution and penalty. It is obligatory on the part of the Settlement Commission to address itself on question as to whether full and true disclosure of income and mode and manner in which income has been derived has been done by the applicant or not—*CIT* v. *ITSC* [2000] 112 Taxman 523/246 ITR 63 (Bom.).

2. The Settlement Commission cannot grant immunity from prosecution under the Indian Penal Code or under any Central Act other than the Income-tax Act and the Wealth-tax Act. This is applicable in respect of application for settlement made on or after June 1, 2007.

3. An immunity granted to a person as stated above shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed under section 245D(4) within the time specified in such order (or within such further time as may be allowed by the Settlement Commission), or fails to comply with any other condition subject to which the immunity was granted. On withdrawal of the immunity the provisions to the Act shall apply as if such immunity had not been granted.

4. In case the Settlement Commission is satisfied that a person to whom an immunity from prosecution or penalty was granted had given false evidence or concealed material particulars, it will be competent for the Settlement Commission to withdraw the immunity. On the withdrawal of the immunity, the applicant will become liable to prosecution and/or imposition of penalty in respect of any offence or default for which he would have been so liable had the immunity not been granted to him.

5. Once the Settlement Commission decides the application for settlement including any direction (or absence thereof) for any penalty or interest, the Assessing Officer cannot later on levy penalty or interest. These powers are available to the Settlement Commission under section 245F and, if in its discretion, the Settlement Commission does not choose to invoke these powers, the Assessing Officer cannot subsequently invoke them after the Settlement Commission has passed an order under section 245D(4)—*Mohanlal S. Doppa* v. *CIT* [2002] 121 Taxman 671 (Guj.).

Abatement of proceeding before Settlement Commission [Sec. 245HA]

398. Proceedings for settlement shall abate from the date given below—

Circumstances in which the proceeding abates	*Date of abatement*
Where the application is made on or after June 1, 2007 and is rejected within 14 days from the date of application under section 245D(1)	Date on which the application is rejected
An application made before June 1, 2007 but the tax is not paid before July 31, 2007 and hence it is rejected under section 245D(2D)	July 31, 2007
An application made under section 245C declared as invalid with or without the report of the Commissioner under section 245D(2C)	The last day of the month in which the application is declared as invalid
An application made under section 245C but order not providing for the terms of settlement is passed under section 245D(4)	The day on which order, not providing for the terms of settlement, is passed under section 245D(4)
An application made under section 245C and the order is not passed within the time prescribed in section 245D(4A) (this time-limit is 18 months from the end of the month in which the application was made)	Date on which the time period specified in section 245D(4A) expires.

Consequence of abatement of proceedings before settlement commission

398.1 Where the proceedings before the Settlement Commission abates, the Assessing Officer or any other Income-tax authority before whom the proceedings are pending at the time of making the application under section 245C shall reassume jurisdiction and shall dispose of the case in accordance with the provisions of the Act.

MATERIAL PRODUCED BEFORE THE SETTLEMENT COMMISSION CAN BE USED BY THE ASSESSING OFFICER

398.1-1 The Assessing Officer or the Income-tax authority as the case may be shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of any enquiry held or evidence recorded by the Settlement Commission as if such material, information, enquiry and evidence was produced before him or held or recorded by him in the course of the proceedings before him‡.

TIME-LIMIT

398.1-2 The time limit prescribed under sections 149, 153, 153B, 154, 155, 158BE and section 231 and for the purposes of payment of interest under section 243 or 244 or section 244A, for making assessment or reassessment after abatement of proceedings before the Settlement Commission, the period commencing from the date of application and ending with the date of abatement [as given in *Column 2* of the table (*supra*)] shall be excluded].

The period of limitation referred to in section 153 available to the Assessing Officer for making an order of assessment, reassessment or re-computation, as the case may be [after excluding the period commencing from the date of application to the Settlement Commission till the date of abatement as given in section 245HA(4)], shall be not less than one year, and where such period of limitation is less than one year, it shall be deemed to be extended to one year.

Provisions illustrated - For the assessment year 2014-15 (which is pending before the Assessing Officer), an application is made to the Settlement Commission on June 13, 2016. The application is rejected on June 20, 2016. The Assessing Officer can complete the assessment within the time-limit given below—

a. April 7, 2017 (*i.e.*, March 31, 2017 + 7 days); or

b. June 19, 2017 (1 year from the date of abatement),

whichever comes later. Consequently, the assessment can be completed on or before June 19, 2017.

CREDIT FOR TAX PAID IN THE CASE OF ABATEMENT [SEC. 245HAA]

398.1-3 Where an application is made under section 245C on or after June 1, 2007 and it is rejected under section 245D the credit for the tax and interest paid on or before making application or during the pendency of the case, shall be allowed by the Assessing Officer.

Order of settlement to be conclusive [Sec. 245-I]

399. An order made by the Settlement Commission under sub-section (4) of section 245D will not be called into question in any proceeding under the Income-tax Act or under any other law for the time being in force except as provided in this Chapter.

‡ The plea by the assessee that material produced before the Settlement Commission should not be allowed to be used by tax authorities, has been rejected – *Vikas Shipping Corpn.* v. *Union of India* [2017] 86 taxmann.com 68 (Guj.).

Other points

Recovery of sums due under order of Settlement Commission [Sec. 245J]

400. One should also keep in view the following —

400.1 For the recovery of any sum due from any person in pursuance of the order passed by the Settlement Commission under section 245D(4), the provisions of Chapter XVII of the Act are applicable.

In case of any default in payment of such sums, penalty can also be imposed and recovered under the provisions of Chapter XVII by the Assessing Officer, having jurisdiction over such person. The recovery will, however, be subject to such conditions, if any, as may be specified by the Settlement Commission in its order.

Bar on subsequent application for settlement in certain cases [Sec. 245K]

400.2 In the following cases a person cannot apply for settlement under section 245C in relation to any other matter :

a. where an order of settlement passed under section 245D(4) provides for the imposition of a penalty on the person who made the application under section 245C for settlement, on the ground of concealment of particulars of his income ; or

b. where after the passing of an order of settlement under section 245D(4) in relation to a case, such person is convicted of any offence under Chapter XXII in relation to that case ; or

c. where the case of such person is sent back to the Assessing Officer by the Settlement Commission under section 245HA.

Where a person has made an application under section 245C on or after June 1, 2007 and if such application is allowed to be proceeded with under section 245D(1), such person shall not be entitled to make another application under section 245C at any time later. In other words, after June 1, 2007 only once, the benefit of settlement of the case could be availed by the taxpayers.

■ *Bar on subsequent application extended to cover "related persons"* - With effect from June 1, 2015, section 245K has been modified to provide that any person related to the person who has already approached the Settlement Commission once, also cannot approach the Settlement Commission subsequently. The "related person" is explained below –

Person who has approached the Settlement Commission	*"Related persons" who cannot approach Settlement Commission subsequently*
1. Where such person is an individual	Any company in which such person holds more than 50 per cent of the shares or voting power at any time, or any firm or association of persons or body of individuals in which such person is entitled to more than 50 per cent of the profits at any time, or any Hindu undivided family in which such person is a karta
2. Where such person is a company	Any individual who held more than 50 per cent of the shares or voting power in such company at any time before the date of application before the Settlement Commission by such person
3. Where such person is a firm or association of persons or body of individuals	Any individual who was entitled to more than 50 per cent of the profits in such firm, association of persons or body of individuals, at any time before the date of application before the Settlement Commission by such person
4. Where such person is an Hindu undivided family	The karta of that Hindu undivided family.

MULTIPLE CHOICE QUESTIONS

Q1. Notice is issued under section 148 in a given case. In such a case, application can be filed before the Settlement Commission, if a few conditions are satisfied.

a. True;

b. False.

Q2. An application can be filed before Settlement Commission, if tax on undisclosed income exceeds—

a. Rs. 1 lakh;

b. Rs. 3 lakh;

c. Rs. 30,000;

d. No such limit.

Q3. On receipt of application the Settlement Commission will issue a notice to the applicant requiring him to explain as to why the application made by him to be allowed to be proceeded with. Such notice shall be issued by the Settlement Commission—

a. Within 10 days from the date of receipt of application;

b. Within 7 days from the date of receipt of application;

c. Within 30 days from the date of receipt of application;

d. Within 60 days from the date of receipt of application.

Q4. In respect of application made for settlement before June 1, 2015, the Settlement Commission shall pass an order on or before March 31, 2016. Many courts have held that this requirement is unfair, unjust and arbitrary.

a. True;

b. False.

Q5. Settlement Commission cannot reopen completed proceedings.

a. True;

b. False.

Q6. Every order of the Settlement Commission under section 245D is final. However, such proceedings are subject to the Supreme Court's jurisdiction under article 136 of the Constitution.

a. True;

b. False.

34 CHAPTER

SEARCH, SEIZURE AND ASSESSMENT

Powers regarding discovery, production of evidence, etc. [Sec. 131]

412. Section 131 gives powers of court of law to the income-tax authority, though they are not strictly judicial authorities—*Dinshaw* v. *CIT* [1943] 11 ITR 172 (Bom.). Therefore, the Assessing Officer acts in a quasi-judicial capacity. The Assessing Officer must follow the basic principles of conforming to the judicial procedure.

Powers of Civil Court [Sec. 131(1)]

412.1 The Assessing Officer, Joint Commissioner, Commissioner (Appeals) and Chief Commissioner or Commissioner shall have powers vested in a Court under the Code of Civil Procedure, 1908 in respect of the following matter—

a. discovery and inspection;

b. enforcing the attendance of any person, including an officer of a banking company and examining him on oath;

c. compelling the production of books of account and other documents; and

d. issuing commissions.

When power can be exercised in respect of concluded proceedings [Sec. 131(1A)]

412.2 If six specified authorities, *viz.;* (*1*) Director-General, (*2*) Director, (*3*) Joint Director, (*4*) Assistant Director, (*5*) Deputy Director, and (*6*) the authorised officer referred to in section 132(1) have reason to suspect that any income has been concealed (or is likely to be concealed) by any person (or class of persons) within his jurisdiction, then for purpose of making any inquiry or investigation in relation to the said income (*i.e.*, concealed income), the authority (who has noticed the concealment of income) will be competent to exercise the powers conferred under section 131(1) notwithstanding that no proceedings with respect to such person/class of persons are pending before him or any other income-tax authority.

Impounding of books [Sec. 131(3)]

412.3 The Director-General or Director or Joint Director or Assistant Director or Deputy Director or Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeals), Chief Commissioner or an officer authorised under section 132(1) to carry out search and seizure is authorised to impound and retain in its custody any books of account or other document produced before it in any proceedings under the Act.

Collection of information on requests received from tax authorities outside India

412.4 To facilitate prompt collection of information on requests received from tax authorities outside India in relation to an agreement for exchange of information under section 90 or section 90A, sub-section (2) has been inserted in section 131.

The aforesaid sub-section (2) provides that for the purpose of making an enquiry or investigation in respect of any person or class of persons in relation to an agreement referred to in section 90 or section 90A, it shall be competent for any income-tax authority (to be notified by the Board, but not below the rank of Assistant Commissioner), to exercise the powers currently conferred on income-tax authorities referred to in section 131(1). Further, the amended provision of section 131(3) empowers the aforesaid authority, as notified by the Board, to impound and retain any books of account and other documents produced before it in any proceeding under the Act.

Search and seizure

413. This section confers upon the income-tax authorities wide powers relating to search and seizure and provisions of Code of Criminal Procedure shall apply. However, limitations prescribed by section 165 of that Code shall not apply.

Circumstances in which search and seizure can be conducted [Sec. 132(1)]

413.1 The Director-General or Director or the Chief Commissioner or Commissioner or, such Joint Director who is duly empowered by the Board, has in his possession any information through which he has reason to believe that—

a. a person to whom a summon under section 131(1) or a notice under section 142(1) has been served to produce books of account (or other documents) has failed (or omitted to produce or cause to be produced) the said books of account (or other documents) ; or

b. a person to whom a summon under section 131(1) or notice under section 142(1) has been (or might be) issued is not likely to produce (or cause to be produced) any books of account or other document which will be useful for (or relevant to) any proceedings under the Act ; or

c. a person is in possession of money, bullion, jewellery or other valuable article or thing and such property represents wholly or partly income or property which has not been disclosed or would not be disclosed.

Who is the authorised officer

413.2 For the purpose of carrying out search and seizure, if Director-General or Director or the Chief Commissioner or Commissioner has reasons to believe due to the information (as given in para 413.1) which he has in his possession, then he may authorise any Joint Director, Joint Commissioner, Assistant Director, Deputy Director, Assistant Commissioner, Deputy Commissioner or Income-tax Officer.

If duly authorised Joint Director or Joint Commissioner has reasons to believe due to the information in his possession (as given in para 413.1), then he may authorise any Assistant Director, Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer.

However, authorization shall not be issued by the Additional Director or Additional Commissioner or Joint Director or Joint Commissioner on or after October 1, 2009, unless he has been empowered by the Board to do so.

Powers of authorised officer in respect of search and seizure

413.3 The authorised officer [*see* para 413.2] is empowered to —

a. enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery and other valuable articles are kept ;

b. break open the lock of any door, locker, safe, almirah or other receptacle for exercising the powers conferred under (*a*) *supra* where the keys thereof are not available ;

c. search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing ;

d. require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in section 2(1)(*t*) of the Information Technology Act, 2000, to afford the authorised officer the necessary facility to inspect such books of account or other documents;

e. seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search (however, from June 1, 2003, any bullion, jewellery or other valuable article or thing being stock-in-trade of the business found as a result of search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business);

f. place marks of identification on any books or other documents or make or cause to be made extracts or copies therefrom ; and

g. make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

DEEMED SEIZURE

413.3-1 Where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner (or the person who is in immediate possession thereof) that he shall not remove, part with or otherwise deal with it, except with the previous permission of the authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing [second proviso to section 132(1)]. However, from June 1, 2003 the aforesaid provision shall not apply in case of any valuable article or thing, being stock-in-trade of the business.

WHERE THE CONCERNED PERSON IS NOT IN THE JURISDICTION OF CHIEF COMMISSIONER OR COMMISSIONER

413.3-2 Where the building, place, vessel or aircraft in which search is to be conducted is within the area of jurisdiction of a Chief Commissioner or Commissioner but such Chief Commissioner or Commissioner has no jurisdiction over the person in relation to whom search is proposed, even then he can still exercise the powers given under para 493.3 if he has reason to believe that delay in getting the authorisation from the proper Chief Commissioner or Commissioner may be prejudicial to the interest of the revenue.

RIGHTS AND DUTIES OF PERSONS SEARCHED

413.3-3 The person searched has the following right —

- To see the warrant of authorisation duly signed and sealed by the issuing authority*.
- To verify the identity of each member of the search party.
- To make personal search of all members of the search party before the start of the search and on conclusion of the search.
- To insist on personal search of ladies being taken only by lady, with strict regard to decency.
- To have at least two respectable and independent residents of the locality as witnesses.
- A lady occupying an apartment being searched has a right to withdraw before the search party enters, if, according to custom, she does not appear in public.
- To call a medical practitioner in case of emergency.
- To allow the children to go to school, after checking their bags.
- To have the facility of having meals, etc., at the normal time.
- To inspect the seals placed on various receptacles, sealed in course of search and subsequently at the time of reopening of the seals.
- Every person who is examined under section 132(4) has a right to ensure that the facts so stated by him have been recorded correctly.
- To have a copy of the panchnama together with all the annexures.
- To have a copy of any statement that is used against him by the Department.
- To have inspection of the seized books of account, etc., or to take extracts therefrom in the presence of any of the authorised officers or any other person empowered by him.
- To make an application objecting to the approval given by the Commissioner of Income-tax for retention of books and documents beyond 30 days from the date of assessment under section 153A or 158BC(*c*).

❑ Duties of the person searched are—

- To allow free and unhindered ingress into the premises.
- To see the warrant of authorisation and put signature on the same.
- To identify all receptacles in which assets or books of account and documents are kept and to hand over keys to such receptacles to the authorised officer.

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*In a few cases, the Courts have held that in search cases warrant of authorisation must be issued individually and if it is not issued individually, assessment cannot be made in an individual capacity. Further, if the authorization was issued jointly, the assessment will have to be made collectively in the name of all the persons in the status of association of persons/body of individuals – *CIT* v. *Vandana Verma* [2010] 186 Taxman 88 (All.), *Siksha 'O' Anusandhan* v. *CIT* [2011] 336 ITR 112 (Ori.). To supersede these rulings, section 292CC has been inserted by the Finance Act, 2012 with retrospective effect from April 1, 1976. It provides that –

a. it shall not be necessary to issue an authorisation (under section 132) or make a requisition (under section 132A) separately in the name of each person;

b. where an authorization/requisition has been made/issued mentioning therein the name of more than one person, the mention of such names of more than one person on such authorization/requisition shall not be deemed to construe that it was issued in the name of an association of persons or body of individuals consisting of such persons;

c. notwithstanding that an authorization/requisition has been made/issued mentioning therein the name of more than one person, the assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorization/requisition.

