

Rates of Tax, Surcharge and Education Cess



Exemption limit and rates of taxes:

The exemption limit for Individuals, HUF, AOP and BOI has been increased w.e.f. A.Y. 2010-11. This limit is now increased for senior citizens from Rs. 2,25,000 to Rs. 2,40,000, for women (below 65 years) from Rs.1,80,000 to Rs.1,90,000, and for others from Rs.1,50,000 to Rs.1,60,000. The slabs for levy of tax have also been recast as under:

Slab (Rs. in lacs)	A.Y. 2009-10	Slab (Rs. in lacs)	A.Y. 2010-11
1.50 to 3.00	10%	1.60 to 3.00	10%
3.00 to 5.00	20%	3.00 to 5.00	20%
Above 5.00	30%	Above 5.00	30%

Rates in A.Y. 2010-11 (Account Year ending 31-3-2010)

Income slab (Rs. in lacs)	Rates for senior citizens	Rates for women below 65 years	Rates for others
Up to 1.60	Nil	Nil	Nil
1.60 to 1.90	Nil	Nil	10%
1.90 to 2.40	Nil	10%	10%
2.40 to 3.00	10%	10%	10%
3.00 to 5.00	20%	20%	20%
Above 5.00	30%	30%	30%



Surcharge on income-tax:

In A.Y. 2009-10, surcharge at 10% of the income-tax was payable by a non-corporate as well as corporate body if their total income exceeded certain limits. In A.Y. 2010-11, no surcharge is leviable on non-corporate assessees. Surcharge will only be payable by companies if their total income exceeds specified limits. The following comparative position will explain the effect of this change:

Assessee	A.Y. 2009-10	A.Y. 2010-11
Individual, HUF, AOP, BOI - If total income exceeds Rs.10 lacs.	10%	Nil
Artificial Juridical Person	10%	Nil
Co-operative Society or Local Authority	Nil	Nil
Firm - If total income exceeds Rs.1 crore (Note : From: A.Y. 2010-11 Firm will include LLP)	10%	Nil
Company having total income exceeding Rs.1 crore		
- Domestic company	10%	10%
- Foreign Company	2.5%	2.5%

**Education Cess:**

As in A.Y. 2009-10, Education Cess of 3% (including 1% secondary and higher education cess) on I.T. and surcharge (where applicable) is payable by all assesseees in A.Y. 2010-11.

Dividend Distribution Tax

As in A.Y. 2009-10, the rate of DDT u/s.1150 continues to be at 15%. This amount is to be increased by surcharge at 10% of tax and Education Cess at 3% of tax and surcharge. It may be noted that w.e.f. 1-4-2009, no DDT is payable on the amount of dividend distributed to New Pension Scheme Trust as defined in S. 10 (44).

Deduction of Tax at Source (TDS)

**No surcharge and Education Cess on TDS:**

While deducting TDS w.e.f. 1-4-2009, the tax deductor has not to add surcharge and Education Cess to the tax deducted under various provisions of the Income-tax Act. Similarly, while collecting tax at source u/s. 206 from certain income, no surcharge or education cess is to be collected. There are only two exceptions as under:

- TDS from payment to a foreign company u/s. 195 or collection of tax from foreign company u/s.206C. In such cases, surcharge at 2.5% of tax and

education cess at 3% of tax and surcharge is to be added to the amount of tax.

- ii) TDS from payment to a Non-resident u/s.195, collection of tax from a Non-Resident u/s. 206 C and salary payment to an employee u/s.192. In such cases only Education cess at 3% of tax is to be added to the amount of tax.

TDS rates:

Part II of the First Schedule to the Finance Act (No. 2) Act, 2009 prescribes different rates of taxes for TDS from certain payments u/s. 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act. It may be noted these rates are the same as in A.Y. 2009-10 except for the following:

- (i) In the case of a domestic company, the rate of TDS from Interest Income and Other Income which was 20% is now reduced to 10% w.e.f. 1-4-2009.
- (ii) In the case of other residents, the rate of TDS from other income which was 20% has been reduced to 10% w.e.f. 1-4-09.

S. 206AA:

This is a new Section which will come into force w.e.f. 1-4-2010. It is now provided that wherever tax is to be deducted at source under Chapter XVIIB (S. 192 to S. 196D), the deductor should obtain PAN of the deductee. If the deductee does not provide his/its PAN, the tax deductor will have to deduct tax at source at the higher of the following rates:

- (i) Rate specified in the relevant Section in Chapter XVII B.
- (ii) Rate or rates applicable to the deductee.
- (iii) 20%.

