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**UNIT-1**

**INCOME TAX IN INDIA - AN INTRODUCTION**

Income tax is an important direct tax. It is an important source of revenue of Central government. A major portion of income tax collected by the Central government if distributed to State governments.

## **BRIEF HISTORY OF INCOME TAX IN INDIA**

In India, Income tax was introduced for the first time in 1860, by Sir James Wilson in order to meet the losses sustained by the Government on account of the Military Mutiny of 1857. Thereafter; several amendments were made in it from time to time. In 1886, a separate Income tax act was passed. This act remained in force up to, with various amendments from time to time. In 1918, a new income tax was passed and again it was replaced by another new act which was passed in 1922.This Act remained in force up to the assessment year 1961-62 with numerous amendments. The Income Tax Act of 1922 had become very complicated on account of innumerable amendments. The Government of India therefore referred it to the law commission in1956 with a view to simplify and prevent the evasion of tax. The law commission submitted its report-in September 1958, but in the meantime the Government of India had appointed the Direct Taxes Administration Enquiry Committee submitted its report in 1956.In consultation with the Ministry of Law finally the Income Tax Act, 1961 was passed.

The Income Tax Act 1961 has been brought into force with 1 April 1962. It applies to the whole of India including Jammu and Kashmir.

## **CENTRAL BOARD OF DIRECT TAXES**

CBDT is the apex body of Income Tax Department. It has the power to frame rules under the control of the Central Government.

## **INCOME-TAX LAW IN INDIA**

The income tax law in India consists of the following components:

### Income tax Acts

* 1. Income tax rules
  2. Finance Act
  3. Circulars, notifications etc
  4. Legal decision of courts.

**Finance Act:**

Every year, the Finance Minister of the Government of India presents the Budget to the Parliament. Once the Finance Bill is approved by the Parliament and gets the assent of the President of India, it becomes the Finance Act.

## **Income-tax Rules:**

The administration of direct taxes is looked after by the Central Board of Direct Taxes (CBDT). The CBDT is empowered to make rules for carrying out the purposes of the Act. For the proper administration of the Income-tax Act, the CBDT frames rules from time to time. These rules are collectively called Income-tax Rules, 1962.

## **Circulars and Notifications:**

Circulars are issued by the CBDT from time to time to deal with certain specific problems and to clarify doubts regarding the scope and meaning of the provisions. These circulars are issued for the guidance of the officers and/or assesses.

## **IMPORTANT DEFINITIONS**

**ASSESSMENT YEAR Section 2(9)**

“Assessment year” means the period starting from April 1 and ending on March 31 of the next year. Example: Assessment year 2019-20 which commences on April 1, 2019 and ends on March 31, 2020. Income of previous year of an assessee is taxed during the assessment year at the rates prescribed by the relevant Finance Act for tax rates.

## **PREVIOUS YEAR: Section 3**

Income earned in a particular 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. In other words, previous year is the financial year immediately preceding the assessment year.

## **Exceptions to the general rule that previous year’s income is taxable during the assessment year**

In the following situations income of an assessee is liable to be assessed to tax in the same year in which he earns the income:

### Income of non-residents from shipping;

1. Income of persons leaving India either permanently or for a long period of time;
2. 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;

### e. Income of a discontinued business.

**PERSON: Section 2(31)**

* The term “person” includes:
* an individual;
* a Hindu undivided family;
* a company;
* a firm;
* an association of persons or a body of individuals ,whether incorporated or not; 6.a local authority; and
* every artificial juridical person not falling with in any of the preceding categories.

**ASSESSEE: Section 2(7)**

Every person in respect of whom, any proceeding under the act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable or of the loss sustained by him or by such other person or the amount of refund due to him or to such other person may be called an assessee.

## **BASIS OF CHARGE OF INCOME TAX Sec: 4**

To know the procedure for charging tax on income, one should be familiar with the following:

1. **Annual tax** - Income-tax is an annual tax on income.

### Tax rate of assessment year - Income of previous year is chargeable to tax in the next following assessment year at the tax rates applicable for the assessment year.

### This rule is, however, subject to some exceptions

1. **Rates fixed by Finance Act** - Tax rates are fixed by the annual Finance Act and not by the Income-tax Act. For instance, the Finance Act, 2019, fixes tax rates for the assessment year 2019-20.
2. **Tax on person** -Tax is charged on every person

### Tax on total income - Tax is levied on the “total income” of every assessee computed in accordance with the provisions of the Act.

**Income: section2 (24)**

The definition of the term “income” in section 2(24) is inclusive and not exhaustive. Therefore, the term “income” not only includes those things that are included in section 2(24) but also includes those things that the term signifies according to its general and natural meaning.

Income, in general, means a periodic monetary return which accrues or is expected to accrue regularly from definite sources. However, under the Income-tax Act, 1961, even certain incomes which do not arise regularly are treated as income for tax purposes e.g. Winnings from lotteries, crossword puzzles.

Section 2(24) of the Act gives a statutory definition of income

**At present, the following items of receipts are included in income:—**

### Profits and gains.

1. Dividends.
2. Voluntary contributions received by a trust/institution created wholly or partly for charitable or religious purposes or by an association or institution
3. The value of any perquisite or profit in lieu of salary taxable under section 17.
4. Any special allowance or benefit other than the perquisite included above, specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit.
5. Any allowance granted to the assessee to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living.
6. The value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company or by a relative of the director or such person and any sum paid by any such company in respect of any obligation which, but for such payment would have been payable by the director or other person aforesaid.
7. The value of any benefit or perquisite, whether convertible into money or not, which is obtained by any representative assessee mentioned under section 160(1)(iii) and (iv), or by any beneficiary or any amount paid by the representative assessee for the benefit of the beneficiary which the beneficiary would have ordinarily been required to pay.
8. Deemed profits chargeable to tax under section 41 or section 59.
9. Profits and gains of business or profession chargeable to tax under section 28.
10. Any capital gains chargeable under section 45.
11. The profits and gains of any insurance business carried on by Mutual Insurance Company or by a cooperative society, computed in accordance with Section 44 or any surplus taken to be such profits and gains by virtue of the provisions contained in the first Schedule to the Act.
12. The profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members.
13. Any winnings from lotteries, cross-word puzzles, races including horse races, card games and other games of any sort or from gambling, or betting of any form or nature whatsoever.
14. Any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or Employees State Insurance Fund (ESI) or any other fund for the welfare of such employees.

### Profits and gains.

1. Dividends.
2. Voluntary contributions received by a trust/institution created wholly or partly for charitable or religious purposes or by an association or institution
3. The value of any perquisite or profit in lieu of salary taxable under section
4. Any special allowance or benefit other than the perquisite included above, specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit.
5. Any allowance granted to the assessee to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living.
6. The value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company or by a relative of the director or such person and any sum paid by any such company in respect of any obligation which, but for such payment would have been payable by the director or other person aforesaid.
7. The value of any benefit or perquisite, whether convertible into money or not, which is obtained by any representative assessee mentioned under section 160(1)(iii) and (iv), or by any beneficiary or any amount paid by the representative assessee for the benefit of the beneficiary which the beneficiary would have ordinarily been required to pay.
8. Deemed profits chargeable to tax under section 41 or section 59.
9. Profits and gains of business or profession chargeable to tax under section 28.
10. Any capital gains chargeable under section 45.
11. The profits and gains of any insurance business carried on by Mutual Insurance Company or by a cooperative society, computed in accordance with Section 44 or any surplus taken to be such profits and gains by virtue of the provisions contained in the first Schedule to the Act.
12. The profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members.
13. Any winnings from lotteries, cross-word puzzles, races including horse races, card games and other games of any sort or from gambling, or betting of any form or nature whatsoever.
14. Any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or Employees State Insurance Fund (ESI) or any other fund

for the welfare of such employees.

**Gross Total Income Sec:**

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

### Salaries.

* 1. Income from house property.
  2. Profits and gains of business or profession.
  3. Capital gains.
  4. Income from other sources.

If the income is not derived from any of the above sources, it is not taxable under the act.

The aggregate income under these heads is termed as “gross total income”.

## **Total Income Sec: 2(45)**

Total income means the amount left after making the deductions under section 80C to 80U from the gross total income.

## **Casual Income**

Any receipt which is of a casual and non-recurring nature is called casual income. Casual income includes the following receipts:

### Winning from lotteries,

1. Winning from crossword puzzles,
2. Winning from races (including horse races),
3. Winning from card games and other games of any sort
4. Winning from gambling or betting of any form or nature.

## **AGRICULTURE INCOME**

Agriculture income is exempt under the Indian Income Tax Act. This means that income earned from agricultural operations is not taxed. The reason for exemption of agriculture income from Central Taxation is that the Constitution gives exclusive power to make laws with respect to taxes on agricultural income to the State Legislature. However while computing tax on non- agricultural income agricultural income is also taken into consideration. As per Income Tax Act income earned from any of the under given three

sources meant Agricultural Income;

1. Any rent received from land which is used for agricultural purpose.
2. Any income derived from such land by agricultural operations including processing of agricultural produce, raised or received as rent in kind so as to render it fit for the market, or sale of such produce.
3. Income attributable to a farm house subject to the condition that building is situated on or in the immediate vicinity of the land and is used as a dwelling house, store house etc.

Now income earned from carrying nursery operations is also considered as agricultural income and hence exempt from income tax. In order to consider an income as agricultural income certain points have to be kept in mind:

### There must me a land.

1. The land is being used for agricultural operations.
2. Agricultural operation means that efforts have been induced for the crop to sprout out of the land.
3. If any rent is being received from the land then in order to assess that rental income as agricultural income there must be agricultural activities on the land.
4. In order to assess income of farm house as agricultural income the farm house building must be situated on the land itself only and is used as a store house/dwelling house.

**Certain income which is treated as Agriculture Income:**

* 1. Income from sale of replanted trees.
  2. Rent received for agricultural land.
  3. Income from growing flowers and creepers.
  4. Share of profit of a partner from a firm engaged in agricultural operations.
  5. Interest on capital received by a partner from a firm engaged in agricultural operations.
  6. Income derived from sale of seeds.

**Certain income which is not treated as Agricultural Income:**

1. Income from poultry farming.
2. Income from bee hiving.
3. Income from sale of spontaneously grown trees.
4. Income from dairy farming.
5. Purchase of standing crop.
6. Dividend paid by a company out of its agriculture income.
7. Income of salt produced by flooding the land with sea water.
8. Royalty income from mines.
9. Income from butter and cheese making.
10. Receipts from TV serial shooting in farm house are not agriculture income.

**Partly agriculture income**

Partly agricultural income consists of both the element of agriculture and business, so non agricultural part of the income is taxed. Some examples for partly agricultural income are given below:

## **Profit of business other than Tea**

This rule applicable to agricultural produce like cotton, tobacco, and sugarcane etc, here the market value of the agricultural produce raised by the Assessee for utilizing it as raw material for his business will be deducted out of the total profit of such Assessee while calculating tax on his income.

## **Profit from Tea manufacturing**

If a person using his own tealeaves grown by him for his tea manufacturing business, then 60 % of his income will be treated as agricultural income and the remaining 40 % will be treated as business income. So he has to pay tax on that remaining 40% of income.

## **Income from the manufacturing of centrifuged latex or cenex**

If a person manufacturing centrifuged latex by using his own made raw then, 65 % of the income derived from the sale of the same is treated as agricultural income so he has to pay tax remaining part of the income.

## **Income from the coffee manufacturing**

### 75% of the income derived from the sale of coffee grown and cured by the seller in India is deemed to be agricultural income 25% is taken as business income.

* 1. 60% the income derived from the sale of coffee grown, cured, roasted and grounded by the seller in India is deemed to be agricultural income 40% is taken as business income.

**QUESTIONS:-**

**1)** What is Income Tax? What are the basis and procedure of charged Income tax?

**2)** Write a note on agricultural income.

**UNIT-II**

**INCOME FROM SALARY**

**SALARY (Section 15 – 17)**

Salary is the remuneration received by or accruing to an individual, periodically, for service rendered as a result of an express or implied contract. The actual receipt of salary in the previous year is not material as far as its taxability is concerned. According to Income Tax Act there are certain conditions where all such remuneration is chargeable to income tax:

### When due from the former employer or present employer in the previous year, whether paid or not

* 1. When paid or allowed in the previous year, by or on behalf of a former employer or present employer, though not due or before it becomes due.
  2. When arrears of salary is paid in the previous year by or on behalf of a former employer or present employer, if not charged to tax in the period to which it relates.

**Section 17(1)** of the Income tax Act gives an inclusive and not exhaustive definition of “Salaries”, which includes:

### Wages

1. Annuity or pension
2. Gratuity
3. Fees, Commission, allowances perquisites or profits in lieu of salary
4. Advance of Salary
5. Amount transferred from unrecognized provident fund to recognized provident fund
6. Contribution of employer to a Recognized Provident Fund in excess of the prescribed limit
7. Leave Encashment
8. Compensation as a result of variation in Service contract etc.
9. Contribution made by the Central Government to the account of an employee under a notified Pension scheme.

**ARREARS OF SALARY**

Salary in arrears / advance, received in lump sum, is liable to tax in the year of receipt.

Relief can be obtained for salary arrears u/s 89(1) of the Income Tax Act.

#### PENSION

Pension is a payment made by the employer after the retirement or death of employee as a reward for past service. It is normally paid as a periodical payment on monthly basis but certain employers may allow an employee to forgo a portion of pension in lieu of lump sum amount. This is known as commutation of pension.

The treatment of these two kinds of pension is as under:

## **Periodical pension (or uncommuted pension):**

It is fully taxable in the hands of all employee, whereas government or non-government.

## **Commuted pension**

For employees of government organizations, local authorities and statutory corporations, it is fully exempted from tax, hence not included in gross salary.

For other employees, commuted value of half of the total value of pension is exempted from tax. Any amount received over and above this amount is taxable, so included in gross salary. If, however, the employee is also receiving gratuity (another retirement benefit) along with pension, then one third of the total value of pension is exempted from tax. Amount received in excess of this is taxable, so included in gross salary.

Pension received by employee is taxable under the head “Salaries”. However, family pension received by legal heirs after death of employee is taxable under ‘Income from other sources’ For Central Government Employees joined on or after 1-1-2004, 10% of Salary is compulsory deducted towards Pension with a matching contribution from the Govt. and is Non- Taxable u/s 80CCD. Only Terminal Benefit is charged to tax.

## **GRATUITY**

Gratuity is the payment made by the employer to an employee in appreciation of past services rendered by the employee. It is received by the employee on his retirement. Gratuity is exempted up to certain limit depending upon the category of employee. For the purpose of exemption, employees are divided into 3 categories:

## **Government employees and employees of local authority:**

In case of such employees, the entire amount of gratuity received by then is exempted from tax. Nothing will be added to gross salary.

## **Employees covered under Payment of Gratuity Act, 1972**

In case of employees who are covered under Payment of Gratuity Act, the minimum of the following amounts are exempted from tax:

### Amount of gratuity actually received.

1. 15 days of salary for every completed years of service or part thereof in excess of six months. (15 / 26 x [basic salary + Dearness Allowance] x No. of years of service+1 [if fraction >

6 months]).

### Rs.20, 00,000 (amount specified by government).

**(iii) Other employees.**

In case of employees not falling in the above two categories, gratuity received from the employers is exempt to the extent of minimum of following amounts:

### Actual amount of gratuity received.

* + Half month average salary for every completed year of service

(1/2 x average salary of last 10 months x completed years of service).

### Rs. 20, 00,000 (amount specified by government).

Salary = 10 months average salary preceding the month of retirement. = Basic Pay + Dearness Allowance considered for retirement benefits + commission (if received as a fixed percentage on turnover).

## **LEAVE SALARY**

Employees are entitled to various types of leave. The leave generally can be taken (casual leave/medical leave) or it lapses. Earned leave is a kind of leave which an employee is said to have earned every year after working for some time. This leave can either be availed every year, or get encashment for it. If leave is not availed or encashed, it is allowed to be carried forward. This leave keeps getting accumulated and is encashed by employee on his retirement.

The tax treatment of leave encashment is as under:

1. **Encashment of leave while in service.** This is fully taxable and so is added to gross salary.

### Encashment of leave on retirement. For the purpose of exemption of accumulated leave encashment, the employees are divided into two categories. They are Govt employees and other employees.

* State or Central Government employees:

Leave encashment received by government employees is fully exempted from tax. Nothing is to be included in gross salary

### Other employees:

Leave encashment of accumulated leave at the time of retirement received by other employees is exempted to the extent of minimum of following four amounts:

### Amount specified by Central Government (3, 00,000).

1. Leave encashment actually received.

3.10 months average salary (10 x average salary of 10 months preceding retirement).

4. Cash equivalent of unavailed leave.

(Leave entitlement is calculated on the basis of maximum 30 days leave every year, cash equivalent is based on average salary of last 10 months).

**Salary = Basic Pay + Dearness Allowance (forming a part of salary for retirement benefits)**

**+ Commission (if received as a fixed percentage on turnover).**

## **RETRENCHMENT COMPENSATION 10 (10B)**

Retrenchment compensation is the compensation received by a workman at the time of:

(i) Closing down of the undertaking. (ii) Transfer (irrespective of by agreement/compulsory acquisition) if the following conditions are satisfied:

### Service of workmen interrupted by transfer

1. Terms and conditions of employment after transfer are less favourable
2. New employer is not under a legal obligation whether under the terms of transfer or otherwise to pay compensation on the basis that the employee’s service has been continuous and has not been interrupted by transfer. The exemption is granted to the least of the followings:
   1. Actual amount received
   2. Amount determined under the Industrial Disputes Act, 1947
   3. Maximum Limit Rs 5,00,000

## **VOLUNTARY RETIREMENT COMPENSATION 10 (10c)**

The following Conditions are to be met for claiming exemption:

### An individual, who has retired under the Voluntary Retirement scheme, should not be employed in another company of the same management.

1. He should not have received any other Voluntary Retirement Compensation before from any other employer and claimed exemption.
2. Exemption u/s 10(10C) in respect of Compensation under VRS can be availed by an Individual only once in his lifetime.

Exemption is allowed to the least of the followings:

### Actual amount received

* 1. Maximum Limit Rs 5,00,000
  2. The highest of the following:
     1. Last drawn salary ×3 ×No. of fully completed years of service
     2. Last drawn salary ×Balance of no. of months of service left.

## **TAXABLE VALUE OF ALLOWANCES**

Allowance is a fixed monetary amount paid by the employer to the employee (over and above basic salary) for meeting certain expenses, whether personal or for the performance of his duties. These allowances are generally taxable and are to be included in gross salary unless specific exemption is provided in respect of such allowance. For the purpose of tax treatment, we divide these allowances into 3 categories:

### Fully taxable cash allowances

1. Partially exempt cash allowances
2. Fully exempt cash allowances.

**FULLY TAXABLE ALLOWANCES**

Dearness Allowance and Dearness Pay City

Compensatory Allowance

Tiffin Lunch Allowance

Non practicing Allowance

Warden or Proctor Allowance Deputation Allowance

Overtime Allowance

Fixed Medical Allowance

Servant Allowance

Other allowances: - There may be several other allowances like family allowance, project allowance, marriage allowance, education allowance, and holiday allowance etc. which are not covered under specifically exempt category, so are fully taxable.

## **PARTLY EXEMPTED ALLOWANCES**

House Rent Allowance or H.R.A. [Sec. 10(13A) Rule

2A] Conditions for claiming exemption:

### Assessee is in receipt of HRA.

1. He has to pay rent.
2. Rent paid is more than 10% of salary.

An allowance granted to a person by his employer to meet expenditure incurred on payment of rent in respect of residential accommodation occupied by him is exempt from tax to the extent of least of the following three amounts:

### House Rent Allowance actually received by the assessee

1. Excess of rent paid by the assessee over 10% of salary due to him
2. An amount equal to 50% of salary due to assessee (If accommodation is situated in Mumbai, Kolkata, Delhi, Chennai) ‘Or’ an amount equal to 40% of salary (if accommodation is situated in any other place).

Salary for this purpose includes Basic Salary, Dearness Allowance (if it forms part of salary for the purpose of retirement benefits), Commission based on fixed percentage of turnover achieved by the employee.

While claiming exemption the following points are considered:

### The exemption shall be calculated on the basis of where the accommodation is situated.

* 1. If the place of employment is the same for the whole year, then exemption shall be calculated for the whole year.
  2. If there is a change in place during the previous year, then it will be calculated on a monthly basis
  3. Exemption should be calculated in respect of the period during which rental accommodation is occupied by the employee during the previous year.
  4. Salary for the period during which rental accommodation is not occupied shall not be considered.

## **ENTERTAINMENT ALLOWANCE**

This allowance is first included in gross salary under allowances and then deduction is given to only central and state government employees under Section 16 (ii).

## **SPECIAL ALLOWANCES FOR MEETING OFFICIAL EXPENDITURE**

Certain allowances are given to the employees to meet expenses incurred exclusively in performance of official duties and hence are exempt to the extent actually incurred for the purpose for which it is given. These include travelling allowance, daily allowance, conveyance allowance, helper allowance, research allowance and uniform allowance.

## **SPECIAL ALLOWANCES TO MEET PERSONAL EXPENSES:**

There are certain allowances given to the employees for specific personal purposes and the amount of exemption is fixed.

### Children Education Allowance: This allowance is exempt to the extent of Rs.100 per month per child for maximum of 2 children (grand children are not considered).

1. **Children Hostel Allowance**: Any allowance granted to an employee to meet the hostel expenditure on his child is exempt to the extent of Rs.300 per month per child for maximum of 2 children.
2. **Transport Allowance**: This allowance is generally given to government employees to compensate the cost incurred in commuting between place of residence and place of work. This is omitted by notification no. 17/2018, dated 06/04/ 2018w.e.f. 01/04/2019 i.e. A.Y.2019-20. However, in case of blind and orthopedically handicapped persons, it is exempt up to Rs. 3200 p.m.
3. **Running Allowance** (Out of station allowance): An allowance granted to an employee working in a transport system to meet his personal expenses in performance of his duty in the course of running of such transport from one place to another is exempt up to 70% of such allowance or Rs.10000 per month, whichever is less.
4. **Tribal area allowance:** Exemption is available as Rs: 200 p.m.
5. **Underground allowance:** Exempted up to Rs: 800 p.m.

## **FULLY EXEMPT ALLOWANCES**

### Foreign allowance: This allowance is usually paid by the government to its employees being Indian citizen posted out of India for rendering services abroad. It is fully exempt from tax.

* 1. Allowance to High Court and Supreme Court Judges of whatever nature are exempt from tax.
  2. Allowances from UNO organization to its employees are fully exempt from tax.

**PERQUISITES**

Perquisites are defined as any casual emolument or benefit attached to an office or position in addition to salary or wages. . Perquisites are taxable and included in gross salary only if they are

(i) allowed by an employer to an employee, (ii) Allowed during the continuation of employment,

### Directly dependent on service, (iv) resulting in the nature of personal advantage to the employee and (v) derived by virtue of employer’s authority.

As per Section 17 (2) of the Act, perquisites include:

### Value of rent free accommodation provided to the employee by the employer.

* 1. Value of concession in the matter of rent in respect of accommodation provided to the employee by his employer.
  2. Value of any benefit or amenity granted free of cost or at a concessional rate in any of the following cases:
     1. by a company to an employee who is a director thereof
     2. by a company to an employee who has substantial interest in the company
     3. by any employer to an employee who is neither a director, nor has substantial interest in the company, but his monetary emoluments under the head ‘Salaries’ exceeds Rs.50, 000.
  3. Any sum paid by the employer towards any obligation of the employee.
  4. Any sum payable by employer to affect an assurance on the life of assessee.
  5. The value of any other fringe benefit given to the employee as may be prescribed.

**CLASSIFICATION OF PERQUISITES**

For tax purposes, perquisites specified under Section 17 (2) of the Act may be classified as follows:

### Perquisites that are taxable in case of every employee, whether specified or not

1. Perquisites that is taxable in case of specified employees only.
2. Perquisites that is exempt from tax for all employees

**PERQUISITES TAXABLE IN CASE OF ALL EMPLOYEES**

The following perquisites are taxable in case of every employee, whether specified or not:

### Rent free house provided by employer

1. House provided at concessional rate
2. Any obligation of employee discharged by employer e.g. payment of club or hotel bills of employee, salary to domestic servants engaged by employee, payment of school fees of employees children etc.
3. Any sum paid by employer in respect of insurance premium on the life of employee
4. Notified fringe benefits (on which fringe benefit tax is not applicable) – it includes interest free or concessional loans to employees, use of movable assets, transfer of moveable assets.

**PERQUISITES TAXABLE IN CASE OF SPECIFIED EMPLOYEES ONLY**

Specified Employee:

An Individual will be considered as a Specified Employee if:

### He is a director of a company, or

* He holds 20% or more of equity voting power in the company,
* Monetary salary in excess of 50,000: His income under the head salaries, (from any employer including a company) excluding non-monetary payments exceeds 50,000. For the above purpose, salary, should be arrived at after making the following deductions:
  1. Entertainment Allowance
  2. Professional Tax.

The following perquisites are taxable in case of such employees:

### Free supply of gas, electricity or water supply for household consumption

1. Free or concessional educational facilities to the members of employees household
2. Free or concessional transport facilities
3. Sweeper, watchman, gardener and personal attendant
4. Any other benefit or amenity

**PERQUISITES WHICH ARE TAX FREE FOR ALL THE EMPLOYEES**

This category includes perquisites which are tax free for the employees and also other perquisites on which employer has to pay a tax (called Fringe Benefit Tax) if they are given to the employees and so are not taxable for them.

The following perquisites are exempt from tax in all cases and hence not includible for the purpose of tax deduction at source under section 192 during the financial year 20019-20:

### Provision for medical facilities subject to limit

1. Tea or snacks provided during working hours
2. Free meals provided during working hours in a remote area or an offshore installation
3. Perquisites allowed outside India by the Government to a citizen of India for rendering service outside India.

**VALUATION OF MEDICAL FACILITIES**

Medical facilities provided to employee are exempt from tax.

### Medical benefits within India which are exempt from tax include the following:

* 1. Medical treatment provided to an employee or any member of his family in hospital maintained by the employer.
  2. Any sum paid by the employer in respect of any expenditure incurred by the employee on medical treatment of himself and members of his family :
     1. In a hospital maintained by government or local authority or approved by the government for medical treatment of its employees.
     2. In respect of the prescribed diseases or ailments in any hospital approved by the Chief Commissioner.
     3. Premium paid by the employer on health insurance of the employee under an approved scheme.
  3. Premium on insurance of health of an employee or his family members paid by employer is exempt.

1. Medical Treatment outside India which is exempt from tax includes the following:
   1. Any expenditure incurred by employer on the medical treatment of the employee or any member of his family outside India.
   2. Any expenditure incurred by employer on travel and stay abroad of the patient (employee or member of his family) and one attendant who accompanies the patient in connection with such treatment, shall be exempt to the following extent :
      1. The expenditure on medical treatment and stay abroad shall be exempt to the extent permitted by the Reserve Bank of India.
      2. The expenditure on travel shall be exempt in full provided the gross total income of the employee (including this expenditure) does not exceed Rs.2 00,000.

**VALUATION OF RENT FREE ACCOMMODATION**

For the purpose of valuation of house, employees are divided into 2 categories:

### Central and State Government employees: If accommodation is provided by the State or Central Government to their employees, the value of such accommodation is simply the amount fixed by the government (called the license fees) in this regard.

1. Other Employees:The valuation of accommodation for this category of non government employees depends upon whether the accommodation given to the employee is owned by the employer or taken on lease.

**1) Accommodation owned by employer**

In cities having population exceeding 25 lakhs as per 2001 census:

-15% of Salary Less Rent actually paid by employee

In cities having population exceeding 10 lakhs but not exceeding 25 lakhs as per 2001 census:

-10% of Salary Less Rent actually paid by employee

In other places:

-7.5% of Salary Less Rent actually paid by employee

## **2) Accommodation is taken on lease / rent by the employer**

Rent paid by the employer or 15% of Salary whichever is lower Less Rent recovered from employee.

## **3) Accommodation in a hotel**

24% of salary paid/payable or actual charges paid/payable whichever is lower Less Amount paid or payable by the employee

## **4) Valuation of accommodation in case of Employees on transfer:**

### For the first 90 days of transfer: Where accommodation is provided both at existing place of work and in new place, the accommodation, which has lower value, shall be taxable.

1. After 90 days: Both accommodations shall be taxable.

Valuation of furnished accommodation where the accommodation is furnished, 10% per annum of the original cost of furniture given to the employee shall be added to the value of unfurnished accommodation. If the furniture is taken on rent by employer, then actual hire charges are to be added to the value.

## **DEFINITION OF SALARY FOR THE COMPUTATION OF RENT FREE ACCOMMODATION:**

Basic Salary + Taxable cash allowances + Bonus or Commission + any other monetary payment. (It does not include dearness allowance if it is not forming part of basic salary for retirement benefit, allowances which are exempt from tax, value of perquisites specified under Section 17(2), employer’s contribution to provident fund account of employees).

## **SWEEPER, GARDENER OR WATCHMAN PROVIDED BY THE EMPLOYER**

The value of benefit of provision of services of sweeper, watchman, gardener or personal attendant to the employee or any member of his household shall be the actual cost to the employer. The actual cost in such a case is the total amount of salary paid or payable by the employer or any other person on his behalf for such services as reduced by any amount paid by the employee for such services. If the above servants are engaged by the employer and facility of such servants are provided to the employees, it will be a perquisite for specified employees only. On the other hand, if these servants are employed by the employee and wages of such servants are paid / reimbursed by the employer, it will be taxable perquisite for all classes of employees.

## **FREE SUPPLY OF GAS, ELECTRICITY OR WATER**

The value of these benefits is taxable in the hands of specified employees, if the connection is taken in the name of the employer, and is determined according to the following rules:

### If the employer provides the supply of gas, electricity, and water from its own sources, the manufacturing cost per unit incurred by the employer shall be the value of perquisite.

* 1. If the supply is from any other outside agency, the value of perquisite shall be the amount paid by the employer to the agency supplying these facilities.
  2. Where the employee is paying any amount in respect of such services, the amount so paid shall be deducted from the value of perquisite calculated under (a) or (b).
  3. Where the connection for gas, electricity, water supply is in the name of employee and the bills are paid or reimbursed by the employer, it is an obligation of the employee discharged by the employer. Such payment is taxable in case of all employees under Section 17 (2) (iv).

**FREE EDUCATION**

1. Cost of free education to any member of employees’ family provided in an educational institution owned and maintained by the employer shall be determined with reference to reasonable cost of such education in a similar institution in a nearby locality. For education facilities provided to the children of employee (excluding any other member of house hold), the value shall be nil, if the cost of such education per child does not exceed Rs.1, 000 per month.
2. Where free education facilities are allowed to any member of employees’ family in any other educational institution by reason of his being in employment of that employer, the value of perquisite shall be determined as in (a).
3. In any other case: The value of benefit of providing free or concessional educational facilities for any member of the house hold (including children) of the employee shall be the amount of expenditure incurred by the employer.
4. While calculating the amount of perquisite in all in above cases, any amount paid or recovered from the employee in this connection, shall be deducted.

**FREE TRANSPORT**

The value of any benefit provided by any undertaking engaged in the carriage of passengers or goods to any employee or to any member of his household for private journey free of cost or at concessional rate in any conveyance owned or leased by it shall be taken to be the value at which such benefit is offered by such undertaking to the public as reduced by the amount, if any, paid by or recovered from the employee for such benefit. In case of employees of the Railways and airlines, the value of transport facility shall be exempt.

## **USE OF ANY MOVABLE ASSET OTHER THAN COMPUTER OR LAPTOPS OR OTHER ASSETS ALREADY MENTIONED**

10% of Actual Cost if owned by the employer; or Actual rental charge paid/payable by the employer less Amount recovered from employee.

**TAXABILITY OF PERQUISITES PROVIDED BY EMPLOYERS TAXABILITY OF MOTOR CAR BENEFITS**

|  |  |  |  |
| --- | --- | --- | --- |
| **Owner of Car** | **Expense s borne**  **By** | **Purpose** | **Taxable Value of Perquisite** |
| 1(a) Employer | Employer | Fully official | Nil |
| 1(b) Employer | Employer | Fully private | Total of:   1. Actual expenditure on car 2. Remuneration to chauffeur 3. 10% of the cost of car (normal wear & tear) Less:   Amount charged from employee |
| 1(c)(i)  Employe r | Employer | Partly official and partly personal | Cubic Capacity of Car Engine up to 1.6 litres` Rs 1,800 p.m+ Rs 900 p.m. for Chauffeur  Cubic Capacity of Car Engine above 1.6 litres Rs2,400 p.m. + Rs 900 p.m. for |
| 1(c)(ii) Employe r | Employee | Partly official and partly personal | Cubic Capacity of Car Engine up to 1.6 litres Rs 600 p.m + Rs 900 p.m. for chauffeur Cubic Capacity of Car Engine above 1.6 litres Rs900 p.m. + Rs 900 p.m. for |
| 2(i) Employee | Employer | Fully official | Nil |
| 2(ii) Employee | Employer | Partly official and partly personal | Actual expenditure incurred.  Less: Car cubic capacity up to 1.6 litres [i.e. value as per 1(c)(i)]  Or  Car cubic capacity up to 1.6 litres above  1.6 litres [i.e. value as per 1(c )(i) |
| 3(i) Employee  Owns other auto motive but not car | Employer | Fully official | Not a perquisite |

|  |  |  |  |
| --- | --- | --- | --- |
| 3 (i) Employee Owns other auto motive  but not car | Employer | Partly for official use | Actual expenditure incurred by employer. Less: Rs 900 pm |

#### FREE MEALS DURING OFFICE HOURS

Actual cost to the employer in excess of Rs 50 per meal less: amount recovered from the employee. Tea or non-alcoholic beverages and snacks during working hours are not taxable.