- To identify and explain the ownership of the assets, books of account and documents found in the premises.
- To identify every individual in the premises and to explain their relationship to the person being searched. He should not mislead by personation. If he cheats by pretending to be some other person or knowingly substitutes one person for another, it is an offence punishable under section 416 of the Indian Penal Code.
- Not to allow or encourage the entry of any unauthorised person into the premises.
- Not to remove any article from its place without notice or knowledge of the authorised officer. If he secretes or destroys any documents with the intention of preventing the same from being produced or used as evidence before the court or public servant, he shall be punishable with imprisonment or fine or both, in accordance with section 204 of the Indian Penal Code.
- To answer all queries truthfully and to the best of his knowledge. He should not allow any third party to either interfere or prompt while his statement is being recorded by the authorised officer. In doing so, he should keep in mind that—
  - ❑ If he refuses to answer a question on a subject relevant to the search operation, he shall be punishable with imprisonment or fine or both, under section 179 of the Indian Penal Code.
  - ❑ Being legally bound by an oath or affirmation to state the truth, if he makes a false statement, he shall be punishable with imprisonment or fine or both under section 181 of the Indian Penal Code.
  - ❑ Similarly, if he provides evidence which is false and which he knows or believes to be false, he is liable to be punished under section 191 of the Indian Penal Code.
- To affix his signature on the recorded statement, inventories and the panchnama.
- To ensure that peace is maintained throughout the duration of the search, and to co-operate with the search party in all respects so that the search action is concluded at the earliest and in a peaceful manner.
- Similar co-operation should be extended even after the search action is over, so as to enable the authorised officer to complete necessary follow-up investigations at the earliest.

REASON TO BELIEVE TO CONDUCT A SEARCH, ETC. NOT TO BE DISCLOSED

413.3-4 The Apex Court in the case of *DGIT* v. *Spacewood Furnishers (P.) Ltd.* [2015] 57 taxmann.com 292, had held that the Income-tax Authorities should have sufficient reasons before issuing warrant of authorization of search/seizure. Such reasons shall not be communicated to the concerned assessee at the time of issue of search warrant. It is only at stage of commencement of assessment proceedings after completion of search and seizure, if any, that requisite material may have to be disclosed to assessee. In *Parma Ram Bhakar* v. *CIT* [2013] 39 taxmann.com 119, the Jodhpur Bench of Tribunal held that since authorization to conduct search based on reason under section 132(1) did not exist, search became invalid. In *CIT* v. *Chitra Devi Soni* [2008] 170 Taxman 164, the Rajasthan High Court quashed the assessment order because revenue could not produce sufficient documents to show existence of conditions prescribed by section 132.

To supersede the aforesaid ruling, sections 132 and 132A have been amended by the Finance Act, 2017. The amended provisions provide that the "reason to believe" or "reason to suspect" shall not be disclosed to any person or any authority or the Appellate Tribunal. These amendments will take effect retrospectively from the date of enactment of the said provisions [*viz.*, amendment to section 132(1) from April 1, 1962 and amendment to section 132(1A)/132A(1) from October 1, 1975].

If books of account, etc. are kept in building not specified in the search warrant [Sec. 132(1A)]

413.4 Where a search for any books of account or other documents or assets has been authorised by Director-General, Director, Chief Commissioner or Commissioner, Joint Director or Joint Commissioner (*i.e.*, the authorised officer), and the Chief Commissioner or Commissioner has reasons to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or things of the assessee are kept in any building, place, vessel, vehicle or aircraft not specified in the search warrant, then such Chief Commissioner or Commissioner may authorise the authorised officer to search such other building, place, vessel, vehicle or aircraft.

Police assistance [Sec. 132(2)]

413.5 The authorised officer may requisition the services of any police officer or any officer of the Central Government or both to assist him for the purposes as laid out in paras 413.3 and 413.4 and it shall be the duty of every such officer to comply with such requisition.

Where it is not practicable to seize books of account etc. [Sec. 132(3)]

413.6 Where in any particular case it is not practicable to seize books of account, other documents, money, bullion, jewellery or other valuable article or thing [for reasons other than those mentioned in second proviso to section 132(1)], then in such a case the authorised officer may serve an order on the owner or the person who is in the immediate possession or control of the books of account, etc., to the effect that such person shall not remove, part with or otherwise deal with it except with the prior permission of the authorised officer. Such authorised officer may take such steps as he deems necessary for proper compliance of his orders. Serving of aforesaid order is not to be deemed as case of seizure [*Explan.* to section 132(3)].

TIME-LIMIT

413.6-1 According to section 132(8A), the aforesaid order shall not be operative for a period exceeding 60 days from the date of order.

Examination on oath [Sec. 132(4)]

413.7 The authorised officer may during the course of search and seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, etc. Any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Act. However, all persons who are found at place of search are not automatically covered by action under section 132—*CIT* v. *Latika V. Waman* [2005] 1 SOT 535 (Mum.).

According to *Explanation* to the sub-section (4) of section 132, the examination of any person may not be merely in respect of any books of account, documents or other assets found as a result of search but also in respect of all matters relevant for the purpose of any investigation, connected with any proceedings under the Act.

Presumptions [Sec. 132(4A)]

413.8 Where any books of account, other documents, money, bullion, jewellery and other valuable article is found in possession or control of any person in the course of a search*, the following presumption can be made —

1. Those books of account, other documents money, bullion, jewellery and other valuable article or thing belongs to such person.

2. The contents of such books of account and documents are true.

3. The signature and every other part of such books of account and other documents which purports to be in the handwriting of any particular person are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped, executed or attested by the person by whom it purports to have been so executed or attested.

■ Section 292C has been amended with retrospective effect from October 1, 1975 so as to extend this presumption also to books of account, other documents or assets which have been delivered to the requisitioning officer in accordance with the provisions of section 132A.

Time-limit for retention of seized books of account, etc. [Sec. 132(8)]

413.9 When the books of account or other documents are seized [*see* para 413.3], then authorised officer cannot retain the possession thereof for a period exceeding 30 days from the date of the assessment under section 158BC or 153A. Retention for a period exceeding (30 days) can be made only if reasons are recorded in writing and the approval of the Chief Commissioner, Commissioner, Director-General or Director is obtained. Moreover, the Chief Commissioner, Commissioner, Director-General or Director cannot authorise the retention beyond 30 days after all the proceedings under the Act in respect of years for which books of account, etc., are relevant are completed.

However, if the person legally entitled to the books of account or other documents, etc., objects to the approval given by the Chief Commissioner, Commissioner, Director-General or Director, he may make an application to the Board stating therein the reasons for the objection and requesting for return of books of account etc. The Board shall pass such order as it thinks fit after providing an opportunity of hearing to the applicant.

Taking copies of seized documents [Sec. 132(9)]

413.10 The person from whom the books of account or other documents were seized is permitted to make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf and at such place and time as the authorised officer may provide.

Authorised Officer having

413.11 Where books of account or other documents or assets have been seized by a person having no jurisdiction over the persons, then such an authorised officer is required to hand over the

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*The scope of this provision has been modified by amending section 292C so as to extend this presumption also to books of account, other documents, etc. found in the possession or control of any person in the cause of a survey operation.

no jurisdiction [Sec. 132(9A)]

seized papers and assets to the Assessing Officer who has proper jurisdiction within a period of 60 days (15 days up to May 31, 2002) from the date on which the last of the authorisation for search was executed. On handing over the seized papers, the powers referred to in paras 413.9 and 413.10 shall be exercised by latter Assessing Officer.

Power of provisional attachment [Sec. 132(9B)/(9C)]

413.12 *Explanation* to section 281B was omitted by the Finance Act, 2016 with effect from June 1, 2016. After this omission, the revenue does not have any power of provisional attachment of property. To overcome this situation, sub-sections (9B) and (9C) have been inserted in section 132 by the Finance Act, 2017 with effect from April 1, 2017. These sub-sections provide that during the course of a search or seizure or within a period of 60 days from the date on which the last of the authorisations for search was executed, the authorised officer (on being satisfied that for protecting the interest of revenue it is necessary so to do), may attach provisionally any property belonging to the assessee with the prior approval of Principal Director General or Director General or Principal Director or Director. Such provisional attachment shall cease to have effect after the expiry of 6 months from the date of order of such attachment.

Power to make reference to Valuation Officer [Sec. 132(9D)]

413.13 In order to enable correct estimation and quantification of undisclosed income held in the form of investment or property by the assessee by the Investigation wing of the Department, sub-section (9D) has been inserted in section 132 by the Finance Act, 2017 (with effect from April 1, 2017) to provide that in a case of search, the authorised officer may, for the purpose of estimation of fair market value of a property, make a reference to a Valuation Officer referred to in section 142A, for valuation in the manner provided under that sub-section. It also provides that the Valuation Officer shall furnish the valuation report within 60 days of receipt of such reference.

Requisitioning of books of account, etc.

414. Under section 132A, an authorisation can be issued to the designated income-tax authorities for taking delivery of books of account, etc., which are in the custody of any officer or authority (not a court of law) under any other law, for the purposes of inquiry under the Act—*Abdul Khader* v. *Sub-Inspector of Police* [1999] 240 ITR 489 (Ker.).

Who can exercise powers

414.1 The income-tax authorities who can exercise the powers under section132A are: Director-General, Director, Chief Commissioner or Commissioner.

Requisitioning officers

414.2 The aforesaid authorities may authorise Joint Director, Joint Commissioner, Assistant Director, Deputy Director, Assistant Commissioner, Deputy Commissioner or Assessing Officer (these officers have been referred to in section 132A as requisitioning officers) to take action under section 132A.

Situations in which powers under section 132A can be invoked

414.3 Powers can be invoked under section 132A when the Director-General, Director, Chief Commissioner or Commissioner has information in his possession and in consequence thereof has reason to believe that —

a. any person to whom summons under section 131(1) or notice under section 142(1) was issued to produce any books of account or other documents has failed to produce them and the said books of account or other documents have been taken into custody by any officer or authority under any other law for the time being in force, or

b. any books of account or other documents will be useful for, or relevant to, any proceeding under the Act and any person to whom a summons or notice as aforesaid has been or might be issued will not produce such books of account or other documents on their return by any officer by whom they have been taken into custody under any other law for the time being in force, or

c. any assets represent either wholly or partly income or property which has not been, or would not have been disclosed for the purposes of the Act, by any person from whose possession or control such assets have been taken into custody by any officer or authority under any other law for the time being in force.

■ *"Reason to believe" need not be disclosed to any person/authority/Tribunal* - After the amendment made by Finance Act, 2017, the "reason to believe" or "reason to suspect" shall not be disclosed to any person or any authority or the Appellate Tribunal.

Requisition procedure

414.4 The procedure for requisition is given below—

■ The requisitioning officer requires the officer or authority referred to above, as the case may be, to deliver such books of account, other documents or assets to him. Rule 112D(1) provides that the authorisation under section 132A(1) shall be in Form No. 45C, shall be in writing, signed by the issuing authority and shall bear his seal.

■ On receipt of a requisition as aforesaid, the officer or authority concerned shall deliver the books of account, other documents or assets to the requisitioning officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain them in his custody.

■ The delivering officer or authority shall prepare a list of the books of account or other documents delivered to the requisitioning officer. Before effecting delivery of any bullion, jewellery or other valuable article or thing, the delivering officer or authority shall place or cause to be placed such bullion, jewellery, article or thing in a package or packages which shall be listed with details of such bullion, jewellery, article or thing placed therein. Every such package shall bear an identification mark and seal of the requisitioning officer or of any other income-tax authority not below the rank of Income-tax Officer on behalf of the requisitioning officer, and also of the delivering officer or authority. The person referred to in section 132A(1)(*a*)/(*b*)/(*c*) or any other person on his behalf shall also be permitted to place his seal on the said package or packages. A copy of the list prepared shall be delivered to such person and a copy thereof shall also be forwarded by the delivering officer to the Chief Commissioner or Commissioner and also to the Director-General or Director where the authorisation has been issued by him.

Application of assets seized or requisitioned [Sec. 132B]

415. All assets which are seized under section 132 or requisitioned under section 132A shall be dealt with as follows:

a. liability existing† on the day of seizure or requisition under Income-tax Act, Wealth-tax Act, Expenditure-tax Act, Gift-tax Act and Interest-tax Act;

b. liability determined on completion of block assessment or assessment under section 153A (including assessment of the previous year in which search is initiated) if such person is in default or deemed to be in default for such liability or liability arising on an application made before the Settlement Commission under section 245C(1).

Release of sum remaining after recovery

415.1 Where any asset or proceeds are left after applying the assets seized or requisitioned as mentioned in para above, then such sum shall be released back to the person from whose custody it was taken if the following conditions are satisfied:

1. The concerned person makes an application to the Assessing Officer within 30 days from the end of the month in which the asset was seized.

2. Nature and source of such assets is explained to the Assessing Officer satisfactorily.

3. All existing liabilities and liability determined on completion of block assessment or assessment under section 153A (including assessment of the previous year in which search is initiated) as mentioned in para above are recovered out of such assets.

4. Prior approval of Chief Commissioner of Income-tax or Commissioner of Income-tax has been obtained.

WHERE ASSETS SEIZED OR REQUISITIONED CONSISTS OF CASH

415.1-1 Where assets seized consists solely or partly of cash, then the Assessing Officer is empowered to apply such money in discharge of the existing liabilities and liability determined on completion of block assessment as mentioned in para 415 above and the assessee shall be discharged of such liability to the extent of the money so applied.

WHERE ASSETS SEIZED OR REQUISITIONED CONSISTS PARTLY

415.1-2 Where assets seized consists partly of cash and partly of other assets, then Assessing Officer is empowered to apply such money in discharge of the existing liabilities and liability determined on completion of block assessment as mentioned in para 415 above and assessee shall

†Various courts have taken a view that the term "existing liability" includes advance tax liability of the assessee and if seized assets are adjusted against advance tax liability, interest under sections 234B and 234C cannot be imposed – *CIT* v. *Ashok Kumar* [2011] 334 ITR 355 (Punj. & Har.), *Ram S. Sarda* v. *Dy. CIT* [2012] 25 taxmann.com 455 (Rajkot), *Nikka Mal Babu Ram* v. *CIT* [2010] 41 SOT 407 (Chd.), *Satpaul D. Agarwal (HUF)* v. *CIT* [1999] 105 Taxman 71 (Mum.).

To supersede the aforesaid rulings, section 132B has been amended by the Finance Act, 2013, with effect from June 1, 2013 to clarify that the existing liability does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII of the Act. This amendment is applicable with effect from June 1, 2013 (it does not have any retrospective application) – *Circular No. 20/2017*, dated June 12, 2017.

OF CASH AND PARTLY OF OTHER ASSETS

be discharged of such liability to the extent of the money so applied. After applying money in discharge of such liability the remaining assets shall also be applied in discharging the remaining liability.

For the aforesaid purpose, such assets shall be deemed to be held in distraint as if such distraint was effected by the Assessing Officer or as the case may be, by the Tax Recovery Officer under authorization from the Chief Commissioner of Income-tax or Commissioner of Income-tax under section 226(5). Therefore, such Assessing Officer or Tax Recovery Officer may recover the amount of such liability by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

Recovery through any other modes

415.2 Nothing contained in section 132B(1) shall preclude the recovery of the amount of liabilities as mentioned in para 415 by any other mode laid down under the Income-tax Act.

Payment of interest by the Central Government

415.3 The Central Government shall pay interest @ ½ per cent per month or part thereof (upto May 31, 2007 @ 6 per cent per annum) on the excess amount seized or requisitioned over and above the amount required to meet all existing liabilities and liability determined on completion of assessment.

Period of interest - The interest shall be paid from the date immediately following the expiry of the period of 120 days from the date on which the last of the authorization for search under section 132 or requisition under section 132A was executed to the date of completion of the assessment under section 153A or Chapter XIV-B.

Power to call for information [Sec. 133]

416. The Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner or the Commissioner (Appeals) has power to call for information required for the purposes of the Act from the following —

■ *Any firm* - To furnish a return of the names and address of the partners of the firm and their respective share.

■ *Any HUF* - To furnish a return of the names and address of the manager and members of the family.

■ *Any person on whom the authority has reason to believe to be a trustee, guardian or agent* - To furnish a return of the names of the persons for or of whom he is a trustee, guardian or agent, and their address.

■ *Any assessee* - To furnish a statement of names and address of all persons to whom he has paid in any previous year rent, interest, commission, royalty, brokerage or annuity taxable under the head "Salaries" amounting to a sum more than Rs. 1,000 together with the particulars of all such payment.

■ *Any dealer, broker, or agent or any person concerned in the management of a stock or commodity exchange* - To furnish a statement of the names and address of all persons to whom he or the exchange has paid any sum in connection with the transfer of assets or on whose behalf or from whom he or the exchange has received any sum, together with the particulars of such payments and receipts.