It is also provided in this Section that in the application u/s.197 for lower deduction of tax and in the declaration u/s.197A (Forms 15G and 15H), the PAN of the deductee should be stated, otherwise this application /declaration will be invalid. Further, in all correspondence, bills, vouchers and other documents which are exchanged between the tax deductor and deductee, this PAN should be mentioned. If the PAN provided by the deductee is invalid for any reason, the tax deductor will be considered as having deducted tax at lower rate if he has deducted tax at a rate lower than 20%.

S. 194A: TDS from Interest

W.e.f. 1-4-2009, this Section shall not apply to interest paid by a scheduled bank in relation to Zero Coupon Bonds issued on or after 1-6-2005 by such bank.

S. 194C:

- (i) This Section deals with TDS from payments to contractors for work. The existing S. 194C has been replaced by a new S. 194C w.e.f. 1-10-2009. Under the existing S. 194C, TDS at the rate 2% to be deducted on payment for a contract to a contractor. However, in the case of sub-contractor, the TDS rate is 1% of the amount paid or payable. Further, in the case of payment for an advertising contract, TDS rate is 1%.
- (ii) In order to reduce the scope for disputes, the new S. 194C now removes the distinction between the contractor and sub-contractor. Uniform rates for TDS are now provided in this new Section for contractors and sub-contractors as under:
- (a) 1% where payment for a contract is to an individual or HUF.
 - (b) 2% where payment for a contract is to any other entity (e.g., Firm, LLP, AOP, Company, Co-operative Society, etc.)
 - (c) 'Nil' rate where payment is to a contractor for plying, hiring or leasing goods carriage, as defined in Explanation to S. 44AE(7), if the contractor furnishes his PAN. If PAN is not given the rate for TDS will be 1% if the contractor is an individual/HUF and 2% in other cases up to 31-3-2010.
 - (d) New S. 206AA now provides that w.e.f. 1-4-2010, the rate for TDS will be 20% in all cases if the deductee does not provide his PAN. Hence, in the case of a transport contractor, the rate of TDS will be 20% if the contractor does not provide his/its PAN.
- (iii) It is also provided in the Section that tax is to be deducted on invoice value, excluding value of the material used by the contractor if such value is separately stated in the invoice. Otherwise, TDS will be on the entire invoice value.
- (iv) This Section applies to a contract for any 'work'. The definition of this term is now widened to include 'Manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased by such customer, but does not include such contract where the material used is purchased from a person other than such customer'.

Question:

Explain whether the following contracts fall within the meaning of "work" under section 194C –

- (i) Manufacturing a product for A as per A's requirement using raw material purchased from B.
- (ii) Manufacturing a product for A as per A's requirement using raw material purchased from A himself.

If yes, what would be the value on which tax should be deducted at source under section 194C?

Answer:

The definition of “work” under section 194C has been amended to resolve the issue as to whether outsourcing constitutes work or not. Accordingly, as per the new definition, “work” shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person, other than such customer, as such a contract is a contract for ‘sale’. Therefore, if a product is manufactured for A using the raw material purchased from B, it would be a contract from ‘sale’ and not a works contract.

It may be noted that the term “work” would include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer. Therefore, if a product is manufactured for A using the raw material purchased from A himself, it would fall within the definition of work under section 194C.

In such a case, tax shall be deducted on the invoice value excluding the value of material purchased from A if such value is mentioned separately in the invoice. Where the material component has not been separately mentioned in the invoice, tax shall be deducted on the whole of the invoice value.

✚ **S.194I:**

This Section deals with TDS from payment of rent. The rates for TDS are reduced w.e.f. 1-10-2009 as under.

Type of payment	Existing rate up to 30.0.09	Revised w.e.f. 1-10- 2009
(i) Rent for hire of machinery, plant or equipment	10%	2%
(ii) Rent for land, building (including factory building) or furniture/fitting		
(a) If payee is Individual/HUF	15%	10%
(b) If payee is any other person	20%	10%

If the payee does not furnish PAN, the rate will be 20% in all cases w.e.f. 1-4-2010.

✚ **S. 197A:**

This Section provides that TDS provisions do not apply to Individuals who file declarations (Form 15G/15H) with the tax deductor and to certain specified persons. By amendment of this Section w.e.f. 1-4-2009, it is now provided that the tax is not to be deducted from payment to New Pension System Trust as defined in S. 10(44).