## **GIFTS**

Value of any gift or voucher or taken other than gifts made in cash or convertible into

money (e.g. gift cheques) on ceremonial occasion. In this case if the aggregate value of gift during the previous year is less than Rs 5,000, then it is not a taxable perquisite.

## **PROFIT IN LIEU OF SALARY**

Profit in lieu of salary means any amount received by the employee from the employer due to its employee employer relationship other than normal compensation what he receive from employer.

The amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or modification of his term of employment

Any payment from Unrecognized Provident Fund( URPF) or such other fund to the extent to which it does not consist of contribution by the assessee or interest on such contribution.

Any sum received under a keyman insurance policy including the sum allocated by way of bonus on such policy.

Any other amount from employer except the following:

### Gratuity exempted u/s 10(10)

* House rent allowance
* Retrenchment compensation
* Superannuation fund
* Statutory provident fund or public provident fund
* Recognized provident fund, if does not include contribution of assessee and interest thereon
* Keyman insurance policy and bonus
* Any amount received prior to employment or after the cession of employment
* Any received from ex-employer

#### PROVIDENT FUND

Provident Fund Scheme is a welfare scheme for the benefit of employees. Under this scheme, certain amount is deducted by the employer from the employee’s salary as his contribution to Provident Fund every month. The employer also contributes certain percentage of the salary of the employee to the Fund. The contributions are invested outside in securities. The interest earned on it is also credited to the Provident Fund Account. At the time of retirement, the accumulated balance is given to the employee.

## **Statutory Provident Fund**

This is set up under the provisions of Provident Fund Act, 1925. Contribution is made by Employer and Employee.

Assesses Contribution: will get Deduction u/s 80C Employer’s Contribution- Not taxable

Interest credited- Fully exempted

Withdrawal at the time of retirement/resignation/termination, etc- Exempted u/s 10(11)

## **Recognized Provident Fund**

This is set up under the Employee’s Provident Fund and Miscellaneous Provisions Act, 1952 (PF Act, 1952) and is maintained by private sector employees.

Assessee’s Contribution - will get Deduction u/s 80C

Employer’s Contribution - Amount exceeding 12% of salary is taxable

Interest credited-Exempted up to 9.5% p.a. Any excess is taxable.

Withdrawal at the time of retirement/ resignation/termination, etc-Exempted u/s 10(12) Subject to conditions.

## **Unrecognized Provident Fund**

If a provident fund is not recognized by the Commissioner of Income Tax, it is known as unrecognized PF.

Assesse’s Contribution: will not get Deduction u/s 80C. No Income Tax Benefit Employer’s Contribution- Not taxable at the time of contribution

Interest credited- On Employee’s contribution taxable under the head “Other Sources” and, on Employer’s contribution not taxable at the time of credit.

Withdrawal at the time of retirement/resignation/termination, etc- Employee’s contribution thereon is not taxable. Interest on employees share is taxable under the head income from other sources.

Employer’s contribution and interest thereon is taxable as Profits in lieu of Salary, under “Salaries”

## **Deductions:**

The income chargeable under the head salaries is computed after making the following deductions under Section 16:

### Entertainment Allowance [section 16(ii)] of the Act as given earlier, entertainment allowance received from employer is first included in gross salary and thereafter, a deduction is allowed to government employees (State or Central Government) to the extent of least of following 3 amounts:

(i) Rs.5000

### 20% of basic salary

* 1. Amount of Entertainment Allowance actually received during the year.

1. **Professional Tax [Section 16(iii)] of the Act.**

Professional tax or tax on employment levied by a State under Article 276 of the Constitution is allowed as a deduction only in the year when it is actually paid. If the professional tax is paid by the employer on behalf of the employee, it is first included in gross salary as a perquisite (since it is an obligation of employee fulfilled by employer) and then the same amount is allowed as deduction on account of professional tax from gross salary. Employment tax cannot exceed Rs. 2500/- per annum.

**3. Standard Deduction.**

A deduction of Rs.40, 000/- or the amount of the salary, whichever is less. (Inserted by Finance Act, 2018 w.e.f. 01/04/2019 i.e. AY 2019-20).

**INCOME FROM HOUSE PROPERTY**

The annual value of a property, consisting of any buildings or lands appurtenant thereto, of which the assessee is the owner, is chargeable to tax under the head ‘Income from house property’. However, if a house property, or any portion thereof, is occupied by the assessee, for the purpose of any business or profession, carried on by him, the profits of which are chargeable to income-tax, the value of such property is not chargeable to tax under this head.

Thus, three conditions are to be satisfied for property income to be taxable under this head:

### The property should consist of buildings or lands appurtenant thereto.

1. The assessee should be the owner of the property.
2. The property should not be used by the owner for the purpose of any business or profession carried on by him, the profits of which are chargeable to income-tax.

**OWNERSHIP OF HOUSE PROPERTY**

It is only the owner (or deemed owner) of house property who is liable to tax on income under this head. Owner may be an individual, firm, company, co-operative society or association of persons. The property may be let out to a third party either for residential purposes or for business purposes. Annual value of property is assessed to tax in the hands of the owner even if he is not in receipt of the income. For tax purposes, the assessee is required to be the owner in the previous year only.

## **DEEMED OWNER [Section 27]**

### Owner: An Individual shall be considered as owner of a property when the document of title to the property is registered in his name.

1. **Deemed Owner:** Under the following circumstances, Income from House Property is taxable in the hands of the Individual, even if the property is not registered in his name
   1. Where the Property has been transferred to spouse for inadequate consideration other than in pursuance of an agreement to live apart.
   2. Where the Property is transferred to a minor child for inadequate consideration (except a transfer to minor married daughter)
   3. Where the Individual holds an impartibly estate.
   4. Where the Individual is a member of Co-operative Society, Company, or other Association and has been allotted a house property by virtue of his being a member, even though the property is registered in the name of the Society / Company / Association.
   5. Where the property has been transferred to the individual’s name as part-performance of a contract u/s 53A of the Transfer of Property Act, 1882. (I.e. Possession of the Property has been transferred to Individual, but the Title Deeds have not yet been transferred).
   6. Where the Individual is a holder of a Power of Attorney enabling the right of possession or enjoyment of the property.
   7. Where the property has been constructed on a leasehold land.
   8. Where the ownership of the Property is under dispute.
   9. Where the property is taken on a lease for a period of not less than 12 years, then the lessee shall be deemed as the owner of the property.

HOUSE PROPERTY INCOME IS EXEMPT FROM TAX TO CERTAIN PERSONS

1. An Ex-Ruler for his occupation (palace)
2. Local Authority.
3. Approved Scientific Research Association.
4. Institution for the development of Khadi and Village Industries.
5. Khadi and Village Industries Boards.
6. A body or authority for administering religious or charitable Trust or endowments.
7. Certain Funds, educational institutions, hospitals etc.
8. Registered Trade Union.
9. Statutory Corporation or an institution or association financed by the Government for promoting in the interests of members of SC or ST.
10. Co-operative Society for promoting the interest of the members of SC or ST.
11. Charitable Trust.
12. Political Parties

**DETERMINATION OF ANNUAL VALUE**

The basis of calculating Income from House property is the ‘annual value’. This is the inherent capacity of the property to earn income and it has been defined as the amount for which the property may reasonably be expected to be let out from year to year. It is

not necessary that the property should actually be let out. The municipal value of the property, the standard rent, if any, under the Rent Control Act, the rent of similar properties in the same locality, are all pointers to the determination of annual value.

## **GROSS ANNUAL VALUE**

The Gross Annual Value is the municipal value, the actual rent (whether received or receivable) or the fair rental value, whichever is highest. If, however, the Rent Control Act applies to the property, the gross annual value Fair rental value or municipal value whichever is higher or standard rental value whichever is less. If the property is let out but remains vacant during any part or whole of the year and due to such vacancy, the rent received is less than the reasonable expected rent, such lesser amount shall be the Annual value.

**The principle of determining GAV is:**

Expected Rental Value OR Actual Rent received for full year, whichever is more.

Here, Expected Rental Value is calculated as follows:

If the let out property is not subject to Rent Control Act ERV is: FRV or MRV whichever is higher.

If the let out property is subject to Rent Control Act ERV is:

FRV or MRV whichever is higher OR Standard Rental Value,

Whichever is less.

## **MUNICIPAL TAX**

Municipal Tax includes services tax like Water Tax and Sewerage Tax levied by any local authority.

It can be claimed as a deduction from the Gross Annual Value of the Property.

## **Conditions:**

### Paid by Owner: The tax shall be borne by the owner and tie same was paid by him during the previous year.

1. Property let out: Municipal Tax can be claimed as a deduction only in respect of let out or deemed to be let out properties (i.e. more than one property self occupied).
2. Year of payment: Municipal Tax relating to earlier previous years, but paid during the current previous year can be claimed as deduction only in the year of payment.
3. Borne By Tenant: Municipal Taxes Met By Tenant Are Not Allowed As Deduction.

**UNREALIZED RENT**

Unrealized Rent means the rent not paid by the tenant to the owner and the same shall be deducted from the Actual Rent Receivable from the property before computing income from that property,

provided the following conditions are satisfied:

### The tenancy is bonafide

1. The defaulting tenant should have vacated the property
2. The assessee has taken steps to compel the defaulting tenant to vacate the property
3. The defaulting tenant is not in occupation of any other property owned by the assessee
4. The assessee has taken all reasonable steps for recovery of unrealized rent or satisfies the Assessing Officer that such steps would be useless.

**DEDUCTION FROM NET ANNUAL VALUE**

1. **Standard Deduction u/s 24(a):**

Standard deduction of 30% of NAV (Net Annual Value) shall be allowed to the assessee.

## **Interest on Loan u/s 24(b):**

### Purpose of loan: The loan shall be borrowed for the purpose of acquisition, construction, repairs, renewal or reconstruction of the house property.

1. Accrual basis: The interest will be allowed as a deduction on accrual basis, even though it is not paid during the financial year.
2. Interest on interest: Interest on unpaid interest shall not be allowed as a deduction.
3. Brokerage: Any brokerage or commission paid for acquiring the loan will not be allowed as a deduction.
4. Prior period interest: Prior Period Interest shall be allowed in five equal installments commencing from the financial year in which the property was acquired or construction was completed.

**Note:** Prior period interest means the interest from the date of the loan borrowed up to the end of the financial year immediately preceding the financial year in which acquisition was made or construction was completed.

### Interest on fresh loan to repay existing loan: Interest on any fresh loan taken to repay the existing loan shall be allowed as a deduction.

1. Inadmissible interest: Interest payable outside India without deduction of tax at source and in respect of which no person in India is treated as an agent u/s 163 shall not be an allowable expenditure. [Section25]
2. Certificate: The assessee should furnish a certificate from the person from whom the amount is borrowed.

**INCOME FROM SELF – OCCUPIED HOUSE PROPERTY**

The annual value of one self-occupied house property is taken as ‘Nil’. From the annual value, only the interest on borrowed capital is allowed as a deduction under section 24. The amount of deduction will be:

### Either the actual amount accrued or Rs.30, 000/- whichever is less

1. When money borrowed or acquisition of the property is after 31.3.1999 - deduction is Rs.2, 00,000/- applicable to A.Y 2002-03 and onwards.

However, if the money borrowed is for repairs, renewals or reconstruction, the deduction is restricted to Rs.30, 000. If the borrowable is for construction/acquisition, higher deduction as noted above is available. If a person owns more than one house property, using all of them for self-occupation, he is entitled to exercise an option in terms of which, the annual value of one house property as specified by him will be taken at Nil. The other self occupied house property/is will be deemed to be let-out and their annual value will be determined on notional basis as if they had been let out.

Annual Value of a house property which is partly self – occupied and partly let out: If a house property consists of two or more independent residential units, one of which is self – occupied and the other unit(s) are let out, the income from the different units is to be calculated separately.

## **LEAVE TRAVEL CONCESSION (LTC)**

Leave Travel Concession is a non-taxable perquisite available for salaried class. An Employee with his dependent family members can avail of this facility to travel anywhere in India / native place. Exemption is limited to the amount actually spent. The amount exempt is the value of any travel concession or assistance received or due to the assessee.

### Journey by Air: Economy Class Airfare of India Airlines by the shortest route or the actual amount spent, whichever is lower.

1. Journey by Rail: A/C 1st Class rail fare by the shortest route or actual amount spent, whichever is lower.
2. Where the place of destination is connected by Rail: Air-conditioned first class Rail fare by the shortest route or the actual amount spent for the journey performed by road whichever is lower.
3. Where the place of destination is NOT connected by Rail :
   1. **If Recognized public transport exists:**First Class or Deluxe Class fare by the shortest route or the actual amount spent whichever is lower.
   2. **If No recognized public transport exists:**Air-conditioned first Class Rail fare by the shortest route or the actual amount spent whichever is lower.

These exemptions are available only for 2 journeys performed in a block of 4 calendar years. Family of an Individual means:

### Spouse and children of the individual, and

### Parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the Individual.

**TAXABILITY OF PERQUISITES PROVIDED BY EMPLOYERS TAXABILITY OF MOTOR CAR BENEFITS**

|  |  |  |  |
| --- | --- | --- | --- |
| **Owner of Car** | **Expense s borne**  **By** | **Purpose** | **Taxable Value of Perquisite** |
| 1(a) Employer | Employer | Fully official | Nil |
| 1(b) Employer | Employer | Fully private | Total of:   1. Actual expenditure on car 2. Remuneration to chauffeur 3. 10% of the cost of car (normal wear & tear) Less:   Amount charged from employee |
| 1(c)(i)  Employe r | Employer | Partly official and partly personal | Cubic Capacity of Car Engine up to 1.6 litres` Rs 1,800 p.m+ Rs 900 p.m. for Chauffeur  Cubic Capacity of Car Engine above 1.6 litres Rs2,400 p.m. + Rs 900 p.m. for |
| 1(c)(ii) Employe r | Employee | Partly official and partly personal | Cubic Capacity of Car Engine up to 1.6 litres Rs 600 p.m + Rs 900 p.m. for chauffeur Cubic Capacity of Car Engine above 1.6 litres Rs900 p.m. + Rs 900 p.m. for |
| 2(i) Employee | Employer | Fully official | Nil |
| 2(ii) Employee | Employer | Partly official and partly personal | Actual expenditure incurred.  Less: Car cubic capacity up to 1.6 litres [i.e. value as per 1(c)(i)]  Or  Car cubic capacity up to 1.6 litres above  1.6 litres [i.e. value as per 1(c )(i) |
| 3(i) Employee  Owns other auto motive but not car | Employer | Fully official | Not a perquisite |
| 3(i) Employee Owns other auto motive  but not car | Employer | Partly for official use | Actual expenditure incurred by employer. Less: Rs 900 pm |

#### FREE MEALS DURING OFFICE HOURS

Actual cost to the employer in excess of Rs 50 per meal less: amount recovered from the employee. Tea or non-alcoholic beverages and snacks during working hours are not taxable.

## **GIFTS**

Value of any gift or voucher or taken other than gifts made in cash or convertible into

money (e.g. gift cheques) on ceremonial occasion. In this case if the aggregate value of gift during the previous year is less than Rs 5,000, then it is not a taxable perquisite.

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Profit in lieu of salary means any amount received by the employee from the employer due to its employee employer relationship other than normal compensation what he receive from employer.

The amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or modification of his term of employment

Any payment from Unrecognized Provident Fund( URPF) or such other fund to the extent to which it does not consist of contribution by the assessee or interest on such contribution.

Any sum received under a keyman insurance policy including the sum allocated by way of bonus on such policy.

Any other amount from employer except the following:

### Gratuity exempted u/s 10(10)

* House rent allowance
* Retrenchment compensation
* Superannuation fund
* Statutory provident fund or public provident fund
* Recognized provident fund, if does not include contribution of assessee and interest thereon
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#### PROVIDENT FUND

Provident Fund Scheme is a welfare scheme for the benefit of employees. Under this scheme, certain amount is deducted by the employer from the employee’s salary as his contribution to Provident Fund every month. The employer also contributes certain percentage of the salary of the employee to the Fund. The contributions are invested outside in securities. The interest earned on it is also credited to the Provident Fund Account. At the time of retirement, the accumulated balance is given to the employee.

## **Statutory Provident Fund**

This is set up under the provisions of Provident Fund Act, 1925. Contribution is made by Employer and Employee.

Assesses Contribution: will get Deduction u/s 80C Employer’s Contribution- Not taxable

Interest credited- Fully exempted

Withdrawal at the time of retirement/resignation/termination, etc- Exempted u/s 10(11)

## **Recognized Provident Fund**

This is set up under the Employee’s Provident Fund and Miscellaneous Provisions Act, 1952 (PF Act, 1952) and is maintained by private sector employees.

Assessee’s Contribution - will get Deduction u/s 80C

Employer’s Contribution - Amount exceeding 12% of salary is taxable

Interest credited-Exempted up to 9.5% p.a. Any excess is taxable.

Withdrawal at the time of retirement/ resignation/termination, etc-Exempted u/s 10(12) Subject to conditions.

## **Unrecognized Provident Fund**

If a provident fund is not recognized by the Commissioner of Income Tax, it is known as unrecognized PF.

Assesse’s Contribution: will not get Deduction u/s 80C. No Income Tax Benefit Employer’s Contribution- Not taxable at the time of contribution

Interest credited- On Employee’s contribution taxable under the head “Other Sources” and, on Employer’s contribution not taxable at the time of credit.

Withdrawal at the time of retirement/resignation/termination, etc- Employee’s contribution thereon is not taxable. Interest on employees share is taxable under the head income from other sources.

Employer’s contribution and interest thereon is taxable as Profits in lieu of Salary, under “Salaries”

## **Deductions:**

The income chargeable under the head salaries is computed after making the following deductions under Section 16:

### 1. Entertainment Allowance [section 16(ii)] of the Act as given earlier, entertainment allowance received from employer is first included in gross salary and thereafter, a deduction is allowed to government employees (State or Central Government) to the extent of least of following 3 amounts:

(i) Rs.5000

### 20% of basic salary

* 1. Amount of Entertainment Allowance actually received during the year.

1. **Professional Tax [Section 16(iii)] of the Act.**

Professional tax or tax on employment levied by a State under Article 276 of the Constitution is allowed as a deduction only in the year when it is actually paid. If the professional tax is paid by the employer on behalf of the employee, it is first included in gross salary as a perquisite (since it is an obligation of employee fulfilled by employer) and then the same amount is allowed as deduction on account of professional tax from gross salary. Employment tax cannot exceed Rs. 2500/- per annum.

**3. Standard Deduction.**

A deduction of Rs.40, 000/- or the amount of the salary, whichever is less. (Inserted by Finance Act, 2018 w.e.f. 01/04/2019 i.e. AY 2019-20).

**INCOME FROM HOUSE PROPERTY**

The annual value of a property, consisting of any buildings or lands appurtenant thereto, of which the assessee is the owner, is chargeable to tax under the head ‘Income from house property’. However, if a house property, or any portion thereof, is occupied by the assessee, for the purpose of any business or profession, carried on by him, the profits of which are chargeable to income-tax, the value of such property is not chargeable to tax under this head.

Thus, three conditions are to be satisfied for property income to be taxable under this head:

### The property should consist of buildings or lands appurtenant thereto.

1. The assessee should be the owner of the property.
2. The property should not be used by the owner for the purpose of any business or profession carried on by him, the profits of which are chargeable to income-tax.

**OWNERSHIP OF HOUSE PROPERTY**

It is only the owner (or deemed owner) of house property who is liable to tax on income under this head. Owner may be an individual, firm, company, co-operative society or association of persons. The property may be let out to a third party either for residential purposes or for business purposes. Annual value of property is assessed to tax in the hands of the owner even if he is not in receipt of the income. For tax purposes, the assessee is required to be the owner in the previous year only.

## **DEEMED OWNER [Section 27]**

### Owner: An Individual shall be considered as owner of a property when the document of title to the property is registered in his name.

1. **Deemed Owner:** Under the following circumstances, Income from House Property is taxable in the hands of the Individual, even if the property is not registered in his name
   1. Where the Property has been transferred to spouse for inadequate consideration other than in pursuance of an agreement to live apart.
   2. Where the Property is transferred to a minor child for inadequate consideration (except a transfer to minor married daughter)
   3. Where the Individual holds an impartibly estate.
   4. Where the Individual is a member of Co-operative Society, Company, or other Association and has been allotted a house property by virtue of his being a member, even though the property is registered in the name of the Society / Company / Association.
2. Where the property has been transferred to the individual’s name as part-performance of a contract u/s 53A of the Transfer of Property Act, 1882. (I.e. Possession of the Property has been transferred to Individual, but the Title Deeds have not yet been transferred).
3. Where the Individual is a holder of a Power of Attorney enabling the right of possession or enjoyment of the property.
4. Where the property has been constructed on a leasehold land.
5. Where the ownership of the Property is under dispute.
6. Where the property is taken on a lease for a period of not less than 12 years, then the lessee shall be deemed as the owner of the property.

HOUSE PROPERTY INCOME IS EXEMPT FROM TAX TO CERTAIN PERSONS

1. An Ex-Ruler for his occupation (palace)
2. Local Authority.
3. Approved Scientific Research Association.
4. Institution for the development of Khadi and Village Industries.
5. Khadi and Village Industries Boards.
6. A body or authority for administering religious or charitable Trust or endowments.
7. Certain Funds, educational institutions, hospitals etc.
8. Registered Trade Union.
9. Statutory Corporation or an institution or association financed by the Government for promoting in the interests of members of SC or ST.
10. Co-operative Society for promoting the interest of the members of SC or ST.
11. Charitable Trust.
12. Political Parties

**DETERMINATION OF ANNUAL VALUE**

The basis of calculating Income from House property is the ‘annual value’. This is the inherent capacity of the property to earn income and it has been defined as the amount for which the property may reasonably be expected to be let out from year to year. It is not necessary that the property should actually be let out. The municipal value of the property, the standard rent, if any, under the Rent Control Act, the rent of similar properties in the same locality, are all pointers to the determination of annual value.

## **GROSS ANNUAL VALUE**

The Gross Annual Value is the municipal value, the actual rent (whether received or receivable) or the fair rental value, whichever is highest. If, however, the Rent Control Act applies to the property, the gross annual value Fair rental value or municipal value whichever is higher or standard rental value whichever is less. If the property is let out but remains vacant during any part or whole of the year and due to such vacancy, the rent received is less than the reasonable expected rent, such lesser amount shall be the Annual value.

**The principle of determining GAV is:**

Expected Rental Value OR Actual Rent received for full year, whichever is more.

Here, Expected Rental Value is calculated as follows:

If the let out property is not subject to Rent Control Act ERV is: FRV or MRV whichever is higher.

If the let out property is subject to Rent Control Act ERV is:

FRV or MRV whichever is higher OR Standard Rental Value,

Whichever is less.

## **MUNICIPAL TAX**

Municipal Tax includes services tax like Water Tax and Sewerage Tax levied by any local authority.

It can be claimed as a deduction from the Gross Annual Value of the Property.

## **Conditions:**

### Paid by Owner: The tax shall be borne by the owner and tie same was paid by him during the previous year.

1. Property let out: Municipal Tax can be claimed as a deduction only in respect of let out or deemed to be let out properties (i.e. more than one property self occupied).
2. Year of payment: Municipal Tax relating to earlier previous years, but paid during the current previous year can be claimed as deduction only in the year of payment.
3. Borne By Tenant: Municipal Taxes Met By Tenant Are Not Allowed As Deduction.

**UNREALIZED RENT**

Unrealized Rent means the rent not paid by the tenant to the owner and the same shall be deducted from the Actual Rent Receivable from the property before computing income from that property, provided the following conditions are satisfied:

### The tenancy is bonafide

1. The defaulting tenant should have vacated the property
2. The assessee has taken steps to compel the defaulting tenant to vacate the property
3. The defaulting tenant is not in occupation of any other property owned by the assessee
4. The assessee has taken all reasonable steps for recovery of unrealized rent or satisfies the Assessing Officer that such steps would be useless.

**DEDUCTION FROM NET ANNUAL VALUE**

1. **Standard Deduction u/s 24(a):**

Standard deduction of 30% of NAV (Net Annual Value) shall be allowed to the assessee.

## **Interest on Loan u/s 24(b):**

### Purpose of loan: The loan shall be borrowed for the purpose of acquisition, construction, repairs, renewal or reconstruction of the house property.

1. Accrual basis: The interest will be allowed as a deduction on accrual basis, even though it is not paid during the financial year.
2. Interest on interest: Interest on unpaid interest shall not be allowed as a deduction.
3. Brokerage: Any brokerage or commission paid for acquiring the loan will not be allowed as a deduction.
4. Prior period interest: Prior Period Interest shall be allowed in five equal installments commencing from the financial year in which the property was acquired or construction was completed.

Note: Prior period interest means the interest from the date of the loan borrowed up to the end of the financial year immediately preceding the financial year in which acquisition was made or construction was completed.

### Interest on fresh loan to repay existing loan: Interest on any fresh loan taken to repay the existing loan shall be allowed as a deduction.

1. Inadmissible interest: Interest payable outside India without deduction of tax at source and in respect of which no person in India is treated as an agent u/s 163 shall not be an allowable expenditure. [Section25]
2. Certificate: The assessee should furnish a certificate from the person from whom the amount is borrowed.

**INCOME FROM SELF – OCCUPIED HOUSE PROPERTY**

The annual value of one self-occupied house property is taken as ‘Nil’. From the annual value, only the interest on borrowed capital is allowed as a deduction under section 24. The amount of deduction will be:

### Either the actual amount accrued or Rs.30, 000/- whichever is less

When money borrowed or acquisition of the property is after 31.3.1999 - deduction is Rs.2, 00,000/- applicable to A.Y 2002-03 and onwards.

However, if the money borrowed is for repairs, renewals or reconstruction, the deduction is restricted to Rs.30, 000. If the borrowable is for construction/acquisition, higher deduction as noted above is available. If a person owns more than one house property, using all of them for self-occupation, he is entitled to exercise an option in terms of which, the annual value of one house property as specified by him will be taken at Nil. The other self occupied house property/is will be deemed to be let-out and their annual value will be determined on notional basis as if they had been let out.

Annual Value of a house property which is partly self – occupied and partly let out: If a house property consists of two or more independent residential units, one of which is self – occupied and the other unit(s) are let out, the income from the different units is to be calculated separately.

**QUESTIONS:-**

**1)** What are the incomes that are chargeable to Income tax under the head ‘Salaries’?

**2)** Write notes on:-

(i) Approved Superannuation Fund;

(ii) Free Medical Facility;

(iii) Free Education Facility;

(iv) Valuation of transfer of movable assets.

**3)** Define ‘annual value’ and state the deductions that are allowed from the annual value in computing

the income from house property.

**4)** How would you determine the annual value of a house which remained vacant for part of the

Previous year?

**UNIT-III**

**INCOME FROM BUSINESS OR PROFESSION**

**BUSINESS: Sec 2 (13)**

Business includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce, or manufacture. Or practical purpose business means the purchase and sale or manufacture of a commodity with a view to make profit. Business includes banking, transport business or any other adventure. Profit of an isolated transaction is also taxable under this head.

## **PROFESSION**

A profession is a vocation founded upon specialized educational training, the purpose of which is to supply objective counsel and service to others, for a direct and definite compensation, wholly apart from expectation of other business gain. For example the work of lawyer, doctor auditor engineer and so on. Vocation means activities which are performed in order to earn livelihood. For example brokerage, music, dancing etc.

The following items are chargeable under the head income from business or profession. (section28)

 The profits and gains of any business or profession, which was carried on by the assessee at any time during the previous year;

 Any compensation or other payment, due or received by the following:-

Any person, by whatever name called, managing the whole or substantially the whole of the affairs of an Indian company, at or in connection with the termination of his management or the modification of the terms and conditions relating thereto;

Any person, by whatever name called, managing the whole or substantially the whole of the affairs in India of any other company, at or in connection with the termination of his office or the modification of the terms and conditions relating thereto;

Any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of any agency or the modification of the terms and conditions relating thereto;

Any person, for or in connection with the vesting in the Government, or in any corporation owned or controlled by the Government, under any law for the time being in force, of the management of any property or business;

*  Income, derived by a trade, professional or similar association from specific services performed for its members
* Profits on sale of a license granted under the Imports (Control) Order, 1955, made under the Imports and
* Exports (Control) Act, 1947
* Cash assistance (by whatever name called), received or receivable by any person against exports under any scheme of the Government of India
* Any duty of customs or excise repaid or repayable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, 1971
* The value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession
* Any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm
* Income from speculative transactions
* Any sum received under a key man insurance policy including bonus
* Any sum whether received or receivable in cash or in kind , under an agreement for

(a) Not carrying out any activity in relation to nay business or

(b) Not sharing any know how, patent, copyright, trade mark, license franchise or any likely to assist in the manufacture or processing of goods or provision of services.

* Any sum whether received or receivable in cash or kind, on account of any capital asset (other than land or goodwill or financial instrument) being demolished , discarded or transferred , if the whole of the expenditure on such capital asset has been allowed as deduction under section 35AD

However, it is provided that where any interest, salary, bonus, commission or remuneration, by whatever name called, or any part thereof has not been allowed to be deducted under Clause (b) of section 40, the income under this clause shall be adjusted to the extent of the amount not so allowed to be deducted.

In the following cases, income from trading or business is not taxable under the head “profits and gains of business or profession":-

* Rent of house property is taxable under the head “Income from house property". Even if the property constitutes stock in trade of recipient of rent or the recipient of rent is engaged in the business of letting properties on rent.
* Deemed dividends on shares are taxable under the head "Income from other sources". Winnings from lotteries, races etc. are taxable under the head "Income from other sources

General Principals governing the computation of taxable income under the head "profits and gains of business or profession:-

* Business or profession should be carried on by the assessee. It is not the ownership of business which is important, but it is the person carrying on a business or profession, who is chargeable to tax.
* Income from business or profession is chargeable to tax under this head only if the business or profession is carried on by the assessee at any time during the previous year. This income is taxable during the following assessment year
* Profits and gains of different business or profession carried on by the assessee are not separately chargeable to tax i.e. tax incidence arises on aggregate income from all businesses or professions carried on by the assessee. But, profits and loss of a speculative business are kept separately.
* It is not only the legal ownership but also the beneficial ownership that has to be considered.
* Profits made by an assessee in winding up of a business or profession are not taxable, as no business is carried on in that case. However, such profits may be taxable as capital gains or as business income, if the process of winding up is such as to involve the carrying on of a trade.
* Taxable profit is the profit accrued or arising in the accounting year. Anticipated or potential profits or losses, which may occur in future, are not considered for arriving at taxable income. Also, the profits, which are taxable, are the real profits and not notional profits. Real profits from the commercial point of view mean a gain to the person carrying on the business and not profits from narrow, technical or legalistic point of view.
* The yield of income by a commercial asset is the profit of the business irrespective of the manner in which that asset is exploited by the owner of the business.
* Any sum recovered by the assessee during the previous year, in respect of an amount or
* Expenditure which was earlier allowed as deduction is taxable as business income of the year in which it is recovered.
* Modes of book entries are generally not determinative of the question whether the assessee has earned any profit or loss.
* The Income tax act is not concerned with the legality or illegality of business or profession. Hence, income of illegal business or profession is not exempt from tax.
* Profits and losses of speculation business carried on by an assessee are kept separate.
* Profits made in winding up of a business by the sale of assets in one lot are not table as business profit but as capital gain. The profit on the sale of stock in trade will be taxable as business profit, because the sale of goods under any circumstances is a transaction in the nature of trader and hence its profit is taxable as business profit.
* Tax is levied on the actual profit of the previous year and not on the anticipated profit

## **SPECULATIVE TRANSACTIONS AND TAXABILITY OF SPECULATION BUSINESS**

Speculative Transaction [Section 43(5)]: “Speculative Business” means a transaction in which a contract for purchase/sale of any commodity/stocks/ shares is settled otherwise than by the actual delivery or transfer of the commodity or scrips.

## **DEDUCTION IN RESPECT OF LOSSES INCIDENTAL TO BUSINESS**

A loss (other than capital loss), which is incidental to the trade, is allowable in computing the business profits on ordinary principles of commercial trading. Such trading losses can be claimed as deduction provided the following conditions are satisfied:

### Loss should be real in nature and not notional or fictitious;

* 1. It should be a revenue loss and not capital;

### Loss should have resulted directly from carrying on of business i.e. it should be incidental to business;

* 1. Losses should have actually occurred during the previous year;
  2. There should be no direct or indirect restriction under the Act against the deductibility of such loss. E.g. Loss of stock-in-trade on account of fire, embezzlement/theft of cash in course of business, or loss on account of advances/guarantees granted during course of business, are admissible in the computation of taxable income on the basis of common principles of accounting and commercial expediency.

## **AMOUNTS EXPRESSIVELY ALLOWED AS DEDUCTION [U/s 30 to 37]**

Deduction In Respect Of Rent, Rates, Taxes, Repairs and Insurance, etc. for Buildings, Plant and Machinery and Furniture [Section 30 And 31]

The following are allowable as deduction in computing the income under the head ‘Profits and Gains of Business or Profession’–

### Rent of the premises is allowed ad deduction. However, notional rent paid by proprietor is not allowed as deduction. But rent paid by him to its partner for using his premises is allowed as deduction.

1. Current repairs if the assessee bears the cost of repairs are allowed as deduction. However, Capital repairs incurred by the assessee are never allowed as deduction whether premises is occupied as a tenant or as an owner. Instead the capital repairs incurred shall be deemed to be a building and depreciation shall be claimed.
2. Any sum on account of Land Revenue, Local Taxes or Municipal Taxes subject to section 43B.
3. Insurance charges against the risk of damage or destruction of building is allowed as deduction.
4. In respect of repairs and insurance of machinery, plant & furniture used for the purpose of business or profession the following deductions are allowable:
   1. Amount of expenditure incurred on current repairs of machinery, plant or furniture used in the business is deductible.
   2. The amount paid for current repairs shall not include any expenditure in the nature of capital expenditure.