■ *Any person including a banking company or a co-operative bank or any officer thereof* - To furnish information or statement of accounts giving information on various matters which will be useful for or relevant to any inquiry or proceedings under the Act. [It may be noted that this power can also be exercised by the Principal Director General/Director-General/Principal CCIT/CCIT/Principal Director/Director or by Principal CIT/CIT/Joint Director/Deputy Director/Assistant Director].

Power of survey

417. Power of survey is given by section 133A.

Places where an income-tax authority can enter

417.1 By virtue of section 133A (notwithstanding anything contained in the Income-tax Act), an income-tax authority [*i.e.*, Principal CIT/CIT/Joint CIT/Principal Director/Director/Joint Director/Assistant Director/Deputy Director/AO/Tax Recovery Officer, it also includes Inspector of Income-tax for the purpose of inspecting books of account or other documents] may enter the following places—

a. any place within the limits of the area assigned to him ; or *b.* any place which is occupied by any person in respect of whom he exercises jurisdiction; or

c. any place in relation to which he is authorised by such income-tax authority who is assigned that area within which such place is located or who exercises jurisdiction in relation to such person occupying that place.

NEED FOR ENTERING PLACES MENTIONED ABOVE

417.1-1 On entering the aforesaid place, the income-tax authority may require any proprietor, employee or any other person attending or helping in carrying on such business or profession —

a. to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place ;

b. to afford him the necessary facility to check or verify the cash, stock or other valuable articles or things which may be found therein ; and

c. to furnish such information as he may require as to any matter which may be helpful for or relevant to any proceeding under the Act.

WHERE BOOKS OF ACCOUNT, CASH, STOCK, ETC., ARE KEPT AT ANY OTHER PLACE

417.1-2 If the concerned person states that books of account, other documents, cash, stock, etc., are kept at a place other than the place where business/profession is carried on, then the income-tax authority may enter such place for survey.

TIME

417.1-3 An income-tax authority may enter any place of business or profession only during the hours at which such place is open for conduct of business/profession and in case of any other place only after the Sunrise and before Sunset.

Powers of survey

417.2 Section 133A provides the following powers to the income-tax authority—

1. An income-tax authority may if he so deems necessary, place marks of identification on the books of account or other documents inspected by him and make copies therefrom.

2. Such authority may impound and retain in his custody for such period as he thinks fit any books of account or other documents inspected by him. However, books of account or other documents shall not be impounded before recording reasons in writing and where such books or other documents are retained for a period exceeding 10 days exclusive of holidays, then income-tax authority will have to obtain the approval of Chief Commissioner or Director-General therefor, as the case may be. An income-tax authority under section 133A shall not retain in his custody any such books of account or other documents for a period exceeding 15 days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner/ Principal Director General/Chief Commissioner/Director General/Principal Commissioner/Principal Director/ Commissioner/Director.

3. Such authority may, make an inventory of any cash, stock or other valuable article or thing checked or verified by him.

4. Such authority may record the statement of any person, which may be useful for, or relevant to, any proceedings under the Act.

5. An income-tax authority having regard to the nature and scale of expenditure incurred by the assessee, in connection with any function, ceremony or event, is of the opinion that it is necessary or expedient to do so, may require (at any time after such function, ceremony or event) the assessee by whom such expenditure has been incurred (or any person who, in the opinion of the income-tax authority, is likely to possess information as regard the expenditure incurred) to furnish such information as he may require as to any matter which may be useful or relevant for any proceeding under the Act and may have the statements of the assessee (or any other person) recorded and any statement so recorded may thereafter be used in evidence in any proceedings under the Act.

NO POWER TO REMOVE CASH [SEC. 133A(4)]

417.2-1 An income-tax authority can in no case remove the place wherein he has entered for survey, any cash, stock or other valuable article or thing.

If a person refuses to obey orders

417.3 In carrying on survey if a person refuses to afford facility to income-tax authority to inspect account books or other documents etc., or evades to do so, the income-tax authority shall have all the powers under section 131(1) for enforcing compliance with the requirement made.

Meaning of proceeding

417.4 The term "Proceeding" means any proceeding which is completed, or pending or which is to be commenced in future.

TDS survey [Sec. 133A(2A)]

417A. Under section 133A(2A) an income-tax authority may for the purpose of verifying that tax has been deducted or collected at source in accordance with the provisions of Chapter XVII-B or Chapter XVII-BB, as the case may be, enter any office, or a place where business or profession is carried on, within the limits of the area assigned to him, or any such place in respect of which he is authorised for the purposes of this section by such income-tax authority who is assigned the area within which such place is situated where books of account or documents are kept. The income-tax authority may for this purpose enter an office, or a place where business or profession is carried on after sunrise and before sunset. Further, such income-tax authority may require the deductor or the collector or any other person who may at the time and place of survey be attending to such work,—

a. to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place, and

b. to furnish such information as he may require in relation to such matter.

The income-tax authority may place marks of identification on the books of account or other documents inspected by him and take extracts and copies thereof. He may also record the statement of any person which may be useful for, or relevant to, any proceeding under the Act. However, while acting under sub-section (2A) he shall not impound and retain in his custody any books of account or documents inspected by him or make an inventory of any cash, stock or other valuables.

Power to collect certain information [Sec. 133B]

418. For the purpose of collecting any information, which may be useful for the purpose of the Act, an income-tax authority [as defined in *Explanation* to sec. 133B] may enter—

a. any building or place within the limit of the area assigned to such authority ; or

b. any building or place occupied by any person in respect of whom he exercises jurisdiction.

Other points

418.1 The following points are important —

1. The income-tax authority can enter the aforesaid building only if it is used for the purpose of carrying on a business or profession. It is, however, immaterial whether such place is the principal place of such business or profession or not.

2. The income-tax authority may require any proprietor, employee or any other person who is attending in any manner to furnish information in Form No. 45D.

3. The income-tax authority may enter any place of business or profession only during the hours at which such place is open for conduct of business or profession.

4. The income-tax authority shall on no account remove or cause to be removed from the building or place wherein he has entered, any books of account or other documents or any cash, stock or other valuable article.

Scheme of assessment

419. Section 153A has been inserted to provide for assessment in case of search or making requisition.

Notice for submission of return of six assessment years†

419.1 Section 153A provides the procedure for completion of assessment where a search is initiated under section 132 or books of account, or other documents or any assets are requisitioned under section 132A after May 31, 2003. In such cases, the Assessing Officer shall issue notice to such person requiring him to furnish, within such period as may be specified in the notice, return of income in respect of six assessment years† immediately preceding the assessment year relevant to the previous year in which the search was conducted under section 132 or requisition was made under section 132A.

For instance if search is conducted under section 132 on June 20, 2014, the Assessing Officer shall issue notice requiring the assessee to furnish return of income in respect of assessment years 2009-10 to 2014-15.

■ The above provision has been amended by the Finance Act, 2012 with effect from July 1, 2012. Under the amended provision, the Central Government may notify* cases (or class of cases) in which the Assessing Officer shall not be required to issue notice for initiation of proceedings for the preceding 6 assessment years†.

**See* rule 112F, inserted with effect from July 1, 2012.

†And for "relevant assessment year/years". For meaning of "relevant assessment year", *see* para 419.1-1.

EXTENSION OF SCOPE OF SECTION 153A TO ASSESS INCOME FOR A PERIOD BEYOND 6 YEARS

419.1-1 The scope of section 153A has been enlarged by the Finance Act, 2017with effect from April 1, 2017. After this amendment, the Assessing Officer can issue notice for 6 preceding assessment years and for "the relevant assessment year or years". For this purpose, "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond 6 assessment years but not later than 10 assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made. However, for the "relevant assessment year", notice can be issued if –

a. the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income which has escaped assessment amounts to (or is likely to amount) to Rs. 50 lakh (or more) in one year or in aggregate in the relevant 4 assessment years (falling beyond the 6th year);

b. such income escaping assessment is represented in the form of asset (for this purpose "asset" shall include‡ immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account);

c. the income escaping assessment or part thereof relates to such year or years; and

d. search under section 132 is initiated or requisition under section 132A is made on or after April 1, 2017.

As discussed in para 413.3-4, section 132 has been amended by the Finance Act, 2017 and after the amendment, the income-tax authorities are not required to disclose reasons for conducting search before any person, authority or Tribunal. However, this concession is not available under the aforesaid amendment for issuing notice beyond 6th year. If the Assessing Officer issues notice beyond 6th year, he should have sufficient material in his possession which reveals that the income which has escaped assessment amounts to Rs. 50 lakh or more in aggregate in the relevant 4 years (falling beyond the 6th year).

Case Study

Search is conducted on the premises of X Ltd. on May 20, 2019. The Assessing Officer can issue notice requiring X Ltd. to furnish return of income in respect of 6 preceding assessment years (*i.e.*, assessment years 2014-15 to 2019-20). The Assessing Officer has documents in his possession which reveal that X Ltd. has undisclosed income (represented in the form of asset) pertaining to earlier assessment years as follows –

(Rs. in lakh)

Assessment years	*Undisclosed income*		
	Situation 1	*Situation 2*	*Situation 3*
2013-14 (7th year)	10	5	40
2012-13 (8th year)	12	12	0
2011-12 (9th year)	13	13	1
2010-11 (10th year)	15	15	9
2009-10 (11th year)	5	10	150

Situation 1 - Notice can also be issued under section 153A for the assessment years 2010-11 to 2013-14 (as the aggregate undisclosed income for these assessment years is Rs. 50 lakh). However, notice cannot be issued for years earlier than 10th year (*i.e.*, assessment year 2009-10 or earlier).

Situation 2 - Notice cannot be issued for the assessment years 2010-11 to 2013-14 (as the aggregate undisclosed income for these assessment years is less than Rs. 50 lakh). Even for earlier years, notice cannot be issued.

Situation 3 - Notice can also be issued for the assessment years 2010-11, 2011-12 and 2013-14. For earlier years, notice cannot be issued.

Pending assessment

419.2 The Assessing Officer shall assess or reassess the total income of each of these six assessment years†. Assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years† pending on the date of initiation of the search under section 132 or requisition under section 132A, as the case may be, shall abate.

ASSESSMENTS ALREADY COMPLETED

419.2-1 After the search, the total income of the assessee is to be recomputed on the basis of the undisclosed income unearthed during search and the same is to be added with the regular income

†And for "relevant assessment year/years". For meaning of "relevant assessment year", *see* para 419.1-1.

‡The definition of "asset" is inclusive. Any asset (whether movable or immovable), though not specifically included in the definition, may fall under the definition of asset.

assessed under section 143(3) or computed under section 143(1) for each of the six preceding assessment years†. Where any prepaid taxes are there, the same are required to be given credit for computing the further tax payable by the assessee. The assessee is also required to pay interest under sections 234A and 234B on the tax due on the basis of new calculation. Where nothing incriminating is found in the course of search relating to any assessment year, the assessments for such year cannot be disturbed.

Suppose in the course of a search, nothing incriminating is found. Does this mean that an honest citizen be unduly harassed by facing automatic reopening of the concluded assessments, merely because there was search action against him? The absurdity of the construction gets all the more pronounced when say, no incriminating material is found relating to the 'other person', but the material found indicates disclosed income. Suppose, loan confirmation relating to loans duly disclosed in the return of income of A is found at the time of search in the premises of B; should the assessments of A be reopened for all the six preceding years† merely because search action has been initiated against B ? The Courts have held that in selecting out of different interpretations, the Courts shall adopt that which is just, reasonable and sensible rather than that which is none of those things.

A reading of the CBDT Circular No. 7 of 2003, dated September 5, 2003 also clearly indicates that the appeal, revision, etc., arising out of earlier assessments shall not abate. In other words, there is no merger of the earlier assessments with the assessments done under the new scheme, *i.e.*, section 153A or section 153C—*LMJ International Ltd.* v. *CIT* [2008] 22 SOT 315 (Kol.).

Provisions for re-assessment vis-à-vis section 153A

419.3 Save as otherwise provided in sections 153A, 153B and 153C, all other provisions of the Act shall apply to the assessment made under section 153A. Section 153A authorises issue of notice for reassessment or recomputation for six earlier assessments, without the necessity of satisfaction of the superior officers, required under section 151. Moreover, there is no need for income concealment for longer or shorter time-limit under section 147, since provisions of sections 147 and 148 will not be applicable in search cases. On the mere fact of search, all the precautions given to the taxpayer against re-opening of back assessment have been set aside.

Regular tax rate will be applicable

419.4 In an assessment or reassessment made in respect of an assessment year under section 153A, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

Time-limit for completion of assessment under section 153A [Sec. 153B]

419.5 Section 153B provides for the time-limit for completion of search assessments. It provides that the Assessing Officer shall make an order of assessment or reassessment in respect of each assessment year, falling within six assessment years under section 153A within a period of 21 months** from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed.

■ This section also provides the time-limit for completion of assessment in respect of the assessment year relevant to the previous year in which the search is conducted under section 132 or requisition is made under section 132A within a period of 21 months** from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed.

■ In case of "other person", the time-limit for making assessment or reassessment in search cases shall be—

a. 21 months** from the end of the financial year in which the last of authorisations for search under section 132 or for requisition under section 132A was executed; or

b. 9 months‡ from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person,

whichever is later.

Provisions illustrated - A search was conducted in the premises of X Ltd. on February 20, 2017. It was completed on March 6, 2017. Certain documents pertaining to Y Ltd. were seized. Y Ltd. is a company based at Nagpur. These documents are handed over to the Assessing Officer having jurisdiction over Y Ltd. on April 7, 2017*. Assessment/reassessment of Y Ltd. can be completed at any time on or before December 31, 2018

†And for "relevant assessment year/years". For meaning of "relevant assessment year", *see* para 419.1-1.

** 18 months (if last of authorisations under section 132/132A is executed during the financial year 2018-19), 12 months (if last of authorisations under section 132/132A is executed on or after April 1, 2019).

‡ 12 months (if last of authorisations under section 132/132A is executed on or after April 1, 2018).

*Time-limit of 60 days is prescribed under section 132(9A) for the purpose of handing over these documents.

(*i.e.*, 21 months from the end of the financial year 2016-17 or 9 months from the end of the financial year 2017-18, whichever is later).

WHEN REFERENCE IS MADE TO TRANSFER PRICING OFFICER

419.5-1 With effect from June 1, 2007 the time-limit specified under section 153B in cases where reference is made to Transfer Pricing Officer (TPO) shall be extended by 12 months.

PERIOD TO BE EXCLUDED

419.5-2 In computing the period of limitation, the following shall be excluded—

a. the period during which the assessment proceeding (*i.e.*, the process of assessment starting from the date of filing of return till making order of assessment) is stayed by an order or injunction of any Court; or

b. the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under section 142(2A) and ending with the date on which the assessee is required to furnish audit report; or

c. the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under section 142A(1) and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer; or

d. the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to section 129; or

e. in a case where an application made before the Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which such application is made and ending with the date on which the order under section 245D(1) is received by the Commissioner under section 245D(2); or

f. the period commencing from the date on which an application is made before the Authority for Advance Rulings and ending with the date on which the order rejecting the application or, as the case may be, the date on which the advance ruling pronounced by it is received by the Commissioner.

Where immediately after the exclusion of the time or period mentioned above, the period of limitation referred to above, available to the Assessing Officer for making an order of assessment or reassessment orders is less than 60 days, the remaining period shall be extended to 60 days and the aforesaid period of limitation shall be deemed to be extended accordingly.

This provision that the Assessing Officer should have minimum period of 60 days to complete assessment (after excluding the time or period given above) can come into operation on one, two or more occasions in the same assessment/reassessment proceedings whenever this situation occurs—*CIT* v. *Ulike Promoters (P.) Ltd.* [2012] 205 Taxman 414 (Delhi).

TIME-LIMIT OF COMPLETION OF ASSESSMENT IN THE CASE OF ANNULMENT OF SEARCH PROCEED-INGS IN AN APPEAL/ LEGAL PROCEED-INGS

419.5-3 Provisions regulating revival of proceedings and time-limits for action were ambiguous before the amendment made by the Finance Act, 2008. The amended provisions are given below—

a. if any proceeding initiated under section 153A or any order of assessment or reassessment made under section 153A(1) has been annulled in any appeal or other legal proceeding, the abated assessment or reassessment relating to any assessment year shall stand revived and if such order of annulment is set aside, such revival shall cease to have effect;

b. that time-limit for completion of such assessment or reassessment shall be one year from the end of the month in which the abated assessment revives or within the period already specified in section 153 or in section 153B(1), whichever is later; and

c. the period commencing from the date of annulment of a proceeding or order of assessment or reassessment referred to in section 153A(2) till the date of the receipt of the order setting aside the order of such annulments by the Commissioner, shall be excluded in computing the period of limitation.