 S. 200:

At present the tax deductor has to file quarterly returns of TDS. It is now provided that the tax deductor shall prepare such statements for such period as may be prescribed by the CBDT. Thus new procedure will be effective from 1-10-2009. Similar amendments are made in S. 201(1A), 203A, 206A, 206C, etc.

 S. 200A:

This is a new Section which comes into effect from 1-4-2010. The Section provides that TDS returns filed u/s.200 shall be processed and TDS amount worked out by the assessee under Chapter XVIIB shall be computed after making adjustments of arithmetical errors or apparent incorrect claims made by the tax deductor. The method of processing of TDS returns is now provided in this new Section. The provisions are as follows:

Where a statement of tax deduction at source has been made by a person deducting any sum under section 200, such statement shall be processed in the following manner, namely:—

- (a) the sums deductible under this Chapter shall be computed after making the following adjustments, namely:—
 - (i) any arithmetical error in the statement; or
 - (ii) an incorrect claim, apparent from any information in the statement;
- (b) the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;
- (c) the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of amount computed under clause (b) against any amount paid under section 200 and section 201, and any amount paid otherwise by way of tax or interest;
- (d) an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (c); and
- (e) the amount of refund due to the deductor in pursuance of the determination under clause (c) shall be granted to the deductor :

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.

Explanation.—For the purposes of this sub-section, “an incorrect claim apparent from any information in the statement” shall mean a claim, on the basis of an entry, in the statement—

- (i) of an item, which is inconsistent with another entry of the same or some other item in such statement;
- (ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act.

S. 201:

This Section deals with levy of penalty and interest for defaults in not deducting TDS or having deducted the tax there is default in not depositing the same with the Government. There is no time limit for passing order for levy of penalty, or interest. This Section is amended w.e.f. 1-4-2010 to provide that no order u/s.201(1), deeming the tax deductor who is Resident as an assessee in default, shall be made after the expiry of:

- (i) 2 years from the end of the financial year in which the TDS return is filed.
- (ii) 4 years from the end of the financial year in which the payment is made or credit is given, in any other case.

Exemptions and deductions:

S. 10(10C):

Under this Section it is provided that lumpsum amount received for VRS or on retirement of an employee is not liable to tax up to the specified amount. The Section is amended effective from A.Y. 2010-11 to provide that if the relief u/s. 89 is allowed, no relief in rate of tax will be allowed to such employee under this Section. Corresponding amendment is made in S. 89.

Question:

Mr. Ravi, working in a public sector company, opted for voluntary retirement scheme and received Rs.8 lakh as VRS compensation. He claimed Rs.5 lakh as exemption under section 10(10C). Further, in respect of the balance amount of Rs.3 lakh, he claimed relief under section 89(1). Mr.Ravi seeks your opinion on the correctness of the above tax treatment.

Answer:

An employee opting for voluntary retirement scheme receives a lump-sum amount in respect of his balance period of service. This amount is in the nature of advance

salary. Under section 10(10C), an exemption of Rs.5 lakh is provided in respect of such amount to mitigate the hardship on account of the employee going into the higher tax bracket consequent to receipt of the amount in lump-sum upon voluntary retirement.

However, some tax payers have resorted to claiming both the exemption under section 10(10C) (upto Rs.5 lakh) and relief under section 89 (in respect of the amount received in excess of Rs.5 lakh). This tax treatment has been supported by many court judgements also, for example, the Madras High Court ruling in *CIT v. G.V. Venugopal* (2005) 273 ITR 0307 and *CIT v. M. Abdul Kareem* (2009) 311 ITR 162 and the Bombay High Court ruling in *CIT v. Koodathil Kallyatan Ambujakshan* (2009) 309 ITR 113 and *CIT v. Nagesh Devidas Kulkarni* (2007) 291 ITR 0407. However, this does not reflect the correct intention of the statute.

Therefore, in order to convey the true legislative intention, section 89 has been amended to provide that no relief shall be granted in respect of any amount received or receivable by an assessee on his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or a scheme of voluntary separation (in the case of a public sector company), if exemption under section 10(10C) in respect of such compensation received on voluntary retirement or termination of his service or voluntary separation has been claimed by the assessee in respect of the same assessment year or any other assessment year.