**DEPRECIATION [Section 32]:**

## **1. What is Depreciation?**

Depreciation under the [Income Tax Act](https://cleartax.in/s/income-tax) is a deduction allowed for the decline in the real value of a tangible or intangible asset used by a taxpayer. The Income Tax Department uses the concept of depreciation for the purpose of writing off the cost of an asset over its useful life.

Depreciation is a mandatory deduction and the Act allows the deduction either under straight-line method or written down value (WDV) method. They calculate the deduction for depreciation under the WDV method except for undertaking engaged in generation or generation and distribution of power. The Act also allows a deduction for additional depreciation in the year of purchase in certain circumstances. To read about additional depreciation visit Additional Depreciation under the Income Tax Act.

## **2. Block of Assets- Concept**

Depreciation is calculated on the WDV of a Block of assets. Block of assets is a group of assets falling within a class of assets comprising of:

* Tangible assets, being building, machinery, plant or furniture,
* Intangible assets, being know how, patents, copyrights, trade-marks, licenses, franchises or any other business or commercial rights of similar nature

## **3. Conditions for Claiming Depreciation**

You can avail deduction for depreciation, only if it satisfies the following conditions.

1. The assets must be owned, wholly or partly, by the assessee.
2. They must be in use for the business or profession of the taxpayer. If the assets are not used exclusively for the business, but for other purposes as well, depreciation allowable would be proportionate to the use of business purpose. The Income Tax Officer also has the right to determine the proportionate part of the depreciation under Section 38 of the Act.
3. Co-owners can claim depreciation to the extent of the value of the assets owned by each co-owner.
4. You cannot claim depreciation on the cost of land.
5. Depreciation is mandatory from A.Y. 2002-03 and shall be allowed or deemed to have been allowed as a deduction irrespective of a claim made by a taxpayer in the profit & loss account.

## **4. Written Down Value- Meaning**

As per Section 32(1) of the IT Act depreciation should be computed at the prescribed percentage on the WDV of the asset, which in turn is calculated with reference to the actual cost of the assets. In the context of computing depreciation, it is important to understand the meaning of the term ‘WDV’ & ‘Actual Cost’.

WDV under the Income Tax Act means:

1. Where the asset is acquired in the previous year, the actual cost of the asset shall be treated as WDV.
2. Where the asset is acquired in earlier year WDV shall be equal to the actual cost incurred less depreciation actually allowed under the Act.

## **5. Depreciation Allowed**

* The allowance for depreciation is calculated under the WDV method except for undertaking engaged in generation or generation and distribution of power. The depreciation rates are given in Appendix 1. In case of undertakings engaged in generation or generation and distribution of power, such undertaking has an option to claim depreciation on WDV method at the rates provided in New Appendix I – if such option is exercised before the due date of filing the return.

In the case of amalgamation or demerger, the aggregate depreciation allowance shall be apportioned between the amalgamating and the amalgamated company, or the demerged and the resulting company. The aggregate depreciation would be computed as if the amalgamation or demerger had not taken place. It shall be apportioned based on the number of days the assets were used by such companies.

In case of a finance lease transaction, the lessee has to capitalize the assets in its books under AS-19 – the Accounting standard on leases. In such cases, the lessee can exercise the rights of the owner in his own right and hence the allowance for depreciation is available to the lessee.

# **Depreciation Rates — 2019**

# **Building Rate for AY 2019–2020.**

1. Buildings used for residential purposes except hotels and boarding houses @5%.

2. Buildings other those used for residential purposes and not covered in 1) and 3) below@10%.

3. Building acquired after September, 2002 for installing machinery or plant forming part of some water supply project or water treatment system (Section 80-IA) @40%.

4. Purely temporary erections such as wooden structures@ 40%.

# F**urniture and Fittings**

Furniture and Fittings including electrical fittings @ 10%.

# **Machinery and Plant**

1. Machinery and Plants not covered in any of subsections above and Section VIII below @15%.

2. Motor Cars (other than used for car hiring business) @15%.

3. Aeroplanes ,commercial vehicles , air &water pollution control equipment's, solid waste control equipment, life saving equipment, glass/plastic refilling containers, computers including software’s , machinery used in textile industry for weaving/processing of garments, wooden parts used in silk manufacturing , cinematographic equipment, wooden match frames used in match factories @40%.

4. Motor busses, moulds used in rubber and plastic good factories, equipment & machinery used in semi –Conductor industries @30%.

**Mines and Quarries**

1. Tubs, ropes ,sand stowing pipes , haulage ropes , safety lamps , salt works (condensers, clay, reservoirs), flour mills (rollers), rolling mill rolls (iron &steel industry ), sugar work equipment , energy saving devices, instruments and equipments used in monitoring energy flow, waste heat recovery equipments, co-generation systems , electrical equipments, burners, gas regulators, gas cylinders, valves, wet air oxidation equipment , mechanical vapour re-compressors, thin film evaporators, coal based producer gas plants, fluid drives and fluid couplings, turbo chargers/super-charges, sealed radiation sources for radiation processing plants, glass manufacturing concerns, mineral oil concerns, renewal energy devices , books (carried by a professional)@ 40%.

2. Oil wells not covered in 1) above @ 15%.

# **Ships**

1. Ocean going ships including tugs, barges , survey launches and other ships used for dredging purposes and fishing vessels with wooden hull , vessels operating inland waters, vessels operating inland being speed boats @ 20%.

# **Part B — Intangible Assets**

1. Know how, copyrights, patents, trademark, franchise, licenses and other commercial rights @ 25%.

# ****Rules for Charge of Depreciation****

For depreciation in the year in which asset is purchased

* Depreciation will only be allowed if asset is put to use in the year of purchase.
* If assets used for a short trial run, such period shall also be considered for determining the appropriate period of use in the year of purchase.
* If asset is put to use for less than 180 days, then only 50% of the actual rate of depreciation shall be charged.

For depreciation in subsequent years

Depreciation will be provided to the fullest, even if the asset is not used or put to use for less than 180 days in subsequent years if any other asset of the same block is used during the year.

# **Computation of Depreciation**

Depreciation on a defined block of assets used during the previous year can be computed in the following way:

**1.** **Open WDV of Block of Assets**

**2.** **Add: Cost of New Assets acquired during previous year**

**3.** **Less: Money received or receivable for any asset in the block sold, demolished, discarded, or destroyed during previous**

**4.** **WDV at the end of previous year**

**5.** **Less: Amount of Depreciation at a prescribed rate on block of asset**

6. **Closing value of the block of asset for the previous year.**

## **Carry Forward and Set-Off Of Unabsorbed Depreciation**

### Amount of depreciation remaining unabsorbed shall be allowed to be carried forward whether or not the business/asset to which it relates exists. It shall be treated as part of current year depreciation.

* 1. Return of loss is not required to be submitted to carry forward unabsorbed depreciation.
  2. Brought forward business losses (speculative or non-speculative) under Section 72(2) and 73(3) shall be given priority of set off over unabsorbed depreciation.
  3. While allowing unabsorbed depreciation, the expression ‘Profit and Gains Chargeable to Tax’

**Expenditure Incurred in the Field of Scientific Research [Section 35]**

#### Revenue Expenditure Incurred by an Assessee who Himself Carries on Scientific Research

#### [Section 35(1) (i)]

#### Contribution to Outside Institutions for Scientific Research [Section 35(1) (ii)/ (iii)]

#### Amount Paid to an Approved Scientific Research Company [Section 35(1) (iia)]

#### Capital Expenditure Incurred by an Assesses who himself Carries on Scientific Research

#### [Section 35(2)]

#### Contribution to National Laboratory for Scientific Research [Section 35(2AA)]

#### Expenses on In-House Research and Development Expenses [Section 35(2AB)

The term “scientific research” means “any activity for the extension of knowledge in the fields of natural or applied sciences including agriculture, animal husbandry or fisheries”. The term ‘scientific research’ has a wide scope. It does not necessarily mean only invention or successful scientific research. With a view to accelerating scientific research, section 35 provides tax incentives.

Under this section amount deductible in respect of scientific research may be classified as under:

|  |  |
| --- | --- |
| Expenditure on Research carried on by the Assessee | Contribution to Outsiders |
| 1. Revenue Expenditure under Section 35(1))(i) | 1. Contribution to an Approved Research Association under Section 35(1)(ii)/(iii) |
| 2. Capital Expenditure under Section 35(2) | 2. Payment to National Laboratory under Section 35(2AA) |
| 3. Expenditure on an Approved in-House Research under Section 35(2AB) | 3. Contribution to an Indian Scientific Research Company. |

## **Revenue Expenditure Incurred by an Assessee who Himself Carries On Scientific Research [Section 35(1) (i)]**

Where the assessee himself carries on scientific research and incurs revenue expenditure, deduction is allowed for such expenditure only if such research relates to his business.

### Pre-commencement Period Expenses -

Revenue expenses incurred before the commencement of business (but within three years immediately before commencement of business) on scientific research related to the business are deductible in the previous year in which the business is commenced.

However, the deduction is limited to the extent it is certified by the prescribed authority prescribed for this purpose under rule 6 [prescribed authority is Director-General (Income-tax Exemptions) in concurrence with the Secretary, Department of Scientific and Industrial Research, Government of India].

## **2. Contribution to Outside Institutions for Scientific Research [Section 35(1) (ii)/ (iii)]**

Where the assessee does not himself carry on research but makes contributions to the following institutions for this purpose, a deduction is allowed as follows—

|  |  |  |
| --- | --- | --- |
| To whom Contribution can be given | Deduction( as a percentage of Actual Expenditure) | |
| For AY 2018-19 to 2020-21 | For AY 2021-22 onwards |
| An approved’ scientific association which has, as its object, undertaking of scientific research related or unrelated to the business of assessee [sec. *35(1)(ii)]* | 150% | 100% |
| An approved’ university, college or other institution for the use of scientific research related or unrelated to the business of assessee [sec. 35(1)(ii)] | 150% | 100% |
| An approved’ university, college or other institution for the use of research in social sciences or statistical research related or unrelated to the business of the assessee [sec. *35(1)(iii)]* | 100% | 100% |

## **Amount Paid to an Approved Scientific Research Company [Section 35(1) (iia)]**

Section 35(1)(iia) is applicable if the following conditions are satisfied—

1. The taxpayer is any person (maybe an individual, HUF, firm, company or any other person).
2. The taxpayer has paid any sum to an Indian company (hereinafter referred as “payee-company”) to be used by the payee for scientific research.
3. The scientific research may or may not be related to the business of the taxpayer.
4. The payee-company has as its main object the scientific research and development.
5. The payee-company is for the time being approved by the prescribed authority (i.e., the Chief Commissioner of Income-tax having jurisdiction over the applicant). An application shall be submitted online for this purpose in Form No. 3CF-III.
6. The payee-company fulfils such other conditions as may be prescribed. These conditions are given in rule 5F.

### Amount of Deduction –

If the above conditions are satisfied, the taxpayer can claim a deduction under   
section 35(1) (iia). The amount of deduction is –

-          for the assessment years 2009-10 to 2017-18    : 125% of the amount paid;

-          from the assessment year 2018-19 onwards : 100% of the amount paid.

### Payee-company cannot claim Deduction under Section 35(2AB) –

With a view to avoid multiple claims for deduction, it has been provided that the payee-company approved under the provisions of section 35(2)(iia) is not entitled to claim deduction under section 35(2AB). However, deduction to the extent of 100% of the sum spent as revenue expenditure or capital expenditure on scientific research which is available under section 35(1) will continue to be allowed.

## **Capital Expenditure Incurred by an Assesses who himself Carries On Scientific Research [Section 35(2)]**

Where the assessee incurs any expenditure of a capital nature on scientific research related to his business, the whole of such expenditure incurred in any previous year is allowable as deduction for that previous year.

The following points should also be kept in view:

1. The assessee should incur expenditure of a capital nature on scientific research and there is no requirement that such expenditure should be capitalized in its books of account.
2. Where any capital expenditure has been incurred before the commencement of the business, the aggregate of such expenditure, incurred within three years immediately preceding the commencement of the business, is deemed to have been incurred in the previous year in which the business is commenced [Explanation to section 35(2)(ia)].
3. The aforesaid deduction is not available in respect of capital expenditure incurred on the acquisition of any land after February 29, 1984.
4. If the asset is sold without having been used for other purposes, surplus or deduction allowed, whichever is less, is chargeable to tax as business income of the previous year in which the sale took place [sec. 41(3)]. The excess of surplus over deduction allowed is, however, chargeable to tax as capital gains.
5. Deduction by way of depreciation is not admissible in respect of an asset used in scientific research, either in the year in which the capital expenditure is incurred or in a subsequent year.

|  |
| --- |
| **4. Capital Expenditure Incurred by an Assesses who himself Carries On Scientific Research [Section 35(2)]** Where the assessee incurs any expenditure of a capital nature on scientific research related to his business, the whole of such expenditure incurred in any previous year is allowable as deduction for that previous year.  The following points should also be kept in view:   1. The assessee should incur expenditure of a capital nature on scientific research and there is no requirement that such expenditure should be capitalized in its books of account. 2. Where any capital expenditure has been incurred before the commencement of the business, the aggregate of such expenditure, incurred within three years immediately preceding the commencement of the business, is deemed to have been incurred in the previous year in which the business is commenced [Explanation to section 35(2)(ia)]. 3. The aforesaid deduction is not available in respect of capital expenditure incurred on the acquisition of any land after February 29, 1984. 4. If the asset is sold without having been used for other purposes, surplus or deduction allowed, whichever is less, is chargeable to tax as business income of the previous year in which the sale took place [sec. 41(3)]. The excess of surplus over deduction allowed is, however, chargeable to tax as capital gains. 5. Deduction by way of depreciation is not admissible in respect of an asset used in scientific research, either in the year in which the capital expenditure is incurred or in a subsequent year. |
| **5. Contribution to National Laboratory for Scientific Research [Section 35(2AA)]** The provisions of section 35(2AA) are given below— CONDITIONS - The following conditions should be satisfied—  1. The payment is made to—    1. National Laboratory; or    2. University; or    3. Indian Institute of Technology; or    4. Specified person as approved by the prescribed authority. 2. The above payment is made under a specific direction that it should be used by the aforesaid person for undertaking scientific research programme approved by the prescribed authority.  AMOUNT OF DEDUCTION – If the aforesaid conditions are satisfied, the taxpayer is eligible for deduction as follows—   * For the assessment years 2018-19 to 2020-21 : **150% of actual payment** * From the assessment year 2021-22 onwards : **100% of actual payment**   Such contribution which is eligible for deduction under the aforesaid provisions is not eligible for any other deduction under the Act. |

## **. Expenses on In-House Research and Development Expenses [Section 35(2AB)]**

From the assessment year 1998-99, sub-section (2AB) has been inserted in section 35. It provides for a deduction in respect of expenditure on in-house research and development expenses subject to the following—

### Conditions - One has to satisfy the following conditions—

1. The taxpayer is a company.
2. The company should be in the business of bio-technology or in the business of manufacture or production of any article or thing except those specified in the Eleventh Schedule.
3. It incurs any expenditure on scientific research and such expenditure is of capital nature or revenue nature (not being expenditure in the nature of cost of any land and building). The expenditure on scientific research in relation to drugs and pharmaceuticals shall include expenditure incurred on clinical drug trial, regulatory approval and filing an application for a patent.
4. The research and development facility is approved by the prescribed authority.
5. The taxpayer has entered into an agreement with the prescribed authority for co-operation in such research and development facility and for audit of the accounts maintained for that facility or fulfils such conditions with regard to maintenance of accounts and audit thereof and furnishing of reports in such manner as may be prescribed.

### Amount of Deduction -

If all the above conditions are satisfied, the quantum of deduction is as follows—

|  |  |
| --- | --- |
| For the assessment years 2018-19 to 2020-21 | 150% of actual payment |
| From the assessment year 2021-22 onwards | 100% of actual payment |

A company approved under the provisions of section 35(1) (iia) is not eligible to claim weighted deduction under section 35(2AB). However, deduction under section 35(1)(i)/(2) can be claimed to the extent of 100% of the sum spent as revenue expenditure or capital expenditure on scientific research.

**CAPITAL GAINS**

Profits or gains arising from the transfer of a capital asset made in a previous year are taxable a s capital gains under the head “Capital Gains”. The capital gain is chargeable to income tax if the following conditions are satisfied:

### There is a capital asset.

* + 1. Assessee should transfer the capital asset.
    2. Transfer of capital assets should take place during the previous year.
    3. There should be gain or loss on account of such transfer of capital asset.

**CAPITAL ASSET:** Sec. 2(14): Capital Asset means property of any kind (Fixed, Circulating, movable, immovable, tangible or intangible) whether or not connected with business or profession. Exclusions —

### Stock-in-trade

1. Personal effects of the assessee i.e., personal use excluding jewellery, costly stones, silver, gold
2. Agricultural land in a rural area i.e., an area with population more than 10,000.
3. 6½% Gold Bonds, 1977 or 7% Gold Bonds, 1980 or National Defence Bonds, 1980 issued by the Central Government
4. Special Bearer Bonds, 1991 issued by the Central Government.
5. Gold Deposit Bonds issued under Gold Deposit Scheme 2000

**KINDS OF CAPITAL ASSETS**

There are two kinds of capital assets

**Short-term capital asset: Sec. 2(42A):** means a capital asset held by an assessee for not more than thirty six months immediately preceding the date of its transfer. However, in the following cases, an asset, held for not more than twelve months, is treated as short-term capital asset—

### Quoted or unquoted equity or preference shares in a company

* 1. Quoted Securities
  2. Quoted or unquoted Units of UTI
  3. Quoted or unquoted Units of Mutual Funds specified u/s. 10(23D)
  4. Quoted or unquoted zero coupon bonds

**Long-term capital asset: Sec. 2(29A):** means a capital asset which is not a short-term capital asset. Under the existing law, profits and gains arising from the transfer of capital asset made in a previous year is taxable as capital gains. A capital asset is distinguished on the basis of the period of holding. A capital asset, which is held for more than three years, is categorized as a long-term capital asset. However, if the capital asset is in the nature of equity, it is categorized as a long-term capital asset if it is held for more than one year. All capital assets other than long-term capital asset are termed as a short-term capital asset.

**TRANSFER OF CAPITAL ASSET**

Transfer includes:

### Sale of asset

* Exchange of asset
* Relinquishment of asset (means surrender of asset)
* Extinguishments of any right on asset (means reducing any right on asset)
* Compulsory acquisition of asset.

The definition of transfer is inclusive, thus transfer includes only above said five ways. In other words, transfer can take place only on these five ways. If there is any other way where an asset is given to other such as by way of gift, inheritance etc. it will not be termed as transfer.

## **YEAR OF CHARGEABILITY TO TAX**

Capital gains are generally charged to tax in the year in which ‘transfer’ takes place.

## **LONG TERM CAPITAL GAINS**

Long term Capital gains, if the assets like shares and securities, are held by the assessee for a period exceeding 12 months or 36 months in the case of other assets. Units of UTI and specified mutual funds will now be eligible for treatment as long term capital assets if they are held for a period exceeding 12 months.

Long term Capital gains are computed by deducting from the full value of consideration for the transfer of a capital asset the following:

### Expenditure connected exclusively with the transfer;

* The indexed cost of acquisition of the asset, and
* The indexed cost of improvement, if any, of that asset.

**The method of computing capital gains is given below:**

|  |  |
| --- | --- |
| **Short-term Capital Gain** | **Long-term Capital Gain** |
| A. Find out Full Value of Consideration | A. Find out Full Value of Consideration |
| B. Deduct: | B. Deduct: |
| (i) Expenditure incurred wholly and exclusively in connection with such Transfer. | (i) Expenditure incurred wholly and exclusively in connection with such Transfer. (ii) Indexed Cost of Acquisition |
| 1. Cost of Acquisition 2. Cost of Improvement 3. Exemption provided by Ss. 54B, 54D & 54G, 54GA | 1. Indexed Cost of Improvement 2. Exemption provided by Ss. 54, 54B, 54D, 54EC, 54EE, 54F & 54G, 54GA, 54GB |
| C. (A-B) is the short-term capital gain | C. (A-B) is the long-term capital gain |

## **Differences between Long term capital gains and Short term capital gains**

|  |  |
| --- | --- |
| **Long Term Capital Gain** | **Short Term Capital Gain** |
| It arises out of transfer of long term capital assets | It arises out of transfer of short term capital assets |
| Tax rate is 20% | Tax rate is 15%. |
| Cost of acquisition and cost of improvement are indexed on the basis of CII. | No indexing is done. |
| If LTCA is acquired before 1-4-1981, then the fair market value of the asset as on 1-4- 1981 is taken as the value of | No such option is available to STCA. |
| Long term capital loss can be set off only against long term capital gain. | Short term capital loss can be set off against short term capital gain or long term capital gain. |

#### FULL VALUE OF CONSIDERATION

Full value of consideration means and it includes the whole or complete sale price or exchange value or compensation including enhanced compensation received in respect of capital asset in transfer. The following points are important to note in relation to full value of consideration.

* + 1. The consideration may be in cash or kind.
    2. The consideration received in kind is valued at its fair market value.
    3. It may be received or receivable.
    4. The consideration must be actual irrespective of its adequacy.

When shares, debentures or warrants are received under employees stock option plan or scheme are transferred under a gift or an irrecoverable trust , the market value on the date of transfer shall be deemed to be the full value of consideration received or accruing as a result of transfer for computation of capital gains.

## **COST OF ACQUISITION**

Cost of Acquisition (COA) means any capital expense at the time of acquiring capital asset under transfer, i.e., to include the purchase price, expenses incurred up to acquiring date in the form of registration, storage etc. expenses incurred on completing transfer. In other words, cost of acquisition of an asset is the value for which it was acquired by the assessee. Expenses of capital nature for completing or acquiring the title are included in the cost of acquisition.

**Cost to the previous owner deemed to be the cost of acquisition**: If the asset is acquired by an assessee in the following circumstances the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it.

### On any distribution of asset on the total or partial partition of a HUF or

1. Under gift or will
2. By succession , inheritance or devolution or
3. On any distribution of assets on the dissolution of a firm, body of individuals or other association of persons at any time before 1-04-1987. Or
4. On Any distribution of asset on the liquidation of a company or
5. Under a transfer to a revocable or an irrevocable trust or
6. On transfer by a parent company to its Indian subsidiary company which is wholly owned by a parent company or
7. On the transfer by a subsidiary company to its Indian holding company which owns whole of the share capital of the subsidiary company or
8. On the transfer of capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company. Or
9. On transfer of shares of an Indian company by amalgamated foreign company to the amalgamated foreign company. Or
10. On the transfer of capital asset in a scheme of amalgamation of a banking company with a banking institution sanctioned and brought into force by the central government or
11. When any members of HUF converts his self acquired property into HUF property or
12. On transfer of capital asset by the predecessor cooperative bank to the successor cooperative bank in a business organization or
13. On transfer of shares in the predecessor cooperative bank in lieu of shares allotted in the successor cooperative bank in a business reorganization or
14. On transfer of capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company or
15. On succession of a sole proprietary concern by a company.

**Cost of share or security**

If the share or security was acquired before 1st April 1981, the cost of acquisition will be the actual cost or fair market value on 1st April 1981 whichever is beneficial to the assessee. If it is acquired after 31st march 1981, the actual cost is the cost of acquisition.

## **3. Cost of bonus shares**

The cost of bonus shares or security which is received by the assessee without any payment on the basis of his holding any financial asset will be as under:-

### Where bonus share or security was received prior to 1st April 1981, the fair market value on 1str April 1981.

* 1. In any other case- nil.

1. **Cost of acquisition of goodwill**

If the asset is purchased from the previous owner – purchase price in any other case –Nil

### Right issue-cost of acquisition in the case of right issue is amount actually paid to acquire it.

1. **Capital asset acquired before 1st April 1981**- total cost of the asset to the assessee or the faire market value on 1st April 1981.
2. **Capital asset acquired by the previous owner before 1st April 1981-** total cost of the asset to the previous owner or the faire market value on 1st April 1981.

### Cost of acquisition of shares or debentures- shares or debentures acquired in consideration of conversion of debenture, debenture stock or deposit certificate shall be deemed to be the cost of original debentures, debenture stocks or deposit certificates converted.

**COST OF IMPROVEMENT**

Cost of improvement is the capital expenditure incurred by an assessee for making any addition or improvement in the capital asset. It also includes any expenditure incurred in protecting or curing the title. In other words, cost of improvement includes all those expenditures, which are incurred to increase the value of the capital asset.

Cost of improvement x CII for the year in which

the asset is sold

Indexed Cost of improvement =

CII for the year in which the improvement

To asset took place.

Any cost of improvement incurred before 1st April 1981 is not considered or it is ignored. The reason behind it is that for carrying any improvement in asset before 1st April 1981, asset should have been purchased before 1st April 1981. If asset is purchased before 1st April we consider the fair market value. The fair market value of asset on 1st April 1981 will certainly include the improvement made in the asset.

**Computation of capital gains in case of slump sale:** Any gain arising from the slump sale effected in the previous year shall be chargeable as long term capital gains of the previous year in which the transfer take place.

## **EXPENDITURE ON TRANSFER**

Expenditure incurred wholly and exclusively for transfer of capital asset is called expenditure on transfer. It is fully deductible from the full value of consideration while calculating the capital gain. Examples of expenditure on transfer are the commission or brokerage paid by seller, any

fees like registration fees, and cost of stamp papers etc., travelling expenses, and litigation expenses incurred for transferring the capital assets are expenditure on transfer.

***Note:*** Expenditure incurred by buyer at the time of buying the capital assets like brokerage, commission, registration fees, cost of stamp paper etc. are to be added in the cost of acquisition before indexation.

## **EXEMPTION FROM CAPITAL GAINS**

Capital gain arising on the transfer of property used for residence: -

The exemption u/s 54 relates to the capital gain arising out of transfer of residential house. The exemption is available to only Individual assessee. The exemption relates to the capital gains arising on the transfer of a residential house.

Conditions: Exemption is available if: -

### House Property transferred was used for residential purpose.

1. House Property was a long term capital asset.
2. Assesses has purchased another house property within a period of one year before or two years after the date of transfer or has constructed another house property within three years of date of transfer i.e. the construction of the new house property should be completed within three years. The date of starting of construction is irrelevant. Where the amount of capital gain is not utilized by the assessee for acquisition of new house before the due date, it shall be deposited by him on or before the due date of furnishing the return of income in an account opened under the capital gain account scheme 1988.

Amount of Exemption will be the least of: -

### Capital Gain

* 1. Cost of new house.

Withdrawal of exemption: If the newly acquired house property is transferred within three years of acquisition. Thus the earlier exempted capital gain will be charged to tax in the year in which the newly acquired house property is transferred. For that the cost of acquisition of the newly acquired house property will be reduced by the amount of exemption already availed thus the cost will reduce and thus the capital gains on the new house property will be more. Above all the new house property will be a STCA since for withdrawal of exemption it should had been sold within three years of its acquisition thus now the capital gain of the new house property will be STCG which is charged as per the normal rates which may be 15% in the case of individuals.

#### CAPITAL GAIN ARISING FROM THE TRANSFER OF AGRICULTURAL LAND (sec 54 B)

Any capital gain arising on the transfer of agricultural land situated in an urban area is exempt subject to the following conditions

### The agriculture land is owned by an individual or a HUF

1. The agriculture land was, in the two years immediately preceding the date of transfer, being used either by the assessee or his parent or HUF for agriculture purposes.
2. The assessee has purchased within a period of two years from the date of transfer any other land for agricultural purposes.

The amount of deduction is the capital gain arising from the transfer of such agricultural land is exempt to the extent of the cost of the new agricultural land purchased within two years from the date of transfer.

If the amount of capital gain is not utilized by the assessee for the acquisition of the new agricultural land before due date of furnishing return of income, it shall be transferred to capital gain account scheme.

The exemption is withdrawn if the assessee transfers the new land within 3 years of its purchase.

#### CAPITAL GAIN ON COMPULSORY ACQUISITION OF LAND AND BUILDINGS (sec 54 D)

This exemption is available to all categories of taxpayers. To get exemption the following conditions are to be satisfied.

### The asset transferred is land or building or any right in land or building which formed part of new industrial undertaking belonging to the tax payer.

* 1. Asset in question is transferred by way of compulsory acquisition under any law.
  2. The asset in question was used for the purpose of industrial undertaking at least for two years immediately before the date of compulsory acquisition.
  3. Assessee has purchased any other land or building with in a period of three years from the date of receipt of compensation or constructed a building within such a period.

If the new asset is not acquired by the due date for furnishing the return of income for the relevant assessment year, the unutilized amount of capital gains must be deposited in a Capital Gains Deposit Account.

The cost of acquisition of the new asset is reduced by the exemption granted from LTCG for a period of 3 years from its date of acquisition.

## **INVESTMENT IN FINANCIAL ASSETS (Section -54 EC)**

This exemption is available to all categories of taxpayers. To get exemption the following conditions are to be satisfied.

### The assessee should transfer a long-term capital asset during the previous year.

* + 1. The assessee should invest the whole or part of capital gain in long term specified

assets. The long term specified assets include

1. Bonds redeemable after three years
2. Issued on or after 1.4.2007and
3. Issued by
   1. National Highway Authority of India (NHAI). Or
   2. Rural Electrification Corporation Limited (RECL).

The investment made on or after 1.4.2007 in the long term specified asset by an assessee during any financial year shall not exceed fifty lakh rupees. The investment is to be made within six months from the date of transfer of the original capital asset. The bonds should not be transferred or converted into money for a period of three years from the date of acquisition. In case the bonds are transferred within 3 years from the date of their acquisition, the exemption allowed for investment earlier would be taxed in the year of such transfer as capital gains. For this purpose it would be considered as transfer even if the assessee takes any loan or advance on the security of the specified securities. For the investment in the bonds deduction under section 80C will not be available.

## **INVESTMENT INTO A RESIDENTIAL HOUSE (Section 54F)**

If an individual or a HUF having LTCG arising out of sale of capital asset other than a residential house invests in the purchase or construction of a residential house, then, he/it is eligible for exemption.

Cost of New House X Capital Gains Amount

of exemption = -------------------------------------------------

Net Consideration

Where net consideration = full value of consideration - cost of transfer.

The time available for investment and the method to be followed for investment after the due date for filing of return of income are the same as mentioned in the scheme in (a) above.

In this case, however, cost of the new asset is not changed. But the assessee should not own more than one residential house other than the residential house in which he has invested as on the date of transfer and also, he should not purchase/construct any other residential house for a period of 1/3 years from the date of transfer. In case he owns more than one residential house as on the date of transfer he is not eligible for this deduction.

In case he purchases/constructs a house within 1/3 years from the date of transfer after getting this deduction, the amount allowed as deduction would be taxed as capital gains in the year of such purchase/construction.

g) Transfer of fixed asset of industrial undertaking effected to shift it from urban area -54G

This exemption is available to all categories of taxpayers. The conditions for claiming the exemption are as under:

### The transfer is affected in the course of or inconsequence of shifting the undertaking from an urban area to any area other than an urban area.

1. Asset transferred is machinery, plant, building, land or any right in building or land used for the business of industrial undertaking in an urban area.
2. The capital gain is utilized within one year before or 3 years after the date of transfer
   1. for purchasing new machinery or plant or building or land for tax payer’s business in that new area; or
   2. shifting of the old undertaking and its establishment to the new area; or
   3. incurring of expenditure on such other purposes as specified in the scheme notified for the purpose.

Exemption of LTCG is given to the extent of the outlay for aforesaid asset and activities.

The unutilized amount of capital gain as on the date on which return of income for the relevant Assessment Year is due; must be deposited in a Capital Gains Deposit account.

The cost of acquisition of the new asset is reduced by the exemption allowed from LTCG for a period of 3 years from its date of acquisition.

**Shifting of an industrial undertaking from urban area to any Special Economic Zone (Sec 54 GA)**

Capital gain arising out of shifting of industrial undertaking from urban area to any Special Economic Zone are exempt of the following conditions were satisfied.

### The transfer should be a long term or short-term capital asset such as plant, machinery, building or land or right in building or land.

1. Such asset has been used for the purpose of business of industrial undertaking situated in urban area.
2. The transfer should be done in connection with shifting of industrial undertaking in SEZ.
3. The amount of capital gain must be used within a period of one year before or three years after the date of transfer to purchase machinery or plant, to acquire land, to construct building for the purpose of business in SEZ.

The unutilized amount of capital gain as on the date on which return of income for the relevant Assessment Year is due; must be deposited in a Capital Gains Deposit account.

**Exemption of long term capital gains on transfer of residential property (sec 54 GB)**

This exemption is available to an individual or HUF. Capital gain arising out of transfer of a long term capital asset being a residential property (a house or a plot of land) is exempted from tax if the following conditions are satisfied.

### The assessee utilizes the net consideration for subscription in equity shares of an eligible company before the due date of furnishing the return of income. If he invests less than the net consideration in equity shares, the proportionate capital gains shall be exempt.

* 1. The company utilizes the money within one year from the date of subscription in equity shares by the assessee for the purchase of new plant and machinery.
  2. If the company does not utilize the consideration, received for issue of shares to the assessee, for purchase of new plant and machinery before the due date of furnishing return of income by the assessee, the consideration not so utilized shall be deposited in specified banks or institution in notified scheme.

If the amount deposited in specified bank etc is not utilized with the mentioned period of time by the company, the proportionate capital gains shall be chargeable to tax of the assessee of the previous year in which the period of one year from the date of subscription in the equity shares by the assessee expires.

4.If the assessee sells or otherwise transfers the shares or the company sells or otherwise transfers the new plant or machinery within five years from the date of acquisition , the exempted capital gains shall be deemed to be the capital gains of the previous year in which the new plant and machinery is sold or transferred.