The cumulative impact of the aforesaid amendments may be illustrated as follows—

Case study

1. Facts of the case	
1.1 Name of the taxpayer	X Ltd.
1.2 Date on which search proceeding is initiated	May 16, 2015
1.3 Date on which last of authorization related to this search is issued	June 15, 2015
1.4 Assessments pending on May 16, 2015	For assessment years 2013-14 and 2014-15

2. Consequences of search	
2.1 Abatement of pending assessments [second proviso to sec. 153A(1)]	Assessments for the assessment years 2013-14 and 2014-15 pending on May 16, 2015 shall abate
2.2 Assessment/reassessment with respect to each of 6 assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted [first proviso to sec. 153A(1)]	Assessment or reassessment with respect to each of the six assessment years, *i.e.*, from assessment year 2010-11 to assessment year 2015-16 shall be required to be made
2.3 Time-limit for completion of these assessments [sec. 153B(1)(*a*)]	December 31, 2017
3. Annulment of search proceedings in an appeal/ legal proceedings	
3.1 Date of passing of the annulment order in appeal/legal proceedings	October 25, 2015
3.2 Date when the order is received by the Commissioner	November 20, 2015
4. Consequences of annulment of search proceedings	
4.1 If assessment for the assessment year 2010-11 to assessment year 2015-16 is already completed on October 25, 2015	Automatically becomes annulled due to the order given in (3) (*supra*)
4.2 If assessment for the assessment year 2010-11 to assessment year 2015-16 is not completed by October 25, 2015	No order of assessment/reassessment for these 6 assessment years can be made under first proviso to section 153A(1)
4.3 Pending assessments which had abated under (2.1) (*supra*) shall revive	Assessments for the assessment years 2013-14 and 2014-15 which were pending on May 16, 2015 and which has abated by virtue of search proceeding, shall revive
4.4 Time-limit for completion of aforesaid pending assessments	*For assessment year 2013-14* - (*a*) March 31, 2016 (normal time-limit under section 153), or (*b*) November 30, 2016 [time-limit under sec. 153(8), *i.e.*, one year from the end of the month in which the order of annulment of search proceedings is received by the Commissioner], or (*c*) December 31, 2017 [time-limit under section 153B(1) given in point 2.3 (*supra*)], whichever is later. The assessment can be completed on or before December 31, 2017. *For assessment year 2014-15* - (*a*) December 31, 2016 (normal time-limit under section 153), or (*b*) November 30, 2016 [time-limit under sec. 153(8), *i.e.*, one year from the end of the month in which the order of annulment of search proceedings is received by the Commissioner], or (*c*) December 31, 2017 [time-limit under section 153B(1) given in point 2.3 (*supra*)], whichever is later. The assessment can be completed on or before December 31, 2017.
*5. Assume that the order of annulment of search proceedings as given in (3) (*supra*) is set aside under a legal proceeding*	
5.1 Date of passing of the order to set aside annulment order	January 25, 2016
5.2 Date when the order is received by the Commissioner	February 2, 2016
6. Consequences of order to set aside received by the Commissioner on February 2, 2016	
6.1 If assessment for the assessment year 2010-11 to assessment year 2015-16 was completed on or before October 25, 2015	Shall automatically get revived
6.2 If assessment for the assessment year 2010-11 to assessment year 2015-16 is yet to be completed	These assessments can now be made under first proviso to section 153A(1)

6.3 Time-limit for completing assessment as mentioned in (6.2) (*supra*)	It should be completed by December 31, 2017. However, the time-limit will be extended to— *a.* March 15, 2018 (being December 31, 2017 + 74 days; 74 days being the difference between November 20, 2015 and February 2, 2016); *b.* April 3, 2016 (being February 2, 2016 + 60 days) These assessments can, therefore, be completed by March 15, 2018.

Assessment of income of any other person [Sec. 153C]

419.6 Section 153C provides that where an Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong or belongs to a person other than the person referred to in section 153A, then the books of account, or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

The following points should be noted—

■ In case of "other person", the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having the jurisdiction over such other person.

■ In respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, in case of other person, where—

a. no return of income has been furnished by such person and no notice under section 142(1) has been issued to him, or

b. a return of income has been furnished by such person but no notice under section 143(2) has been served and limitation of serving the notice under section 143(2) has expired, or

c. assessment or reassessment, if any, has been made,

before the date of receiving of books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person for such assessment year in the manner provided in section 153A.

The above provisions would apply where books of account or documents or assets seized or requisitioned referred to in sub-section (1) have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A.

■ *Amendment made by the Finance (No. 2) Act, 2014* - Section 153C has been amended with effect from October 1, 2014. The amended version provides as follows –

1. Where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to any person, other than the person who has been searched, then books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person.

2. The Assessing Officer (to whom the above documents/assets are handed over) shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A. However, this action can be taken only if he is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in section 153A(1).

Provisions illustrated - A search is conducted on different premises belonging to X. Some documents/assets belonging to Y are seized from the premises of X. The Assessing Officer of X will handover these documents/assets to the Assessing Officer having jurisdiction over Y. Afterwards, the Assessing Officer of Y will issue notice to Y.

Under the provisions before amendment (*i.e.*, applicable before October 1, 2014), the Assessing Officer of Y will have to issue notice under section 153A for 6 years even if such documents/assets do not have a bearing on the determination of total income of any of these 6 years. After the amendment (applicable with effect from October 1, 2014), the Assessing Officer of Y may not issue notice under section 153A if he is satisfied that income pertaining to these documents/assets is already covered in the assessments pertaining to these 6 years.

■ *Originals v. Photocopies* - Finding of photocopies in the possession of a searched person does not necessarily mean and imply that they (*i.e.*, photocopies) "belong" to the person who holds the originals. Possession of documents and possession of photocopies of documents are two separate things. Take the case of a search on the premises of Jay Ltd. During search photocopies of certain documents belonging to Peesee Ltd. are recovered from the premises of Jay Ltd. "Photocopies" are owned by Jay Ltd. but original documents belong to Peesee Ltd. Unless it is established that the documents in question (*i.e.*, photocopies in this example) do not belong to Jay Ltd., the question of invoking section 153C does not arise and proceedings cannot be started on Peesee Ltd. – *Pepsico India Holdings (P.) Ltd.* v. *CIT* [2014] 50 taxmann.com 299 (Delhi).

Amendment by the Finance Act, 2015 - To supersede the above observations, section 153C has been amended with effect from June 1, 2015. The amended section provides that notwithstanding anything contained in sections 139, 147, 148, 149, 151 and 153, where the Assessing Officer is satisfied that,–

a. any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

b. any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

any person, other than the searched person, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person.

Prior approval in the case of search [Sec. 153D]

420. Section 153D provides that in search cases no order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner except with the previous approval of the Joint Commissioner. This provision is applicable in respect of the following orders—

a. orders of assessment or reassessment passed under section 153A(*b*) in respect of each assessment year falling within 6 assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A;

b. orders of assessment passed under section 153B(1)(*b*) in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A;

c. orders in the case of a person referred to in section 153A;

d. orders in the case of other person referred to in section 153C.

■ The above provisions have been amended by the Finance Act, 2013 with effect from April 1, 2016. The amended version provides that where the assessment/reassessment order is required to be passed by the Assessing Officer [with the prior approval of the Commissioner under section 144BA(12)], then prior approval under section 153B will not be required.

TAX RATES

ASSESSMENT YEARS 2019-20 AND 2020-21

Tax liability - How to find out

Tax liability for the assessment years 2019-20 and 2020-21 shall be calculated as follows :—

	Rs.	Rs.
1. Find out gross total income	—	
2. Less: Deductions under sections 80C to 80U	—	
3. Find out net income [(*1*) – (*2*)]		—
4. Divide the net income into the following—		
4.1 Income subject to special tax rates mentioned in para 0.1-6	—	
4.2 Remaining income subject to normal rates	—	
5. Find out income-tax on net income—		
5.1 Tax on income specified in 4.1 (*supra*) at the rates given in para 0.1-6	—	
5.2 Tax on remaining income at the normal rate given in para 0.1-1 or 0.1-2 or 0.1-3 or 0.1-4 or 0.1-5	—	—
6. Less: Rebate under section 87A [applicable in the case of a resident individual having net income not exceeding Rs. 3.50 lakh (for the assessment year 2019-20) or Rs. 5 lakh (for the assessment year 2020-21)]		—
7. Income-tax after rebate under section 87A [(*5*) – (*6*)]		—
8. Add : Surcharge[2] @ 0%, 2%, 5%, 7%, 10%, 12%, 15%, 25% or 37% of (*7*)		—
9. Find out the total [(*7*)+(*8*)]		—
10. Add : Health and education cess (HEC) [4% of (*9*)]		
11. Find out the total [(*9*) + (*10*)]		—
12. Deduct : Rebate under section 86, 89, 90, 90A or 91		—
13. Tax liability [(*11*)–(*12*)]*		—
14. Add: Interest/penalty, etc.		—
15. Less: Pre-paid taxes [*i.e.*, advance tax, self-assessment tax, TDS, TCS, MAT/AMT credit]		—
16. Tax payable [(*13*) + (*14*) – (*15*)]		—

Notes :

1. (*2*) cannot exceed (*1*).

2. Surcharge is applicable as a % of income-tax [*i.e.*, (*7*)]. These rates are—

	Net income range	*Assessment year 2019-20*	*Assessment year 2020-21*
Individuals/HUF/AOP/BOI/ artificial juridical person	0 – Rs. 50 lakh Rs. 50 lakh – Rs. 1 crore Rs. 1 crore – Rs. 2 crore Rs. 2 crore – Rs. 5 crore Above Rs. 5 crore	*Nil* 10% 15% 15% 15%	*Nil* 10% 15% 25% 37%
Firm/co-operative society/ local authority	0 – Rs. 1 crore Above Rs. 1 crore	*Nil* 12%	*Nil* 12%
Domestic company	0 – Rs. 1 crore Rs. 1 crore – Rs. 10 crore Above Rs. 10 crore	*Nil* 7% 12%	*Nil* 7% 12%
Foreign company	0 – Rs. 1 crore Rs. 1 crore – Rs. 10 crore Above Rs. 10 crore	*Nil* 2% 5%	*Nil* 2% 5%

* In the case of a corporate-assessee, it cannot be less than minimum alternate tax. In the case of any other taxpayer, it cannot be less than alternate minimum tax.

Income-tax

0.1-1 ***Individuals, Hindu undivided families, AOPs, BOIs*** - The tax rates applicable to individuals are also applicable to a Hindu undivided family, an association of persons, body of individuals or an artificial juridical person. The rates applicable for the assessment years 2019-20 and 2020-21 are as follows :

ASSESSMENT YEAR 2019-20

0.1-1a Tax rates for the assessment year 2019-20 are given below—

■ For a resident senior citizen (who is 60 years or more at any time during the previous year but less than 80 years on the last day of the previous year, *i.e.*, born on or after April 2, 1939 but before April 2, 1959)–

Net income range	*Income-tax rates‡*	*Surcharge*	*Health and education cess (HEC)*
Up to Rs. 3,00,000	*Nil*	*Nil*	*Nil*
Rs. 3,00,000 – Rs. 5,00,000	5% of (total income *minus* Rs. 3,00,000) [*see* Note 1]	*Nil*	4% of income-tax
Rs. 5,00,000 – Rs. 10,00,000	Rs. 10,000 + 20% of (total income *minus* Rs. 5,00,000)	*Nil*	4% of income-tax
Rs. 10,00,000 – Rs. 50,00,000	Rs. 1,10,000 + 30% of (total income *minus* Rs. 10,00,000)	*Nil*	4% of income-tax
Rs. 50,00,000 - Rs. 1,00,00,000	Rs. 13,10,000 + 30% of (total income *minus* Rs. 50,00,000)	10% of income-tax [*see* Note 2]	4% of income-tax and surcharge
Above Rs.1,00,00,000	Rs. 28,10,000 + 30% of (total income *minus* Rs.1,00,00,000)	15% of income-tax [*see* Note 2]	4% of income-tax and surcharge

■ For a resident super senior citizen (who is 80 years or more at any time during the previous year, *i.e.*, born before April 2, 1939)—

Net income range	*Income-tax rates‡*	*Surcharge*	*Health and education cess (HEC)*
Up to Rs. 5,00,000	*Nil*	*Nil*	*Nil*
Rs. 5,00,000 – Rs. 10,00,000	20% of (total income *minus* Rs. 5,00,000)	*Nil*	4% of income-tax
Rs. 10,00,000 – Rs. 50,00,000	Rs. 1,00,000 + 30% of (total income *minus* Rs. 10,00,000)	*Nil*	4% of income-tax
Rs. 50,00,000 - Rs. 1,00,00,000	Rs. 13,00,000 + 30% of (total income *minus* Rs. 50,00,000)	10% of income-tax [*see* Note 2]	4% of income-tax and surcharge
Above Rs. 1,00,00,000	Rs. 28,00,000 + 30% of (total income *minus* Rs. 1,00,00,000)	15% of income-tax [*see* Note 2]	4% of income-tax and surcharge

■ For any other resident individual (born on or after April 2, 1959), any non-resident individual, every HUF/ AOP/BOI/artificial juridical person—

Net income range	*Income-tax rates‡*	*Surcharge*	*Health and education cess (HEC)*
Up to Rs. 2,50,000	*Nil*	*Nil*	*Nil*
Rs. 2,50,000 – Rs. 5,00,000	5% of (total income *minus* Rs. 2,50,000) [*see* Note 1]	*Nil*	4% of income-tax
Rs. 5,00,000 – Rs. 10,00,000	Rs. 12,500 + 20% of (total income *minus* Rs. 5,00,000)	*Nil*	4% of income-tax
Rs. 10,00,000 – Rs. 50,00,000	Rs. 1,12,500 + 30% of (total income *minus* Rs. 10,00,000)	*Nil*	4% of income-tax
Rs. 50,00,000 - Rs. 1,00,00,000	Rs. 13,12,500 + 30% of (total income *minus* Rs. 50,00,000)	10% of income-tax [*see* Note 2]	4% of income-tax and surcharge
Above Rs. 1,00,00,000	Rs. 28,12,500 + 30% of (total income *minus* Rs. 1,00,00,000)	15% of income-tax [*see* Note 2]	4% of income-tax and surcharge

Notes :

1. Rebate under section 87A - A resident individual (whose net income does not exceed Rs. 3,50,000) can avail rebate under section 87A. It is deductible from income-tax before calculating health and education cess. The amount of rebate is 100 per cent of income-tax or Rs. 2,500, whichever is less.

2. Surcharge - Surcharge is 10 per cent of income-tax if net income is more than Rs. 50 lakh but not more than Rs. 1 crore. If net income is more than Rs. 1 crore, surcharge is 15 per cent of income-tax. Surcharge is subject to a marginal relief. If net income exceeds Rs. 50 lakh, the amount payable as income-tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 50 lakh by more

‡*See* also para 0.1-6.

than the amount of income that exceeds Rs. 50 lakh. Likewise, if net income exceeds Rs. 1 crore, the amount payable as income-tax and surcharge shall not exceed the total amount payable as income-tax and surcharge on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore.