Correspondingly, section 10(10C) has been amended to provide that where any relief has been allowed to any assessee under section 89 for any assessment year in respect of any amount received or receivable on his voluntary retirement or termination of service or voluntary separation, no exemption under section 10(10C) shall be allowed to him in relation to that assessment year or any other assessment year.

Therefore, in view of the above amendment, Mr. Ravi's tax treatment is incorrect. He has to either opt for exemption of upto Rs.5 lakh under section 10(10C) or relief under section 89(1), but not both.

S. 10(23C):

Under this Section application for exemption or renewal of exemption is to be made to the prescribed authority by a university, educational institution, hospital, etc. before the end of the accounting year. It is now provided w.e.f. 1-4-2009 that such application can now be made before 30th September of the following year.

Question:

An educational institution having annual receipts of Rs.1.20 crore during the P.Y.2009- 10, has to make an application to the prescribed authority before 31.3.2010 for claiming tax exemption under section 10(23C) for A.Y. 2010-11 - Discuss the correctness or otherwise of this statement.

Answer:

This statement is not correct.

This position has changed consequent to an amendment in section 10(23C) by the Finance (No.2) Act, 2009. Prior to such amendment, an educational institution having annual receipts of more than rupees one crore, had to make an application for seeking exemption at any time during the financial year for which the exemption is sought.

Therefore, an eligible educational institution is required to estimate its annual receipts for deciding whether or not to file an application for exemption. This resulted in genuine hardship, for alleviating which, the time limit for filing such application has been extended from 31st March to 30th September of the succeeding financial year.

Therefore, in the given case, the educational institution (having annual receipts of Rs.1.20 crore during the P.Y.2009-10) can make an application for grant of exemption in the prescribed form to the prescribed authority on or before 30th September, 2010.

 S. 10(44):

This is a new clause inserted w.e.f. 1-4-2009 to provide that the income of the New Pension System Trust established on 27-2-2008 shall be exempt from A.Y. 2009-10 onwards.

 S. 10A and S. 10B:

Both these Sections are amended w.e.f. 1-4-2009 and it is now provided that such deductions will be available in A.Y. 2011-12 also.

 S. 10AA:

This Section grants exemption to income-of a unit established in the SEZ. Up to now, the formula for working out proportion of the profit exempt under this Section was as under:

$$\frac{\text{Profits of the business of the unit} \times \text{Export turnover of the unit}}{\text{Total turnover of the business carried on by the assessee}}$$

It is now clarified by amendment of this Section, effective from A.Y. 2010-11 that this will be worked out with reference to Total turnover of the SEZ unit only. Thus, the denominator in the above example will be 'Total turnover of SEZ unit'.

Recently, it has been proposed by Finance Minister in Finance Bill, 2010 that this amendment shall be applied retrospectively from assessment year beginning on the 1st day of April, 2006

Donations to 'Electoral Trust':

- (i) New S. 13B has been inserted effective from A.Y. 2010-11. It may be noted that u/s.13A, the income of recognised political party is exempt. S. 13B now provides that voluntary contributions received by 'Electoral Trust' shall not be included in the total income of the trust if the following conditions are complied with:
 - a) Such trust distributes 95% of the aggregate donations received by it during the accounting year, along with surplus brought forward from earlier years, to recognised political parties. This distribution is to be made in the same accounting year.
 - b) Such trust functions in accordance with the rules made by the Central Government.
- (ii) The expression 'Electoral Trust' is defined in S. 2(22 AAA) to mean a trust approved by the CBDT in accordance with the scheme made by the Central Government.
- (iii) S. 80GGB and S. 80GGC provide that any donation by an assessee (including a company) to a recognised political party is allowable as deduction in computing total income. These two Sections are also amended effective from A.Y. 2010-11 to provide that such deduction will be allowed in respect of donations to such an 'Electoral Trust'.

Charitable trusts:

S. 2(15): This Section defines the expression Charitable Purpose as (i) relief of the poor, (ii) education, (iii) medical relief and (iv) advancement of any other objects of general public utility. The last object No (iv) will not be considered as charitable if it involves the carrying on of any activity in the nature of trade, commerce or business, etc. This Section is now amended, effective from A.Y. 2009-10, to provide that the trust engaged in the preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest will not fall in object No. (iv). Therefore, if such trust is carrying on activity of trade, commerce, business etc. it will still be considered as charitable, trust u/s. 2(15).