If there is a gain on transfer of shares to the assessee, it shall be chargeable to tax in his hand.

If there is gain on transfer of plant and machinery to the company, the company shall be liable to pay tax on it.

### Extension of time for acquiring new asset or depositing or investing amount of capital gain: (Section 54H)

Where the transfer of the original asset (residential house and land appurtenant there to (Section 54), agricultural land (Section 54 B), land and building of an industrial undertaking (Section 54D), any long term capital asset (Section 54 EC) and long term capital asset other than residential house is by way of compulsory acquisition under any law, and the amount of compensation awarded for such acquisition is not received by the assessee the date of transfer, the period of acquiring the new asset or the period for depositing or investing the amount shall be extended in relation to the amount of compensation as is not received on the date of transfer.

**Tax on capital gains on transfer of equity shares in a company or units of an equity oriented fund**

In the case of short term capital gains arising from transfer of equity shares in a company or units of an equity oriented fund, the tax payable by the assessee shall be @15% +surcharge of any+ education cess 3% on such short term capital gains provided that such a transaction is chargeable to securities transactions tax.

Notably, no deduction is available u/s 80C to 80U from above short term capital gains. In case of LTCG on transfer of equity shares or units of equity oriented mutual funds, provided the transaction has been subject to securities transaction tax, the LTCG is not chargeable to tax at all.

If the transaction has not been subjected to securities transaction tax, the LTCG will be taxed @ 10% if no indexing is claimed and @ 20% if cost of acquisition is indexed. The taxpayer has an option to choose from either of the above.

In case the shares / securities are transferred in demat' form, for computing capital gain chargeable to tax, the cost of acquisition and period of holding of any security shall be determined on First in – First - out (FIFO) basis.

Tax on long term capital gains @ 20%.

**INCOME FROM OTHER SOURCES**

CHARGING SECTION [SECTION 56(1)]

• Income of every kind

• Not Excluded from Total Income

• Not chargeable to tax under other four heads

• Shall be chargeable to Income Tax under Income from Other Sources.

Examples:

1. Rental Income from vacant land

2. Income from sub-letting of house property

3. Interest on loan/deposits.

4. Agricultural Income outside India

5. Family pension.

6. Insurance Commission

7. Income from Undisclosed sources

8. Royalty (If not covered under Business or Profession)

9. Receipt of Life Insurance money (If not exempt u/s 10(10D)

10. Director Fees/Commission

11. Director salary if not chargeable under salary

12. Salary to MP/MLA etc

**Following Incomes SHALL BE chargeable under head Other Sources [Section 56(2)]**

1. Dividend Income
2. Winnings from Lotteries, cross word puzzles, card games etc.
3. Interest on Securities, if not chargeable under Business or Profession
4. Income from letting of Plant, Machinery or Furniture, if income not chargeable under Business or Profession
5. Income from composite letting of Building together with Plant, Machinery or Furniture, which is inseparable from letting of such building, if such income not chargeable under Business or Profession
6. Sum received under Keyman Insurance Policy, if not chargeable under salary or Business or profession
7. Sum/Property received as Gifts
8. Specified shares received by Firms/Closely Held Company.
9. Share premium in excess of fair market value received by Closely Held Company
10. Interest received on compensation or on Enhanced compensation
11. Advance or other money received in course of negotiations for transfer of a capital asset, if such sum is forfeited & negotiations do not result in transfer of such capital asset.

**TAXATION OF DIVIDEND [SECTION 115O]**

• Every Domestic Company

• shall pay Corporate Dividend tax (CDT)

• @ 15%\* + 12 % surcharge + 4 % Health and Education cess

• On divided declared or paid [Actual and Deemed dividend u/s 2(22) (a) (b) (c) (d)] [\*30% for Deemed dividend u/s 2(22) (e) Finance Act, 2018]

Special Point1

**Other Company**

**Indian Company**

**Company**

**Arrangement for distribution of dividend in India**

**No Arrangement**

**Foreign Company 2(23A)**

**Domestic Company 2(22A)**

**Not Liable to CDT**

**Liable to CDT**

* 1. Dividend in Section115O **includes Deemed dividend u/s. 2(22) (a), (b), (c), (d) & 2(22)(e).**
  2. Dividend includes both **Interim** & **final** dividend.
  3. Dividend includes both Interim & final dividend.
  4. Such Corporate Dividend Tax is payable even if Income Tax is not payable by the company
  5. Corporate Dividend Tax shall not be chargeable for dividends declared, distributed or paid by enterprise engaged in developing or developing and operating or developing, operating and maintaining a Special Economic Zone.
  6. Corporate Dividend Tax not payable on Buy Back of shares by company *(Exception : Section 115QA )*

DIVIDEND [SECTION 2(22)]

Dividend Includes:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Distribution by a Company to** | | | | |
| **Section 2(22)(a)** | **Section 2(22)(b)** | | **Section 2(22)(c)** | **Section 2(22)(d)** |
| ***ANY***  ***Shareholder*** | ***ANY Shareholder*** | ***Preference Share Holders*** | ***Equity***  ***Shareholder*** | ***Equity Shareholder*** |
| All or part of its  **Assets** | **Debentures**, debenture- stock, deposit certificate with or without interest. | **Bonus**  shares | Any money or asset on its **liquidation** | Any money or asset on **Reduction of its capital** |
| ***To the extent of accumulated profits*** | | | | |

**Note:** While calculating accumulated profits, an allowance for depreciation and additional depreciation at the rates provided by the Income Tax Act has to be made by way of deduction. [Navnitlal C. Jhaveri v CIT [1971]80 ITR 582 (Bom)]

# Deemed Dividend [Section 2(22)(e)]

* Closely held Company
* Gives loan or Advance
* To Specified Shareholder (case 1) or
* To CONCERN in which specified shareholder is partner/member & has substantial interest

## (Case II) or

* To Any person on behalf or benefit of specified shareholder (case III)
* Shall be deemed as dividend to the extent of accumulated profits

Special Points:

1. **Specified Shareholder Means** beneficial owner holding **at least 10% voting** in the company.
2. **Substantial Interest means**: If at **any time** person entitled to **at least 20% income** of that concern (**20% voting power**, in case of company).
3. In Case I, Deemed dividend in hands of **Specified shareholder.**

In Case II, Deemed dividend in hands of **Concern.**

In Case III, Deemed dividend in hands of **Specified shareholder.**

## Section 2(18): Company in which public are substantially interested (Widely held company)

A company is said to be a company in which the public are substantially interested if

* 1. It is owned by Government or Reserve Bank of India or
  2. It’s at least 40% shares are held by the Government or the RBI or
  3. Nonprofit company or
  4. company whose principal business is to accept deposits from its members or
  5. Public company & its equity shares were listed on last day of P/Y on recognized stock exchange a company not covered under above categories is a closely held company.

1. Section 2(22)(e) covers not only advances and loans to shareholders but any other payment by the company on behalf of or for the Individual shareholders, such as payment of shareholder personal expenses, Insurance premium etc to the extent of the accumulated profits of the company.

[CIT v jamnadas Khimji Kothari [1973] 92 ITR105 (Bom)]

## **Tax treatment of dividend in the hands of shareholder**

1. **Section 10(34):** Dividend received from domestic company referred to in Section 115O shall be exempt. This section is subject to Section 115BBDA

## **Section 115BBDA:** Tax on dividends received from domestic companies

* + In case of Resident + Specified assessee
  + Dividend exempt u/s 10(34)
  + Exceeds 10 lakhs
  + Such excess is taxable at 10% + Applicable surcharge + 4% Health & Education Cess

**Special Point**

## No deduction of any expenditure/allowance/set off of loss shall be allowed u/s 115BBDA

1. **Specified assessee**” means a person other than,—
   1. Domestic company; or
   2. Fund/trust/university/educational institution/hospital u/s 10(23C) ; or
   3. Trust registered u/s 12A or u/s 12AA.

# TAX ON DISTRIBUTED INCOME TO SHAREHOLDERS [SECTION 115QA]

Domestic company shall pay tax on distributed income by company on buy-back of shares (not being shares listed on a recognised stock exchange) from a shareholder.

### Special point:

1. Buy-Back means purchase by company of its own shares.
2. Distributed income” means consideration paid by company on buy-back of shares as reduced by the amount which was received by the company for issue of such shares.
3. Section 10(34A) : Any income arising to shareholder, on account of buy back of shares (not being listed on a recognized stock exchange) by the company as referred to in section 115QA is exempt.

# TAXATION OF INCOME RECEIVED FROM MUTUAL FUNDS & UTI

**Section 115R**: Mutual Funds shall pay **TAX** on **Income distributed** by them.

**Section 10(35)**: Income referred in Sec 115R **shall not be** included in Total Income of recipient.

# CASUAL INCOME

## Winnings from Lotteries, Crossword Puzzle, Races including horse races, Card games & other games of any sort or from gambling or betting of any form – Taxable

**Special Points:**

1. Deduction u/s Section 80 C to Section 80 U will not be available from such Incomes
2. Section 58: No Deduction shall be allowed from such incomes
3. Amount to be included in Total Income is Gross amount & not Net amount received after TDS

### Gross Amount to be included in total income =

### Net Amount Received after TDSX100

### 100 - TDS rate

# INTEREST INCOME

Income from Interest on Securities is chargeable under head other sources. (If not chargeable under Business or Profession)

### Interest Exempt from Tax [Section 10(15)]

1. Interest on **Notified bonds/certificates**
   * Post office Saving Bank account upto `3,500/ `7,000 in joint account in P/Y
   * Post office Time deposit
   * Special Bearer Bonds
2. – Notified Investment Bond

– Notified Relief Bonds of RBI

1. Notified Bond/Debenture of **Public Sector Companies**. E.g. Rural Electrification Corporation Limited, Indian Railway Finance Corporation Limited.
2. Bonds of **Local Authority**, i.e. Municipal Bonds.
3. Interest on Gold **Deposit Bonds** issued under Gold Deposit scheme 1999 or Deposit certificates issued under Gold Monetization Scheme, 2015.

**Note:**

1. **Section 14A:** Expenditure of any exempt income is not allowed as a deduction from taxable income.
2. Amount to be included in Total Income is Gross amount & not Net amount received after TDS
3. Gross Amount to be = Net Amount Received after TDS X 100

included in Total Income 100 - TDS rat

**BOND WASHING TRANSACTIONS [SECTION 94(1)]**

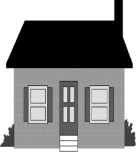
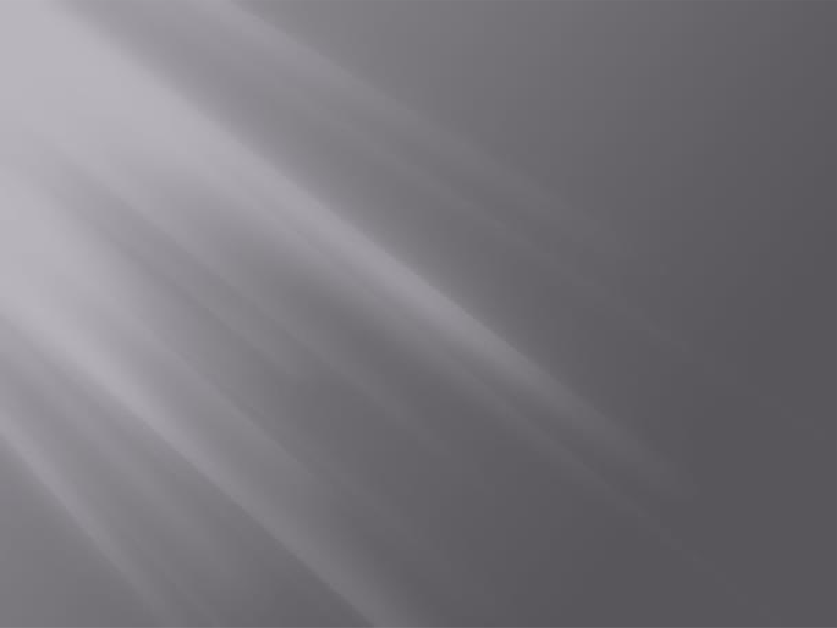
* If owner of security(Transferor)
* Sells security before record date &
* Acquires the same after record date
* Interest received by transferee
* Deemed as Income of transferor

However Deeming provisions of section 94(1) is not applicable if there is **no avoidance** of Income tax **or**

Avoidance of Income tax was **exceptional** & there was no avoidance during last **three preceding P/Y**

# INCOME FROM LETTING OF MACHINERY, PLANT OR FURNITURE BELONGING TO ASSESSEE

If Plant and Machinery etc. is **NOT** let out as part of assessee’s business activity than income arising from such hire will be taxable under other Sources. If letting is as part of his business activity than under business or



**Rent**

**Business**

**Not Business**

**House Property P/G/B/P**

**(Business/Non Business)**

**Other sources**

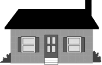
**u/s 56(2)**

Profession.

# 

# Income from composite letting of machinery, plant furniture and buildings

If letting of building is inseparable from letting of P&M etc. and such letting is **NOT** as part of his business activity, than income arising from such letting will be taxable under other sources. If letting is as part of his business activity than under BUSINESS OR PROFESSION



**Rent**

**Building**

**Facility**

**House Property**

**Cannot be separated**

**Can be separated**

# SUM RECEIVED UNDER KEYMAN INSURANCE POLICY INCLUDING BONUS

Any sum received under Key Man policy including bonus is taxable under other sources provided not chargeable under head Salary or Business or Profession



**Received by person taking policy**

**Not received by person taking policy**

**Received by Employee**

**Received by other person**

**Business income u/s 28**

**Salary income u/s 17(3)**

**Other sources u/s 56(2)**

****

# SUM/PROPERTY RECEIVED AS GIFTS

1. **Taxation of Cash Gifts**

Sum of money received by ANY PERSON

* + Without consideration
  + In excess of ` 50,000/-
  + in a previous year
  + the whole of such sum
  + Shall be included in income of receiver under head Other sources

## Taxation of Property as Gift/Inadequate consideration

### Property means following Capital asset of the assessee, namely

1. Immovable property being land or building or both;
2. Shares and securities;
3. Jewellery;
4. Archaeological collections;
5. Drawings;
6. Paintings
7. Sculptures;
8. Bullion;
9. Any work of art

****



### Special Point:



* 1. Section 49(4): If Property is taxable in hands of recipient under other sources then its Stamp value / FMV will be taken as its Cost of Acquisition.
  2. Sum of Money/Property received from following will not be included in Income
     1. From **RELATIVE**
     2. On **Marriage** of Individual.
     3. Under **will** or **inheritance**.
     4. Received in **contemplation of death** of payer/donor.

1. From **Trust** registered **u/s 12AA**

## **From** Local authority u/s 10(20)

1. From any **university /educational institution/hospital/trust/institution u/s 10(23C**)
2. By way of transaction **not regarded as transfer u/s 47(certain specific cases)**
3. From an individual by a trust created or established solely for the benefit of relative of the individual
4. **Any compensation or other payment**, due to or received by any person, by whatever name called, in connection with the termination of his employment or the modification of the terms and conditions relating thereto.
   1. **RELATIVE :** For above purpose “Relative “ means

**In case of individual :**

1. Spouse of the individual
2. Brother or sister of the individual
3. Brother or sister of spouse of the individual
4. Brother or sister of either of the parents of the individual
5. Any lineal ascendant or descendant of the individual
6. Any lineal ascendant or descendant of the spouse of the individual
7. Spouse of the persons referred to in clause (ii) to (vi)
8. In case of HUF : Any member thereof

# OTHER MISC. PROVISIONS

**INTEREST RECEIVED ON COMPENSATION FOR COMPULSORY ACQUISITION OF CAPITAL ASSET**

* Interest received by an assessee on **Compensation** or on **Enhanced Compensation** shall be **deemed** to be the income of the **previous year in which it is received**.
* **Section 57:** A deduction of **50%** of such income shall be allowed & no deduction shall be allowed under any other clause of this section.

# SPECIFIED SHARES RECEIVED BY FIRMS/SPECIFIED COMPANIES

* Where a Firm or a Closely held company i.e. company not covered u/s 2(18)
* receives from Any Person
* shares of closely held company
* **Without Consideration**, the **Aggregate FMV > 50,000**, than the whole of **aggregate FMV** of such property shall be deemed as income under IOS
* For **Consideration** < **(Aggregate FMV – 50,000),** then aggregate **(FMV – Consideration)** shall be deemed as income under sources.

**- SHARE PREMIUM IN EXCESS OF FAIR MARKET VALUE TO BE TREATED AS INCOME OF CLOSELY HELD COMPANY**

* Where a closely held company i.e. company not covered u/s 2(18),
* Receives, in any previous year
* From a resident
* Any consideration for issue of shares that exceeds
* Face value of such shares
* Excess of aggregate consideration received for such shares over fair market value of share
* Shall be treated as income

# ADVANCE MONEY FORFEITED ON CAPITAL ASSET ON OR AFTER 1/4/2014

If Advance or other money is forfeited under negotiations for transfer of capital asset, it is included in Income of receiver under other sources.

# DEDUCTIONS AVAILABLE FROM INCOME UNDER OTHER SOURCES [SECTION 57]

1. **Collection Charges against taxable Dividend/Interest:** Any reasonable sum paid by way of commission or remuneration for realizing such **dividend/interest**
2. **Deduction against Income from letting of Plant, Machinery etc:** Revenue Repair ,Insurance , Depreciation of Building ,Machinery, Plant or Furniture
3. **Deduction against family pension:** 1/3rd of Pension **OR** `15,000/- , *whichever is less*
4. **Any other Expenditure:** Any other expenditure (**not being a capital expenditure**) expended **wholly and exclusively** for the purpose of earning such income.
5. A deduction of 50% shall be allowed from interest received on compensation for compulsory acquisition of capital asset. No other deduction shall be allowed from such income

**Special Points:**

1. **FAMILY PENSION**
   * Regular Amount payable by Employer,
   * To Legal Heir of Deceased Employee
   * Is Taxable under other sources

Deduction u/s 57 is available against such pension.

However following pension are exempt from tax

|  |  |
| --- | --- |
| **Section 10(18)** | **Pension** received by Individual or **Family Pension** by family member ***if*** Individual has been in service of C/S Govt. & awarded Vir Chakra or Mahavir Chakra or Param Vir Chakra or other notified gallantry awards. |
| **Section 10(19)** | **Family pension** received by widow or children or heir on death of member of armed forces during duty |

**NO DEDUCTION OF FOLLOWING EXPENSES FROM INCOME FROM OTHER SOURCES**

**[SECTION 58]**

* Personal Expenses of Assessee.
* Interest paid outside India on which Tax not paid or deducted at source
* Income Tax / Wealth Tax.
* Expenditure referred to in Section 40A(2),40A(3)
* Expenditure or allowance for earning income from Lottery, Crossword Puzzles etc., (except Income from owning & maintaining race horses)

**Note:** If an expense is allowed as deduction from other sources in any previous year, recovery of any amount out of that expense shall be taxable under other sources in previous year of receipt [Section 59].

**QUESTIONS:-**

**1)** Explain clearly the deductions that are expressly allowed in computing the income from business under the Income Tax Act, 1961.

**2)** What is a ‘block of assets’? What is the method of computing the W.D.V. of a block of assets?

**3)** What do you understand by the term ‘Capital Gains’ used in the Income Tax Act? What are the rules regarding exemption of Capital Gains?

**4)** Describe the method of computing income under the head ‘Income from Other Sources’.

**UNIT-IV**

**CLUBBING OF INCOME**

Normally, a person is taxed in respect of income earned by him only. However, in certain special cases income of other person is included (i.e. clubbed) in the taxable income of the taxpayer and in such a case he will be liable to pay tax in respect of his income (if any) as well as income of other person too. The situation in which income of other person is included in the income of the taxpayer is called as clubbing of income. E.g., Income of minor child is clubbed with the income of his/her parent. Section 60 to 64 contains various provisions relating to clubbing of income.

The special provisions contained in these sections are designed to counteract the various attempts which an individual may make for avoiding or reducing his liability to tax by transferring his assets or income to other person(s) while, at the same time, retaining certain powers or interest over the property or it’s income. These provisions are explained below.

# TRANSFER OF INCOME [SECTION 60]

Section 60 of Income Tax Act, 1961 provides the provisions relating to clubbing of income where transfer of income is done without transferring the assets.Where a person transfers to any other person, income (whether revocable or not) from an asset without transferring that asset, the income shall be included in the total income of the transferor. “Transfer” includes any settlement, trust, covenant, agreement or arrangement. The transfer also includes a lease for inadequate consideration and the income derived by the lessee from the leased property is included in the income of the lessor.

These are applicable if the following conditions are satisfied:

1. The taxpayer owns an asset
2. The ownership of asset is not transferred by him.
3. The income from the asset is transferred to any person under a settlement, or agreement.

If the above conditions are satisfied, the income from the asset would be taxable in the hands of the transferor. If the transferor transfers the asset and keeps the income for himself, the income shall be included in the income of transferor.

Section 60 of the Act has no application where assets producing income are transferred along with the income.

C.I.T. v. Ram Prasad Mehta (1975) 100 ITR 468 (Bombay). There may be a field of operation of Sections 61 to 64 but certainly not of Section 60.

# REVOCABLE TRANSFER OF ASSETS [SECTION 61]

‘Revocable transfer’ means the transferor of asset assumes a right to re-acquire asset or income from such an asset, either whole or in parts at any time in future, during the lifetime of transferee. It also includes a transfer which gives a right to re-assume power of the income from asset or asset during the lifetime of transferee.

Where a person transfers any asset to any person with a right to revoke the transfer, all income accruing to the transferee from the asset shall be included in the total income of the transferor.

The income under revocable transfer of asset shall be included in the income of transferor even when only a part of income from transferred asset has been applied for the transferor.

For this purpose assets include movable or immovable property whether situated in India or abroad. As per Section 63, a transfer shall be deemed to be revocable if:

1. it contains any provision for the re-transfer directly or indirectly of the whole or any part of the income or assets to the transferor; or
2. it, in any way, gives the transferor a right to reassume power directly, or indirectly over the whole or any part of the income or assets.

**Examples of revocable transfers**

Some of the examples of revocable transfers are as follows:

1. If there is an express clause of revocation in the instrument of transfer; or
2. If there is a sale with a condition of re-purchase; or
3. If the transfer is to a trust and if the transfer can be revoked with the consent of two or more beneficiaries;

Or

1. If the trustees are empowered in sole discretion to revoke the transfer; or
2. If the transferor has power to change beneficiary or trustees

“Transfer” includes any settlement, trust, covenant, agreement or arrangement.

**Note:** Re-transfer to the transferor must be in the same capacity in which he made the transfer or settlement. If a settlement is made by a Hindu undivided family and there is a re-transfer to one member of the family in his capacity as an individual and not in his capacity as a member of the family this cannot be termed a re-transfer for this purpose.

INCOME OF SPOUSE

The following incomes of the spouse of an individual shall be included in the total income of the individual:

### Income to spouse from a concern in which such individual has substantial interest [Section 64(1)(ii)]

All such income as arises directly or indirectly, to the spouse of an individual by way of salary, commission, fees or any other remuneration, whether in cash or kind from a concern in which such individual has a substantial interest, shall be included in the income of the individual.

**Exception:** However, where the spouse possesses technical or professional qualifications and the income is solely attributable to the application of his/her technical or professional knowledge and experience, the income shall not be included in the income of (other spouse) the assessee.

**Substantial Interest:** An individual shall be deemed to have a **substantial interest** in a concern -

* In a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than 20% of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of his relatives;
* In any other case, if such person is entitled, or such person and one or more of his relatives are entitled in the aggregate, at any time during the previous year, to not less than 20% of the profits of such concern.

When both husband and wife have substantial interest

Where both husband and wife have a substantial interest in the concern and both are in receipt of the remuneration in such concern, the remuneration from such concern is to be included in the total income of the husband or, as the case may be, the wife whose total income excluding the income referred to in that clause

i.e. 64(1) (ii) is greater; (Circular No. 258, dated 14-6-79) and where any such income is once included in the total income of either spouse, any such income arising in any succeeding year shall not be included in the total income of the other spouse unless the Assessing Officer is satisfied, after giving that spouse an opportunity of being heard, that it is necessary so to do.

### Income to spouse from the assets transferred [Section 64(1) (IV)]

Where any individual transfers directly or indirectly any asset (other than a house property) to the spouse, the income from such asset shall be included in the income of the transferor.

In order to attract the provisions of this section, it is not necessary that the asset must have been transferred by the assessee to his spouse in the same form in which it stands at the time the income arises. Conversion of assets from one form to another would be totally immaterial and it is also not essential that the transfer must have taken place directly between the spouses.

**Exception:** However, there are exceptions to this rule:

* 1. The transferor has received adequate consideration in money or money’s worth. If the consideration was inadequate, proportionate income shall be included in the income of the transferor.
  2. The transfer has been made in connection with an agreement to live apart. This separation can be either judicial or voluntary under circumstances in which a judicial separation can be granted.
  3. The income from the assets transferred shall not be included in the income of transferor after the death of spouse, either transferor or transferee.
  4. The income from assets transferred shall be included in the income of the transferor, only if the relationship as spouse exists on the two dates, i.e., the date of transfer and the date on
  5. which the income accrues or arises to the transferee. If any asset has been transferred before

marriage, the income from such asset cannot be included in the income of the transferor.

* 1. Only the direct income (including capital gains) earned with the help of the transferred assets shall be included in the income of the transferor. Any indirect income to the transferee from the transferred assets shall not be included in the income of the transferor.

Suppose, A transfers certain shares to his wife B. Dividends received on such shares are taxable in the hands of A. If B sells the shares and makes some capital gains, such gains are also taxable in A’s hands. Now from the dividend money, B purchases some more shares and receives dividends on these new shares, such dividends are not taxable to A. In the same way, if B receives certain bonus shares

on the shares transferred by her husband and later on she receives dividend on such bonus shares, the dividend shall not be included in the income of the transferor because the bonus shares were never transferred by her husband.

If some pin-money is given to wife by her husband neither the savings out of pin-money nor the income earned with the help of savings out of pin-money can be included in the income of husband.

TRANSFER FOR IMMEDIATE OR DEFERRED BENEFIT OF SON’S WIFE [SECTION 64(1)(VIII)]

Any income arising, directly or indirectly, to any person or association of persons from assets transferred directly or indirectly after June 1, 1973, otherwise than for adequate consideration to the person or association of persons by such individual shall, to the extent to which the income from such assets is for the immediate or deferred benefit of his son’s wife be included in computing the total income of such individual.

***Explanation:*** For the purpose of clauses (iv) and (vi), where the assets transferred directly or indirectly by an individual to his spouse or son’s wife (hereafter in this Explanation referred to as “the transferee”) are invested by the transferee -

1. in any business, such investment being not in the nature of contribution of capital as a partner in a firm or, as the case may be, for being admitted to the benefits of partnership in a firm, that part of the income arising out of the business to the transferee in any previous year, which bears the same proportion to the income of the transferee from the business as the value of the assets aforesaid as on the first day of the previous year bears to the total investment in the business by the transferee as on the said day;
2. in the nature of contribution of capital as a partner in a firm, that part of the interest receivable by the transferee from the firm in any previous year, which bears the same proportion to the interest receivable by the transferee from the firm as the value of investment aforesaid as on the first day of the previous year bears to the total investment by way of capital contribution as a partner in the firm as on the said day, shall be included in the total income of the individual in that previous year.

# INCOME TO SPOUSE THROUGH A THIRD PERSON [SECTION 64(1)(VII)]

Where a person transfers some assets directly or indirectly to a person or association of persons (trustee or body of trustees or juristic person) without adequate consideration for the immediate or deferred benefit of his or her spouse, all such income as arises directly or indirectly from assets transferred shall be included in the income of the transferor. If only a portion is reserved for the benefit of spouse and a portion is utilised for the benefit of others, only the portion reserved for the spouse shall be included in the income of the transferor.

The share of income of the spouse can be included in the income of the transferor provided the spouse has either received the income or the income has accrued to spouse or the spouse has a beneficial interest in the income. If an individual creates a life-interest in a property in favour of a

third person and grants the remainder to his spouse, and so long as the third person is alive, she should not be getting any benefit out of transferred asset, such income cannot be included in the income of the transferor. If however, the benefit from the assets transferred is to be derived by the transferor himself, the transfer would be treated as revocable and would consequently fall within the purview of Section 61 which provides that the entire income arising from the assets so transferred shall be included in the total income of the transferor.

Where a trust was created by assessee’s mother for the benefit of the assessee, his wife and the trustees were authorised to carry on business, the income from the business was held to be income of the trust and the share of wife could not be added to the income of the spouse because neither the trust was created by the assessee nor the business done in the partnership. *[K.T Doctor v. C.I.T (1980) 124 ITR 501 (Guj.)].*

# CLUBBING OF INCOME OF MINOR CHILD [SECTION 64(1A)]

All income which arises or accrues to the minor child (not being a minor child suffering from any disability of the nature specified in Section 80U) shall be clubbed in the income of his parent. However, any income which is derived by the minor from manual work or from any activity involving application of his skill, talent or specialised knowledge and experience will not be included in the income of his parent. Further, the income of the minor shall be included in the income of that parent whose total income excluding income includible under this subsection is greater, where the marriage of minor’s parents subsists, otherwise the income of the minor will be includible in the income of that parent who maintains the minor child in the relevant previous year.

Once the income of the minor is included in the total income of any one parent, clubbing of income of the minor with the same parent will continue in subsequent years also, unless the Assessing Officer is satisfied, after giving that parent an opportunity of being heard that it is necessary so to do.

In case the income of an individual includes any income of his minor child in terms of this section [i.e. Section 64(1A)], such individual shall be entitled to exemption of the amount of such income or Rs. 1,500 whichever is less.

# INCOME FROM THE CONVERTED PROPERTY [SECTION 64(2)]

Where an individual, being a member of Hindu Undivided Family, transfers his self-acquired property after 31st December, 1969 to the family for the common benefit of the family, or throwing it into the

common stock of the family, or transfers it directly or indirectly to the family otherwise than for adequate consideration, such property is known as converted property. The income derived from the converted property or any part thereof, shall be included in the income of the transfer.

For this section “property” includes any interest in property, movable or immovable the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale thereof and where the property is converted into any other property by any method, such other property.

**Income from converted property to spouse after partition**

Where the converted property has been the subject matter of total or partial partition amongst the members of the family, the income derived from such converted property as is received by the spouse of the transferor on partition shall be included in the income of the individual.

The income so included in the total income of the individual shall be excluded from the total income of the family or spouse, as the case may be.

The income from the above mentioned items shall first be computed under the appropriate heads in the hands of the transferee and after that it shall be included in the total income of the transferor under the head, “Income from other sources”. However, the income from house property transferred to spouse shall be computed under the head ‘Income from house property’ in the hands of transferor and not in the hands of the transferee.

Explanation to the term ‘income’ used in Section 64 includes ‘losses. This amendment nullifies the decision in *Dayalbhai Madhavji Vadera* v. *C.I.T.* (1966) 60 ITR 551 of the Gujarat High Court that the term ‘income’ used in Sub-section (1) of Section 64 does not include a loss.

# RECOVERY OF TAX

**Dual Liability for Tax:** The tax on the income of the other person which has been included in the income of the assessee can either be recovered from the assessee or from the other person. The liability of other person is limited to the portion of the tax levied on the assessee which is attributable to the income so included. His liability arises after the service of a notice of demand by the Assessing Officer in this behalf.

Where any such asset (the income from which has been included in that of the assessee) is held jointly by more than one person, they shall be jointly and severally liable to pay the tax which is attributable to the income from the assets so included.

# SET-OFF AND CARRY-FORWARD OF LOSSES

While one endeavors to derive income, the possibility of incurring losses cannot be ruled out. Based on the principles of natural justice, a set-off should be available for loss incurred. The income tax laws in India recognize this and provide for adjustment and utilization of the losses. For this purpose, the Income-tax Act, 1961 contains specific provisions (Sections 70 to 80) for the set-off and carry- forward of losses.

Income-tax is levied on the total income of the previous year of an assessee and it is necessary to ascertain the total income. Further, loss incurred by the assessee is to be set-off against any income, the net result of the assessee’s activities during the particular accounting year cannot be ascertained and consequently the tax payable would also be incapable of determination.

**SET-OFF OF LOSSES FROM ONE SOURCE AGAINST INCOME FROM ANOTHER SOURCE**

The process of adjustment of loss from a source under a particular head of income against income

from other source under the same head of income is called intra-head adjustment, e.g. Adjustment of loss from business A against profit from business B.

Income of a person is computed under five heads. ‘Sources’ of income derived by an individual may be many but yet they could be classified under the same head. Consider a situation where Harish has two properties- one, occupied by him and the other, let out. Harish pays interest on loan of Rs 1.50 lakh on the property occupied and derives net rental income of Rs 1.50 lakh from the let-out property. In case of a self-occupied property, income is computed as nil and interest expenditure results in loss. The loss of Rs 1.50 lakh can be set off against rent income of Rs 1.50 lakh; the income chargeable under the head ‘House property’ will be ‘Nil’.

Thus, in general, if the net result for any assessment year in respect of any source falling under any head of income is a loss, the assessee is entitled to set off the amount of such loss against his income from any other source under the same head.

However, the following are the **exceptions to general rule**:

1. **Speculative Business Losses:** Loss from speculation business cannot be set of against profit from an non speculation business however loss from non speculative business can be set-off against speculation income)
2. **Long-term capital Loss:** Long Term Capital Loss (LTCL) can only be set off against Long Term Capital Gain (LTCG) and cannot be set off against Short term Capital Gain (STCG) however STCL can be set off against LTCG)
3. **Casual Income:** No loss can be set-off against casual income i.e. Income from lotteries, crossword puzzles, race including horse race, card game, and any other game of any sort or from gambling or betting of any form or nature. No expenses can be claimed against casual income.
4. **Income Losses from owning and maintaining race horses:** Loss from the business of owning and maintaining race horses cannot be set off against any income other than income from the business of owning and maintaining race horses.