3. Health and education cess (HEC) - It is 4 per cent of income-tax and surcharge.

■ *Alternate minimum tax* - Tax payable by a non-corporate assessee cannot be less than 18.5 per cent† (+SC+HEC) of "adjusted total income" as per section 115JC

ASSESSMENT YEAR 2020-21

0.1-1b Tax rates for the assessment year 2020-21 are given below—

■ For a resident senior citizen (who is 60 years or more at any time during the previous year but less than 80 years on the last day of the previous year, *i.e.*, born on or after April 2, 1940 but before April 2, 1960)–

Net income range	*Income-tax rates‡*	*Surcharge*	*Health and education cess (HEC)*
Up to Rs. 3,00,000	*Nil*	*Nil*	*Nil*
Rs. 3,00,000 – Rs. 5,00,000	5% of (total income *minus* Rs. 3,00,000) [*see* Note 1]	*Nil*	4% of income-tax
Rs. 5,00,000 – Rs. 10,00,000	Rs. 10,000 + 20% of (total income *minus* Rs. 5,00,000)	*Nil*	4% of income-tax
Rs. 10,00,000 – Rs. 50,00,000	Rs. 1,10,000 + 30% of (total income *minus* Rs. 10,00,000)	*Nil*	4% of income-tax
Rs. 50,00,000 - Rs. 1,00,00,000	Rs. 13,10,000 + 30% of (total income *minus* Rs. 50,00,000)	10% of income-tax [*see* Note 2]	4% of income-tax and surcharge
Rs. 1,00,00,000 - Rs. 2,00,00,000	Rs. 28,10,000 + 30% of (total income *minus* Rs.1,00,00,000)	15% of income-tax [*see* Note 2]	4% of income-tax and surcharge
Rs. 2,00,00,000 - Rs. 5,00,00,000	Rs. 58,10,000 + 30% of (total income *minus* Rs. 2,00,00,000)	25% of income-tax [*see* Note 2]	4% of income-tax and surcharge
Above Rs. 5,00,00,000	Rs. 1,48,10,000 + 30% of (total income *minus* Rs. 5,00,00,000)	37% of income-tax [*see* Note 2]	4% of income-tax and surcharge

■ For a resident super senior citizen (who is 80 years or more at any time during the previous year, *i.e.*, born before April 2, 1940)—

Net income range	*Income-tax rates‡*	*Surcharge*	*Health and education cess (HEC)*
Up to Rs. 5,00,000	*Nil*	*Nil*	*Nil*
Rs. 5,00,000 – Rs. 10,00,000	20% of (total income *minus* Rs. 5,00,000)	*Nil*	4% of income-tax
Rs. 10,00,000 – Rs. 50,00,000	Rs. 1,00,000 + 30% of (total income *minus* Rs. 10,00,000)	*Nil*	4% of income-tax
Rs. 50,00,000 - Rs. 1,00,00,000	Rs. 13,00,000 + 30% of (total income *minus* Rs. 50,00,000)	10% of income-tax [*see* Note 2]	4% of income-tax and surcharge
Rs. 1,00,00,000 – Rs. 2,00,00,000	Rs. 28,00,000 + 30% of (total income *minus* Rs.1,00,00,000)	15% of income-tax [*see* Note 2]	4% of income-tax and surcharge
Rs. 2,00,00,000 – Rs. 5,00,00,000	Rs. 58,00,000 + 30% of (total income *minus* Rs. 2,00,00,000)	25% of income-tax [*see* Note 2]	4% of income-tax and surcharge
Above Rs. 5,00,00,000	Rs. 1,48,00,000 + 30% of (total income *minus* Rs. 5,00,00,000)	37% of income-tax [*see* Note 2]	4% of income-tax and surcharge

■ For any other resident individual (born on or after April 2, 1960), any non-resident individual, every HUF/ AOP/BOI/artificial juridical person—

Net income range	*Income-tax rates‡*	*Surcharge*	*Health and education cess (HEC)*
Up to Rs. 2,50,000	*Nil*	*Nil*	*Nil*
Rs. 2,50,000 – Rs. 5,00,000	5% of (total income *minus* Rs. 2,50,000) [*see* Note 1]	*Nil*	4% of income-tax
Rs. 5,00,000 – Rs. 10,00,000	Rs. 12,500 + 20% of (total income *minus* Rs. 5,00,000)	*Nil*	4% of income-tax
Rs. 10,00,000 – Rs. 50,00,000	Rs. 1,12,500 + 30% of (total income *minus* Rs. 10,00,000)	*Nil*	4% of income-tax

‡*See* also para 0.1-6.

† 9 per cent, if the assessee is a unit located in an International Financial Services Centre and derives its income solely in convertible foreign exchange.

Net income range	*Income-tax rates‡*	*Surcharge*	*Health and education cess (HEC)*
Rs. 50,00,000 - Rs. 1,00,00,000	Rs. 13,12,500 + 30% of (total income *minus* Rs. 50,00,000)	10% of income-tax [*see* Note 2]	4% of income-tax and surcharge
Rs. 1,00,00,000 – Rs. 2,00,00,000	Rs. 28,12,500 + 30% of (total income *minus* Rs.1,00,00,000)	15% of income-tax [*see* Note 2]	4% of income-tax and surcharge
Rs. 2,00,00,000 – Rs. 5,00,00,000	Rs. 58,12,500 + 30% of (total income *minus* Rs. 2,00,00,000)	25% of income-tax [*see* Note 2]	4% of income-tax and surcharge
Above Rs. 5,00,00,000	Rs. 1,48,12,500 + 30% of (total income *minus* Rs. 5,00,00,000)	37% of income-tax [*see* Note 2]	4% of income-tax and surcharge

Notes :

1. Rebate under section 87A - A resident individual (whose net income does not exceed Rs. 5,00,000) can avail rebate under section 87A. It is deductible from income-tax before calculating health and education cess. The amount of rebate is 100 per cent of income-tax or Rs. 12,500, whichever is less.

2. Surcharge - Surcharge is 10 per cent of income-tax if net income is more than Rs. 50 lakh but not more than Rs. 1 crore. If net income is more than Rs. 1 crore but not more than Rs. 2 crore, surcharge is 15 per cent of income-tax. If net income is more than Rs. 2 crore but not more than Rs. 5 crore, surcharge is 25 per cent of income-tax. If net income is more than Rs. 5 crore, surcharge is 37 per cent of income-tax. Surcharge is subject to a marginal relief. If net income exceeds Rs. 50 lakh, the amount payable as income-tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 50 lakh by more than the amount of income that exceeds Rs. 50 lakh. Moreover, if net income is in the range of Rs. 1 crore – Rs. 2 crore, the amount payable as income-tax and surcharge shall not exceed the total amount payable as income-tax and surcharge on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore. Similarly, if net income is in the range of Rs. 2 crore – Rs. 5 crore, the amount payable as income-tax and surcharge shall not exceed the total amount payable as income-tax and surcharge on total income of Rs. 2 crore by more than the amount of income that exceeds Rs. 2 crore. Likewise, if net income is above Rs. 5 crore, the amount payable as income-tax and surcharge shall not exceed the total amount payable as income-tax and surcharge on total income of Rs. 5 crore by more than the amount of income that exceeds Rs. 5 crore.

3. Health and education cess (HEC) - It is 4 per cent of income-tax and surcharge.

▪ *Alternate minimum tax* - Tax payable by a non-corporate assessee cannot be less than 18.5 per cent† (+SC+HEC) of "adjusted total income" as per section 115JC.

Firms

0.1-2 A firm is taxable at the rate of 30 per cent for the assessment years 2019-20 and 2020-21 [*see* also para 0.1-6].

Surcharge - Surcharge is 12 per cent of income-tax if net income exceeds Rs. 1 crore. It is subject to marginal relief (in the case of a firm having a net income of exceeding Rs. 1 crore, the amount payable as income tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore).

Health and education cess - It is 4 per cent of income-tax and surcharge.

▪ *Alternate minimum tax* - Tax payable by firm cannot be less than 18.5 per cent† [+ SC + HEC] of "adjusted total income" as per section 115JC.

Companies

0.1-3 For the assessment years 2019-20 and 2020-21 the following rates of income-tax are applicable:

Company	*Rate of income-tax (per cent) [see also para 0.1-6]*	
	Assessment year 2019-20	*Assessment year 2020-21*
In the case of a domestic company -		
- where its total turnover or gross receipt during the previous year 2016-17 does not exceed Rs. 250 crore	25	*NA*
- where its total turnover or gross receipt during the previous year 2017-18 does not exceed Rs. 400 crore	*NA*	25
- any other domestic company	30	30

‡*See* also para 0.1-6.

† 9 per cent, if the assessee is a unit located in an International Financial Services Centre and derives its income solely in convertible foreign exchange.

Company	*Rate of income-tax (per cent) [see also para 0.1-6]*	
	Assessment year 2019-20	*Assessment year 2020-21*
In the case of a foreign company -		
- royalty received from Government or an Indian concern in pursuance of an agreement made by it with the Indian concern after March 31, 1961, but before April 1, 1976, or fees for rendering technical services in pursuance of an agreement made by it after February 29, 1964 but before April 1, 1976 and where such agreement has, in either case, been approved by the Central Government	50	50
- other income	40	40

Surcharge - Surcharge is applicable at the rates given below—

	If net income does not exceed Rs. 1 crore	*If net income is in the range of Rs. 1 crore – Rs. 10 crore*	*If net income exceeds Rs. 10 crore*
Domestic company	*Nil*	7%*	12%**
Foreign company	*Nil*	2%*	5%**

**Marginal relief* - In the case of a company having a net income of exceeding Rs. 1 crore, the amount payable as income-tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore.

***Marginal relief* - In the case of a company having a net income of exceeding Rs. 10 crore, the amount payable as income-tax and surcharge shall not exceed the total amount payable as income-tax and surcharge on total income of Rs. 10 crore by more than the amount of income that exceeds Rs. 10 crore.

Health and education cess - It is 4 per cent of income-tax and surcharge.

MINIMUM ALTERNATE TAX

0.1-3a The following rate of minimum alternate tax shall be applicable—

	If book profit does not exceed Rs.1 crore				*If book profit is in the range of Rs. 1 crore – Rs. 10 crore*				*If book profit exceeds Rs. 10 crore*			
	IT	*SC*	*HEC*	*Total*	*IT*	*SC*	*HEC*	*Total*	*IT*	*SC*	*HEC*	*Total*
Domestic company	18.5†	–	0.74	19.24	18.5†	1.295	0.7918	20.5868	18.5†	2.22	0.8288	21.5488
Foreign company	18.5†	–	0.74	19.24	18.5†	0.37	0.7548	19.6248	18.5†	0.925	0.777	20.202

Note - If book profit of a company exceeds Rs. 1 crore but does not exceed Rs. 10 crore, the minimum alternate tax cannot exceed the following : (Rs. 18.5 lakh + book profit – Rs. 1 crore) + HEC. If, however, book profit exceeds Rs. 10 crore, the minimum alternate tax cannot exceed the following –

a. in the case of domestic company, (Rs. 197.95 lakh + book profit – Rs. 10 crore) + HEC; or
b. in the case of a foreign company, (Rs. 188.7 lakh + book profit – Rs. 10 crore) + HEC.

Co-operative societies

0.1-4 The following rates are applicable to a co-operative society for the assessment years 2019-20 and 2020-21—

(Per cent)

Net income range	*Rate of income-tax [*See *also 0.1-6]*
Up to Rs. 10,000	10
Rs. 10,000 - Rs. 20,000	20
Above Rs. 20,000	30

Surcharge - Surcharge is 12 per cent of income-tax if net income exceeds Rs. 1 crore. It is subject to marginal relief (in the case of a co-operative society having a net income of exceeding Rs. 1 crore, the amount payable as income tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore).

Health and education cess - It is 4 per cent of income-tax and surcharge.

■ *Alternate minimum tax* - Tax payable by firm cannot be less than 18.5 per cent† [+ SC + HEC] of "adjusted total income" as per section 115JC.

Local authorities

0.1-5 Local authorities are taxable at the rate of 30 per cent.

Surcharge - Surcharge is 12 per cent of income-tax if net income exceeds Rs. 1 crore. It is subject to marginal relief (in the case of a local authority having a net income of exceeding Rs. 1 crore, the amount payable as

† 9 per cent, if the assessee is a unit located in an International Financial Services Centre and derives its income solely in convertible foreign exchange.

income tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore).

Health and education cess - It is 4 per cent of income-tax and surcharge.

■ *Alternate minimum tax* - Tax payable by firm cannot be less than 18.5 per cent† [+ SC + HEC] of "adjusted total income" as per section 115JC.

Tax rates specified in the Income-tax Act

0.1-6 The following incomes are taxable at the rates specified by the Income-tax Act and not at the rates mentioned in paras 0.1-1 to 0.1-5 *supra* :

Section	*Income*	*Income-tax rates**
(1)	*(2)*	*(3)*
111A	Short-term capital gains	15
112	Long-term capital gains	20‡
112A	Long-term capital gain in excess of Rs. 1 lakh	10
115A(1) (*a*)(*i*)	Dividend received by a foreign company or a non-resident non-corporate assessee [*it is not applicable in the case of dividends referred to in section 115-O]	20*
115A(1) (*a*)(*ii*)	Interest received by a foreign company or a non-resident non-corporate assessee from Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency	20
115A(1) (*a*)(*iia*)	Interest received from an infrastructure debt fund referred to in section 10(*47*)	5
115A(1) (*a*)(*iiaa*)	Interest received from an Indian company specified in section 194LC	5
115A(1) (*a*)(*iiab*)/ (*iiac*)	Interest of the nature and extent referred to in section 194LD or section 194LBA	5
115A (1)(*b*)	Royalty or fees for technical services (not referred to in section 44DA) received by a foreign company or non-resident non-corporate assessee from an Indian concern or Government in pursuance of an agreement approved by the Central Government if such agreement is made at any time after March 31, 1976	10
115AB	Income of an overseas financial organisation on transfer of units purchased in foreign currency being long-term capital gains	10
115AC	Income from bonds or Global Depository Receipts[1] or on bonds or Global Depository Receipts[1] of a public sector company sold by the Government and purchased in foreign currency or long-term capital gains arising from their transfer *[not applicable in the case of dividends referred to in section 115-O]	10*
115ACA	Income from Global Depository Receipts held by a resident individual who is an employee of an Indian company engaged in information technology software/ services††	
	❑ Dividend [other than dividend referred to in section 115-O] on Global Depository Receipts issued under employees stock option scheme and purchased in foreign currency	10
	❑ Long-term capital gain on transfer of such receipts	10
115AD	Income in respect of securities received by a Foreign Institutional Investor as specified[2] by the Government	
	❑ Short-term capital gain covered by section 111A	15
	❑ Any other short-term capital gain	30
	❑ Long-term capital gain	10
	❑ Long-term capital gain (referred to in section 112A) in excess of Rs. 1 lakh	10
	❑ Interest referred to in section 194LD	5

*These rates are subject to SC + HEC [*see* Notes at the end of Table].

‡In some cases, tax rate is 10%

† 9 per cent, if the assessee is a unit located in an International Financial Services Centre and derives its income solely in convertible foreign exchange.

††An employee of an Indian company engaged in specified knowledge based industry or service or an employee of its subsidiary engaged in specified knowledge based industry or service.

1. Issued by an Indian company in accordance with the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993/Issue of Foreign Currency Exchangeable Bonds Scheme, 2008.
2. For notified Foreign Institutional Investor, *see* Taxmann's *Direct Taxes Circulars,* 2011 edition.

Section	*Income*	*Income-tax rates*†
(1)	*(2)*	*(3)*
	❑ Other income [*not applicable in the case of dividends referred to in section 115-O]	20*
115B	Profits and gains of life insurance business	12.5
115BA	Income of certain domestic companies‡	25
115BB	Winnings from lotteries, crossword puzzles, or race including horse race (not being income from the activity of owning and maintaining race horse) or card game and other game of any sort or from gambling or betting of any form or nature	30
115BBA(1) (*a*)/(*b*)	Income of a non-resident foreign citizen sportsman for participation in any game in India or received by way of advertisement or for contribution of articles relating to any game or sport in India or income of a non-resident sport association by way of guarantee money	20
115BBA(1) (*c*)	Income of non-resident foreign citizen (being an entertainer) for performance in India	20
115BBC	Anonymous donation	30
115BBD	Income of an Indian company by way of dividends declared, distributed or paid by a specified foreign company (in which the Indian company holds 26 per cent or more of equity share capital)	15
115BBDA	Aggregate dividend from domestic companies in excess of Rs. 10 lakh [excluding deemed dividend under section 2(*22*)(*e*)]	10
115BBE	Income referred to in sections 68, 69, 69A, 69B, 69C and 69D	60
115BBF	Income by way of royalty in respect of a patent developed and registered in India (received by a resident assessee who is a patentee)	10
115BBG	Income from transfer of carbon credits	10
115E	Income from foreign exchange assets and capital gains of non-resident Indian *a.* income from foreign exchange asset [*not applicable in the case of dividends referred to in section 115-O] *b.* long-term capital gain	 20* 10
115JB	Minimum alternate tax - Book profit of a company (not being a company given below) - Book profit of a company located in an International Financial Services Centre and derives its income solely in convertible foreign exchange	 18.5 9
115JC	Alternative minimum tax in the case of non-corporate taxpayer – - Adjusted total income (not being a unit given below) - Adjusted total income of a unit located in an International Financial Services Centre and derives its income solely in convertible foreign exchange	 18.5 9
115TD	Accreted income of certain trusts and institutions [*taxable at maximum marginal rate (MMR) of tax which is 35.88 per cent (for the assessment year 2019-20) and 42.744 per cent (for the assessment year 2020-21)]	MMR*

†These rates are subject to SC + HEC [*see* Notes at the end of Table].