Finance Minister has proposed to introduce another proviso w.e.f 1.4.09 as follows under the Finance Bill, 2010:

“Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakh rupees or less in the previous year;”;

That means that if profit from the activities of carrying on any activity in the nature of trade, commerce or business does not exceed Rs.10 lacs, then the same will be eligible for deduction as being for charitable purpose.

 S. 115 BBC:

This Section was inserted by the Finance Act, 2006, w.e.f. 1-4-2007 to provide that anonymous donations received by a public trust claiming exemption u/s 10(23C)-University, educational institutions, hospital, etc. and u/s 11 —Public Charitable Trusts will be taxable at the rate of 30% of such donations. The Section is now amended effective from A.Y. 2010-11 to provide as under:

- (i) Tax at 30% will be payable on the aggregate of anonymous donations received in excess of the higher of the following:
 - (a) 5% of total donations received by the trust or institution, or
 - (b) Rs.1,00,000
- (ii) The amount on which the above tax is payable will be excluded from the total income of the trust.

Question:

A charitable trust received anonymous donation of Rs.10 lakh during the P.Y.2009-10. It seeks your opinion on the taxability of such anonymous donation. The total donations received by the trust during the P.Y.2009-10 is Rs.25 lakh.

Answer:

Anonymous donations received by wholly charitable trusts and institutions are subject to tax at a flat rate of 30% under section 115BBC. In order to provide relief to these trusts and institutions and to reduce their compliance burden, an exemption limit has been introduced, and only the anonymous donations in excess of this limit would be subject to tax@30% under section 115BBC.

The exemption limit is the higher of the following –

- (1) 5% of the total donations received by the assessee; or
- (2) Rs.1 lakh.

The total tax payable by such institutions would be –

- (1) tax@30% on anonymous donations exceeding the exemption limit as calculated above; and

(2) tax on the balance income i.e. total income as reduced by the aggregate of anonymous donations received.

Therefore, in this case, the charitable trust would be eligible for an exemption of Rs.1,25,000 [the higher of Rs.1,00,000 and Rs.1,25,000 (i.e., 5% of Rs.25 lakh)]. The balance anonymous donation of Rs.8,75,000 (i.e. Rs.10,00,000 minus Rs.1,25,000) would be taxable at 30%. The tax liability under section 115BBC on anonymous donations would be Rs.2,62,500 (being 30% of Rs.8,75,000).

S. 80G:

This Section deals with approval of charitable trusts to enable the donors to claim deduction for donations made by them. The following amendments are made:

- (i) Since many trusts may have lost their exemption u/s.11 by virtue of amendment to the definition of 'Charitable Purpose' u/s.2(15) effective from A.Y. 2009-10, in order that donors do not lose the benefit of deduction, in the first year of loss of exemption, such trusts as were eligible for benefit u/s.80G for A.Y. 2007-08 will be deemed to have continued to be eligible u/s.80 G for the F.Y. 2008-09.
- (ii) W.e.f. 1-10-2009, the requirement of periodic renewal of approval u/s.80G has been done away with. All trusts whose approval u/s. 80G expires on or after 1-10-2009, will not have to apply for such approval or renewal again. Their approval will continue to be valid perpetuity unless withdrawn. Those trusts whose approval u/s.80G expire prior to 1-10-2009, will have to apply once for renewal their approval.

Business income

Definition of the word 'Manufacture':

S. 2(29BA) has been inserted effective from A.Y. 2009-10 to define the term "Manufacture". Accordingly, the word 'Manufacture' means a change in a non living physical object or article or thing (i) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use, or (ii) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.

S. 35:

At present u/s.35 (2AB) weighted deduction of 150% of the expenditure on in-house scientific research incurred by a company engaged in the business of biotechnology or in manufacture or production of drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any article or thing notified by the CBDT is allowed. The Section is now amended effective from A.Y. 2010-11 to provide that the weighted deduction will be available to any company engaged in any business of manufacture or production of any article or thing, other than the article or thing specified in the Eleventh Schedule.

 New S. 35AD:

This Section comes into effect from A.Y. 2010-11 and provides for deduction in respect of expenditure on specified business.

The deduction under this Section is available to an assessee carrying on any specified business viz, one or more of the following businesses:

- (a) Setting up and operating a cold chain facility,
- (b) Setting up and operating a warehousing facility for storage of agricultural produce,
- (c) Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being, an integral part of such network.