**5. Loss from an exempted source cannot be set off against taxable Income:** If income from a particular source is exempt from tax, then loss from such source cannot be set off against any other income which is chargeable to tax. E.g., Agricultural income is exempt from tax; hence, if the taxpayer incurs loss from agricultural activity, then such loss cannot be adjusted against any other taxable income.

**6. Income Losses of specified Business:** Loss from business specified under section 35AD cannot be set off against any other income except income from specified business (section 35AD is applicable in respect of certain specified businesses like setting up a cold chain facility, setting up and operating warehousing facility for storage of agricultural produce, developing and building a housing projects, etc.)

**Income losses Intra-head Set of**

### Loss from business or profession

Any loss from business or profession (other than speculation business or loss from the activity of owning and maintaining race horses) can be set off against the income from any other business or profession including the income from speculation business or income from the activity of owning and maintaining race horses.

If any business has been discontinued during the year, the loss from such business can also be set-off from the income of other business or profession.

### Loss from speculation business

Such loss can be set-off only against the income from speculation business. It is not essential that the nature of the other speculation transaction must be the same. Speculative transactions in different commodities and in different markets are to be treated as one business. However, a loss from an illegal speculation business cannot be set-off against income from any lawful speculation. Similarly, where the assessee earns commission on speculative transactions, he is not entitled to set-off speculative loss against such commission because there is no element of speculation in the commission.

SET-OFF OF LOSS FROM ONE HEAD AGAINST INCOME FROM ANOTHER HEAD [SECTION 71]

After making intra-head adjustment (if any) the next step is to make inter-head adjustment. If in any year, the taxpayer has incurred loss under one head of income and is having income under other head of income, then he can adjust the loss from one head against income from other head, E.g., Loss under the head of house property to be adjusted against salary income.

A person may have various sources of income computed under different heads of income. Loss under one head of income is generally allowed to be set off against income under another head.

For instance, X has only one property, which is occupied by him and the loss is Rs 1.50 lakh. He derives salary of Rs 10 lakh during the year. Here, he can set off the loss of Rs 1.50 lakh against his salary income by making appropriate declarations to his employer, thereby making his net taxable income Rs 8.50 lakh.

The provision of Section 71 reads as under:

1. an assessee not having any income under the head “Capital gains” and having loss from income under other heads (excluding capital gains) can set off such loss against his income under any other head (other than “capital gains”);
2. loss under any head of income (other than “capital gains”) can be set off against income from any head of income, including “capital gains”;
3. loss under the head “capital gains” cannot be set off against income under any other head. It must be set off only against income from “capital gains”.
4. Loss under the head “Profits and gains of business or profession” cannot be set off against the head “income from Salaries”.

Where the assessee incurs any loss under the head income from house property it can be set off against the assessee’s any other income under other head during the previous years where such loss is not fully adjusted under other heads of income in the same assessment year, then the balance loss shall be allowed to be carried forward and set off in subsequent years subject to a limit of eight assessment years against income from house property.

Section 71(3A) Inter head adjustment of loss under the head House Property (i.e. adjustment of loss under the head House Property against Income under any other head in the same year) cannot exceed Rs 2, 00,000 for any assessment year. Remaining loss can be carried forward to be set off in future as per provisions of Section 71B. (There is no restriction of Rs. 2, 00,000 in section 71B). **[Inserted vide Finance Act, 2017 w.e.f. AY 2018-19]**

1. Loss incurred by an assessee from a source, income from which is exempt, cannot be set-off against income from a taxable source.

There are certain exceptions to the general rule that Loss under one head of income is allowed to be set off against income under another head.

1. Loss from speculative business cannot be set off against any other income. However, non-speculative business loss can be set off against income from speculative business. For Example: House property loss can be set-off against Speculative Incomes but speculation loss cannot be set off against House property)
2. Business loss cannot be set-off against salary income. (It can be set-off against other incomes)
3. Loss under the head Capital Gains (LTCL or STCL) cannot be set-off against any other head however Loss from other heads can be set-off against Capital Gains. For an instance, House Property loss can be set-off against CG but LTCL or STCL cannot be set off against HP, i.e., house property Income.
4. No loss can be set off against Casual income such as winnings from lotteries, crossword puzzles, race including horse race, card game, and any other game of any sort or from gambling or betting of any form or nature.
5. No expenses can be claimed against casual income.
6. Loss from the business of owning and maintaining race horses cannot be set off against any other income.
7. Loss from an exempted source cannot be set off (e.g. Share of loss of firm, agricultural income, cultivation expenses)

Loss from business specified under section 35AD cannot be set off against any other income (section 35AD is applicable in respect of certain specified businesses like setting up a cold chain facility, setting up and operating warehousing facility for storage of agricultural produce, developing and building housing projects, etc.)

It may be noted that before making inter-head adjustment, the taxpayer has to first make intra-head adjustment.

# CARRY-FORWARD OF LOSSES

Many times it may happen that after making intra-head and inter-head adjustments, still the loss remains unadjusted. Such unadjusted loss can be carried forward to next year for adjustment against subsequent year(s)’ income. Separate provisions have been framed under the Income-tax Law for carry forward of loss under different heads of income. Losses can be set-off against the income of following years provided that they have been suffered by assessee and determined in pursuance of a

return filed by the asessee. Further, carry forward of losses (other than loss from house property and unabsorbed depreciation) is permissible if the return of income for the year, in which loss is incurred, is filed in time. The late filing of return should not impact the status of carry forward of loss of previous years.

The following losses could be carried forward:

1. Loss in non-speculation business or profession.
2. Loss in speculation business.
3. Loss in transfer of capital assets [whether short-term or long-term].
4. Loss from activity of owning and maintaining of race horses.
5. Loss under the head ‘Income from House Property’.

However, losses suffered under the following heads are not allowed to be carried forward and set off:

* 1. Losses under the head ‘salaries’.
  2. Losses under the head ‘Income from other sources’ (excepting loss suffered from the activity of owning and maintaining race horses).

# (A) LOSS IN NON-SPECULATION BUSINESS [SECTION 72]

It shall be set-off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year.

From this it follows that the loss from non-speculation business or profession can be set-off against the income of the business in which it was suffered or any other business or profession either old or new including speculation business income or from any other head, such as house property, or other sources, if the income under this head forms part of the trading activities of the assessee. *[Western States Trading Co. (P) Ltd. v. C.I.T. (1971) 80 ITR 21* (SC)].

The loss can be set-off against the business profits of the year provided such profits are asessable to tax. If the profits are exempt from tax for any reason, no set-off can be made by the income-tax officer against such profits.

# Conditions for carry forward and set-off of business loss

1. The right of carry-forward and set-off is available to the same assessee who has sustained the loss. A holding company however, cannot claim to carry forward the losses, if any, incurred by its wholly owned subsidiary company. Exceptions to this rule are (a) cases of succession by inheritance [a loss incurred by the father in the course of carrying on his business can be carried forward and set-off by his son, if the son succeeds to the business of his father on account of the father’s death but not otherwise] (b) accumulated business loss of an amalgamating company under Section 72A (c) the share of loss of partnership taken over by one of its partners can also be set-off by the partner *[Dwarkadass Leeladhar v. CIT (1963) 47 ITR 619 (Ker.)]*

However, loss incurred by HUF cannot be carried forward and set-off after its partition against income of firm formed thereafter by certain coparceners *[Keshrichand Bhanabhai v. CIT(1951) 20ITR 201 (Bom.)].*

1. The loss can be carried forward to a maximum of eight consecutive assessment years immediately succeeding the assessment year for which the loss was first computed. In case of a business on which rehabilitation allowance has been allowed, the previous losses are allowed to be carried forward to the assessment year relevant to the previous year in which the business was so revived or re-established and are allowed to be set-off against the profits of that assessment year. Any balance of loss can be carried forward to the succeeding seven assessment years.

Where any unabsorbed depreciation or capital expenditure on scientific research has been brought forward along with business loss, the business loss shall first be set-off.

# Order of Set-off of losses

In case where profits are insufficient to absorb brought forward losses, current depreciation and current business losses, the same should be deducted in the following order:

1. Current scientific research expenditure [under Section 35(1)].
2. Current Depreciation [under Section 32(1)].
3. Brought forward business losses [under Section 72(1)].
4. Unabsorbed family planning promotion capital expenditure [under Section 36(1) (ix)].
5. Unabsorbed Depreciation [under Section 32(2)].

Unabsorbed scientific research expenditure [under Section 35(4)].

(B) LOSS IN SPECULATION BUSINESS [SECTION 73]

Where, for any assessment year, any loss computed in respect of a speculation business has not been wholly set-off against the profits of another speculation business, it shall be carried forward to the following assessment year and shall be set-off against the profits of any speculation business carried on by him and assessable for the assessment year.

# Speculative Business

Explanation to section 73 provides that where any part of the business of a company (other than a company whose gross total income consists mainly of income which is chargeable under the heads “Interest on securities”, “Income from house property”, “Capital gains” and “Income from other sources”, or a company the principal business of which is the business of trading in shares or banking or the granting of loans and advances) consists in the purchase and sale of shares of other companies, such company shall, for the purposes of this section, be deemed to be carrying on a Sub-section (5) of section 43 defines the term speculative transaction as a transaction in which a contract for purchase or sale of any commodity, including stocks and shares, is settled otherwise than by way of actual delivery. However, the proviso to sub-section (5) of section 43 exempts, *inter alia,* transaction in respect of trading in derivatives on a recognized stock exchange from its ambit.

# Carry forward of losses in speculative business

In case of speculation loss even if the particular speculation business in which there is loss is discontinued, this loss can be carried forward to be set-off in the succeeding year against the profits of any other speculation business.

This loss can be carried forward to a maximum of **four consecutive assessment years** immediately succeeding.

However, the loss from an illegal speculation business or loss incurred in speculation business in banned items can be neither set-off against income from any lawful speculation business nor can it be carried forward for being set-off in the subsequent year against income even from an illegal speculation business because the law assumes that any illegal business dies with all its losses in the same year *[CIT v. Kurji Jinabhai Kotecha (1977) 107 ITR 101* (SC)].

Where any unabsorbed depreciation or capital expenditure on scientific research has been brought forward along with speculation loss, the speculation loss shall first be set-off.

Sometimes there may be brought-forward speculation loss and current year’s non-speculation business loss. Now the problem arises whether they brought forward speculation loss should be adjusted first against the current year’s speculation income or current year’s non-speculative business loss should be set-off first against the current year’s speculative income. Accordingly to the administrative instructions the Assessing Officer may allow the assessee:

1. either to first set-off the speculation loss carried forward from an earlier year against the speculation profits of the current year and then to set-off the current year’s losses against other sources and against the remaining part, if any, of the current year’s speculation profits; or
2. to first set-off the current year’s losses from non-speculation business and other sources against the current year’s speculation profits and then to set-off the carried forward speculation losses of the earlier year against the remaining part, if any, of the current year’s speculation profits, whichever is advantageous to the assessee.

Where an assessee has brought forward speculative loss from his individual business and during the current year he receives some speculative gains from a firm in which he is a partner, the brought forward loss can be set-off against the speculative profits received from the firm. Similarly, where a speculation business is carried on by sole proprietor and after his death the business is continued by legal heirs forming partnership, the firm is entitled to carry forward and set-off such loss. *[C.I.T. v. Madhukant M. Mehta (1981) 132 ITR 159 (Guj.)].*

# (C) CARRY FORWARD AND SET OFF OF LOSSES BY SPECIFIED BUSINESS [SECTION 73A]

* 1. Any loss of any specified business in section 35AD shall not be set off except against profits and gains of any other specified business.
  2. Where for any assessment year any loss computed of the specified business has not been wholly set off, the loss not set off shall be carried forward to the following assessment year, and
* it shall be set off against the profits and gains of any specified business carried on by him and
* if the loss cannot be wholly set off, the amount of loss not set off shall be carried forward to the following assessment year and so on.

# (D) SET-OFF AND CARRY FORWARD OF CAPITAL LOSSES [SECTION 74]

Where, in respect of any assessment year, the net result of the computation under the head “Capital gains” is a loss to the assessee, it can be carried forward to the following assessment year. The short-term and long-term losses shall be separately carried forward. In case of short-term capital loss it can be set off against income, if any, under the head “Capital gains” (whether short-term or long-term) assessable for that assessment year in respect of any other capital asset. But in case of long-term capital loss, it can be set off only against long-term capital gain.

While losses on transfer of capital assets, whether short-term or long-term cannot be set off against any other income of the assessee under other heads of income i.e. heads other than ‘capital gains’ in the previous year in which such loss was incurred, it can be carried forward to be set off against capital gains if any during the next eight assessment years.

# (E) LOSS ON MAINTENANCE OF RACE HORSES [SECTION 74A]

Where an assessee who is the owner of race horses sustains a loss in the activity of owning and maintaining race horses, he can carry-forward and set-off such loss against his income (Prize money received on a race horse or race horses) from the activity of owning and maintaining race horses in subsequent years. This loss can be carried forward to a maximum of four assessment years immediately succeeding the assessment year for which the loss was first computed.

# (F) LOSS UNDER THE HEAD “INCOME FROM OTHER SOURCES”

Except the loss from the activity of owning and maintaining of race horses, the unabsorbed loss from no other activity under the above head is permitted to be carried forward and set off against income of subsequent years

**DEDUCTIONS TO BE MADE IN COMPUTING TOTAL INCOME**

**Deduction in respect of investments [Section 80C]**

Section 80C provides deduction to (a) an individual; (b) a Hindu undivided family for investments made in specified assets subject to a maximum amount of’ one lakh and fifty thousand rupees. The specified Investments include:

1. Premium paid on life Insurance policy taken on the life of an individual assessee or spouse and any child of such individual, and any member of the Hindu Undivided Family subject to a maximum of 10% of the actual sum assured, if insurance policy is taken on or after 1.04.2012. But if, insurance policy is taken on or before 31.03.2012, then maximum limit is 20% of actual sum assured. Further, if insurance policy is taken on or after 01.04.2013 and the policy is on the life of a person with disability or severe disability mentioned in Section 80U or a person suffering from a disease or aliment mentioned in Section 80DDB, then 15% of actual sum assured.

“actual sum assured” in relation to a life insurance policy shall mean the minimum amount assured under the policy on happening of the insured event at any time during the term of the policy, not taking into account.

* 1. the value of any premium agreed to be returned; or
  2. any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person.

1. Amounts paid to effect or to keep in force a contract for a non-cumulative deferred annuity not being an annuity plan referred to in clause (j) below on the life of: (i) in the case of an individual, the individual, spouse or any child of such individual and

However, such contract should not contain a provision for exercise of an option by the insured to receive cash payment in lieu of the payment of the annuity.

1. Deduction from the salary payable by or on behalf of the Government to any individual, in accordance with the conditions of his service, for securing to him a deferred annuity or making provision for his wife or children, to the extent of one-fifth of salary.
2. Contribution made by an individual to a Recognised provident fund; an approved superannuation fund; public provident fund; a ten-year account or a fifteen- year account under the Post Office Savings Bank (Cumulative Time Deposits) Rules, 1959
3. Purchase of notified securities or deposit scheme of the Central Government. Sukanya Samriddhi Account Scheme has been notified.
4. Subscription to other notified savings certificates defined in Section 2(c) of the Government Savings Certificates Act, 1959 [For this clause, National Savings Certificates (VIII) issue has been notified] and interest accured deemed to be reinvested also qualifies.
5. Contributions made by an individual or HUF, for participation in the Unit-Linked Insurance Plan, 1971, deemed to have been made under Section 19(8)(a) of the Unit Trust of India Act, 1963. [For this clause, Dhanaraksha-1989 plan of LIC Mutual Fund has been notified].
6. Contributions made in the name of an individual or HUF for participation in any notified Unit-Linked Insurance Plan of the LIC Mutual Fund.
7. Any contribution to effect or keep in force any notified annuity plan of the LIC or any other insurer.
8. Any subscription, to any units of any Mutual Fund or the Unit Trust of India under any notified plan formulated by the Central Government.
9. Any contribution to any pension fund set up by any Mutual Fund as notified by the Central Government.
10. Subscription to the notified deposit scheme of or contribution to any such pension fund set up by the National Housing Bank established under Section 3 of the National Housing Bank Act, 1987. [For this clause, Home Loan Account Scheme of National Housing Bank has been notified].
11. Only tuition fees (excluding any payment towards any development fees or donation or payment of similar nature), whether at the time of admission or thereafter, - (for full time education of any 2 children) to any university, college, school or other educational institution situated within India;
12. For purchase or construction of a residential house property, the income of which is chargeable to tax under the head “Income from House Property”, where such payments are made towards or by way of:
13. any instalment or part payment of the amount due towards the cost of the house property allotted or construction and sale of house property on ownership basis; or
14. E-payment of any loan taken for the purpose of purchase or construction of residential house property subject to some conditions.

Subscription to equity shares or debentures or units forming part of any eligible issue of capital i.e .issue made by a company registered in India or a public financial institution or an approved mutual. fund for the purpose of developing, maintaining and operating an infrastructure facility as defined in the explanation to Sub-section (4) of Section 80-IA or for generation, or for generation and distribution of power or for providing telecommunication services whether basic or cellular.

1. Fixed deposits for a minimum period of 5 years in any Scheduled Banks
2. As subscription to such bonds issued by the National Bank for Agriculture and Rural Development, as the Central Government may, by notification in the Official Gazette specify in this behalf.
3. In an account under the Senior Citizens Savings Scheme Rules, 2004.
4. As five year time deposit in an account under the Post Office Time Deposit Rules, 1981.

# Deduction for Contribution to Pension Fund [Section 80CCC]

Section 80CCC provides deduction with respect to amount deposited by an individual out of his taxable income to any annuity plan of the Life Insurance Corporation of India or any insurer approved by the IRDAI for receiving pension subject to a maximum of Rs. 1,50,000.

No deduction for this contribution will be available u/s 80C. The pension received by the assessee or his nominee is taxable in the year of receipt.

If the asseesee or his nominee surrenders the annuity before its maturity, then surrender value including bonus/ interest is taxable in the year of receipt.

**Deduction in respect of Contribution to Pension Scheme of Central Government [Section 80CCD]**

Section 80CCD provides deduction with respect to employers and employees contribution to pension scheme which is applicable to new employees of the Central Government employed on or after 01.01.2004 or being an individual employed by any other employer. It is mandatory for such employee to contribute 10% of salary every month towards the pension scheme. A matching contribution is required to be made by the employer also.

As per section 80CCD (1), employees contribution towards the notified pension scheme is deductible, but up to maximum of 10% of the salary of employee. As per section 80CCD (1B), an additional deduction of maximum Rs. 50,000 can also be availed. This deduction is out of the focus of section 80CCE. As per section 80CCD

(2) if the employer contributes towards the notified pension scheme, then deduction can be claimed but up to maximum of 10% of the salary of employee. This deduction is out of the focus of section 80CCE.

Salary here means basic salary plus dearness allowance (forming part) plus commission at a fixed percentage of turnovers achieved by the employee. Self-employed individuals can also contribute to NPS and in such a case, maximum limit of deduction is 20% of his gross total income. Any amount received from pension fund, shall be taxable as income of the recipient (assessee or his nominee) in the year in which such amount is received.

# Limit on Deductions under sections 80C, 80CCC and 80CCD (1) [Section 80CCE]

The aggregate amount of deductions under Sections 80C, 80CCC and 80CCD (1) shall not in any case, exceed Rs. 1, 50,000.

# Deduction in respect of Investment made under any Equity Saving Scheme [Section 80CCG]

Deduction under Section 80CCG is not allowed from AY 2018-19. However, an assessee who has claimed deduction under this section in AY 2017-18 or earlier years shall be allowed deduction under this section till AY 2019-20 (if otherwise eligible). Section 80CCG provided for deduction of 50% of the investment but up to maximum of Rs. 25,000, with respect to investment in listed equity shares or listed units of an equity oriented funds in accordance with a notified scheme to a resident individual, if his gross total income does not exceed

Rs. 12 Lakh. Further, the investment should be locked in for a period of 3 years from the date of acquisition in accordance with the above scheme. The assessee must satisfy any other condition as may be prescribed. The deduction shall be allowed for 3 consecutive assessment years beginning with assessment years in which listed equity shares or units were first acquired.

Note: The assessee should be a new retail investor as per the requirements of the notified scheme. Equity oriented fund shall have the same meaning assigned in section 10(38).

# Deduction in respect of Medical Insurance Premia [Section 80D]

Section 80D provides deduction to an individual or a Hindu undivided family towards medical insurance premium and preventive health check-up or contribution to *Central Government Health Scheme* (CGHS) or any scheme notified by the Central Government on the health of the assessee, his family, parents or members of the HUF.

Where the assessee is an individual, following expenditures are eligible for deduction:

1. the whole of the amount paid to effect or to keep in force an insurance on the health of the assessee or his family or “any contribution made to the *Central Government Health Scheme”* or such other scheme as may be notified by the Central Government in this behalf *or any payment made on account of preventive health check-up of the assessee or his family* and the sum does not exceed in the aggregate Rs. 25,000; and
2. the whole of the amount paid to effect or to keep in force an insurance on the health of the parent or parents of the assessee *or any payment made on account of preventive health check-up of the assessee or his family* as does not exceed in the aggregate Rs. 25,000.
3. the whole of the amount paid on account of medical expenditure incurred on the health of the assessee or any member of his family, who is senior citizen or very senior citizen and not having medical insurance, as does not exceed in the aggregate Rs. 50,000.
4. the whole of the amount paid on account of medical expenditure incurred on the health of any parent of the assessee who is senior citizen or very senior citizen and not having medical insurance, as does not exceed in the aggregate Rs. 50,000.

Explanation: family means the spouse and dependent children of the assessee.

Payment shall be made by any mode, including cash, in respect of any sum paid on account of preventive health check-up and by any mode other than cash in all cases other than preventive health check up.

Where the assessee is a Hindu undivided family, the expenditure eligible for deduction, shall be aggregate of the following namely:

1. whole of the amount paid to effect or to keep in force an insurance on the health of any member of that

Hindu undivided Family as does not exceed in the aggregate Rs. 25,000

1. whole of the amount paid on account of medical expenditure incurred on the health of any senior citizen or senior citizen member of the Hindu undivided family as does not exceed in the aggregate Rs. 50,000 and no amount has been paid to effect or to keep in force and insurance on the heath of such a person:

Provided Further that the aggregate of the sum specified under the clause (a) and clause (b) shall not exceed Rs. 50,000. In case of a senior citizen the amount shall not exceed Rs.50,000.

## Note:- where amount is paid in lump sum in the previous year to effect or to keep in force an insurance on the health of any person specified there in for more than a year, then, subject to the provisions of this section, deduction shall be allowed proportionately for each relevant previous year.

Explanation: For the purposes of this sub-section,

1. Senior citizen means an individual resident in India who is of the age of sixty years or more at any time during the relevant previous year.

**Deduction in respect of maintenance including medical treatment of a dependant who is a person with disability [Section 80DD]**

Section 80DD provides deduction to an individual or a Hindu undivided family, who is a resident in India,

1. for expenditure incurred during the previous year for the medical treatment (including nursing), training and rehabilitation of a dependent, being a person with disability; or (b) paid or deposited any amount under a scheme framed in this behalf by the Life Insurance Corporation or any other insurer or as specified in the section. The amount deduction shall be Rs. 75000 (flat deduction irrespective of the expenditure incurred or amount paid or deposited). However, in case of severe disability (disability of at least 80%) the deduction shall be Rs. 1, 25,000 flat.

The deduction under clause (b) shall be allowed only if the following conditions are fulfilled, namely: -

* 1. the scheme provides for payment of annuity or lump sum amount for the benefit of a dependant, being a person with disability, in the event of the death of the individual or the member of the Hindu undivided family in whose name subscription to the scheme has been made;
  2. the assessee nominates either the dependant, being a person with disability, or any other person or a trust to receive the payment on his behalf, for the benefit of the dependant, being a person with disability.

If the dependant, being a person with disability, predeceases the individual or the member of the Hindu undivided family, an amount equal to the amount paid or deposited under Clause (b) shall be deemed to be the income of the assessee of the previous year in which such amount is received by the assessee and shall accordingly be chargeable to tax as the income of that previous year.

The assessee, claiming a deduction under this section, shall furnish a copy of the certificate issued by the medical authority in the prescribed form and manner, along with the return of income under Section 139, in respect of the assessment year for which the deduction is claimed:

*For the purpose of this section*

1. *“dependent”* means -
   1. in the case of an individual, the spouse, children, parents, brothers and sisters of the individual or any of them;
   2. in the case of a Hindu undivided family, a member of the Hindu undivided family, dependant wholly or mainly on such individual or Hindu undivided family for his support and maintenance, and who has not claimed any deduction under Section 80U in computing his total income for the assessment year relating to the previous year;
2. *“disability”*shall have the meaning assigned to it in clause (i) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996);

**Deduction in respect of medical treatment of certain specified disease or ailment [Section 80DDB]**

Section 80DDB provides deduction to an individual or a Hindu undivided family, who is a resident in India for amount actually paid during the previous year, for the medical treatment of such disease or ailment as may be specified in the rules made in this behalf by the Board -

1. for himself or a dependent, in case the assessee is an individual; or
2. for any member of a Hindu undivided family, in case the assessee is a Hindu undivided family, subject to a maximum of Rs. 40,000 (in case of senior citizen Rs. 1,00,000)

Deduction is allowed only when a certificate in Form No. 10-I (issued by neurologist, oncologist, urologist, haematologist, immunologist or any such specialist as may be specified working in a Government Hospital) is furnished.

Provided further that the 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 in Clause (a) or Clause (b).

For the purposes of this section, “dependent” means -

1. in the case of an individual, the spouse, children, parents, brothers and sisters of the individual, dependant wholly or mainly on such individual for support and maintenance;
2. in the case of a Hindu undivided family, any member of the Hindu undivided family, dependant wholly or mainly on Hindu undivided family for support and maintenance;

# Deduction in respect of repayment of loan taken for Higher Education [Section 80E]

Section 80E provides deduction to an individual for amount actually paid during the previous year out of his income chargeable to tax by way of an interest on loan, taken by him from any financial institution or any approved charitable institution for the purpose of pursuing higher education of self or any of the relative (i.e. spouse, children of the assessee or student for whom the individual is the legal guardian).The deduction will be available in computing the total income in respect of initial assessment year and the seven assessment years immediately succeeding the initial assessment year or until the interest thereon is paid by such individual in full, whichever is earlier. The expression “initial assessment year” means the assessment year relevant to the previous year, in which the assessee starts paying the interest on the loan.

For the purposes of this section, the expression “higher education” is being defined to mean any course of study pursued after passing the Senior Secondary Examination or its equivalent from any school, board or university recognised by the Central Government or State Government or local authority or by any other authority authorised by the Central Government or State Government or local authority to do so.

The expression “financial institution” is being defined to mean a banking company to which the “Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in Section 51 of the Act) or any other financial institution which the Central Government may, by notification in the Official Gazette, specify in this behalf.

The expression “approved charitable institution” is being defined to mean an institution specified in, or as the case may be, an institution established for charitable purposes and notified by the Central Government under Section 10(23C) or an institution referred to in Section 80G(2)(a).

# Deduction in respect of interest on loan taken for Residential House Property [section 80EE]

Section 80EE provides deduction to an individual for interest payable on loan taken by him from any financial institution for the purpose of acquisition of a residential house property for the assessment year beginning on 1st day of April, 2017 and subsequent assessment year, subject to maximum of Rs. 50,000.

The deduction under section shall be subject to the following conditions, namely

1. the loan has been sanctioned by the financial institution including housing finance company during the period beginning on the 1st day of April, 2016 and ending on the 31st day of March, 2017;
2. the amount of loan sanctioned for acquisition of the residential house property does not exceed 35 lakh rupees;
3. the value of the residential house property does not exceed 50 lakh rupees;
4. the assessee does not own any residential house property on the date of sanction of the loan.

Where a deduction under this section is allowed for any interest, deduction shall not be allowed in respect of such interest under any other provisions of the Act for the same or any other assessment year. Therefore, this deduction is other than the deduction u/s 24(b) under the head “Income from house property”. If in case, the amount of interest exceeds Rs. 50,000 then the individual can claim the balance deduction u/s 24(b), if relevant conditions are satisfied.

For the purposes of this section,

* 1. “financial institution” means a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies including any bank or banking institution referred to in section 51 of that Act or a housing finance company;
  2. “housing finance company” means a public company formed or registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes.

# Deduction in respect of donations to certain funds, charitable institutions, etc. [Section 80G]

Section 80G provides deduction to all assessee’s for donations to specified organizations or institutions or funds. However, any donation of any sum exceeding Rs. 2,000 shall not be allowed as deduction under the section unless such sum is paid by any mode other than cash. Further, where an assessee has claimed and has been allowed any deduction under this section in respect of any amount of donation, the same amount will not again qualify for deduction under any other provision of the Act for the same or any other assessment year. A donation in kind is not eligible as per the Supreme Court Ruling (Vijaipat Singhania v. CIT).

The quantum of deduction under this section is the aggregate of deduction permissible under clauses (A), (B),

1. & (D) mentioned below. Together for (C) and (D) below, there is a qualifying limit which is 10% of adjusted Gross Total Income.

Adjusted Gross total income means the “Gross Total Income” as reduced by:

* 1. Long-term Capital gains, if any which have been included in the “Gross Total Income”.
  2. All deductions permissible under Sections 80C to 80U excepting deduction under Section 80G.
  3. Exempted Income.
  4. Income of NRIs and Foreign Companies under Sections 115A, 115AB, 115AC, 115ACA or 115AD.

### 100% Deduction without any qualifying limit:

* 1. National Defense fund.
  2. Prime Minister’s National relief fund.
  3. Prime Minister’s Earthquake relief fund.
  4. Africa fund.
  5. National Trust for welfare of persons with autism, cerebral palsy, mental retardation and multiple disabilities.
  6. National cultural fund set up by the Central Government.

The Chief Minister’s relief fund or the lieutenant Governor’s relief fund.

* 1. National Illness Assistance fund.
  2. The Andhra Pradesh Chief Minister’s Cyclone Relief Fund, 1996.
  3. The Army/Air force Central welfare fund or the Indian Naval Benevolent fund.
  4. Any fund set up by a State Government to provide medical relief to poors.
  5. The National/State Blood transfusion Council.
  6. Zila Saksharta Samiti constituted in any district.
  7. Any fund set up by the State Government of Gujarat, exclusively for providing relief to the victims of earthquake in Gujarat.
  8. Maharashtra Chief Minister’s Earthquake Relief Fund.
  9. University/Educational Institute of National Eminence approved by the prescribed authority.
  10. National foundation for communal harmony.
  11. Fund for technology development and application, set up by the Central Government.
  12. National sports fund set up by the Central Government.
  13. National Children’s Fund.
  14. the Swachh Bharat Kosh, set up by the Central Government, other than the sum spent by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013 (18 of 2013);
  15. the Clean Ganga Fund, set up by the Central Government, whereas such assessee is a resident and such sum is other than the sum spent by the assessee in pursuance of Corporate Social Responsibility under sub-section (5) of section 135 of the Companies Act, 2013
  16. the National Fund for Control of Drug Abuse constituted under section 7A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);

### 50% Deduction without any qualifying limit:

* 1. Jawaharlal Nehru Memorial Fund.
  2. Indira Gandhi Memorial Trust.
  3. Rajiv Gandhi Foundation.
  4. Prime Minister’s Drought Relief Fund.

### 100% Deduction subject to qualifying limit:

* 1. Any sum to Government or any approved local authority, institution or association to be utilized for promoting family planning.
  2. Any sum paid by the assessee, being a company, in the previous year as donation to Indian Olympic

Association or to any other association established in India and notified by the Central Government for:

* + 1. Development of infrastructure for sports and games or
    2. Sponsorship of sports and games in India.

### 50% Deduction subject to qualifying limit:

* 1. Donation to Government or any approved Local Authority, Institution or Association to be utilized for any charitable purpose other than promoting family planning.
  2. Any other Fund or Institution, which satisfies the conditions of Section 80G (5).
  3. Notified Temple, Mosque, Gurudwara, Church or any other place notified by the Central Government to be of historic, as chorological or artistic importance, for renovation or repair of such place.
  4. Any corporation established by the Central or State Government specified under Section 10(26BB) for promoting interests of the members of a minority community.
  5. Any authority constituted in India by or under any law for satisfying the need for housing accommodation or for the purpose of planning development or improvement of cities, towns and villages or for both.

# Deduction in respect of Rent Paid [Section 80GG]

Section 80GG provides deduction to an individual for rent paid if in case the individual does not receive HRA exempt u/s 10(13A) or rent free accommodation from his employer. The accommodation should be occupied by the assessee for the purpose of his own residence. Further, the individual/spouse/minor child/HUF of which he or she is member does not own a residential accommodation at a place where the individual resides performs the duties of his office or employment or carries on his or her business or profession. For the purpose of this section, the individual will give declaration in Form 10BA. The amount of deduction admissible under this Section is lower of:

* Actual rent paid less 10% of ‘Adjusted Total Income’.
* 25% of such ‘Adjusted Total Income’.
* Amount calculated at Rs. 5,000 p.m.

Where Adjusted Total Income means the Gross total income as reduced by long term capital gain if included in the gross total income and income referred to in section 115A to 115D and the amount of deduction under section 80C other than deduction under this section.