‡ Under section 115BA, a domestic company (which satisfies the following conditions) may opt for tax rate of 25 per cent -

- It is a set-up and registered on or after March 1, 2016.
- The company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to (or distribution of) such article or thing manufactured or produced by it.
- Total income of the company is computed without claiming additional depreciation and deduction under sections 10AA, 32AC, 32AD, 33AB, 33ABA, 35(1)(*ii*)/(*iia*)/(*iii*)/35(2AA)/(2AB), 35AC, 35AD, 35CCC, 35CCD, sections 80H to 80TT (not being section 80JJAA).
- Total income of the company is calculated after claiming depreciation (rate cannot be more than 40 per cent) and without adjusting brought forward loss from any earlier year (if such loss pertains to any deduction under the aforesaid sections). Moreover, such loss will not be carried forward.
- This option shall be exercised on or before the due date for furnishing the first of the returns of income, which the company is required to furnish under the Act. This option should be exercised by electronically furnishing Form No. 10-IB (under digital signature or electronic verification code). Once the company has exercised the option for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

Section	*Income*	*Income-tax rates*
(1)	*(2)*	*(3)*
115UB(4)	Business income of a investment fund – ❑ Where investment fund is a domestic company or firm ❑ Where investment fund is a foreign company ❑ Where investment fund is any other person [*taxable at maximum marginal rate (MMR) of tax which is 35.88 per cent (for the assessment year 2019-20) and 42.744 per cent (for the assessment year 2020-21)]	 30 40 MMR*
161(1A)	Profits and gains of a business in the case of a trust	30
164	Income of private discretionary trust where shares of beneficiaries are indeterminate	30
164A	Income of an oral trust	30
167A	Income of a firm	30
167B	Income of an association of persons or body of individuals if shares of members are unknown	30
167B(2)	Income of an association of persons (AOP) or body of individuals (BOI) if total income of any member (excluding share from AOP/BOI) exceeds the maximum amount not chargeable to tax [*if total income of any member of the AOP /BOI is chargeable to tax at a rate higher than maximum marginal rate, then tax shall be charged on that portion of the total income of the AOP/BOI which is relatable to the share of such member at such higher rate and the balance of the total income is taxable at a maximum marginal rate] [maximum marginal rate of tax is 35.88 per cent (for the assessment year 2019-20) and 42.744 per cent (for the assessment year 2020-21)]	30*

Notes :

1. *Surcharge* - The above income-tax rates are subject to surcharge. Surcharge under section 115BBE is 25 per cent of income-tax. In other cases, surcharge is calculated as a percentage (given below) of income-tax –

	Net income‡ range	*Assessment year 2019-20*	*Assessment year 2020-21*
Individuals/HUF/AOP/BOI/ artificial juridical person	0 – Rs. 50 lakh Rs. 50 lakh – Rs. 1 crore Rs. 1 crore – Rs. 2 crore Rs. 2 crore – Rs. 5 crore Above Rs. 5 crore	*Nil* 10% 15% 15% 15%	*Nil* 10% 15% 25% 37%
Firm/co-operative society/ local authority	0 – Rs. 1 crore Above Rs. 1 crore	*Nil* 12%	*Nil* 12%
Domestic company	0 – Rs. 1 crore Rs. 1 crore – Rs. 10 crore Above Rs. 10 crore	*Nil* 7% 12%	*Nil* 7% 12%
Foreign company	0 – Rs. 1 crore Rs. 1 crore – Rs. 10 crore Above Rs. 10 crore	*Nil* 2% 5%	*Nil* 2% 5%

‡or book profit (for the purpose of section 115JB) or adjusted total income (for the purpose of section 115JC).

2. *Health and education cess* - It is 4 per cent of income-tax and surcharge.

Compulsory deposit

0.2 From the assessment year 1986-87, the scheme of compulsory deposit has been abolished.

Wealth-tax

0.3 No wealth-tax from the assessment year 2016-17.

Gift-tax

0.4 Gifts made after September 30, 1998 are not chargeable to gift-tax.

Estate duty

0.5 The levy of estate duty has been abolished in respect of estates passing on death occurring on or after March 16, 1985.

Rates for tax deduction at source

0.6 Tax is deductible at source at the rates given in table (*infra*). If PAN of the deductee is not intimated to the deductor, tax will be deducted at source by virtue of section 206AA either at the rate given in the table or at the rate of 20 per cent, whichever is higher†. Further, under section 94A(5), if payment or credit is made or given to a deductee who is located in a notified jurisdictional area‡, tax is deductible at the rate given in the table or at the rate of 30 per cent, whichever is higher. TDS rates for the financial year 2019-20 are as follows –

Category A - ***When recipient is resident***	
Nature of payment	*TDS (SC :* Nil, *HEC :* Nil*)*
■ **Sec. 192** - Payment of salary [normal tax rates are applicable – *see* para 0.1-1b, SC : 10% (if total income exceeds Rs. 50 lakh but does not exceed Rs. 1 crore), 15% (if total income exceeds Rs. 1 crore but does not exceed Rs. 2 crore), 25% (if total income exceeds Rs. 2 crore but does not exceed Rs. 5 crore) or 37% (if total income exceeds Rs. 5 crore), HEC : 4%]	—
■ **Sec. 192A** - Payment of taxable accumulated balance of provident fund	10
■ **Sec. 193** - Interest on securities—	
a. interest on (*a*) debentures/securities for money issued by or on behalf of any local authority/statutory corporation, (*b*) listed debentures of a company [not being listed securities in demat form], (*c*) any security of the Central or State Government [*i.e.*, 8% Savings (taxable) Bonds, 2003 and 7.75% Savings (taxable) Bonds, 2018 but not any other Government security]	10
b. any other interest on securities (including interest on non-listed debentures)	10
■ **Sec. 194** - Dividend—	
a. deemed dividend under section 2(*22*)(*e*)	*Nil*
b. any other dividend	*Nil*
■ **Sec. 194A** - Interest other than interest on securities	10
■ **Sec. 194B** - Winnings from lottery or crossword puzzle or card game or other game of any sort	30
■ **Sec. 194BB** - Winnings from horse races	30
■ **Sec. 194C** - Payment or credit to a resident contractor/sub-contractor—	
a. payment/credit to an individual or a Hindu undivided family	1
b. payment/credit to any person other than an individual or a Hindu undivided family	2
■ **Sec. 194D** - Insurance commission—	
- if recipient is a resident (other than a company)	5
- if recipient is a domestic company	10
■ **Sec. 194DA** - Payment in respect of life insurance policy [when exemption is not available under section 10(*10D*)] –	
- Up to August 31, 2019 : 1% of amount payable	1
- With effect from September 1, 2019 : 5% of the amount of income comprised in payment	5

†However, this rule is subject to following modifications –

- *Case 1* - The provisions of section 206AA are not applicable in respect of payment of interest on long-term bonds to a non-resident under section 194LC.
- *Case 2* - Where tax is deductible on the strength of the provisions of DTAAs which is lower than 20 per cent, the provisions of section 206AA cannot be invoked (to compel the assessee to deduct tax at the rate of 20 per cent) even if the recipient does not have PAN – *DIT* v. *Serum Institute of India Ltd.* [2015] 56 taxmann.com 1 (Pune - Trib.), *CIT (International Taxation)* v. *Infosys BPO Ltd.* [2015] 60 taxmann.com 465 (Bang.).
- *Case 3* - If the recipient does not furnish PAN, tax will be deducted under section 192A at the maximum marginal rate of tax (*i.e.*, 42.744 per cent) and not at the rate of 20 per cent given by section 206AA.
- *Case 4* - The provisions of section 206AA are not be applicable, if a few conditions prescribed by rule 37BC$ are satisfied. Under this rule, the deductee is required to submit the following to deductor (to avoid application of section 206AA) – (*a*) name, e-mail id, contact number; (*b*) address in the foreign country; (*c*) tax residency certificate issued by the foreign Government; and (*d*) Tax Identification Number issued by the foreign country.

‡ 'Cyprus' was specified as notified jurisdictional area for purposes of section 94A *vide* Notification No. SO 3307(E)$, dated November 1, 2013. However, this notification has been rescinded with effect from November 1, 2013 (except as respects things done or omitted to be done before such rescission) *vide* Notification No. SO 4033(E), dated December 14, 2016$.

$ For rule 37BC, Notification No. SO 3307(E), dated November 1, 2013 and Notification No. SO 4033(E), dated December 14, 2016, log on to *taxmann.com/readyreckoner.aspx*.

Category A - ***When recipient is resident***	
Nature of payment	*TDS (SC :* Nil, *HEC :* Nil*)*
■ **Sec. 194EE** - Payment in respect of deposits under National Savings Scheme, 1987	10
■ **Sec. 194F** - Payment on account of repurchase of units of MF or UTI	20
■ **Sec. 194G** - Commission on sale of lottery tickets	5
■ **Sec. 194H** - Commission or brokerage	5
■ **Sec. 194-I** - Rent—	
a. rent of plant and machinery	2
b. rent of land or building or furniture or fitting	10
■ **Sec. 194-IA** - Payment/credit of consideration to a resident transferor for transfer of any immovable property (other than rural agricultural land)	1
■ **Sec. 194-IB** - Payment/credit of rent by an individual/HUF (if not subject to tax audit under section 44AB in the immediately preceding financial year)	5
■ **Sec. 194-IC** - Payment under joint development agreement to a resident individual/HUF (who transfers land/building)	10
■ **Sec. 194J** - Professional fees, technical fees, royalty or remuneration to a director –	
- If payee is engaged only in the business of operation of call centre	2
- Any other payment/credit	10
■ **Sec. 194LA** - Payment of compensation on acquisition of certain immovable property	10
■ **Sec. 194LBA(1)** - Payment of the nature referred to in section 10(*23FC*) section 10(*23FC*)(*a*)/(*23FCA*) by business trust to resident unit holders	10
■ **Sec. 194LBB** - Payment in respect of units of investment fund specified in section 115UB	10
■ **Sec. 194LBC(1)** - Payment in respect of an investment in a securitisation trust specified in clause (*d*) of the *Explanation* occurring after section 115TCA—	
- if recipient is an individual or a Hindu undivided family	25
- if recipient is any other person	30
■ **Sec. 194M** - Payment/credit to a resident contractor or resident professional or payment/credit by way of commission/brokerage (applicable with effect from September 1, 2019)	5
■ **Sec. 194N** - Payment from one or more accounts to an account holder in cash by bank/co-operative bank/post office in excess of Rs. 1 crore in the financial year (applicable with effect from September 1, 2019)	2

Category B - ***When recipient is non-resident or foreign company***										
Aggregate payment or credit subject to TDS during the financial year 2019-20 →	*If recipient is non-resident individual/HUF/AOP/BOI/ artificial juridical person*					*If recipient is non-resident co-operative society/firm*		*If recipient is non-domestic company*		
	0 – Rs. 50 lakh	*Rs. 50 lakh – Rs. 1 crore*	*Rs. 1 crore – Rs. 2 crore*	*Rs. 2 crore – Rs. 5 crore*	*Above Rs. 5 crore*	*0 – Rs. 1 crore*	*Above Rs. 1 crore*	*0 – Rs. 1 crore*	*Rs. 1 crore – Rs. 10 crore*	*Above Rs. 10 crore*
Nature of payment	*TDS + HEC : 4%*	*TDS + SC : 10% + HEC : 4%*	*TDS + SC : 15% + HEC : 4%*	*TDS + SC : 25% + HEC : 4%*	*TDS + SC : 37% + HEC : 4%*	*TDS + HEC : 4%*	*TDS + SC : 12% + HEC : 4%*	*TDS + HEC : 4%*	*TDS + SC : 2% + HEC : 4%*	*TDS + SC : 5% + HEC : 4%*
■ **Sec. 192** - Payment of salary [normal tax rates are applicable – *see* para 0.1-1b SC : 10% (if total income exceeds Rs. 50 lakh but does not exceed Rs. 1 crore), 15% (if total income exceeds Rs. 1 crore but does not exceed Rs. 2 crore), 25% (if total income exceeds Rs. 2 crore but does not exceed Rs. 5 crore) or 37% (if total income exceeds Rs. 5 crore), HEC : 4%]	–	–	–	–	–	–	–	–	–	–
■ **Sec. 192A** - Payment of taxable accumulated balance of provident fund	10.4	11.44	11.96	13	14.248	–	–	–	–	–

Category B - ***When recipient is non-resident or foreign company***

Aggregate payment or credit subject to TDS during the financial year 2019-20 → / *Nature of payment*	*If recipient is non-resident individual/HUF/AOP/BOI/ artificial juridical person*					*If recipient is non-resident co-operative society/firm*		*If recipient is non-domestic company*		
	0 – Rs. 50 lakh	*Rs. 50 lakh – Rs. 1 crore*	*Rs. 1 crore – Rs. 2 crore*	*Rs. 2 crore – Rs. 5 crore*	*Above Rs. 5 crore*	*0 – Rs. 1 crore*	*Above Rs. 1 crore*	*0 – Rs. 1 crore*	*Rs. 1 crore – Rs. 10 crore*	*Above Rs. 10 crore*
	TDS + HEC : 4%	*TDS + SC : 10% + HEC : 4%*	*TDS + SC : 15% + HEC : 4%*	*TDS + SC : 25% + HEC : 4%*	*TDS + SC : 37% + HEC : 4%*	*TDS + HEC : 4%*	*TDS + SC : 12% + HEC : 4%*	*TDS + HEC : 4%*	*TDS + SC : 2% + HEC : 4%*	*TDS + SC : 5% + HEC : 4%*
■ **Sec. 194B** - Winnings from lottery or crossword puzzle or card game or other game of any sort	31.2	34.32	35.88	39	42.744	31.2	34.944	31.2	31.824	32.76
■ **Sec. 194BB** - Winnings from horse races	31.2	34.32	35.88	39	42.744	31.2	34.944	31.2	31.824	32.76
■ **Sec. 194E** - Payment to a non-resident foreign citizen sportsman/entertainer or non-resident sports association	20.8	22.88	23.92	26	28.496	20.8	23.296	20.8	21.216	21.84
■ **Sec. 194EE** - Payment in respect of deposits under National Saving Scheme, 1987	10.4	11.44	11.96	13	14.248	*NA*	*NA*	*NA*	*NA*	*NA*
■ **Sec. 194F** - Re-purchase of units of MF or UTI	20.8	22.88	23.92	26	28.496	*NA*	*NA*	*NA*	*NA*	*NA*
■ **Sec. 194G** - Commission on sale of lottery tickets	5.2	5.72	5.98	6.5	7.124	5.2	5.824	5.2	5.304	5.46
■ **Sec. 194LB** - Payment/credit by way of interest by infrastructure debt fund	5.2	5.72	5.98	6.5	7.124	5.2	5.824	5.2	5.304	5.46
■ **Sec. 194LBA(2)** - Payment of the nature referred to in section 10(*23FC*) or section 10(*23FC*)(*a*) by business trust to unit holders	5.2	5.72	5.98	6.5	7.124	5.2	5.824	5.2	5.304	5.46
■ **Sec. 194LBA(3)** - Payment of the nature referred to in section 10(*23FCA*) by business trust to unit holders	31.2	34.32	35.88	39	42.744	31.2	34.944	41.6	42.432	43.68
■ **Sec. 194LBB** - Payment in respect of units of investment fund specified in section 115UB	31.2	34.32	35.88	39	42.744	31.2	34.944	41.6	42.432	43.68
■ **Sec. 194LBC(2)** - Payment in respect of an investment in a securitisation trust specified in clause (*d*) of the *Explanation* occurring after section 115TCA	31.2	34.32	35.88	39	42.744	31.2	34.944	41.6	42.432	43.68
■ **Sec. 194LC** - Payment/credit of interest by an Indian specified company on foreign currency approved loan/long-term bonds from outside India	5.2	5.72	5.98	6.5	7.124	5.2	5.824	5.2	5.304	5.46
■ **Sec. 194LD** - Interest on a rupee denominated bond of an Indian company or Government security	5.2	5.72	5.98	6.5	7.124	5.2	5.824	5.2	5.304	5.46
■ **Sec. 194N** - Payment from one or more accounts to an account holder in cash by bank/co-operative bank/post office in excess of Rs. 1 crore in the financial year (applicable with effect from September 1, 2019)	2.08	2.288	2.392	2.6	2.8496	2.08	2.3296	2.08	2.1216	2.184
■ **Sec. 195** - Payment/credit of other sum to a non-resident —										
a. income of foreign exchange assets payable to an Indian citizen	20.8	22.88	23.92	26	28.496	*NA*	*NA*	*NA*	*NA*	*NA*
b. income by way of long-term capital gains referred to in section 115E or section 112(1)(*c*)(*iii*)	10.4	11.44	11.96	13	14.248	10.4	11.648	10.4	10.608	10.92
c. income by way of long-term capital gains referred to in section 112A	10.4	11.44	11.96	13	14.248	10.4	11.648	10.4	10.608	10.92
d. short-term capital gains under section 111A	15.6	17.16	17.94	19.5	21.372	15.6	17.472	15.6	15.912	16.38
e. any other long-term capital gains [not being covered by sections 10(*33*), 10(*36*) and 112A]	20.8	22.88	23.92	26	28.496	20.8	23.296	20.8	21.216	21.84
f. income by way of interest payable by Government/Indian concern on										