**Deduction in respect of certain donations for Scientific Research or Rural Development [Section 80GGA]**

Section 80GGA provides 100 % deduction to any assessee (other than an assessee whose gross total income includes income chargeable under the head “profits and gains of business or profession”) in respect of the following payments/donations:

1. Sums paid to a research association which has, as its object the undertaking of scientific research, or to a university, college or other institution to be used for scientific research where such association, university, college or institution has been approved by the prescribed authority for the purpose of Section 35(1)(ii).
2. any sum paid by the assessee in the previous year to a research association which has as its object the undertaking of research in social science or statistical research or to a University or college or other institution to be used for social science or statistical research where such such association or university college or institution is for the time being approved by the prescribed authority for the purpose of Section 35(1)(iii).
3. Sums paid to an approved association or institution which has as its object the undertaking of any programme of rural development, to be used for the purposes of carrying out any programme of rural development approved for the purposes of Section 35CCA provided the assessee furnishes the certificate referred to in Section 35CCA(2).
4. Sums paid to an approved association or institution which has as its object the undertaking of any programme of rural development provided the assessee furnishes a certificate referred to in Section 35CCA(2A).
5. any sum paid by the assessee in the previous year to a public sector company or a local authority or an association or institution approved by the National Committee for carrying out any eligible project or scheme, provided the assessee furnishes a certificate referred to in Section 35AC(2)(a).
6. For the purposes of this clause, ‘National Committee’ means the committee constituted by the Central Government from amongst persons of eminence in public life, in accordance with the rules made under Income-tax Act, 1961 and “eligible project or scheme” means such project or scheme for promoting the social and economic welfare of, or the uplift of, the public as may be notified by Central Government on the recommendations of the National Committee.
7. Sums paid before April 1, 2002 to an approved association or institution which has as its object the undertaking of any programme of conservation of natural resources or afforestation to be used for carrying out any programme of conservation of natural resources or of afforestation approved under Section 35CCB(2).
8. Sums paid to the National Fund for Rural Development set up and notified by the Central Government for the purpose of carrying out rural development. This section also provides that where deduction under this section is claimed and allowed, deduction will not be allowed in respect of the same payment under any other provision of the Act for the same or any other assessment year.

i) any sum paid by the assessee in the previous year to the National Urban Poverty Eradication Fund set up and notified by the Central Government.

No deduction shall be allowed under this section in respect of any sum exceeding ten thousand rupees unless such sum is paid by any mode other than cash.

Section 80GGB provides 100 % deduction for any sum contributed by an Indian Company in the previous year to any political party or to an electoral trust while computing its total income by a mode other than cash.

**Deduction in respect of contributions given by any person to Political Parties or an Electoral Trust [Section 80GGC]**

Section 80GGC provides 100 % deduction for any sum contributed by an assessee being any person to a political party or an electoral trust except local authority and every artificial juridical person wholly or partly funded by the Government while computing its total income by a mode other than cash.

**Deduction in respect of profits and gains from industrial undertakings or enterprise engaged in infrastructure development [Section 80-IA]**

Section 80IA provides a deduction to an assessee in respect of profits and gains derived from any business of:

1. ***Infrastructure facility****:* The enterprise is carrying on the business of operating any infrastructure facility which fulfills the following conditions:
   1. It is owned by an Indian company or consortium of companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act registered in India;
   2. It enters into an agreement with the Central or State Government or a local authority or any other statutory body for (i) developing, (ii) operating and maintaining, (iii) developing, operating and maintaining, a new infrastructure facility.
   3. It transfer such infrastructure facility after the period stipulated in the agreement to such Government or authority or body concerned;
   4. It starts operating and maintaining the infrastructure facility on or after 1st April, 1995.

It has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for developing a special economic zone and maintaining a new infrastructure facility.

Where an infrastructure facility is transferred after 31.3.1999 by an enterprise which has developed it to another enterprise for operating and maintaining it on its behalf, in accordance with the agreement with person mentioned in (b), the transferee will get the benefit of deduction for the unexpired period.

Explanation - For the purposes of this clause, “infrastructure facility” means:

1. a road including toll road, a bridge or a rail system;
2. a highway project including housing or other activities being an internal part of the highway project;
3. a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;
4. a port, airport, inland waterway or inland port.

W.e.f. Assessment year 2001-02, infrastructure facility shall also include water treatment system and solid waste management system.

The benefit of deduction to housing and other development activities which are an internal part of a highway project shall be allowed if the following conditions are satisfied:

* + 1. Such profits are transferred to a special reserve account.
    2. Such profits are utilised for highway project, excluding housing and other activities, before the expiry of three years following the year in which the amount was transferred to the reserve account.

The amount remaining unutilised shall be chargeable to tax as income of the year in which it was transferred to the reserve account.

1. **Telecommunication services**:Any undertaking which has started or starts providing telecommunication services whether basic or cellular including radio-paging, domestic satellite service or network of trunking and electronic data interchange services at any time after 31.3.1995 but before 31.3.2005. Domestic Satellite Service means a satellite owned and operated by an Indian Company for providing telecommunication services.
2. ***Industrial park****:* Any undertaking which develops a special economic zone and operates an industrial park (notified by the Central Government) after 31.3.1997 but before 1.4.2006 and in case of SEZ, it should begin on or after 1.4.2001 but before 1.4.2006.

Where an undertaking develops industrial park after 31.3.1999 and transfers the operations and maintenance of it to another undertaking, the transferee will get the benefit of deduction for the unexpired period. However, Investments made to develop industrial park has been extended from 31.3.2006 to 31.3.2011.

1. **Generation and distribution of power:** An undertaking which:
   1. is set-up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on the 1st day of April, 1993 and ending on the 31st day of March 2017.
   2. starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on the 1st day of April, 1999 and ending on the 31st day of March 2017.
   3. undertakes substantial renovation and modernization of the existing network of transmission or distribution lines at any time during the period beginning on the 1st day of April, 2004 and ending on the 31st day of March, 2017.

Provided that the deduction under this section to an industrial undertaking under sub-clause (b) shall be allowed only in relation to the profits derived from laying of such network of new lines for transmission or distribution.

## **Quantum and period of deduction:**

1. First five assessment years - 100% of such profits.
2. Next five assessment years - In case of companies 30% of such profits. In case of other assessees 25% of such profits.

The deduction under (4) above shall be allowed if the following conditions are satisfied:

1. It is not formed by the splitting up, or the reconstruction, of a business already in existence;
2. it is not formed by the transfer to a new business of machinery or plant (exceeding 20%) previously used for any purpose.

## **Re-construction or revival of a power generating plant**

* 1. Such undertaking must be owned by an Indian Company, formed before 30.11.2005 with majority equity participation by public sector companies for the purpose of enforcing the security interest of the lenders to the company owning the power generation plant.
     1. Such Indian Company is notified before 31.12.2005 by the Central Government for the purposes of this clause and begins to generate or transmit or distribute power before 31.3.2011 (w.e.f 1st April 2008 by Finance Act 2009.

**Option to claim deduction:**The assessee, at his option, can claim deduction in any ten consecutive assessment years out of fifteen years beginning from the year in which it begins operations.

If the assessee is engaged in infrastructure facility mentioned in (b) above he can claim deduction in any ten consecutive assessment years out of twenty years instead of out of fifteen years.

**Computation of Income for Deduction*:*** For the purpose of computing the deduction at the specified percentage for the assessment year immediately succeeding the initial assessment year and any subsequent assessment year, the profits and gains will be computed as if such business were the only source of income of the assessee in all the assessment years for which the deduction at the specified percentage under this section is available.

It means if the loss or any allowance (e.g. depreciation allowance) of such business is set-off against any other income in an earlier assessment year to find out the income of the current year for deduction under this section the loss so set-off shall be deducted from the current year’s income and on the balance so arrived, the deduction shall be computed.

Where goods held for the purpose of eligible business are transferred to any other business of the assessee, or vice-versa, such transfer is required to be done at the market value of such goods. If such goods are not transferred at market value on the date of transfer, then the profits and gains of such eligible business shall be recomputed as if transfer has been made at the market value of such goods, as on that date.

If in the opinion of the Assessing Officer, such recomputation presents exceptional difficulties, the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit.

Market Value in relation to any goods or services, means

1. the price that such goods or services would ordinarily fetch in the open market; or
2. the arm’s length price as defined in clause (ii) of section 92F, where the transfer of such goods or services is a specified domestic transaction referred to in section 92BA.

Where deduction to an industrial undertaking or an enterprise for profit and gains is allowed under this section for any assessment year, deduction to that extent shall not be allowed under any other provision of chapter VIA under the heading deductions in respect of certain incomes.

The deduction shall not exceed the profit and gains of such eligible business of industrial undertaking or enterprise. If the profit shown for the eligible business under this section, appears to the assessing officer as more than the ordinary profits which might be expected to arise in such eligible business, owing to some close connection with a person with whom business transactions are so arranged to yield higher profit, the assessing officer may take the amount of profits as may be reasonably derived there from.

Where any undertaking of an Indian company which is entitled to deduction under this section is transferred, before the expiry of the period of tax holiday, to another Indian company in a scheme of amalgamation or demerger, then the deduction will be available as follows:

1. No deduction shall be admissible under this section to the amalgamating company/demerged company for the previous year in which amalgamation/ demerger takes place.
2. The amalgamated company or resulting company will be entitled to claim deduction under this section for the unexpired period of tax holiday (including for the previous year in which the amalgamation/ demerger takes place). The provisions of the section shall, as far as may be, apply to the amalgamated or resulting company as they would have applied to the amalgamating or demerged company as if the amalgamation or demerger had not taken place.

Provided that in a case where an undertaking develops an industrial park on or after the 1st day of April, 1999 or a special economic zone on or after the 1st day of April, 2001 and transfers the operation and maintenance of such industrial park or such special economic zone, as the case may be, to another undertaking (hereafter in this section referred to as the transferee undertaking), the deduction under Sub-section (1) shall be allowed to such transferee undertaking for the remaining period in the ten consecutive assessment years as if the operation and maintenance were not so transferred to the transferee undertaking.

The provisions contained in this section shall not apply to any special economic notified on or after the 1st day of April, 2005 in accordance with the scheme referred to in sub-clause (iii) of clause (c) of Sub-section (4).

**Deduction in respect of profit and gains by an undertaking or an enterprise engaged in development of Special Economic Zone [Section 80-IAB]**

Section 80IB provides a deduction to an assessee which develops Special Economic Zone (SEZ), notified on or after 1.4.2005 under the Special Economic Zones Act, 2005 equal to 100% of the profit and gains derived from such business for 10 consecutive assessment years, out of 15 years beginning from the year in which a SEZ has been notified by the central government, at option of the assessee. Such assesse would not be eligible to claim deduction u/s 80-IA.

**Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings [Section 80-IB]**

Section 80IB provides deduction to an assessee whose gross total income includes profits and gains derived from the following business. The deduction equal to such percentage and for such number of assessment years as given below:

Deduction under Section 80-IB is available to different industrial undertakings as follows:

1. business of an industrial undertaking
2. operation of ship
3. Hotels
4. Scientific research
5. production of mineral oil
6. Developing and building housing projects.
7. Cold Chain facility for agriculture produce..
8. Multiplex theatres.
9. Convention Centre
10. Hospital in Rural area.
11. Hospital anywhere in India.

An industrial undertaking should be mainly engaged in the business of construction of ships or in the manufacture or processing of goods or in mining. Construction of dam, bridge, road or building cannot be characterized as manufacture or production of articles.

The Industrial undertaking claiming deduction under this section, however need to fulfill the following conditions:

* 1. It is not formed by splitting up, or the reconstruction, of a business already in existence. This condition is not violated, where the business is re-established, reconstructed or revived by the same assessee after the business of any industrial undertaking carried on by him in India is discontinued due to extensive damage to or destruction of, any building, machinery, plant or furniture owned by the assessee (and used for the purpose of such business) as a direct result of (i) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature, or (ii) riot or civil disturbance, or (iii) accidental fire or explosion, or (iv) action by any enemy or action taken in combating an enemy (whether with or without a declaration of war).
  2. It is not formed by the transfer to a new business of machinery or plant previously used for any purpose. However, plant and machinery, already used for any purpose, can be transferred to the new industrial undertaking, provided value of such plant and machinery does not exceed 20% of the total value of plant and machinery of the new industrial undertaking.
  3. It manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India. However, a small scale industrial undertaking or an industrial undertaking located in an industrially backward state specified in the Eighth Schedule shall be eligible for the deductions, even if it manufactures or produces any article/thing which is specified in the Eleventh Schedule.

The undertaking employs ten or more workers in a manufacturing process carried on with the aid of power or employs twenty or more workers in a manufacturing process carried on without the aid of power.

I. The amount of deduction to industrial undertaking shall be as follows:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Sl.**  **No.** | **Industrial Undertaking** | **Period within which production should start** | | **Period of deduction (commencing from initial assessment year)** | **%age of profit eligible for deduction** |
| (1) | (2) | (3) | | (4) | (5) |
| (i) | Any industrial undertaking  Owned by a company  Owned by a co-operative society | 1.4.1991 to  31.3.1995\* (or  any further notified  period) | | Ten consecutive assessment year  Twelve consecutive assessment year | 30%  25% |
|  | Any other assessee |  | | Ten consecutive assessment year | 25% |
| \*However where it is an industrial undertaking being a small scale industrial undertaking, it begins to manufacture or produce article or things or to operate its cold storage plant (other than those specified below) the period shall be construed as the period beginning on 1.4.95 and ending on 31.3.2002. | | | | | |
| (ii) Industrial undertaking set up in an industrial backward state specified in Eighth Schedule\* | | | | | |
| Owned by a company | | 1.4.1993 to | | First five years | 100% |
|  | | 31.3.2002  (extended to | | Next five years | 30% |
| Owned by a co-operative society | | 31.3.2012 only in | | First five years | 100% |
|  | | J&K) | | Next seven years | 25% |
| Any other assessee | |  | | First five years | 100% |
|  | |  | | Next five years | 25% |
| \*However in case of notified industries in the North-Eastern Region, the amount of deduction shall be hundred percent of profits for a period of ten assessment years. | | | | | |
| (iii) Industrial undertaking located in notified industrially backward districts of Category A | | | | | |
| Owned by a company | | 1.10.1994 | To | First five years | 100% |
|  | | 31.3.2004 |  | Next five years | 30% |
| Owned by a co-operative society | |  |  | First five years | 100% |
|  | |  |  | Next seven years | 25% |
| Any other assessee | |  |  | First five years | 100% |
|  | |  |  | Next five years | 25% |
| (iv) Industrial undertaking located in notified industrially backward districts of Category B | | | | | |
| Owned by a company | | 1.10.1994 | To | First three years | 100% |
|  | | 31.3.2004 |  | Next five years | 30% |
| Owned by a co-operative society | |  |  | First three years | 100% |
|  | |  |  | Next nine years | 25% |
| Any other assessee | |  |  | First three years | 100% |
|  | |  |  | Next five years | 25% |

1. *Deduction under this section shall also be available in the case of the business of a ship* @ 30% of the *profits and gains derived from such ship for a period of ten consecutive assessment years including the initial assessment year.*

However, to claim deduction it is required that the ship -

* 1. is owned by an Indian company and is wholly used for the purposes of the business carried on by it.
  2. was not, previous to the date of its acquisition by the Indian company, owned or used in Indian territorial waters by a person resident in India.
  3. is brought into use by the Indian company at any time during the period beginning on the 1.4.1991 and ending on 31.3.1995.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Sl.**  **No.** | **Type of Hotel** | **Period within which functioning should start** | **Period of deduction (commencing from initial assessment year)** | **Profit eligible for deduction** |
| (i) | Hotel located in a hilly area or a rural area or a place of pilgrimage or any other place notified by Central Government having regard to the need for development of infrastructure for tourism in any place and other relevant consideration. | 1.4.1990 to  31.3.1994 | Ten consecutive years | 50% |
| (ii) | Hotel located in a hilly area or a rural area or a place of pilgrimage or any other place notified by Central Government. However, such hotel should not be located within Municipal Jurisdiction of Calcutta, Chennai, Delhi and Mumbai. Such hotel should however be approved by the prescribed authority. | 1.4.1997 to  31.3.2001 | Ten consecutive years | 50% |
| (iii) | Hotel located in any place other than those mentioned in (i) above | 1.4.1991 to  31.3.1995 | Ten consecutive years | 30% |
| (iv) | Hotel located in any other place other than those mentioned in (i) above. However, such hotel should not be located within Municipal Jurisdiction of Calcutta, Chennai, Delhi and Mumbai. | 1.4.1997 to  31.3.2001 | Ten consecutive years | 30% |

However, the following conditions need to be satisfied by a hotel in order to claim deduction:

1. The business of the hotel is not formed by the splitting up; or the reconstruction of a business already in existence or by the transfer to a new business of a building previously used as a hotel or of any machinery or plant previously used for any purpose.
2. The business of hotel is owned and carried on by a company registered in India with a paid up capital of not less than Rs. 5 lakhs.
3. The hotel is for the time being approved by the prescribed authority. Any hotel approved before 1.4.99 shall be deemed to have been approved for the purpose of this section.
4. *Deduction in the case of any company carrying on scientific research and development* is *available @ 100% of the profits and gains of such business for a period of five assessment years beginning from the initial assessment year. However, to claim deduction under this section, it is required that such a company -*
   1. is registered in India.
   2. has the main object of scientific and industrial research and development.
   3. is for the time being approved by the prescribed authority at any time before 1.4.1999.

Further, the amount of deduction in the case of any company carrying on scientific research and development shall be hundred per cent of the profits and gains of such business for a period of ten consecutive assessment years, beginning from the initial assessment year, if such company -

1. is registered in India;
2. has its main object the scientific and industrial research and development;
3. is for the time being approved by the prescribed authority at any time after the 31st day of

March, 2000, but before the 1st day of April, 2007;

1. Fulfills such other conditions as may be prescribed.

### Industrial undertaking producing or refining mineral oil in the North Eastern Region or in any part

***of India:***

The amount of deduction to an undertaking shall be 100% of the profits for a period of seven consecutive assessment years, including the initial assessment year, if such undertaking fulfils any of the following conditions:

* 1. is located in North-Eastern Region and has begun or begins commercial production of mineral oil before the 1st day of April, 1997;
  2. is located in any part of India and has begun or begins commercial production of mineral oil on or after the 1st day of April, 1997;

Provided that the provisions of this clause shall not apply to blocks licensed under a contract awarded after the 31st day of March, 2011 under the New Exploration Licencing Policy announced by the Government of India vide Resolution No. O-19018/22/95-ONG.DO.VL, dated the 10th February, 1999 or in pursuance of any law for the time being in force or by the Central or a State Government in any other manner;

* 1. is engaged in refining of mineral oil and begins such refining on or after the 1st day of October, 1998 but not later than 31st day of March 2012..(w.e.f Assessment year 2001-02) (the words “but not later than the 31st day of March, 2012” shall be inserted w.e.f 1st April 2009);
  2. is engaged in commercial production of natural gas in blocks licensed under the VIII Round of bidding for award of exploration contracts (hereafter referred to as “NELP-VIII”) under the New Exploration Licensing Policy announced by the Government of India vide Resolution No. O-19018/22/95-ONG. DO.VL dated 10th February, 1999 and begins commercial production of natural gas on or after the 1st day of April, 2009.
  3. is engaged in commercial production of natural gas in blocks licensed under the IV round of bidding for award of exploration contracts for Coal Bed Methane blocks and begins commercial production of natural gas on or after the 1st day of April 2009.

*Explanation:* All blocks licensed under a single contract, which has been awarded under the New Exploration Licensing Policy announced by the Government of India vide Resolution No. O-19018/22/95-ONG.DO.VL, dated 10th February, 1999 or has been awarded in pursuance of any law for the time being in force or has been awarded by Central or a State Government in any other manner, shall be treated as a single undertaking.

1. ***Deduction of 100% of the profits of an undertaking engaged in developing and building housing projects* approved before the 31st day of March, 2008 by a local authority provided that:**

a. such undertaking has commenced or commences development and construction of the housing project on or after 1st day of October, 1998 and completes such construction –

1. in case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before 31st day of March, 2008;
2. in a case where a housing project has been or, is approved by the local authority on or after the 1st day of April, 2004 but not later than the 31st March 2005, within four years from the end of financial year in which the housing project is approved by the local authority.
3. In a case where a housing project has been approved by the local authority on or after the 1st day of April, 2005, within five years from the end of the financial year in which the housing project is approved by the local authority.
4. the project is of the size of a plot of land which has minimum area of one acre;
5. the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the cities of Delhi or Mumbai or within twenty-five kilometers from the municipal limits of these cities and one thousand and five hundred square feet at any other place; and
6. the build-up area of the shops and other commercial establishments included in the housing project does not exceed three of the aggregate built-up area of the housing project or five thousand square feet whichever is higher.
7. not more than one residential unit in the housing project is allotted to any person not being an individual; and
8. in a case where a residential unit in the housing project is allotted to a person being an individual, no other residential unit in such housing project is allotted to any of the following persons,
   1. the spouse or the minor children of such individual,
   2. the Hindu undivided family in which such individual is the karta,
   3. any person representing such individual, the spouse or the minor children of such individual or the Hindu undivided family in which such individual is the karta.

### Hundred percent of the profits and gains derived by an industrial undertaking from the business of

***setting up and operating a cold chain facility* for agricultural produce shall be deductible:**

|  |  |  |  |
| --- | --- | --- | --- |
| **Industrial Undertaking** | **Period within which production should start** | **Period of deduction (commencing from initial assessment year)** | **%age of profit eligible for deduction** |
| For a company | 1.4.1999 to 31.3.2003 | First five years | 100% |
| Next five years | 30% |
| For a co-operative society | First five years | 100% |
| Next seven years | 25% |
| Any other assessee | First five years | 100% |
| Next five years | 25% |

Where any undertaking of an Indian company which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another Indian company in a scheme of amalgamation or demerger -

1. no deduction shall be admissible under this section to the amalgamating or the demerged company for the previous year in which the amalgamation or the demerger takes place; and
2. the provisions of this section shall as far as may be apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.

Further, the amount of deduction in a case of an undertaking deriving profit from the integrated business of handling, storage and transportation of food grains, shall be hundred per cent of the profits and gains derived from such undertaking for five assessment years beginning with the initial assessment year and thereafter, twenty-five per cent (or thirty per cent, where the assessee is a company) of the profits and gains derived from the operation of such business in a manner that the total period of deduction does not exceed ten consecutive assessment years and subject to fulfillment of the condition that it begins to operate such business on or after the 1st day of April, 2001.

In the case of an undertaking engaged in the integrated business of handling, storage and transportation of food grains, means the assessment year relevant to the previous year in which the undertaking begins such business.

### Deduction in the case of any multiplex theatre

Fifty per cent of the profits and gains derived, from the business of building, owning and operating a multiplex theatre, for a period of five consecutive years beginning from the initial assessment year in any place. Multiplex theatre should not be located at a place within the municipal jurisdiction of Kolkata, Chennai, Delhi or Mumbai. Such multiplex theatre should be constructed at any time during the period beginning on the 1st day of April, 2002 and ending on the 31st day of March, 2005. The business should not be formed by splitting up or the reconstruction, of a business or any plant and machinery previously used for any purpose, and assessee should furnish along with the return of income, the report of an audit in Form No. 10CCBA.

## **Deduction in the case of any convention centre:**

## Fifty per cent of the profits and gains derived, by the assessee from the business of building, owning and operating a convention centre, for a period of five consecutive years beginning form the initial assessment year. Such convention centre is constructed at any time during the period beginning on the 1st day of April, 2002 and ending on the 31st day of March, 2005. The business should not be formed by splitting up or the re-construction of a business or any plant and machinery previously used for any purpose.

1. **100% deduction in case of an undertaking deriving profits from the business of operating and maintaining a hospital in a rural area**for a period of five consecutive assessment years beginning with the initial assessment year if (w.e.f. A.Y. 2005-06) -
   1. such hospital is constructed at any time during the period from 1.10.2004 to 31.3.2008.
   2. the hospital has at least one hundred beds for patients.
   3. construction of hospital is in accordance with the regulations, for the time being in force, of the local authority; and
   4. the assessee furnishes along with the return of income the report of audit in such form and containing such particulars as may be prescribed and duly signed and verified by a chartered accountant that the deduction has been correctly claimed.
2. **The amount of deduction in the case of an undertaking deriving profits from the business of operating and maintaining a hospital located anywhere in India***,* other than the excluded area, shall be hundred per cent of the profits and gains derived from such business for a period of five consecutive assessment years, beginning with the initial assessment year, if -
   1. the hospital is constructed and has started or starts functioning at any time during the period beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2013;

(ii) the hospital has at least one hundred beds for patients;

* 1. the construction of the hospital is in accordance with the regulations or bye-laws of the local authority; and
  2. the assessee furnishes along with the return of income, a report of audit in such form and containing such particulars, as may be prescribed, and duly signed and verified by an accountant, as defined in the Explanation to sub-section (2) of section 288, certifying that the deduction has been correctly claimed.

**Deduction in respect of eligible Start-Up [Section 80IAC]**

Section 80IAC provides a deduction to an assessee who is a Company or LLP incorporated after 31st March, 2016 but before 31st March, 2019, engaged in an 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) , whose gross total income includes any profits and gains derived from eligible start up equal to 100% of the profit and gains derived from such business for 3 consecutive assessment years, at the option of the assessee out of five years beginning from the year in which the eligible start-up is incorporated. The Eligible Start-up should not be formed by splitting up, or the reconstruction, of a business already in existence and should not formed by the transfer to a new business of machinery or plant previously used for any purpose. Annual turnover of Company or LLP should not exceed Rs 25 crore during the previous year in which such deduction is claimed.

# Deductions in respect of profits and gains from Housing Projects [Section 80IBA]

Section 80IBA provides deduction to an assessee whose gross total income includes any profits and gains derived from the business of developing and building housing projects, subject to the provisions of this section, of an amount equal to 100% of the profits and gains derived from such business.

A housing project shall be a project which fulfils the following conditions:

1. the project is approved by the competent authority after the 1st day of June, 2016, but on or before the 31st day of March, 2019;
2. the project is completed within a period of 5 years from the date of approval by the competent authority:
3. the carpet area of the shops and other commercial establishments included in the housing project does not exceed 3% of the aggregate carpet area
4. the project is on a plot of land measuring not less than 1000 square meters, where the project is located within the cities of Chennai, Delhi, Kolkata or Mumbai or within the distance, measured aerially, of 25 kilometers from the municipal limits of these cities or 2000 meters, where the project is located in any other place;
5. the carpet area of the residential unit comprised in the housing project does not exceed 30 square meters, where the project is located within the cities of Chennai, Delhi, Kolkata or Mumbai or within the distance, measured aerially, of 25 kilometers from the municipal limits of these cities or 60 square meters, where the project is located in any other place;

“Carpet Area” means the net usable floor area of an apartment [excluding (i) the area covered by the external walls (ii) areas under the service shafts/exclusive balcony or verandah area/exclusive open terrace area, but including the area covered by the internal portion wall of the apartment.]

**Special provisions in respect of certain undertakings or enterprises in certain special category States [Section 80-IC]**

Section 80IC provides deduction from such profits and gains as specified in Sub-section (3) to an assessee whose gross total income includes any profits and gains derived by an undertaking or an enterprise from any business referred to in Sub-section (2), in accordance with and subject to the provisions of this section.

1. This section applies to any undertaking or enterprise, -
   1. which has begun or begins to manufacture or produce any article or thing, not being any article or thing specified in the Thirteenth Schedule, and undertakes substantial expansion during the period beginning –
      1. on the 23rd day of December, 2002 and ending before the 1st day of April, 2012, in any specified areas, in the State of Sikkim; or
      2. on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in any specified areas, in the State of Himachal Pradesh or the State of Uttaranchal; or
      3. on the 24th day of December, 1997 and ending before the 1st day of April, 2007, in any specified areas, in any of the North-Eastern States; Specified area means any Export Processing Zone or Integral Infrastructure Development Centre or Industrial Growth Centre or Industrial Park or Theme Park, as notified by the Board in accordance with the scheme framed and notified by the central government in this regard.
   2. which has begun or begins to manufacture or produce any article or thing, specified in the Fourteenth Schedule or commences any operation specified in that Schedule, and undertakes substantial expansion during the period beginning –
      1. on the 23rd day of December, 2002 and ending before the 1st day of April, 2012, in the State of Sikkim; or
      2. on the 7th day of January, 2003 and ending before the 1st day of April, 2012, in the State of Himachal Pradesh or the State of Uttaranchal; or
      3. on the 24th day of December, 1997 and ending before the 1st day of April, 2007, in any of the North Eastern States.
2. The deduction referred to in Sub-section (1) shall be -
3. in the case of any undertaking or enterprise referred to in Sub-clauses (i) and (iii) of Clause (a) or Sub clause (i) and (iii) of Clause (b), of Sub-section (2), 100% of such profits and gains for ten assessment years commencing with the initial assessment year;
4. in the case of any undertaking or enterprise referred to in Sub-clause (ii) of Clause (a) or Sub- clause (ii) of Clause (b), of Sub-section (2), 100% of such profits and gains for five assessment years commencing with the initial assessment year and thereafter, 25% (or 30% where the assessee is a company) of the profits and gains.
5. This section applies to any undertaking or enterprise which fulfils all the following conditions, namely:
6. it is not formed by splitting up, or the reconstruction, of a business already in existence;

Provided that this condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in Section 33B, in the circumstances and within the period specified in that section;

1. it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.
2. Notwithstanding anything contained in any other provision of this Act, in computing the total income of the assessee, no deduction shall be allowed under any other section contained in Chapter VIA or in Section 10A or Section 10B, in relation to the profits and gains of the undertaking or enterprise.
3. Notwithstanding anything contained in this Act, no deduction shall be allowed to any undertaking or enterprise under this section, where the total period of deduction inclusive of the period of deduction under this section, or under the second proviso to Sub-section (4) of Section 80-IB or under Section 10C, as the case may be, exceeds ten assessment years.
4. The provisions contained in Sub-section (5) and Sub-sections (7) to (12) of Section 80-IA shall, so far as may be, apply to the eligible undertaking or enterprise under this section.
5. For the purposes of this section, -
6. “Industrial Area” means such areas, which the Board, may by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;
7. “Industrial Estate” means such estates, which the Board may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;
8. “Industrial Growth Centre” means such centres, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;
9. “Industrial Park” means such parks, which the Board, may by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;
10. “initial assessment year” means the assessment year relevant to the previous year in which the undertaking or the enterprise begins to manufacture or produce articles or things, or commences operation or completes substantial expansion;
11. “Integrated Infrastructure Development Centre” means such centers, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government;
12. “North-Eastern States” means the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura;
13. “Software Technology Park” means any park set up in accordance with the Software Technology

Park scheme notified by the Government of India in the Ministry of Commerce and Industry;

1. “substantial expansion” means increase in the investment in the plant and machinery by at least fifty per cent of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken;
2. “Theme Park” means such parks, which the Board, may, by notification in the Official Gazette, specify in accordance with the scheme framed and notified by the Central Government.

**Deduction in respect of profits and gains from the Business of collecting and processing Bio-Degradable Waste [Section 80-JJA]**

Section 80 JJA provides deduction to an assessee whose gross total income includes any profits and gains derived from the business of collecting and 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, making pellets or briquette for fuel or organic manure, of an amount equal to the whole of such profit and gains for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which such business commences.

**Deduction in respect of Employment of New Workmen [Section 80-JJAA]**

New provisions of Section 80JJAA w.e.f. AY 2017-18 are as under:-

**Conditions**

1. Assessee has income from business and is subject to tax audit u/s 44AB.
2. The business of assessee is not formed by splitting up , or the reconstruction , of an existing business (other than establishment, reconstruction or revival of business under section 33B)
3. Business is not acquired by the assessee by way of transfer from any other person or as a result of business reorganization.

**Quantum of Deduction:** 30% of additional employee cost is allowed as deduction for 3 assessment years starting from the assessment year relevant to assessment year in which such additional employee cost is incurred. Books of accounts should be audited and audit report should be submitted with return of income. Deduction should be claimed in return of income otherwise it is not allowed

## **Notes:**

1. ‘Additional employee cost’ means total emoluments paid or payable to additional employees employed during the previous year.
2. In case of existing business, additional employee cost shall be nil, if-
   1. There is no increase in number of employees from the total number of employees employed on the last day of preceding year.
   2. If emoluments are paid otherwise than an account payee cheque or account payee bank draft or by use of ECS.
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 employees” does not include;
   1. An employee whose total emoluments are more than 25000 per month; or
   2. An employee whose entire contribution is paid by the Government under the Employees Pension Scheme notified in accordance with the provisions of Employees Provident fund and Miscellaneous provisions Act, 1952.
   3. An emolyee employed for a period of less than 240 days( **150 days in case of employee working in apparel, shoes or leather industry**) during the previous year; or
   4. An employee who does not participate in RPF.
5. “Emoluments” does not include employer’s contribution to employee’s pension/provident fund etc. And also it does not include terminal benefits such as leave encashment, retrenchment compensation, gratuity etc.
6. Where an employee is employed during the previous year for a period of less than 240 days or 150 days, as the case may be, 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 provisions of this section shall apply accordingly.
7. Provisions of old 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).

# Deduction in respect of certain incomes of Offshore Banking Units [Section 80LA]

Section 80LA provides deduction to an assessee being a scheduled bank, or any bank incorporated by or under the laws of a country outside India, from income

1. Of an offshore banking unit in a special economic zone;
2. from the business, referred to in Sub-section (1) of Section 6 of the Banking Regulation Act, 1949 (10 of 1949), with an undertaking located in a special economic zone or any other undertaking which develops, develops and operates or operates and maintains a special economic zone;
   1. received in convertible foreign exchange, in accordance with the regulations made under the Foreign Exchange Management Act, 1999 (42 of 1999).

## **Quantum of deduction:**

1. 100% of such income for five consecutive assessment years beginning with the assessment year relevant to the previous year in which the permission, under Clause (a) of Sub-section (1) of Section 23 of the Banking Regulation Act, 1949 (10 of 1949), was obtained, and thereafter;
2. 50% of such income for next five consecutive assessment years.-

**Conditions to be satisfied**: No deduction under this section shall be allowed unless the assessee furnishes along with the return of income, -

1. in the prescribed form (Form No. 10CCF), i.e., the report of a accountant as defined in the Explanation below Sub-section (2) of Section 288, certifying that the deduction has been correctly claimed in accordance with the provisions of this section; and
2. a copy of the permission obtained under Clause (a) of Sub-section (1) of Section 23 of the Banking

Regulation Act, 1949 (10 of 1949), in case of an offshore Banking Unit.

1. “convertible foreign exchange” shall have the same meaning assigned to it in clause (a) of the

**Deduction in respect of Income of Co-Operative Societies [Section 80P]**

Section 80P provides deduction to cooperative societies in respect of following incomes, which are included in gross total income:

1. 100% of the profits of a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to
   * The government or a local authority; or
   * A government company or a statutory corporation; or
   * A federal co-operative society, engaged in the business of supplying the above-said products.
2. 100% of the profits of co-operative society engaged in any one of the following activities:
   * Carrying on the business of banking or providing credit facilities to its member, or
   * A cottage industry, or
   * The marketing of agricultural produce grown by its members, or
   * The purchase of agricultural implements for the purpose of supplying them to its members, or
   * The processing, without the aid of power, of agricultural produce of its members, or
   * The collective disposal of the labour of its member, or
   * Fishing or allied activities for the purpose of supplying them to its members.

Provided, in the case of last two types of co-operative societies, the deduction, is available subject to the condition that the rules and bye-laws of the society restrict the voting rights to the members like, State Government, Co-operative Credit Society which provide financial assistance to the society and individual, who contributes their labours.

W.e.f. Assessment Year 2007-08 this exemption is not available to co-operative banks other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

1. Profits and gains of co-operative society other than those specified in A and B above is exempt up to the specified limits:
   * is case of a consumer co-operative society - Rs. 1,00,000

-– is any other case - Rs. 50,000

1. All profits by way of interest or dividend from its investment with any other co-operative society.
2. 100% of income or profit of a Co-operative Society from the letting of godowns or warehouse for storage, processing or facilitating the marketing of commodities. A co-operative society, not being a housing society or an urban consumers society or a society carrying on transport business or a society engaged in the performance of any manufacturing operation with the aid of power, where the gross total income does not exceeds Rs. 20,000. The amount of any income by way of interest on securities or any income from house property chargeable under Section 22 will also be allowed as deduction.

**Deduction from income of Farm Producer Company [Section 80PA]**

Deduction is allowed to a Producer company from its gross total income if following conditions are satisfied;

1. Producer Company is having a total turnover of less 100 crore rupees in during the previous year.
2. Its gross total income includes any profits and gains derived from eligible business.
3. Deduction is available in respect of profits of such eligible business from PY 2018-19 to PY 2024-25

## Deduction:

A deduction of an amount equal to one hundred per cent of the profits and gains attributable to such business is allowed.

If any deduction is available and availed in respect of such profit under any other section of chapter VI-A, then only the profit after allowing deduction under such other sections is eligible for deduction under this section.

**Deduction in respect of Royalty Income, etc., of authors of certain books other than text books [Section 80QQB]**

Section 80 QQB provides deduction to a resident individual who is an author or a joint author of a book whose income includes income derived from such profession, received either as a lump sum consideration for the assignment or grant of any of his interests in the copyright of any book or royalty of books other than text books. The amount of deduction is the lower of eligible income or Rs. 3, 00,000. Eligible income (before deducting expenditure incurred) is lower of

1. Lump sum consideration for the assignment or grant
2. Royalty not exceeding 15%
3. If such income is earned outside India, the part of the income brought to India in convertible foreign exchange within 6 months from the end of the previous year or the extended period by the RBI will be considered.

Books exclude brochures, diaries, guides, journals, magazines, newspapers, pamphlets, text books for schools, tracts, commentaries or any such publication whatever name may be. No deduction under this section shall be allowed unless an assessee furnishes a certificate in the prescribed form 10CCD/10H.

# Deduction in respect of Royalty on Patents [Section 80RRB]

Section 80RRB provides deduction to resident individual, a patentee who is in receipt of income by way of royalty in respect of a patent registered on or after the 1st day of April, 2003 under the Patents Act, 1970, and his gross total income of the previous year includes royalty, subject to the provisions of this section. This deduction shall be available only to a resident individual who is registered as the true and first inventor in respect of an invention under the Patents Act, 1970, including the co-owner of the patent. The amount of deduction is lower of 100% of such income or Rs. 300,000. In case, any such income is earned from any sources outside India, so much of the income, shall be taken into account for the purpose of this section as is brought into India by, or on behalf of, the assessee in convertible foreign exchange within a period of six months from the end of the previous year in which such income is earned or within such further period as the competent authority may allow in this behalf.

Provided that where a compulsory licence is granted in respect of any patent under the Patent Act, 1970, the income by way of royalty for the purpose of allowing deduction under this section shall not exceed the amount of royalty under the terms and conditions of a licence settled by the Controller under that Act:

No deduction under this section shall be allowed unless the assessee furnishes a certificate in the prescribed form (Form No. 10CCD), duly signed by the prescribed authority, along with the return of income setting forth such particulars as may be prescribed.

No deduction under this section shall be allowed in respect of any income earned from any source outside India, unless the assessee furnishes a certificate in the prescribed form (Form No. 10H), from the authority or authorities, as may be prescribed, along with the return of income.

# Deduction in respect of interest on deposits in Savings Account [Section 80TTA]

Section 80TTA provides deduction to an assessee (other than referred to section 80TTB) individual or a Hindu undivided family whose gross total income includes any income by way of interest on deposits (not being time deposits) in a savings account with -

1. a banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act);
2. a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank); or
3. a Post Office as defined in clause (k) of section 2 of the Indian Post Office Act, 1898 (6 of 1898) The maximum amount of deduction is Rs. 10,000.

Further, where the income referred to in this section is derived from any deposit in a savings account held by, or on behalf of, a firm, an association of persons or a body of individuals, no deduction shall be allowed under this section in respect of such income in computing the total income of any partner of the firm or any member of the association or any individual of the body.

*For the purposes of this section - “Time deposits” means the deposits repayable on expiry of fixed periods.*

Note: Under Section 10(15) (i), post office savings bank interest is exempt up to Rs. 3,500.

# Deduction in respect of Interest income to senior citizen [Section80TTB]

Where the gross total income of an assessee, being a senior citizen, includes any income by way of interest on deposits with –

1. a banking company to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act);
2. a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank); or
3. a Post Office as defined in clause (*k*) of section 2 of the Indian Post Office Act, 1898

Then, least of the following shall be allowed as deduction:-

1) aggregate amount of interest in (a), (b), (c) above, or 2) Rs. 50,000.

Where the income such interest income is derived from any deposit held by, or on behalf of, a firm, an association of persons or a body of individuals, no deduction shall be allowed under this section in respect of such income in computing the total income of any partner of the firm or any member of the association or any individual of the body.

Also no deduction shall be allowed to such senior citizen under section 80TTA who have availed deduction under this section.

**Deduction in case of a Person with Disability [Section 80U]**

Section 80U provides deduction to a resident individual who suffers from 40% or more of any of the disabilities, namely, blindness, low vision, leprosy-cured, hearing impairment, locomotors disability, mental retardation and mental illness.

The amount of deduction is Rs. 75,000 (flat in case of disability) and Rs. 1, 25,000 (flat in case of severe disability, being disability of at least 80%). To claim deduction under this section, a certificate issued by the medical authority in the form and manner, as may be prescribed, to be a

person with disability is required to be furnished along with the return of income under Section 139, in respect of the assessment year for which the deduction is claimed.

Provided that where the condition of disability requires reassessment of its extent after a period stipulated in the aforesaid certificate, no deduction under this section shall be allowed for any assessment year relating to any previous year beginning after the expiry of the previous year during which the aforesaid certificate of disability had expired, unless a new certificate is obtained from the medical authority in the form and manner, as may be prescribed, and a copy thereof is furnished along with the return of income under Section 139.

# COMPUTATION OF TAXABLE INCOME AND TAX LIABILITY OF AN INDIVIDUALS

Income tax is a charge on the assessee’s income. Income Tax law lays down the provisions for computing the taxable income on which tax is to be charged. Taxable income of an assessee shall be calculated in the following manner.

1. Determine the residential status of the person as per section 6 of the Act.
2. Calculate the income as per the provisions of respective heads of income. Section 14 classifies the income under five heads.
   1. Income from salaries
   2. Income from House Property
   3. Profits and gains of business or Profession
   4. Capital Gains
   5. Income from other sources
3. Consider all the deductions and allowances given under the respective heads before arriving at the net under each head.
4. Exclude the income exempt under section 10 of the Act.
5. Aggregate of incomes computed under the 5 heads of income after applying clubbing provisions and making adjustments of set off and carry forward of losses is known as Gross Total Income.
6. Deduct there from the deductions admissible under Sections 80C to 80U. The balance is called Total income.
7. The total income is rounded off to the nearest multiple of Rupees ten. (Section 288A)
8. Add agriculture income (if any) in the total income calculated in (6) above. Then calculate tax on the aggregate as if such aggregate income is the Total Income.
9. Calculate income tax on the net agricultural income as increased by Rs. 2,50,000/3,00,000/5,00,000 as the case may be, as if such increased net agricultural income

were the total income.

1. The amount of income tax determined under (9) above will be deducted from the amount of income tax determined under (8) above.
2. Calculate income tax on capital gains under Section 112, and on other income at specified rates.
3. The balance of amount of income tax left as per (10) above plus the amount of income tax at (11) above will be the income tax in respect of the total income.
4. Deduct the following from the amount of tax calculated under (12) above.

* Rebate under section 87A (if applicable).
* Tax deducted and collected at source.
* Advance tax paid.
* Double taxation relief (Section 90 or 91).

1. The balance of amount left after deduction of items given in (13) above, shall be the net tax payable or net tax refundable for the assessee. Net tax payable/refundable shall be rounded off to the nearest multiple of Ten rupees (Section 288B).
2. Along with the amount of net tax payable, the assessee shall have to pay penalties or fines, if any, imposed on him under the Income-tax Act.

For calculation of income, amount received is classified under 5 heads of income; it is then to be adjusted with reference to the provisions of the Income Tax laws in the following manner:

|  |  |
| --- | --- |
| **Particulars** | **Amount (Rs.)** |
| **Income under the head:**  + Income from Salaries  + Income from House Property  + Profits and gains of business or profession  + Capital gains  + Income from other sources  **Adjustment in respect of:**  + Clubbing of Income   * Set off and carry forward of losses   **= Gross Total Income**   * Deductions under section 80C to 80U (or Chapter VIA)   **= Total Income** | XXX XXX XXX XXX XXX  XXX (XXX) **XXX** (XXX) **XXX** |

# TAXATION OF AN INDIVIDUAL

Tax Act As per section 2(31) of Income tax act, the term “person” includes an Individual. However, the term ‘Individual’ is not defined anywhere in Income Tax Act, but it means a human being or a natural person. It also includes a minor or a person of unsound mind whether major or minor, married or unmarried. Individual shall be liable to tax if his income exceeds threshold exemption limit.

Steps for computation of taxable income have been explained in Introduction part above. However, steps for computation of taxable income and tax liability of an individual are briefly explained as under:-

* + 1. Calculate the gross total income ignoring incomes exempted u/s 10, 10A or 10B or 10BA etc. of the Individual by adding Income under the five heads. Adjustment should be made regarding clubbing provisions u/s 60 to 65 and losses should be set off as per provisions of section 70 to 80.

2. Deductions should be allowed from gross total income under chapter VI-A for arriving at taxable income. An Individual is allowed deduction u/s 80C, 80CCC, 80CCD, 80CCG, 80D, 80DDB, 80E, 80EE, 80G, 80GG, 80GGA, 80GGC, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID, 80-IE, 80JJA, 80-JJAA, 80QQB, 80RRB, 80TTA, 80TTB, 80U.

3. Certain incomes of Individual are taxable at flat rate of 30% under section 115BB such as winnings from lottery etc. No deduction is allowed under section 80C to 80U on such Income. Similarly care should be taken to calculate tax on capital gains u/s 112 or 111A etc.

4. There are special provisions related to taxation of non resident Indians u/s 115C to 115-I. Non resident Indians can take benefit of these provisions.

5. Provisions of AMT are applicable to an Individual who has claimed deduction under 10A or 80H to 80RRB (except section 80P) or 35AD and their adjusted total income exceeds Rs. 20 lakh.

6. Certain rebates and reliefs are specifically allowed to Individuals from their tax liability such as:

* + - * Rebate u/s 87A
      * Rebate u/s 86

Relief u/s 89 in respect of arrears or advance of salary income.

**QUESTIONS:-**

**1)** In what circumstances is the income of one person treated as the income of another?

**2)** Explain the provisions regarding set-off and carry-forward of losses?

**3)** Discuss briefly the provisions of Income Tax Act regarding deduction to be made in computing the total income of an assessee in respect of certain payments.

**UNIT-V**

**Procedure for Assessment**

Every assessee, who earns income beyond the basic exemption limit in a Financial Year (FY), must file a statement containing details of his income, deductions, and other related information. This is called the Income Tax Return (ITR). Once you as a taxpayer file the income returns, the Income Tax Department will process it. There are occasions where, based on set parameters by the Central Board of Direct Taxes (CBDT), the return of an assessee gets picked for an assessment.

The various forms of assessment are as follows:

1. [Self Assessment](https://cleartax.in/s/income-tax-assessment#self)
2. [Summary Assessment](https://cleartax.in/s/income-tax-assessment#summary)
3. [Regular Assessment](https://cleartax.in/s/income-tax-assessment#regular)
4. [Best Judgement Assessment](https://cleartax.in/s/income-tax-assessment#best)
5. [Income Escaping Assessment](https://cleartax.in/s/income-tax-assessment#income)

## **1. Self Assessment**

The assessee himself determines the income tax payable. The tax department has made available various forms for filing income tax return. The assessee consolidates his income from various sources and adjusts the same against losses or deductions or various exemptions if any, available to him during the year. The total income of the assessee is then arrived at. The assessee reduces the TDS and Advance Tax from that amount to determine the tax payable on such income. Tax, if still payable by him, is called self assessment tax and must be paid by him before he files his return of income. This process is known as Self Assessment.

## **2. Summary Assessment**

It is a type of assessment carried out without any human intervention. In this type of assessment, the information submitted by the assessee in his return of income is cross-checked against the information that the income tax department has access to. In the process, the reasonableness and correctness of the return are verified by the department. The return gets processed online, and adjustment for arithmetical errors, incorrect claims, and disallowances are automatically done. Example, credit for TDS claimed by the taxpayer is found to be higher than what is available against his PAN as per department records. Making an adjustment in this regard can increase the tax liability of the taxpayer.

After making the aforementioned adjustments, if the assessee is required to pay tax, he will be sent an intimation under Section 143(1). The assessee must respond to this intimation accordingly. [Here](https://cleartax.in/s/section-143-1-it-act) you can read a more detailed article on Section 143(1).

## **3. Regular Assessment**

The income tax department authorizes the Assessing Officer or Income Tax authority, not below the rank of an income tax officer, to conduct this assessment. The purpose is to ensure that the assessee has neither understated his income or overstated any expense or loss or underpaid any tax.

The CBDT has set certain parameters based on which a taxpayer’s case gets picked for a scrutiny assessment.

a. If an assessee is subject to a scrutiny assessment, the Department will send a notice well in advance. However, such notice cannot be served after the expiry of 6 months from the end of the Financial year, in which return is filed.

b. The assessee will be asked to produce the books of accounts, and other evidence to validate the income he has stated in his return. After verifying all the details available, the assessing officer passes an order either confirming the return of income filed or makes additions. This raises an income tax demand, which the assessee must respond to accordingly.

## **4. Best Judgment Assessment**

This assessment gets invoked in the following scenarios:

a. If the assessee fails to respond to a notice issued by the department instructs him to produce certain information or books of accounts

b. If he/she fails to comply with a Special Audit ordered by the Income tax authorities

c. The assessee fails to file the return within due date or such extended time limit as allowed by the CBDT

d. The assessee fails to comply with the terms as contained in the notice issued under Summary Assessment

After providing an opportunity to hear the assessee’s argument, the assessing officer passes an order based on all the relevant materials and evidence available to him. This is known as Best Judgement Assessment.

## **5. Income Escaping Assessment**

When the assessing officer has sufficient reasons to believe that any taxable income has escaped assessment, he has the authority to assess or reassess the assessee’s income. The time limit for issuing a notice to reopen an assessment is 4 years from the end of the relevant assessment Year. Some scenarios where reassessment gets triggered are given below.

a. The assessee has taxable income but has not yet filed his return.

b. The assessee, after filing the income tax return, is found to have either understated his income or claimed excess allowances or deductions.

c. The assessee has failed to furnish reports on international transactions, where he is required to do so.

Assessment could close quickly for some taxpayers, while it could prove to be quite grueling for others. If you are not comfortable dealing with income tax officers, it is suggested that you take the help of a Chartered Accountant to help you with your case.

**Deduction of Tax at Source**

TDS stands for 'Tax Deducted at Source'. It was introduced to collect tax at the source from where an individual's income is generated. The government uses TDS as a tool to collect tax in order to minimize tax evasion by taxing the income (partially or wholly) at the time it is generated rather than at a later date.  
  
TDS is applicable on the various incomes such as salaries, interest received, commission received, dividends etc.

TDS is not applicable to all incomes and persons for all transactions. Different TDS rates have been prescribed by the Income Tax Act for different payments and different categories of recipients. For example, payment of redemption proceeds by a debt mutual fund to a resident individual is not subject to TDS but for a Non-resident Indian is subject to TDS.

TDS works on the concept that every person making specified type of payments to any person shall deduct tax at the rates prescribed in the Income Tax Act at source and deposit the same into the government's account.

The person who is making the payment is responsible for deducting the tax and depositing the same with government. This person is known as 'deductor'. On the other hand, the person who receives the payment after the tax deduction is called 'deductee'. Form26AS is a statement which shows the amount of tax deducted and deposited in a person's name/PAN in a particular financial year.

An individual can, therefore, view/check the TDS from incomes paid to him by viewing this Form 26AS. Each deductor is also duty bound to issue a TDS certificate certifying how much amount is deducted in the deductee's name and deposited with the government.

**Rates prescribed for different types of payments**  
There are different rates for TDS described in the different sections of the Act, depending on the nature of the payments.  
  
The government with effect from May 14, 2020 has reduced the TDS rates by 25% on non-salaried payments such as rent, interest received from fixed deposits, dividends etc. However one must remember that no changes have been made with regards to TDS on salaries. Therefore, tax on salaries will be deducted at the tax rates applicable to your income (inclusive of cess at 4%).

Also, one must remember that the reduced TDS rate on the non-salaried payments will be applicable till March 31, 2021.

**TDS Rates Applicable For Salary & Rent as per FY 2018-19**

|  |  |
| --- | --- |
| **Category** | **Rate Of TDS** |
| Salary | Regular [Slab Rate](https://www.iciciprulife.com/insurance-library/income-tax/income-tax-slabs-rate-deductions.html) or the Rate of Income Tax applicable to the employee based on the slab he/she falls in. |
| Interest earned on securities | 10% |
| Dividend income | 10% |
| Interest earned (other than securities)  In this context, Interest income up to Rs. 50,000 for senior citizens from post office/bank deposits is not taxable. | 10% |
| Income from lottery/card games and other similar activities | 30% |
| Income from horse races | 30% |
| Payments made to contractor/sub-contractors. | 1% (Hindu Undivided Family/Individuals)  2% (Other Persons) |
| Insurance Commission | 5% |
| Commission earned on the sale of lottery tickets | 5% |
| Any commission or brokerage | 5% |
| Rent on  a) Plant & Machinery  b) Land/building/furniture/fitting Threshold for deduction of tax on rental income is now Rs. 2,40,000 per annum as introduced by the Union Budget 2019-20.  Rent payable by HUF or individual not covered under section 194I | (a) 2%  (b) 10%    5%  In case payment of rentals crosses Rs. 50,000 each month |
| Payment upon the transfer of immovable property (with the exception of agricultural land) | 1% |
| Any money paid as the charge for professional services/technical services/remuneration/fee/commission for directors/royalty/copyright | 10% |

## **Slabs for Deduction from Employees-**

For the Assessment Year 2020-21, the slabs for deduction of income tax are as follows:

Male/ Female

|  |  |
| --- | --- |
| **Income** | **Tax Rate** |
| Upto `2,50,000 | Nil. |
| `2,50,001 to `5,00,000 | 5% |
| `5,00,001 to `10,00,000 | `12,500 + 20% of Income exceeding `500,000. |
| Above `10,00,000 | `1, 12,500 + 30% of Income exceeding of `10, 00,000. |

Senior citizen

|  |  |
| --- | --- |
| **Income** | **Tax Rate** |
| Up to `3,00,000 | Nil. |
| `3,00,001 to `5,00,000 | 5% |
| `5,00,001 to `10,00,000 | `10,000 + 20% of Income exceeding `500,000. |
| Above `10,00,000 | `1, 10,000 + 30% of Income exceeding of `10, 00,000. |

Very Senior citizen

|  |  |
| --- | --- |
| **Income** | **Tax Rate** |
| Up to `5,00,000 | Nil. |
| `5,00,001 to `10,00,000 | 20% |
| Above `10,00,000 | `1, 00,000 + 30% of Income exceeding of `10, 00,000. |

Individuals having total income below 5 lakhs, are eligible for full tax rebate of under section 87A for AY 2020-2021 (FY 2019-20)

TDS (Tax Deducted at Source) is a vital component that governs multiple income-based transactions in the country. The above-mentioned chart of rates will help you understand the applicable TDS rate vis-a-vis its specific income category. You can then factor in the deduction according to the category/categories your income falls in any.

**How TDS works**  
The entity making a payment (which is subject to TDS) deducts a certain percentage of the amount paid as tax and pays the balance to the recipient. The recipient also gets a certificate from the deductor stating the amount of TDS. The deductee can claim this TDS amount as tax paid by him (i.e. the deductee) for the financial year in which it is deducted.

The deductor is duty bound to deposit the TDS with the government. Once deposited this amount reflects in the Form 26AS of individual deductees on the TRACES website linked to the income tax department's e-filing website.

**TDS only applicable above a threshold level**  
One must remember that TDS on specified transactions is deducted only when the value of payment is above the specified threshold level. No TDS will be deducted if the value does not cross the specified level.

**How to avoid TDS**  
If a person expects that his total income in a financial year will be below the exemption limit, he can ask the payer not to deduct TDS by submitting Form 15G/15H.  
While receiving payment which is subject to TDS, deductee is required to provide his PAN details to avoid tax deduction at the higher rates.

**Advance Payment of Tax**

# ADVANCE TAX

Generally, tax on the income earned in the previous year is paid in the respective assessment year, but in certain cases, an assessee may be required to pay tax during the previous year itself, as Advance tax. The scheme of advance tax is based on the concept “Pay as you earn”. Under this scheme assessee needs to estimate its income and tax liability of the previous year and pay tax on basis of such estimation in the previous year itself. For instance, income earned during the previous year 2018-19 is normally taxable in the assessment year 2019-20; however under the scheme of Advance tax, assessee is required to pay tax on estimated income of previous year 2018-19 in the previous year itself.

# Scheme of Advance tax [Section 2]

Where the advance tax liability of the assessee is Rs 10,000 or more, the assessee should pay such tax in the previous year itself within the due date

# Advance tax liability [Section 209]

|  |  |
| --- | --- |
| **PARTICULARS** | **AMOUNT** |
| Estimated Gross Total Income [other than income covered u/s 44AD] | \*\*\*\* |
| Less: Deduction under chapter VIA | \*\*\*\* |
| Estimated Total Income | \*\*\*\* |
|  | |
| Gross tax liability on Estimated Total Income | \*\*\*\* |
| Less: Rebate u/s 87A | \*\*\*\* |
| Tax liability after Rebate | \*\*\*\* |
| Add: Surcharge (if applicable) | \*\*\*\* |
| Tax and surcharge payable | \*\*\*\* |
| Add: Health & Education cess | \*\*\*\* |
| Tax liability after Cess | \*\*\*\* |
| Less: Tax deducted or collected at source / other Rebate & Relief | \*\*\*\* |
| ADVANCE TAX LIABILITY | \*\*\*\* |

**Due date for payment of Advance Tax [Section 211]**

|  |  |  |
| --- | --- | --- |
| **Assessee** | **Due date of installment (of previous year)** | **Minimum amount payable** |
| An eligible assessee in respect of an eligible business referred to in sec. 44AD or 44ADA | On or before March 15 | 100% of advance tax liability |
| Other Assessee | On or before June 15 | Upto 15% of advance tax liability |
| On or before September 15 | Upto 45% of advance tax liability |
| On or before December 15 | Upto 75% of advance tax liability |
| On or before March 15 | Upto 100% of advance tax liability |

**Additional points:**

1. Any amount paid u/s 211 on or before 31st March of the previous year, shall be treated as advance tax paid during the financial year.
2. Where an assessee is a senior citizen (or super senior citizen) and does not have any income

chargeable under the head “Profits and gains of business or profession”, provision of advance tax is not applicable. In other words, senior citizen not having business income is not liable to pay advance tax irrespective of the amount of tax liability.

1. Every income including capital gain, winning from lotteries, etc. is subject to advance tax. However, it is not possible to estimate capital gain or casual gain or where income under the head “Profits and gains of business or profession” accrues or arises for the first time, therefore, where the assessee has paid the whole of the amount of tax payable in respect of such income:
   1. As part of the remaining instalments of advance tax which were due; or
   2. Where no instalments were due, by March 31 of the financial year immediately preceding the assessment year, - then it is deemed that all the provisions are complied.
2. While calculating advance tax, net agricultural income shall also be taken into consideration for computing tax liability.
3. If any assessee does not pay any instalment within due date he shall be deemed to be an assessee in default [Sec. 218]
4. Any sum, other than a penalty or interest, paid by an assessee as advance tax shall be treated as a payment of tax and credit for such shall be given to the assessee in the regular assessment [Sec. 219]

# ADVANCE TAX

## On assessee’s own motion [Section 210(1)] Procedure for 1st installment

* 1. Make an estimate of current year’s income (excluding income covered u/s 44AD or 44ADA), considering brought-forward losses, after deducting all allowable deductions under chapter VIA.

**Note:** The estimate is not required to be filed with the tax authorities.

* 1. Compute the tax liability on above estimated income at the rates in force during the financial year and reduce rebate, If any.
  2. Add surcharge (if applicable).
  3. Add Health & Education Cess.
  4. Deduct tax deducted or collected at source.
  5. The amount so derived is the advance tax payable.

Where the advance tax payable is Rs. 10,000 or more, an appropriate percentage thereof should be deposited.

# Procedure for subsequent installments

1. Check if estimate of income made earlier requires revision.
2. If not, deposit appropriate amount of second, third or fourth installment of advance tax.
3. If estimate of income needs revision then make a revised estimate and compute tax liability thereon.
4. Determine advance tax payable in subsequent installments after deducting amount paid in earlier installments.
5. Deposit such advance tax.

## On receipt of order from the Assessing Officer [Section 210(3) or (4)]

The A.O. may pass an order and issue a notice of demand u/s 156 requiring the assessee to pay advance tax. Such order can be issued even if assessee has paid any instalment of advance tax during the year, which is, in the opinion of the Assessing Officer, not as per provision of section 211.

The amount determined by the Assessing Officer shall be the higher of the following –

* Tax on latest assessed income as per regular assessment; or
* Tax on income declared by the assessee in the return relating to the previous year subsequent to the previous year for which regular assessment has been made.

As per section 210(4), Assessing Officer can revise his order to pay advance tax at any time before 1st March of the relevant previous year.

# Interest on non-payment of advance tax

Where an assessee fails to pay advance tax or defers the payment of advance tax on specified date, he shall be liable to pay interest u/s 234B & 234C.

APPEALS

The expression “Appeal” has been defined in Mozley and Whiteley’s Law Dictionary as “a complaint to a superior court of an injustice done by an inferior one”. The party complaining is styled as the “appellant”. The other party is known as “respondent”. The right to appeal must be given by express enactment and cannot be implied- Harihar Gir vs CIT [1941] 9 ITR 246 (Pat.).

# APPELLATE HIERARCHY:

## **Appellate Authorities in Income-tax Act**

|  |  |  |  |
| --- | --- | --- | --- |
| **Appeal** | **Appellate authority** | **Against which order** | **Appellant** |
| 1st | Commissioner (Appeals) | Against specified order of the Assessing Officer | Assessee only |
| 2nd | Income Tax Appellate Tribunal (ITAT) | Against the order of Commissioner (Appeals) | Assessee or the Commissioner (or Principal Commissioner) of Income tax |
| 3rd | High Court | Against the order of ITAT (the case must involve substantial question of law) |
| Final | Supreme Court | Against the order of High Court |

**APPEALS TO COMMISSIONER (APPEALS) [SECTION 246A TO 250]**

Aggrieved tax payer can file appeal before the Commissioner (Appeals) having, jurisdiction over the tax payer. Designation of the Commissioner (Appeals), with whom appeal is to be filed is also mentioned in the notice issued by the Assessing Officer u/s 156.

# Appealable Orders

## **1. U/s 246A**

* Order passed by a Joint Commissioner u/s 115VP(3)(ii);
* Order against the assessee, where the assessee denies his liability to be assessed under this Act;
* Intimation u/s 143(1) or 143(1B) or 200A(1) or 206CB(1) or Order of assessment u/s 143(3) [Scrutiny assessment] [except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sec. 144BA(12)] or u/s 144 [Best judgment assessment] in respect of income assessed or tax determined or loss computed or residential status;
* Order of assessment, reassessment or re computation u/s 147 [(except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sec. 144BA(12)], 150 & 153A [except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sec. 144BA(12)];
* Order u/s 154 (Rectification of Mistake) or u/s 155 (other amendments) having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee [except where it is in respect of an order referred to in sec. 144BA(12)]
* Order of assessment or reassessment u/s 92CD(3)
* Order u/s 163 treating assessee as an agent of a non-resident;
* Order u/s 170 relating to assessment on succession;
* Order u/s 171 refusing to recognize partition of an HUF;
* Order u/s 201 or 206C(6A) for default of provisions of TDS/TCS;
* Order u/s 237 relating to refunds;
* Order relating to Penalty;
* Order imposing penalty under chapter XXI;
* An order of penalty imposed under chapter XXI or an order of imposing or enhancing penalty u/s 275(1A)
* Any order made by an Assessing Officer other than a Joint Commissioner, as the Board may direct.

## **2. U/s 248**

Where under an agreement or other arrangement –

* the tax deductible u/s 195 on any income (other than interest) is to be borne by the person by whom the income is payable; &
* 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

**Time limit for filing appeal:** Appeal should be filed within 30 days from –

|  |  |
| --- | --- |
| **Where the appeal is u/s 248** | **The date of payment of the tax** |
| Where the appeal relates to any assessment or penalty | The date of service of notice of demand relating to the assessment or penalty |
| In any other case | The date on which intimation of the order, sought to be appealed against, is served. |

**Period to be excluded [Section 268]:** While calculating the above time limit, following period shall be excluded –

1. The day on which order complained of was served; and
2. Time required for obtaining a copy of the order, where a copy of the order was not furnished with notice of demand.
3. Where an application has been made u/s 270AA (seeking immunity from penalty and prosecution), the period beginning from the date on which the application is made, to the date on which the order rejecting the application is served on the assessee.

**Delay in filing appeal:** The Commissioner (Appeals) may admit belated application on sufficient cause being shown.

**Note:** It is statutory obligation of the appellate authority (where an application for condonation is filed) to consider whether sufficient cause was shown by the appellant

**Form of appeal:** Form 35 (Mode of filing depends i.e., electronically or in paper form, on mode of filing return of income of the assessee)

# Documents to be submitted

* Order against which appeal is made
* Statement of facts
* Grounds of appeal
* Notice of demand (in Original)
* Challan

**Verification of Form:** Form & grounds of appeal must be verified by the person authorized to verify the return of income u/s 140.

**Payment of tax before filing of appeal**

**If a return has been filed –** Tax as per the return should be paid.

**If no return has been filed –** The assessee should pay an amount equal to the advance tax which was payable by him. However, CIT (A) may, for any good and sufficient reason (recorded in writing), accept the appeal without payment of such advance tax.

**Power of Assessing Officer:** As per section 220(6), where an assessee has presented an appeal u/s 246A, Assessing Officer may treat the assessee as not being in default in respect of the amount in dispute in the appeal.

It may be applied –

* at the discretion of the Assessing Officer;
* subject to such conditions as Assessing Officer may think fit to impose;
* even though the time for payment has expired;
* as long as such appeal remains undisposed of.

Where assessee has not made an application u/s 220(6) or his application u/s 220(6) has been rejected, he can approach the appellate authority for stay order against collection

**Fee for filing an appeal:** Where assessed income as computed by the Assessing Officer is –

* Up to Rs 1,00,000 - Rs 250
  + Exceeds Rs 1, 00,000 but does not exceed Rs 2, 00,000 - Rs 500
* Exceeds Rs 2,00,000 - Rs 1000
  + Where the subject matter of appeal is not covered in above cases - - Rs250

**Procedure**

1. **Fixation of Day & Place:** The Commissioner (Appeals) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Assessing Officer against whose order the appeal is preferred.
2. **Hearing:** The appellant (either in person or by an authorized representative) and the Assessing Officer (either in person or by an authorized representative) shall have the right to be heard at the hearing of the appeal.
3. **Adjournment:** The Commissioner (Appeals) shall have the power to adjourn the hearing of the appeal from time to time.
4. **Inquiry:** The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).
5. **Order:** Commissioner (Appeals) must dispose of the appeal by passing an order which shall –
   * be in writing;
   * mention the points for determination;
   * mention the decision thereon; and
   * mention the reason for the decision.
6. **Communication of Order:** The Commissioner (Appeals) shall communicate the order passed by him to the assessee and to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

**New grounds during hearing:** The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the ‘grounds of appeal’, if he is satisfied that the omission of that ground from the Form of appeal was not willful or unreasonable.