Category B - ***When recipient is non-resident or foreign company***

Aggregate payment or credit subject to TDS during the financial year 2019-20 → / Nature of payment	*If recipient is non-resident individual/HUF/AOP/BOI/ artificial juridical person*					*If recipient is non-resident co-operative society/firm*		*If recipient is non-domestic company*		
	0 – Rs. 50 lakh	*Rs. 50 lakh – Rs. 1 crore*	*Rs. 1 crore – Rs. 2 crore*	*Rs. 2 crore – Rs. 5 crore*	*Above Rs. 5 crore*	*0 – Rs. 1 crore*	*Above Rs. 1 crore*	*0 – Rs. 1 crore*	*Rs. 1 crore – Rs. 10 crore*	*Above Rs. 10 crore*
	TDS + HEC : 4%	*TDS + SC : 10% + HEC : 4%*	*TDS + SC : 15% + HEC : 4%*	*TDS + SC : 25% + HEC : 4%*	*TDS + SC : 37% + HEC : 4%*	*TDS + HEC : 4%*	*TDS + SC : 12% + HEC : 4%*	*TDS + HEC : 4%*	*TDS + SC : 2% + HEC : 4%*	*TDS + SC : 5% + HEC : 4%*
money borrowed or debt incurred by Government or Indian concern in foreign currency (not being interest referred to in section 194LB or 194LC)	20.8	22.88	23.92	26	28.496	20.8	23.296	20.8	21.216	21.84
g. royalty [*see* Note 5]	10.4	11.44	11.96	13	14.248	10.4	11.648	10.4	10.608	10.92
h. royalty [not being royalty of the nature referred to in (*f*) *supra*] [*see* Note 6] –										
❑ where the agreement is made after March 31, 1961 but before April 1, 1976	10.4	11.44	11.96	13	14.248	10.4	11.648	52	53.04	54.6
❑ where the agreement is made on or after April 1, 1976	10.4	11.44	11.96	13	14.248	10.4	11.648	10.4	10.608	10.92
i. fees for technical services [*see* Note 7] –										
❑ where the agreement is made after February 29, 1964 but before April 1, 1976	10.4	11.44	11.96	13	14.248	10.4	11.648	52	53.04	54.6
❑ where the agreement is made on or after April 1, 1976	10.4	11.44	11.96	13	14.248	10.4	11.648	10.4	10.608	10.92
j. any other income	31.2	34.32	35.88	39	42.744	31.2	34.944	41.6	42.432	43.68
■ **Sec. 196B** - Payment/credit of income from units (including long-term capital gains on transfer of such units) to an offshore fund	10.4	11.44	11.96	13	14.248	10.4	11.648	10.4	10.608	10.92
■ **Sec. 196C** - Payment/credit of interest of foreign currency bonds or GDR (including long-term capital gains on transfer of such bonds) (not being dividend referred to in section 115-O)	10.4	11.44	11.96	13	14.248	10.4	11.648	10.4	10.608	10.92
■ **Sec. 196D** - Payment/credit of income from securities (not being dividend, short-term or long-term capital gain) to Foreign Institutional Investors	20.8	22.88	23.92	26	28.496	20.8	23.296	20.8	21.216	21.84

Notes :

1. Under section 192 tax is deductible from salary. The payer shall calculate salary taxable in the hands of recipient. The amount so determined is subject to tax deduction under section 192. Under section 192A, tax is deductible on taxable accumulated balance of provident fund. Under section 195, tax is deductible only if income is taxable in the hands of recipient in India. In any other case, gross payment or credit (without GST, if GST is shown separately) is subject to tax deduction.

2. In *Category B*, tax is deductible at the above rates or the rates specified in ADT agreements entered into by the Central Government under section 90 (whichever is lower) [section 2(*37A*)(*iii*)] [*see* para 0.11, Annex 1].

3. Tax is not deductible under section 192A, 193, 194, 194A, 194D, 194DA, 194-I, or 194EE if the recipient makes a declaration in Form No. 15G/15H under the provisions of section 197A [*see* para 289.8].

4. Under section 197 the recipient can apply the Assessing Officer in Form No. 13 to get a certificate of lower/no tax deduction. This benefit is, however, not available if tax is deductible under section 192A, 194B, 194BB, 194E, 194EE, 194F, 194-IA, 194LB, 194LBA, 194LC, 194M, 196B, 196C or 196D [*see* para 289.7].

5. Royalty payable by Government or an Indian concern in pursuance of an agreement made by non-resident with the Government or the Indian concern after March 31, 1976, where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to section 115A(1A) to the Indian concern or in respect of computer software referred to in the second proviso to section 115(1A), to a person resident in India.

6. Not being royalty of the nature referred to above, payable by Government or an Indian concern in pursuance of an agreement made by non-resident with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to matter included in the industrial policy, the agreement is in accordance with that policy.

7. Fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by non-resident with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to matter included in the industrial policy, the agreement is in accordance with that policy.

Rates for tax collection at source

0.7 During the financial year 2019-20, tax shall be collected under section 206C at the rates given in the table (*infra*). If PAN of collectee is not intimated to the collector, tax will be collected by virtue of section 206CC either at twice the rate specified in the table (*infra*) or at the rate of 5 per cent, whichever is higher†.

Aggregate amount subject to TCS during the financial year 2019-20 → / Different nature of goods	*Status of purchaser or licensee or lessee*										
	Resident	*Non-resident individual/HUF/ AOP/BOI/artificial juridical person*					*Non-resident co-operative society/firm*		*Non-domestic company*		
	Any amount	*0 – Rs. 50 lakh*	*Rs. 50 lakh – Rs. 1 crore*	*Rs. 1 crore – Rs. 2 crore*	*Rs. 2 crore – Rs. 5 crore*	*Above Rs. 5 crore*	*0 – Rs. 1 crore*	*Above Rs. 1 crore*	*0 – Rs. 1 crore*	*Rs. 1 crore – Rs. 10 crore*	*Above Rs. 10 crore*
	TCS	*TCS + HEC : 4%*	*TCS + SC : 10% + HEC : 4%*	*TCS + SC : 15% + HEC : 4%*	*TCS + SC : 25% + HEC : 4%*	*TCS + SC : 37% + HEC : 4%*	*TCS + HEC : 4%*	*TCS + SC : 12% + HEC : 4%*	*TCS + HEC : 4%*	*TCS + SC : 2% + HEC : 4%*	*TCS + SC : 5% + HEC : 4%*
Category A (sale of the following) -											
A1. Alcoholic liquor for human consumption (other than Indian made foreign liquor)	1	1.04	1.144	1.196	1.3	1.4248	1.04	1.1648	1.04	1.0608	1.092
A2. Indian made foreign liquor	1	1.04	1.144	1.196	1.3	1.4248	1.04	1.1648	1.04	1.0608	1.092
A3. Tendu leaves	5	5.2	5.72	5.98	6.5	7.124	5.2	5.824	5.2	5.304	5.46
A4. Timber obtained under a forest lease	2.5	2.6	2.86	2.99	3.25	3.562	2.6	2.912	2.6	2.652	2.73
A5. Timber obtained by any mode other than a forest lease	2.5	2.6	2.86	2.99	3.25	3.562	2.6	2.912	2.6	2.652	2.73
A6. Any other forest produce (not being timber/tendu leaves)	2.5	2.6	2.86	2.99	3.25	3.562	2.6	2.912	2.6	2.652	2.73
A7. Scrap	1	1.04	1.144	1.196	1.3	1.4248	1.04	1.1648	1.04	1.0608	1.092
A8. Minerals, being coal or lignite or iron ore	1	1.04	1.144	1.196	1.3	1.4248	1.04	1.1648	1.04	1.0608	1.092
Category B (grant of lease/license of the following) -											
B1. Parking lot, toll plaza, mining and quarrying	2	2.08	2.288	2.392	2.6	2.8496	2.08	2.3296	2.08	2.1216	2.184
Category C (not applicable with effect from April 1, 2017)	–	–	–	–	–	–	–	–	–	–	–
Category D (sale of the following whether payment is received by cheque or by any other mode) –											
D1. Motor vehicle of the value exceeding Rs. 10 lakh	1	1.04	1.144	1.196	1.3	1.4248	1.04	1.1648	1.04	1.0608	1.092

Tax on dividend distribution, distribution by way of buy-back of shares and non-repatriation of excess money in secondary adjustment [Secs. 115-O, 115QA and 92CE]

0.8 These rates are given below –

0.8-1 ***Under sections 115-O and 115QA*** - Tax rates applicable on distribution under sections 115-O and 115QA during the financial year 2019-20 are as follows –

	Distribution tax (as a % of amount distributed)	*Surcharge (as a % of distribution tax)*	*HEC (as a % of distribution tax and surcharge)*	*Total (as a % of amount distributed)*
■ Tax on dividend under section 115-O [not applicable in the case of deemed dividend under section 2(*22*)(*e*)]	17.647*	12	4	20.5552941
■ Tax on dividend under section 115-O [applicable in the case of deemed dividend under section 2(*22*)(*e*)]	30	12	4	34.944
■ Tax on distributed income of domestic company under section 115QA for				

† However, the provisions of section 206CC shall not apply in the case of a non-resident collectee who does not have any permanent establishment in India.

*15/85 of amount distributed.

	Distribution tax (as a % of amount distributed)	*Surcharge (as a % of distribution tax)*	*HEC (as a % of distribution tax and surcharge)*	*Total (as a % of amount distributed)*
buy- back of unlisted shares (up to July 4, 2019) or **any shares** (on or after July 5, 2019)	20	12	4	23.296

0.8-2 ***Under section 92CE*** - Under section 92CE(2A), additional income-tax is payable at the rate of 18 per cent of excess money (+ surcharge : 12 per cent of tax + HEC : 4 per cent of tax and surcharge). Effective rate of tax is 20.9664 per cent.

Tax on income distributed by UTI/Mutual Fund under section 115R

0.9 Tax on income distributed by UTI/mutual fund[1] shall be charged during the financial year 2019-20 as follows—

	Distribution tax (as a % of amount distributed)	*Surcharge (as a % of distribution tax)*	*HEC (as a % of distribution tax and surcharge)*	*Total (as a % of amount distributed)*
■ Any income distributed by the Administrator of the specified undertaking to unit-holder	*Nil*	*Nil*	*Nil*	*Nil*
■ Any income distributed (on or after September 1, 2019) by a "specified mutual fund", out of its income derived from transactions made on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid/payable in convertible foreign exchange	*Nil*	*Nil*	*Nil*	*Nil*
■ Income distribution by money market mutual fund or a liquid fund or any other fund (not being equity oriented fund)				
- Unit-holder is individual/HUF	33.33[1]	12	4	38.8267
- Unit-holder is any other person	42.857[2]	12	4	49.92
■ Income distribution to any person by equity oriented fund	11.1111[3]	12	4	12.9422
■ Income distribution by a mutual fund under an infrastructure debt fund scheme to a non-resident/foreign company	5.26[4]	12	4	6.1305

Notes –

1. "Specified mutual fund" means a mutual fund specified under section 10(*23D*) —
- located in any International Financial Services Centre;
- of which all the units are held by non-residents.

2. "Equity oriented fund" means a fund set up under a scheme of a mutual fund specified under section 10(*23D*) and, —

a. in a case where the fund invests in the units of another fund which is traded on a recognised stock exchange, —
- a minimum of 90 per cent of the total proceeds of such fund is invested in the units of such other fund; and
- such other fund also invests a minimum of 90 per cent of its total proceeds in the equity shares of domestic companies listed on a recognised stock exchange; and

b. in any other case, a minimum of 65 per cent of the total proceeds of such fund is invested in the equity shares of domestic companies listed on a recognised stock exchange.

The percentage of equity shareholding or unit held in respect of the fund, as the case may be, shall be computed with reference to the annual average of the monthly averages of the opening and closing figures.

3. Tax under section 115R is applicable only on income distributed by way of dividend to unit-holders of mutual funds or UTI. It is not applicable on payments pertaining to redemption/repurchase of units or allotment of additional units by way of bonus units – Circular No. 6/2014, dated February 11, 2014.

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1. 25/75 of amount distributed.
2. 30/70 of amount distributed.
3. 10/90 of amount distributed.
4. 5/95 of amount distributed.

Other taxes

0.10 Some other tax rates are given below—

0.10-1 ***Securities transaction tax*** - Securities transaction tax (STT) rates and other related issues are given below:

	Transaction in recognized stock exchange in India						*Sale of unit of an equity oriented fund to the mutual fund*	*Sale of unlisted equity shares under an offer for sale to public [or, with effect from June 1, 2015, sale of unlisted units of a business trust by a unitholder which were acquired in consideration of a transfer referred to in section 47*(xvii)*]*
	Purchase of equity shares, units of equity oriented mutual fund or (with effect from October 1, 2014) units of a business trust (delivery based)		*Sale of equity shares, units of equity oriented mutual fund or (with effect from October 1, 2014) units of a business trust (delivery based)*		*Sale of equity shares, units of equity oriented mutual fund or (with effect from October 1, 2014) units of a business trust (non-delivery based)*	*Sale of derivative*		
Whether securities transaction tax (STT) is applicable	Yes		Yes		Yes	Yes	Yes	Yes
Who has to pay STT	Purchaser		Seller		Seller	Seller	Seller	Seller
Rate of STT*	*Shares or units of a business trust*	*Units*	*Shares or units of a business trust*	*Units*				
- from June 1, 2016	0.1%	*Nil*	0.1%	0.001%	0.025%	0.05%, 0.125%, 0.01%.#	0.001%	0.2%
- from June 1, 2013 to May 31, 2016	0.1%	*Nil*	0.1%	0.001%	0.025%	0.017%, 0.125%, 0.01%†	0.001%	0.2%
- from July 1, 2012 to May 31, 2013	0.1%	0.1%	0.1%	0.1%	0.025%	0.017%, 0.125%, 0.017%‡	0.25%	0.2%
- from June 1, 2008 to June 30, 2012	0.125%	0.125%	0.125%	0.125%	0.025%	0.017%, 0.125%, 0.017%‡	0.25%	—

*Surcharge : *Nil*, HEC : *Nil*

0.05% of option premium in the case of sale of option (payable by seller), 0.125% of settlement price [with effect from September 1, 2019, 0.125% of (settlement price *minus* strike price)] in the case of sale of an option where option is exercised (payable by purchaser), 0.01% of the price in the case of sale of futures (payable by seller).

†0.017% of option premium in the case of sale of option (payable by seller), 0.125% of settlement price in the case of sale of an option where option is exercised (payable by purchaser), 0.01% of the price in the case of sale of futures (payable by seller).

‡0.017% of option premium in the case of sale of option (payable by seller), 0.125% of settlement price in the case of sale of an option where option is exercised (payable by purchaser), 0.017% of the price in the case of sale of futures (payable by seller).

	Transaction in recognized stock exchange in India							
	Purchase of equity shares, units of equity oriented mutual fund or (with effect from October 1, 2014) units of a business trust (delivery based)		*Sale of equity shares, units of equity oriented mutual fund or (with effect from October 1, 2014) units of a business trust (delivery based)*		*Sale of equity shares, units of equity oriented mutual fund or (with effect from October 1, 2014) units of a business trust (non-delivery based)*	*Sale of derivative*	*Sale of unit of an equity oriented fund to the mutual fund*	*Sale of unlisted equity shares under an offer for sale to public [or, with effect from June 1, 2015, sale of unlisted units of a business trust by a unitholder which were acquired in consideration of a transfer referred to in section 47(xvii)]*
- from June 1, 2006 to May 31, 2008	0.125%	0.125%	0.125%	0.125%	0.025%	0.017%	0.25%	—
- from June 1, 2005 to May 31, 2006	0.1%	0.1%	0.1%	0.1%	0.02%	0.0133%	0.2%	—
- during October 1, 2004 and May 31, 2005	0.075%	0.075%	0.075%	0.075%	0.015%	0.01%	0.15%	—
Who will collect STT	Stock exchange		Stock exchange		Stock exchange	Stock exchange	Mutual fund	Lead merchant banker

Note : STT is not applicable in case of preference shares, Government securities, bonds, debentures, units of mutual fund other than equity oriented mutual fund and in such cases, tax treatment of short-term and long-term capital gains shall be as per normal provisions of law.

0.10-2 ***Fringe benefits tax*** - Fringe benefit tax is not applicable from the assessment year 2010-11 onwards.

0.10-3 ***Banking cash transaction tax*** - It is not applicable after March 31, 2009.

0.10-4 ***Commodities transaction tax*** - Commodities transaction tax is chargeable as follows –

Taxable commodities transaction	*Value of taxable transaction*	*Rate*	*Payable by*
Sale of a commodity derivative	Price at which the commodity derivative is traded	0.01%	Seller
Sale of an option on commodity derivative	Option premium	0.05%	Seller
Sale of an option on commodity derivative, where option is exercised	Settlement price	0.0001%	Purchaser

Withholding tax rates under ADT agreement

0.11 The following withholding tax rates are applicable in India—

	Dividend [not being covered by section 115-O]		*Interest*		*Royalty*		*Fees for technical service*	
	Right of State to tax	*Tax rate*	*Right of State to tax*	*Tax rate*	*Right of State to tax*	*Tax rate*	*Right of State to tax*	*Tax rate*
Albania	Both	10%	Both	10%	Both	10%	Both	10%
Armenia	Both	10%	Both	10%	Both	10%	Both	10%
Australia	Both	15%	Both	15%	Both	[Note 3]	Both	[Note 3]
Austria	Both	10%	Both	10%	Both	10%	Both	10%
Bangladesh	Both	10% (if at least 10% of the capital of the company paying the dividend is held by the recipient)	Both	10% [Note 2]	Both	10%	No separate provision	
Belarus	Both	10% if paid to a company holding 25% shares; otherwise 15%	Both	10% [Note 2]	Both	15%	Both	15%
Belgium	Both	15%	Both	15% (10% if granted by a bank)	Both	10%	Both	10%
Bhutan	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Botswana	Both	7.5% (if shareholder is a company and holds at least 25% shares in the investee-company); otherwise 10%	Both	10%	Both	10%	Both	10%
Brazil	Both	15%	Both	15% [Note 2]	Both	25% for use of trademark; 15% for others	No separate provision	
Bulgaria	Both	15%	Both	15% [Note 2]	Both	15% of royalty relating to literary, artistic, scientific works other than films or tapes used for radio or television broadcasting; 20% in other cases	Both	20%
Canada	Both	15% if at least 10% of the shares of the company paying the dividends is held by the recipient of dividend; 25% in other cases	Both	15% [Note 2]	Both	10%-20%	Both	10%-20%
China	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Columbia	Both	5%	Both	10% [Note 2]	Both	10%	Both	10%

	Dividend [not being covered by section 115-O]		Interest		Royalty		Fees for technical service	
	Right of State to tax	*Tax rate*	*Right of State to tax*	*Tax rate*	*Right of State to tax*	*Tax rate*	*Right of State to tax*	*Tax rate*
Croatia	Both	15% (5% if shareholder is a company and holds at least 10% shares)	Both	10%	Both	10%	Both	10%
Cyprus	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Czech Republic	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Denmark	Both	15% if at least 25% of the shares of the company paying the dividend is held by the recipient; 25% in other cases	Both	10% if loan is granted by bank; 15% for others [Note 2]	Both	20%	Both	20%
Estonia	Both	10%	Both	10%	Both	10%	Both	10%
Ethiopia	Both	7.5%	Both	10%	Both	10%	Both	10%
Fiji	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Finland	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
France	Both	10%	Both	10%	Both	10%	Both	10%
Georgia	Both	10%	Both	10%	Both	10%	Both	10%
Germany	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Greece	Source	20%	Source	20%	Source	10%	No separate provision	
Hong Kong	Both	5%	Both	10% [Note 2]	Both	10%	Both	10%
Hungary	Both	10%	Both	10%	Both	10%	Both	10%
Indonesia	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Iceland	Both	10%	Both	10%	Both	10%	Both	10%
Ireland	Both	10%-15%	Both	10% [Note 2]	Both	10%	Both	10%
Israel	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Italy	Both	15% if at least 10% of the shares of the company paying dividend is beneficially owned by the recipient company; 25% in other cases	Both	15% [Note 2]	Both	20%	Both	20%
Japan	Both	10%	Both	10%	Both	10%	Both	10%
Jordan	Both	10%	Both	10% [Note 2]	Both	20%	Both	20%
Kazakhstan	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Kenya	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Korea	Both	15%	Both	10% [Note 2]	Both	10%	Both	10%
Kuwait	Both	10%	Both	10%	Both	10%	Both	10%
Kyrgyz Republic	Both	10%	Both	10%	Both	15%	Both	15%
Libyan Arab Jamahiriya	Source	20%	Source	20%	Source	30%	No separate provision	
Latvia	Both	10%	Both	10%	Both	10%	Both	10%

	Dividend [not being covered by section 115-O]		Interest		Royalty		Fees for technical service	
	Right of State to tax	Tax rate	Right of State to tax	Tax rate	Right of State to tax	Tax rate	Right of State to tax	Tax rate
Lithuania	Both	5%*, 15%	Both	10%	Both	10%	Both	10%
Luxembourg	Both	10%	Both	10%	Both	10%	Both	10%
Macedonia	Both	10%	Both	10%	Both	10%	Both	10%
Malaysia	Both	5%	Both	10%	Both	10%	Both	10%
Malta	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Mangolia	Both	15%	Both	15% [Note 2]	Both	15%	Both	15%
Mauritius	Both	5% if at least 10% of the capital of the company paying the dividend is held by the recipient; 15% in other cases	Both	7.5%	Both	15%	Both	10%
Montenegro	Both	5% (in some cases 15%)	Both	10%	Both	10%	Both	10%
Myanmar	Both	5%	Both	10%	Both	10%	No separate provision	
Morocco	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Mozambique	Both	7.5%	Both	10%	Both	10%	No separate provision	
Namibia	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Nepal	Both	5%**, 10%	Both	10%	Both	15%	No separate provision	
Netherlands	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
New Zealand	Both	15%	Both	10% [Note 2]	Both	10%	Both	10%
Norway	Both	10%	Both	10%	Both	10%	Both	10%
Oman	Both	10% if at least 10% of shares are held by the recipient; 12.5% in other cases	Both	10% [Note 2]	Both	15%	Both	15%
Philippines	Both	15% if at least 10% of the shares of the company paying the dividend is held by the recipient; 20% in other cases	Both	10% if interest is received by a financial institution or insurance company; 15% in other cases	Both	15% if it is payable in pursuance of any collaboration agreement approved by the Government of India	—	—
Poland	Both	10%	Both	10%	Both	15%	Both	15%
Portuguese Republic	Both	10%-15%	Both	10%	Both	10%	Both	10%
Quatar	Both	5%-10%	Both	10% [Note 2]	Both	10%	Both	10%
Romania	Both	10%	Both	10%	Both	10%	Both	10%
Russian Federation	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Saudi Arabia	Both	5%	Both	10%	Both	10%	No separate provision	

*If the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends.

**5% if beneficial owner of shares is a company and it holds at least 10% shares.

	Dividend [not being covered by section 115-O]		*Interest*		*Royalty*		*Fees for technical service*	
	Right of State to tax	*Tax rate*	*Right of State to tax*	*Tax rate*	*Right of State to tax*	*Tax rate*	*Right of State to tax*	*Tax rate*
Serbia	Both	5% (if recipient is company and holds 25% shares) otherwise 15%	Both	10%	Both	10%	Both	10%
Singapore	Both	10% if at least 25% of the shares of the company paying the dividend is held by the recipient; 15% in other cases	Both	10% if loan is granted by a bank/similar institute including an insurance company; 15% for others	Both	10%	Both	10%
Slovenia	Both	5-15%	Both	10%	Both	10%	Both	10%
South Africa	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Spain	Both	15%	Both	15% [Note 2]	Both	[Note 4]	Both	[Note 4]
Sri Lanka	Both	7.5%	Both	10%	Both	10%	Both	10%
Sudan	Both	10%	Both	10%	Both	10%	Both	10%
Sweden	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Swiss	Both	10%	Both	10% [Note 5]	Both	10%	Both	10%
Syrian Arab Republic	Both	10% (5% if shareholder is a company holding at least 10% shares)	Both	10%	Both	10%	No separate provision	
Taipei	Both	12.5%	Both	10%	Both	10%	Both	10%
Tajikistan	Both	10% (5% if shareholder is a company and holds 25% shares)	Both	10%	Both	10%	No separate provision	
Tanzania	Both	5%*, 10%	Both	10%	Both	10%	No separate provision	
Thailand	Both	10%	Both	10% [*see* Note 2]	Both	10%	No separate provision	
Trinidad and Tobago	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Turkey	Both	15%	Both	10% if recipient is bank, etc.; 15% in other cases [Note 2]	Both	15%	Both	15%
Turkmenistan	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Uganda	Both	10%	Both	10%	Both	10%	Both	10%
Ukraine	Both	10%-15%	Both	10% [Note 2]	Both	10%	Both	10%
United Arab Emirates	Both	10%	Both	5% if loan is granted by a bank/similar financial institute; 12.5% for others	Both	10%	No separate provision	
United Arab Republic	Source	10%	Source	20%	Source	30%	No separate provision	

*5% if received by a company owning at least 25% share in the company paying.

	Dividend [not being covered by section 115-O]		*Interest*		*Royalty*		*Fees for technical service*	
	Right of State to tax	*Tax rate*	*Right of State to tax*	*Tax rate*	*Right of State to tax*	*Tax rate*	*Right of State to tax*	*Tax rate*
United Kingdom	Both	15%	Both	10% if interest is paid to a bank; 15% for others [Note 2]	Both	[Note 3]	Both	[Note 3]
United Mexican States	Both	10%	Both	10%	Both	10%	Both	10%
United States	Both	15% if at least 10% of the voting stock of the company paying the dividend is held by the recipient; 25% in other cases	Both	10% if loan is granted by a bank/similar institute including insurance company; 15% for others	Source	[Note 3]	Source	[Note 3]
Uruguay	Both	5%	Both	10%	Both	10%	Both	10%
Uzbekistan	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Vietnam	Both	10%	Both	10% [Note 2]	Both	10%	Both	10%
Zambia	Both	5% if at least 25% of the shares of the company paying the dividend is held for a period of at least 6 months prior to the date of payment of the dividend; 15% in other cases	Both	10% [Note 2]	Both	10%	Both	10%

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1. 10 per cent of the gross amount of the interest on loans made or guaranteed by a bank or other financial institution carrying on *bona fide* banking or financing business or by an enterprise which holds directly or indirectly at least 10 per cent of the capital of the company paying the interest.

2. Dividend/interest earned by the Government and certain institutions like the Reserve Bank of India is exempt from taxation in the country of source.

3. Royalties and fees for technical services would be taxable in the country of source at the following rates :

- *a.* 10 per cent in case of rental of equipment and services provided along with know-how and technical services ;
- *b.* any other case—
  - *i.* during first five years of the agreement[6]—
    - 15 per cent if the payer is Government or specified organisation;
    - 20 per cent in other cases;
  - *ii.* subsequent years, 15% in all cases.

Income of Government and certain institutions will be exempt from taxation in the country of source.

4. Royalties and fees for technical services would be taxable in the country of source at the following rates :

- *a.* 10 per cent in case of royalties relating to the payments for the use of, or the right to use, industrial, commercial or scientific equipment;
- *b.* 20 per cent in case of fees for technical services and other royalties.

5. 10 per cent of the gross amount of the interest on loans made or guaranteed by a bank or other financial institution carrying on *bona fide* banking or financing business or by an enterprise which holds directly or indirectly at least 20 per cent of the capital of the company paying the interest.

6. As the five-year time-limit is now over, point (*i*) does not have any practical utility in the present context.

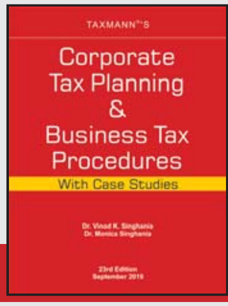
PRESENT VALUE TABLES

TABLE I - PRESENT VALUE OF RE. 1 RECEIVED AT THE END OF YEAR - YEAR'S PURCHASE TABLE

Years(n)	5%	6%	8%	10%	12%	14%	16%	18%	20%	22%	24%	25%
1.	0.952	0.943	0.926	0.909	0.893	0.877	0.862	0.847	0.833	0.820	0.806	0.800
2.	0.907	0.890	0.857	0.826	0.797	0.769	0.743	0.718	0.694	0.672	0.650	0.640
3.	0.864	0.840	0.794	0.751	0.712	0.675	0.641	0.609	0.579	0.551	0.524	0.512
4.	0.823	0.792	0.735	0.683	0.636	0.592	0.552	0.516	0.482	0.451	0.423	0.409
5.	0.784	0.747	0.681	0.621	0.567	0.519	0.476	0.437	0.402	0.370	0.344	0.328
6.	0.746	0.705	0.603	0.564	0.507	0.456	0.410	0.370	0.335	0.303	0.275	0.262
7.	0.711	0.665	0.583	0.513	0.452	0.400	0.354	0.314	0.279	0.249	0.222	0.210
8.	0.677	0.627	0.540	0.467	0.404	0.351	0.305	0.266	0.233	0.204	0.179	0.168
9.	0.645	0.592	0.500	0.424	0.361	0.308	0.263	0.225	0.194	0.167	0.144	0.134
10.	0.614	0.558	0.463	0.386	0.322	0.270	0.227	0.191	0.162	0.137	0.116	0.107
11.	0.585	0.527	0.429	0.350	0.287	0.237	0.195	0.162	0.135	0.112	0.094	0.086
12.	0.557	0.497	0.397	0.319	0.257	0.208	0.168	0.137	0.112	0.092	0.076	0.069
13.	0.530	0.469	0.368	0.290	0.229	0.182	0.145	0.116	0.093	0.075	0.061	0.055
14.	0.505	0.442	0.340	0.263	0.205	0.160	0.125	0.099	0.078	0.062	0.049	0.044
15.	0.481	0.417	0.315	0.239	0.183	0.140	0.108	0.084	0.065	0.051	0.040	0.035
16.	0.458	0.394	0.292	0.218	0.163	0.123	0.093	0.071	0.054	0.042	0.032	0.028
17.	0.436	0.371	0.270	0.198	0.146	0.108	0.080	0.060	0.045	0.034	0.026	0.023
18.	0.416	0.350	0.250	0.180	0.130	0.095	0.069	0.051	0.038	0.028	0.021	0.018
19.	0.396	0.331	0.232	0.164	0.116	0.083	0.060	0.043	0.031	0.023	0.017	0.014
20.	0.377	0.312	0.215	0.149	0.104	0.073	0.051	0.037	0.026	0.019	0.014	0.012
21.	0.359	0.294	0.199	0.135	0.093	0.064	0.044	0.031	0.022	0.015	0.011	0.009

TABLE II - PRESENT VALUE OF RE. 1 RECEIVED ANNUALLY FOR N YEARS : DISCOUNTED VALUE TABLE

Years	5%	6%	8%	10%	12%	14%	16%	18%	20%	22%	24%	25%
1.	0.952	0.943	0.926	0.909	0.893	0.877	0.862	0.848	0.833	0.820	0.807	0.800
2.	1.859	1.833	1.783	1.736	1.690	1.647	1.605	1.566	1.528	1.492	1.457	1.440
3.	2.723	2.673	2.577	2.487	2.402	2.322	2.246	2.174	2.107	2.042	1.981	1.952
4.	3.546	3.465	3.312	3.170	3.037	2.914	2.798	2.690	2.589	2.494	2.404	2.362
5.	4.330	4.212	3.994	3.791	3.605	3.433	3.274	3.127	2.991	2.864	2.745	2.689
6.	5.076	4.917	4.623	4.355	4.111	3.889	3.685	3.498	3.326	3.167	3.021	2.951
7.	5.786	5.582	5.206	4.868	4.564	4.288	4.039	3.812	3.605	3.416	3.242	3.161
8.	6.463	6.210	5.747	5.335	4.968	4.639	4.344	4.078	3.837	3.619	3.421	3.329
9.	7.108	6.802	6.247	5.759	5.328	4.946	4.607	4.303	4.031	3.786	3.566	3.463
10.	7.722	7.360	6.710	6.145	5.650	5.216	4.833	4.494	4.193	3.923	3.682	3.571
11.	8.306	7.887	7.134	6.495	5.938	5.453	5.027	4.656	4.327	4.035	3.776	3.656
12.	8.863	8.384	7.536	6.814	6.194	5.660	5.197	4.793	4.439	4.127	3.851	3.725
13.	9.394	8.853	7.904	7.103	6.424	5.842	5.342	4.910	4.533	4.203	3.912	3.780
14.	9.899	9.295	8.244	7.367	6.628	6.002	5.468	5.008	4.611	4.265	3.962	3.824
15.	10.380	9.712	8.560	7.606	6.811	6.142	5.576	5.092	4.676	4.315	4.001	3.859
16.	10.838	10.106	8.851	7.824	6.974	6.265	5.669	5.162	4.730	4.357	4.033	3.887
17.	11.274	10.477	9.122	8.022	7.120	6.373	5.749	5.222	4.775	4.391	4.059	3.910
18.	11.690	10.828	9.372	8.201	7.250	6.467	5.818	5.273	4.812	4.419	4.080	3.928
19.	12.085	11.158	9.604	8.365	7.366	6.550	5.878	5.316	4.844	4.442	4.097	3.942
20.	12.462	11.470	9.818	8.514	7.469	6.623	5.929	5.353	4.870	4.460	4.110	3.954
21.	12.821	11.764	10.017	8.649	7.562	6.687	5.973	5.389	4.891	4.475	4.121	3.963



About The Book

- The law stated in this Book is as amended by the Finance (No. 2) Act, 2019.
- Book One showcases the law of income-tax in a structured and concise manner so as to provide the theoretical background for understanding the complex Tax Planning and Business Tax Procedures in real world scenarios.
- Book Two covers Corporate Tax Planning (corporate tax, setting up a new business, financial management decision, remuneration planning, non-resident and business restructuring).
- Book Three covers Tax Procedure and Management (return, assessment, appeals, penalties, Settlement Commission, search and seizure, advance tax, TDS, e-TDS and interest).
- Numerous multiple choice problems are included at the end of each chapter so as to enable clarity of thought and quick revision.
- Each para (with a distinct number) starts with analytical discussion supported by well-thought out original problems.
- The book is amended up to August 20, 2019.
- A useful and handy book, especially where the reader is
  - a student of tax planning and management,
  - in the tax consultancy profession,
  - an official in tax department,
  - a taxpayer who wants to learn different techniques to legally minimize his current and future tax bills.

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