**Time limit for disposal of appeal:** Within one year from the end of financial year in which appeal is filed (if possible).

**Production of additional evidence:** Appellate authority has the power to accept additional evidence (after recording reason for its admission in writing) and may make further enquiry at his discretion before disposing of the appeal

In the following circumstances additional evidence shall be admitted by the Commissioner (Appeals):

1. Where the Assessing Officer has refused to admit evidence which ought to have been admitted; or
2. Where appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence, which is related to any ground of appeal; or
3. Where the appellant was prevented by sufficient cause from producing the evidence, which he was called upon to produce by the Assessing Officer; or
4. Where the Assessing Officer has made an order (appealed against) without giving sufficient opportunity to the appellant to produce evidence relevant to any ground of appeal.

# Powers of Commissioner (Appeals) u/s 251

1. Against an order of assessment: To confirm, reduce, enhance or annul the assessment
2. Against an order imposing a penalty: To confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;
3. Against the order of assessment in respect of which the proceeding before the Settlement Commission abates u/s 245HA: To confirm, reduce, enhance or annul the assessment after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record,
4. Relating to any other case: To pass such orders as he thinks fit.

# APPEALS TO INCOME TAX APPELLATE TRIBUNAL (ITAT) [SECTION 252 TO 255]

Appeal against an order of Commissioner (Appeals) lies with the Income Tax Appellate Tribunal (ITAT). Both tax payer and the Assessing Officer can file appeal before the Appellate Tribunal. Several Benches of the Appellate Tribunal constituted all over India by the Central Government and it functions under the Ministry of Law. It consists of as many judicial and accountant members as the Central Government thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

**President of the ITAT**

* The Central Government shall appoint:
  1. a person who is a sitting or retired Judge of a High Court and who has completed not less than 7 years of service as a Judge in a High Court; or
  2. one of the Vice-Presidents of the Appellate Tribunal, - to be the President thereof.

The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President(s) thereof.

The Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

# Appealable Orders

## **Appeal by assesse**

* 1. An order passed by a Commissioner (Appeals) u/s 154, 250, 270A, 271, 271A or 272A; or
  2. An order passed by a Principal Commissioner or Commissioner u/s 12AA [registration of trust], 80G(5) (vi), 263 [revision order], 154, 270A or 271 or 272A; or
  3. An order passed by an Assessing Officer u/s 143(3) or 147 or 153A or 153C in pursuance of the directions of the Dispute Resolution Panel or with the the approval of the Commissioner (or Principal Commissioner) as referred to in sec. 144BA(12) or an order passed u/s 154 or 155 in respect of such order.
  4. An order passed by an Assessing Officer u/s 115VZC(1)
  5. An order passed by the prescribed authority u/s 10(23C)(iv) or (v) or (vi) or (via)
  6. An order passed by Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Director or Director u/s 272A [penalty].

## **Appeal by the Principal Commissioner or Commissioner**

The Principal Commissioner or Commissioner may direct the Assessing Officer to appeal against the order passed by the Commissioner (Appeals) u/s 154 or 250 [The Board has directed that the appeal shall be filed by the department only if tax effect exceeds Rs 10,00,000]

**Time limit for filing appeal:** Within 60 days. The period shall start from the date on which sought to be appealed is communicated to the assessee or Commissioner.

**Delay in filing appeal:** Tribunal may admit belated application on sufficient cause being shown.

**Withdrawal of appeal:** An assessee cannot withdraw an appeal filed to Tribunal

**Form** - Form 36

# Documents to be submitted and number of copies thereof

* 1. Memorandum of Appeal
  2. Order appealed against (including one certified copy)
  3. Order of Assessing Officer
  4. Grounds of appeal before first appellate authority
  5. Statement of facts filed before first appellate authority
  6. In case, appeal against order levying penalty, relevant order

**Verification of Form:** Form 36 and grounds of appeal should be verified by the person authorized to verify the return of income u/s 140 [Rule 47]

**Cross objection:** 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 filed by the other party, may file a memorandum of cross objection with the Tribunal.

**Time limit for filing of cross-objections:** Within 30 days of receipt of notice that appeal has been filed by the other party. However, Tribunal may admit belated memorandum of cross objection on sufficient cause being shown.

## **Form for filing of cross-objections: Form 36A**

**Fee for cross objection:** Nil

**Order of tribunal:** The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders as it thinks fit. Tribunal must record its reasons for its decisions. Order should set out all facts and contentions.

**Communication of order:** Tribunal shall send a copy of the order passed by it to the assessee and to the Principal Commissioner or Commissioner.

**Additional grounds which may be taken in appeal:** Tribunal has discretionary power to refuse additional ground to be raised. Tribunal may permit the assessee to urge grounds of appeal not mentioned in the memorandum of appeal.

**Additional evidence:** The parties to the appeal are not entitled to produce additional evidence of any kind, either oral or documentary before the Tribunal. However, if the Tribunal requires production of any document, examination of any witness or filing of any affidavit to enable it to pass orders, it may allow such document to be produced, witness to be examined, affidavit to be filed and such evidence to be adduced.

**Paper Book:** The appellant or the respondent, as the case may be, may submit a paper book in duplicate containing documents or statements or other papers referred to in the assessment or appellate order, which it may wish to rely upon. The paper book duly indexed and page numbered is to be filed at least a day before the hearing of the appeal along-with proof of service of copy of the same on the other side at least a week before. The Bench may in appropriate cases condone the delay and admit the paper book. The Tribunal can also, on its own direct preparation of paper book in triplicate by and at the cost of appellant or the respondent as it may consider necessary for disposal of appeal. Each paper in the paper book is to be certified as true copy by the party filing the same. Additional evidence, if any, should not be part of the paper book and it should be filed separately.

**Time limit for passing order:** Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of 4 years from the end of the financial year in which such appeal is filed.

However, the Tribunal may pass an order of stay in any proceedings for a period not exceeding 180 from the date of such order and the Tribunal shall dispose of the appeal within the said period of stay specified in that order.

Further where such appeal is not so disposed of within the said period of stay as specified in the order of stay, the Tribunal may, on an application made in this behalf by the assessee and on being satisfied that the delay in disposing of the appeal is not attributable to the assessee, extend the period of stay, or pass an order of stay for a further period or periods as it thinks fit; so, however, that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed 365 days and the Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed.

Further if such appeal is not so disposed of within the period allowed (original and extended), the order of stay shall stand vacated after the expiry of such period (i.e., 365 days), even if the delay in disposing of the appeal is not attributable to the assessee.

**Cost of appeal:** Cost of appeal shall be borne by the person as decided by the Tribunal.

# APPEAL TO HIGH COURT [SECTION 260A]

**Who can file appeal:** Assessee or the Principal Chief Commissioner / Chief Commissioner / Principal Commissioner / Commissioner, being aggrieved by the order of ITAT.

**Tax point:** Only order passed by the ITAT (which involves substantial question of law) can be appealed in the High court.

[The Board has directed that the appeal shall be filed by the department only if tax effect exceeds Rs 20,00,000.]

**Appealable order:** Any order of the Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

# Substantial question of law

* The word “substantial” means having substance, essential, real, of sound worth, important or

considerable;

* The substantial question of law, need not necessarily be a substantial question of law of general importance (i.e. it should be a question of law between the parties);
* To be “substantial”, a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case.

**Time limit for filing appeal:** 120 days from the date on which order of the Tribunal is received by the assessee or Principal Chief Commissioner / Chief Commissioner / Principal Commissioner / Commissioner.

The High Court may admit an appeal after the expiry of said period, if it is satisfied that there was sufficient cause for not filing the same within that period.

**Court Fee:** The Court fee shall be as specified in relevant law relating to Court fees for filing an appeal to High Court.

**Manner of appeal:** The appeal shall be in form of a memorandum of appeal, precisely stating the substantial question of law involved in the appeal.

**Formulation of question of law:**

* Where the High Court is satisfied that a substantial question of law is involved, it shall formulate the question.
* The appeal is to be heard only on the questions formulated. However, the respondents shall, at the hearing of appeal, be allowed to argue that the case does not involve such question.

**Hearing of appeal**

* The appeal is to be heard by a bench of not less than 2 judges of the High Court. Decision will be in accordance with opinion of the majority of judges.
* Where judges are equally divided in their opinions, the case on the point on which they differ shall be heard by one or more other judges of the High Court.

**Hearing of other substantial question of law:** The Court has the power to hear the appeal on any other

substantial question of law not formulated by it, if it is satisfied that the case involves such question.

**Decision:** The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the ground on which such decision is founded and may award such cost as it deems fit. The High Court may determine any issue which –

1. has not been determined by the Tribunal; or
2. has been wrongly determined by the Tribunal, by reason of a decision on such question of law .

**Stay of recovery proceedings:** High Court has power to stay proceedings for recovery of demand arising out of the assessment order, pending disposal of appeal.

# APPEAL TO THE SUPREME COURT [SECTION 261]

**Who can file appeal:** Assessee or the Principal Chief Commissioner / Chief Commissioner / Principal Commissioner / Commissioner aggrieved from the judgment of High Court.

[The Board has directed that the appeal shall be filed by the department only if tax effect exceeds Rs 25,00,000.]

**Order against which appeal is possible:** Any order passed in the High Court, provided that High Court

* is satisfied that the case involves a substantial question of law; and
* certifies the case is fit for appeal to the Supreme Court.

**If High Court refuses to certify the case:** The aggrieved party may make an application to the Supreme Court under Article 136 of the Constitution of India.

**Cost of appeal:** The costs of the appeal shall be borne by the person as decided by the Supreme Court.

**Effect of judgment:** Where the judgment of the High Court is varied or reversed by the Supreme Court, Tribunal should pass necessary order to dispose the case in conformity with such judgment.

REVISIONS

**REVISION BY THE COMMISSIONER OF INCOME TAX [SECTION 263 & 264]**

The right to file such appeals against the orders of the Assessing Officer is not available to the Department. It is for this reason that the Commissioner has been vested with revisional powers under Section 263, where the order of Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue. But such revisional power can be exercised only in respect of orders which are not the subject matter of appeals. The reason is that once an assessment order is appealed against, the Commissioner (Appeals) has got the powers to enhance the assessment under Section 263 and a right of appeal up to the Tribunal is provided to the assessee against the orders of the Assessing Officer. In the following cases Commissioner of Income-tax can revise an order passed by the Assessing Officer:

# REVISION OF ORDER PREJUDICIAL TO THE REVENUE [SECTION 263]

**Orders which may be revised**

Any order passed by the Assessing Officer, which is –

1. Erroneous;
2. Prejudicial to the interests of the revenue; and
3. Passed by an authority subordinate to the Principal Commissioner or Commissioner

## **Notes**

1. Orders passed by the Assessing Officer includes –
   1. An order of assessment made by the Assistant Commissioner on the basis of the directions issued by the Joint Commissioner u/s 144A;
   2. An order made by the Joint Commissioner as an Assessing Officer.
2. Even an intimation u/s 143(1) can be revised

**Tax point**

* Order made by the Assessing Officer after making proper enquiries and considering relevant details and decisions of Supreme Court cannot be said to be erroneous and prejudicial to the interest of the revenue, hence such order cannot be revised.
* 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:

1. the order is passed without making inquiries or verification which should have been made;
2. the order is passed allowing any relief without inquiring into the claim;
3. the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
4. the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person

# Treatment of an order, which is subject matter of the appeal

Revision u/s 263 of an order, which is subject matter of appeal, cannot be made.

**Procedure to be followed**

1. **Examination of Records:** The Principal Commissioner or Commissioner may call for and examine the records of any proceeding under the Act. If he considers that any order passed by the Assessing Officer is prejudicial to the interest of the revenue, he can revise and rectify the assessment.

**Record** shall include all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner. This means that any material, which was not available at the time of assessment but available at the time of examination by the Principal Commissioner or Commissioner, shall also be considered for order u/s 263.

1. **Inquiry:** He must make or cause to be made such inquiry as he deems necessary.
2. **Opportunity of being heard:** No revision order shall be passed u/s 263 without giving the assessee an opportunity of being heard.

**Order:** Finally, he may pass such revision order as the circumstances of the case justify including an order enhancing, modifying or cancelling the assessment and directing a fresh assessment.

**Time limit for passing revision order:** 2 years from the end of the financial year in which the order sought to be revised was passed.

In computing the above period of limitation following period shall be excluded-

* Time taken in giving an opportunity to the assessee of being re-heard u/s 129; &
* Any period during which any proceeding under this section is stayed by an order or injunction of any court.

**Exception:** There is no time limit for passing a revision order to give effect to, or in consequence of, an order of the ITAT, the High Court or the Supreme Court.

**Appeal against order u/s 263:** A revisional order passed by the Principal Commissioner or Commissioner u/s 263 can be appealed to the Tribunal.

**Section 263 vs. Section 154:** Principal Commissioner or Commissioner can exercise the power even in a case where the issue is debatable. Revisional power u/s 263 is not comparable with the power of rectification of mistake u/s 154.

# REVISION OF ORDER IN FAVOUR OF ASSESSEE [SECTION 264]

**Orders which may be revised**

Any order which is –

* erroneous;
* not covered u/s 263 (i.e. not prejudicial to the interest of the revenue);
* passed by an authority subordinate to the Principal Commissioner or Commissioner.

# Procedure to be followed

1. **Examination of Records:** Once revision proceedings have been initiated, the Principal Commissioner or Commissioner may call for and examine the record of any proceeding.
2. **Inquiry:** He must also make or cause to be made such inquiry as he deems necessary
3. **Order:** He may pass such revision order as the circumstances of the case justify. However, the order passed should not be prejudicial to the assessee.

**Time limit for filing an application:** Where revision has been initiated by the assessee, the application must be made within 1 year from the date on which the order in question was communicated to the assessee or the date on which he otherwise came to know of it, whichever is earlier.

However, the Principal Commissioner or Commissioner can admit a belated application if the assessee was prevented by sufficient cause from making the application within time. In computing the above period of limitation following time shall be excluded:

* The day on which the order complained of was served; and
* If the assessee had not received the copy of the order, the time required to obtain copy of such order.

**Time limit for passing a revisional order:** Where the Principal Commissioner or Commissioner acts on his own motion, Within 1 year from the date of original order.

Where the application is made by the assessee, Within 1 Year from the end of the financial year in which such application is made.

In computing the above period of limitation following period shall be excluded.

* Time taken in giving an opportunity to the assessee of being re-heard u/s 129; &
* Any period during which any proceeding under this section is stayed by an order or injunction of any court. [Section 264(6)]
* However, there is no time limit for passing a revision order for giving effect to, or in consequence of, an order of the ITAT, the High Court or the Supreme Court.

# Orders which cannot be revised [Section 264(4)]

1. Where an order is appealable but no appeal has been made to CIT (Appeals) or to the Tribunal and time within which such appeal can be made, has not expired.

**Note:** Where an appeal lies to the Commissioner (Appeals) or to the Appellate Tribunal and the right of appeal is waived by the assessee, the Principal Commissioner or Commissioner may revise the order even before the expiry of time limit of appeal.

1. Where the order has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal.

E.g., the assessee has been aggrieved with point A and point B in the order passed by the Assessing Officer. He preferred an appeal to the Commissioner (Appeals) in respect of point A and seeks to file revision petition u/s 264 in respect of point B. It is not possible, he cannot file revision petition u/s 264 due to doctrine of total (or complete) merger of the order. He has to choose either way of the course.

It is to be noted that for the purpose of sec. 264, doctrine of total merger is applicable, on the other hand, for the purpose of sec. 147, 154 and 263, doctrine of partial merger is applicable.

## **Note**

The assessment order could not be said to have been made subject matter of appeal, where an appeal was dismissed –

* 1. on the ground that the same was incompetent; or
  2. as barred by limitation; or

**Fee:** Rs 500 where the application for revision is made by the assessee.

**Appeal against order u/s 264:** A revisional order passed by the Principal Commissioner or Commissioner u/s 264 cannot be appealed to the Tribunal or the High Court. However, a petition for a writ of certiorari under Article 226 is maintainable.

**Other points**

* The assessee cannot claim the right of revision in respect of an earlier year on the basis of finding of the Tribunal for a subsequent year.
* An order by the Principal Commissioner or Commissioner declining to interfere shall not be deemed to be an order prejudicial to the assessee.

# PENALTY

In Income Tax Act, 1961 provides for the imposition of a penalty on an assessee who commits any offences under the provisions of the Act. Penalty levied over and above the amount of any tax or interest payable by the assessee and thus, penalty is distinct and different from the tax payable. Penalty proceedings, however, are a part of the assessment proceedings. The authority concerned is entitled to levy penalty only if satisfied in the course of any proceedings under the Act that a person has been found guilty of any default in complying with the provisions of the Act. If the order of the penalty is set aside in appeal on the ground the assessee was not given a reasonable opportunity of being heard, the Assessing Officer would be entitled to levy a penalty again after rectifying the mistake in proceedings. The penalty to be levied on an assessee is to be based upon law as it stood at the time the default was committed and not the law as it stands in the financial year for which the assessment is made.

## **1. Default in making payment of tax**

The amount of penalty leviable will be as determined by the Assessing Officer. However, the amount will not exceed the amount of tax in arrears

## **2. Under-reporting of income**

* If the income assessed/ re-assessed exceeds the income declared by the assessee, or in cases where return has not been filed and income exceeds the basic exemption limit, penalty at **50%** of tax payable on such under reported income shall be levied.
* **200%** of the tax is payable if under-reporting results from misreporting of income

## **3. Failure to maintain books of accounts and other documents**

* Normally, the amount of penalty leviable is **Rs.25,000**
* In case, the assessee is a person who has entered into international transaction, the penalty will be **2% of the value of such international transactions or specified domestic transactions**

## **4. Penalty for false entry such as fake invoices**

In case the income tax officer finds that the books of accounts provided by the asseessee in the proceeding contains the following:

1. forged or falsified documents such as a fake invoice or a false piece of documentary evidence

2. an invoice in respect of supply or receipts of goods or services issued by any person without actual supply or receipt of goods or services

3. an invoice of supply or receipt of goods or services received from a person who does not exist

4. an omission of any entry which is relevant for computation of total income

Then, the assessee might have to pay a penalty of the amount equal to sum of such false or omitted entries.

## **5. Undisclosed income**

* + Where the income determined includes **undisclosed income,**a penalty **@10%**is payable. However, no such penalty will be leviable, if such income was included in the return and tax was paid before the end of the relevant previous year.
  + Where Search has been initiated on/ after 1/7/2012 but before 15/12/2016,

a. If undisclosed income is **admitted** during the course of search and assessee pays tax and interest and files return, a penalty @ **10% of such undisclosed income** is payable.

b. If undisclosed income is **not admitted**but the same is furnished in the return filed after such search, **20% of such undisclosed income**is payable.

c. In all other cases, penalty is leviable @ **60%**

* + Where Search has been initiated on/ after 15/12/2016,

a. If undisclosed income is **admitted** during the course of Search and assessee pays tax and interest and files return, a penalty @ **30% of such undisclosed income** is payable.

b. In all other cases, penalty is leviable @ **60%**

## **5. Audit and Audit Report**

* + If the assessee **fails to get his accounts audited, obtain audit report, or furnish report** of such auditor, a penalty will be leviable at the**₹1,50,000 or ½% of the total sale/ Turnover/ gross receipts** whichever is lesser.
  + Failure of assessee to furnish **Audit report** related to **foreign transaction**, a penalty @**₹1,00,000**will be payable

## **6. TDS/TCS**

* + - Where a person **fails to deduct tax at source**, he will be liable to pay a penalty equal to the **amount of tax**which he has failed to deduct/ pay.
    - Where a person **fails to collect tax at source**, he will be liable to pay a penalty equal to the **amount of tax**which he has failed to collect.
  + Failure to **furnish TDS/TCS statement or furnishing incorrect statements,**shall attract a penalty ranging from **₹10,000 to ₹1,00,000**
  + Failure to furnish information/ furnishing inaccurate information related to **TDS deduction related regarding Non residents** shall attract a penalty of **₹100,000**

## **7. Penalty for using modes other than Account payee cheque/ draft/ ECS**

* + If a person takes/ accepts loan/ deposit **except by way of Account payee cheque/ account payee draft/ ECS**, and if the aggregate amount **exceeds ₹20,000,**he shall be liable to pay a penalty of an amount **equal to such loan/ deposit.**
  + If, an amount of **₹2,00,000 or more is received** in aggregate from a person in a day/ single transaction/ relating to one event, a penalty **equal to such amount**will be payable.

If a person **repays loan/ deposit**and such amount so repaid exceeds **₹20,000**and such amount has been repaid **except by way of Account payee cheque/ account payee draft/ ECS**, an amount **equal to such loan/ deposit**shall be payable.

## **8. Failure to furnish statements/ information**

* + Failure to furnish a **statement of financial transaction or reportable account**shall attract a penalty of **₹500 for each day of failure.**And if the failure is in response to a notice to report on specified financial transaction, the penalty shall be **₹1,000 for each day of failure**
  + A penalty of ₹50,000 shall be attracted for furnishing inaccurate statement of a financial transaction/ reportable account
  + Failure of an eligible investment fund to furnish any statement / information/ documents within the prescribed time shall attract a penalty of ₹5,00,000
  + Failure to furnish any information/ document in relation to international transaction shall attract a penalty of 2% of the value of such transaction
  + Failure to furnish any information/ document by an Indian Concern related with international transaction, shall attract a penalty of 2% of the value of transaction or ₹50,000 in some cases.
  + If a report/ certificate is required to be furnished by an Accountant/ Merchant Banker/ Registered Valuer and such information is found to be incorrect, a penalty of ₹10,000 for each incorrect report/ information is payable
  + Failure to furnish information by any person who is attending/ helping carrying the business/ profession of any person, in whose building/ place the income tax authority has entered for collecting information shall attract a penalty of upto ₹1,000
  + Non furnishing of report by any reporting entity which is obliged to furnish **Country by Country report**will attract penalty as follows:

|  |  |
| --- | --- |
| Period of delay | Penalty |
| Less than or equal to 1 month | ₹5000 per day |
| Continuing default | ₹50,000 per day from the beginning of service of order |
| Submission of inaccurate information | ₹5,00,000 |

## **9. Others**

* + Failure to apply/quote/ intimate PAN/ quoting false PAN shall attract a penalty of **₹10,000**
  + Failure to apply/quote TAN/ quoting false TAN shall attract a penalty of **₹10,000**
  + In case of the following defaults, **₹10,000**will be the penalty leviable,
  + Refusal to answer questions put by the department
  + Refusal to sign statements made in income tax proceedings
  + Non compliance with summons to give evidence/ produce books of accounts
  + Failure to comply with a notice

|  |  |
| --- | --- |
| |  | | --- | | **"PROSECUTIONS" Under Income Tax Act.** There are some lapses on the part of the assessee which are punishable through the courts. Whenever Income-tax department feels that a particular person has committed a particular offence, a wrongful act or he is guilty of a crime, the department will initiate the proceedings before a magistrate. The proceedings, before the magistrate shall be heard under the Criminal Procedure Code and onus to prove the guilt before the magistrate shall fall, upon the department. The assesee is considered to be an innocent person unless proved otherwise. Punishment given by the department is of monetary nature whereas for some specific offences punishment can be in the shape of imprisonment. But for that, the income-tax authorities have to launch the proceedings in a court of law The following are cases where the person commits offence under the Act, making the guilty persons liable to be punished by the court.  1. **For removing any Asset, Books of account, documents etc. found during search in contravention of order served under [Section 132 (3)].**Such a person shall be punishable with rigorous imprisonment which may extend up to 2 years and shall also be liable to fine. [Section 275A].  **2.         Removal, Concealment, transfer or delivery of property to avoid tax recovery [Section 276].** When a person fraudulently removes, conceals, transfers or delivers an asset with the objective of thwarting recovery of tax, he shall be liable to rigorous imprisonment up to 2 years and with fine.  **3.         Default on the part of Liquidator [Section 276 (A)].**Under the provisions of Section 178 (1), a liquidator of a company is supposed to inform the Assessing Officer about his appointment as such within 30 days. Under Section 178 (3) he is required not to part with any assets or properties without the permission of the Commissioner. He is further supposed to set aside an amount equal to the amount of tax payable by the company (as intimated by the I.T.O.).  If the liquidator contravenes any of these provisions, he shall be punishable with rigorous imprisonment which may extend up to a maximum of 2 years. If there are no special reasons, the imprisonment shall not be less than 6 months.  **4.         Failure to comply with provisions regarding transfer of immoveable property [Section 276 AB].**When a person fails to comply with provisions u/s 269 UC, 269 UE and 269 UL, (covered under acquisition of immovable property) he shall be liable to a punishment of rigorous imprisonment up to 2 years and with fine. If there are no special reasons, the imprisonment shall not be less than 6 months.  **5.         Failure to pay the tax deducted at source [Section 276 W]**. If a person fails to pay to the credit of the Central Government the tax deducted at source by him as required or tax payable by him as required u/s 1150; or second proviso of section 194B by or under the provision of this Act, he shall be punishable with rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 7 years and with fine.  **6.         Failure to pay the tax collected at source [Section 276 (BB)]**. If a person fails to pay to the credit of the Central Government, the tax collected by him as authorize under the provisions of Section 206 C, 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.  **7.         Willful attempt to evade Tax, Penalty, Interest etc. [Section 276 C (1)]**. If a person intentionally tries to evade any tax, penalty or interest, he shall be liable to a punishment of rigorous imprisonment of 6 months to 7 years and fine if the tax sought to be evaded exceeds Rs. 1,00,000 and 3 months to 3 years and fine if the amount of evasion is less than Rs. One lakh.  In case a person willfully attempts to evade the payment of tax, penalty or interest, he shall be punishable with rigorous imprisonment of a term from 3 months to 3 years and with fine [Section 276 C(2)]. The punishment of imprisonment is without prejudice to any penalty that may be imposable on him under any other provision of the Act  **8.         Failure to furnish return of income (Section 276 CC).**If a person willfully or intentionally fails to furnish in due time the return of income which he is required to furnish u/s 1 15WD(1) or I I5WH(2) or 139 (1) or 142 (1)(i) or 148, or u/s 153A he shall be punishable:  ***(i)***In a case where the amount of tax which would have been evaded if the failure had not been discovered, exceeds Rs. 1,00,000 with a rigorous imprisonment which shall not be less than 6 months but which may extend to 7 years and with fine  ***(ii)***in any other case, with imprisonment which shall not be less than 3 months but which may extend to 3 years and with fine.  It may be noted that person shall not be proceeded against under this section in the following cases  :   1. For any assessment year commencing prior to *1-4-1975.*   ***(ii)***For any assessment year commencing on or after 1-4-1975 if  (a) the return is furnished by him before the expiry of the assessment year ***;***or  ***(b)***the tax payable by him on the total income determined on regular assessment, as reduced by the advance tax paid, if any, and any tax deducted at source, does not exceed Rs. 3,000.  **9.         Failure to furnish return of income in search cases u/s 158 BC (Section 276 CCC).** In case a person willfully fails to furnish in due time, return of total income under a notice served u/s 158 BC, he shall be punishable with imprisonment for 3 months to 3 years and with fine.  **10.       Failure to produce accounts and documents [Section 276 (D)]**. If a person willfully fails to comply with the provisions of the notice served under Section 142 (1) regarding production of accounts, books or other documents, or willfully fails to comply with a direction issued to him under section 142 (2A) to get accounts audited by a Chartered Accountant, he shall be punishable with rigorous imprisonment which may extend up to one year or fine of Rs. 4 to Rs. 10 per day of default or with both.  **11.       False Statement in Verification [Section 277].** A person making a false statement or delivering a false account or statement, which he either knows or believes to be false or does not believe to be true, shall be punishable with rigorous imprisonment for- 6 months to 7 years, if the amount of tax evaded would have been more than Rs. One lakh and 3 months to 3 years and fine in any other case.  **12.       Falsification of books of account or document, etc. [Section 277A]**. If any person (hereafter in this section referred to as the first person) authorize and with intent to enable any other person (hereafter in this section referred to as the second person) to evade any tax or interest or penalty chargeable and impossible under this Act, makes or cause to be made any entry or statement which is false and which the first person either knows to be false or does not believe to be true, in any books of account or other document relevant to or useful in any proceedings against the first person or the second person, under this Act, the first person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.  It shall be sufficient in any charge under this section to allege a general intent to enable the second person to evade any tax, penalty or interest, without specifying any particular instance or sum of tax, penalty or interest which has been or would have been evaded by such second person.  **13.       Abetment in False Return (Section 278).** If a person abets or induces in any manner another person to make and deliver a false account, statement or declaration relating to any income chargeable to tax or to commit an offence u/s 276 C (1), he shall be punishable with rigorous imprisonment for a minimum term of six months and a maximum of seven years, if the amount of tax evaded would have been more than Rs. 1,00,000 and 3 months to 3 years in any other case and with fine.  **.14.       Punishment of Second and Subsequent Offences (Section 278 A).**If a person convicted of an offence under Section 276 B, 278 C(l), 276 CC, 276 DD, 276 D, 276 E, 277 or 278 is again convicted for an offence under any of these provisions, he shall be punishable for second and every subsequent offence with rigorous imprisonment of a term of not less than 6 months but which may extend to 7 years and with fine.  The approval of Commissioner of Income-tax is necessary to launch prosecution for offences under section 275, 276 A, 276 B, 276 C, 276 CC, 276 D, or 277 or 278 A, against any person. The Commissioner may compound any such offence (279). All the offences mentioned in Section 279 shall be deemed to be non-cognizable under the code of Criminal Procedure 1973.  **15.       Punishment not to be imposed in certain cases (Section 278 AA).** Notwithstanding anything contained in Section 276 A, 276 AB or Sec. 276 B, no person shall be punishable for any failure referred to in the aforesaid provisions if he proves that there had been a reasonable cause for such failure.  **Power of Commissioner to grant immunity from Prosecution [Section 278AB]**  I. If a person has made an application for settlement, he may make an application to the commissioner for granting immunity from prosecution.  2. This type of application shall not be made after the institution of the prosecution proceedings after abatement.  3. If the commissioner is satisfied, that the person has, after the abatement, co-operated with income-tax authority and has made full and true disclosures of his income and the manner in which income has been derived, the commissioner may grant to the person immunity from prosecution and he may also impose such conditions as he may think fit.  4. The immunity granted shall stand withdrawn if conditions imposed by the Commissioner are not complied with.  5. The immunity granted can be withdrawn by the Commissioner at any time if he is satisfied that the person hasconcealed any particular material to the assessment or had given false evidence. Such a person shall be tried for the offence ith respect to which immunity was granted or for any other offence of which he appears to have been guilty.  **16.       Offences by Companies (Section 278 B).**    (1)  Where an offence under the Act has been committed, by a company, *eveiy person*who, at the time offence was committed, was incharge of, and was responsible to the company for the conduct of the business as well as company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.  Such a person shall not be held liable to any punishment if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.  (2)       Section 278B says that notwithstanding anything contained in sub-section (1) where an offence by a company under this Act is committed and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary, or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.  (3)       Section 278B Where an offence under this Act has been committed by a person, being a company, and the punishment for such offense is imprisonment and fine, then, without prejudice to the provisions contained in sub-section (1) or sub-section (2), such company shall be punished with fine and every person, referred to in sub-section (1), or the director, manager, secretary or other officer of the company referred to in sub-section (2), shall be liable to be proceeded against and punished in accordance with the provisions of this Act.”   **17.       Offences by Hindu Undivided Families. (Section 278 C).** For any offence committed by H.U.F., its Karta shall be liable for punishment and if any member was also involved, he shall also be punishable.  But if Karta can prove that the offence was committed without his knowledge or that he has exercised all due diligence to present the commission of such offence he can escape punishment.  **18.       Presumption as to Assets, Books of Account etc. in certain cases. (Section 278 D)**. Where during any search conducted u/s 132, any money, bullion, uthori or other valuable article or thing or any books of account or other documents has or have been found in the possession or control of any person and such assets or books or documents are tendered by the prosecution in evidence against such person the provisions of Section 132 (4A) shall apply to such assets.  **19.       Prosecution to be at the instance of commissioner [Section 279]**  A person shall not be proceeded against for any offence under Sections 275 A, 276, 276 A, 276 B, 276 BB, 276 C, 276 CC, 276 D, 277, 278 except with the previous sanction of the Commissioner or Commissioner (Appeals) or the appropriate authority  It is also provided that the Chief Commissioner or, as the case may be Director General, may issue such instructions or directions to the aforesaid income-tax authorities as he may deem fit for the institution of proceeding under this sub-Section. Appropriate authority shall have the same meaning as in Section 269 UA ©.  No prosecution u/s 276 or 277 shall be made in relation with assessment years in respect of which penalty has been reduced or waived by the Chief Commissioner or Commissioner. [279(1A)J.  Any offence under this chapter may either before or after the institution of proceedings be compounded by the Chief Commissioner or Director General. [Section 279 (2)]  Where any proceedings has been taken against any person, any statement made or account or other document produced by such person before any of the income-tax authorities shall not be inadmissible as evidence for the purposes of such proceedings merely on the ground that such statement was made or account or document was produced in the belief that the penalty imposable would be reduced or waived under section 273 A or that the offence in respect of which such proceeding was taken would be compounded. [Section 279 (3)] | |

**QUESTIONS:-**

**1)** Explain briefly the different types of assessement?

**2)** What are the main provisions regarding deductions of tax at source?

**3)** When does the liability to pay advance tax arise? When such a tax is to be paid and how it is calculated and paid?

**4)** Describe briefly the procedure of an appeal to the Commissioner (Appeals).

**5)** Describe the provisions of Income Tax Act regarding revision by the commissioner of Income Tax.