Some of the important conditions are:

- (a) The business should be new and not set up, by splitting-up, or reconstruction of existing business.
- (b) The business, stated in items (a) and (b) of (ii) above, should have been started on or after 1-4-2009.
- (c) As regards business of laying and operating oil pipelines as stated in Para (ii) (c) above:
 - It should have started on or after 1-4-2007,
 - It should have been started by a company or by a consortium of companies or by a public sector undertaking,
 - It should have been approved by the prescribed authority,
 - It should comply with the conditions prescribed by the CBDT.
- (d) The assessee will have to submit the return of income certificate from a chartered accountant in the prescribed form.

The deduction allowable under this Section as under:

- (a) Whole of the expenditure of capital nature incurred, wholly and exclusively, for the purposes of above specified business, excluding expenditure incurred on acquisition of any land, goodwill or financial instrument.

- (b) If any expenditure is incurred during any year prior to commencement of operations of the specified business, if the expenditure is capitalized in the books on commencement of the operations.
- (c) No deduction for such expenses will be allowed under any other Sections of the Income tax Act.
- (d) No deduction for the income of this business will be allowed under Chapter VIA. Consequential amendment is made in S. 80IA.

S. 28, S. 43, and S. 50B are also amended and new S. 73A is inserted effective from A.Y. 2010-11. By these amendments it is provided as under:

- (a) Any sum received or receivable on account of capital asset, in respect of which the above 100% deduction is allowed, when such asset is demolished, destroyed, discarded or transferred shall be treated as income of the assessee and chargeable to income-tax as business income.
- (b) Any loss computed in respect of the specified business shall be set off only against profits and gains of any other specified business. Unabsorbed loss of any year shall be carried forward and set off against profits and gains of any other specified business in subsequent year. No time limit is fixed for carry forward of such loss.

Question:

XYZ Ltd. commenced operations of the business of laying and operating a cross country natural gas pipeline network for distribution on 1st April, 2009. The company incurred capital expenditure of Rs.32 lakh during the period January to March, 2009 exclusively for the above business, and capitalized the same in its books of account as on 1st April, 2009. Further, during the financial year 2009-10, it incurred capital expenditure of Rs.95 lakh (out of which Rs.60 lakh was for acquisition of land) exclusively for the above business. Compute the deduction under section 35AD for the A.Y.2010-11, assuming that XYZ Ltd. has fulfilled all the conditions specified in section 35AD.

Answer:

The amount of deduction allowable under section 35AD for A.Y.2010-11 would be –

Particulars	Rs.
Capital expenditure incurred during the P.Y.2009-10 (excluding the expenditure incurred on acquisition of land) = Rs.95 lakh – Rs.60 lakh	35 lakh
Capital expenditure incurred prior to 1.4.2009 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2009	<u>32 lakh</u>
Total deduction under section 35AD for A.Y.2010-11	67 lakh

S. 36(1)(viii):

Under this Section deduction in respect of any specified reserve up to 20% of the profits is created and maintained by specified entities carrying on eligible business is allowed. At present, eligible business includes, amongst others, provision of long-term finance for 'Construction or Purchase of houses in India for residential purposes'. This is now replaced by provision of long-term finance for 'Development of housing in India'. This amendment is effective from A.Y. 2010-11. This amendment is made with a view to give the benefit of this Section to the National Housing Bank.

S. 40(b):

This Section provides for limit of deduction from income from business or profession for remuneration paid to working partners of a firm (including LLP). This limit is revised upwards effective from A.Y. 2010-11 (accounting year 2009-10) as under:

Book profit of business or profession	Limit for remuneration to all working partners
(i) On the first Rs.3 lacs or in case of loss	Rs.1,50,000 or at the rate of 90% of book profit whichever is more
(ii) On the balance of book profit	At the rate of 60% of book profit

S. 40A(3A):

S. 40A(3) and S. 40A(3A) provide for disallowance of expenditure if the payment for Rs.20,000 is made by any mode other than an A/c payee cheque. By amendment of S. 40A(3A) w.e.f. 1-10-2009, it is now provided that this limit in S. 40A(3) and (3A) shall be increased to Rs.35,000 in the case of payment made for plying, hiring or leasing goods carriages. Therefore, goods transport operators can now be paid up to Rs.35,000 in cash.

S. 43(6):

This Section provides for determination of WDV of block of assets. A new explanation (7) is now added effective from A.Y. 2010-11 to provide that where the income of an assessee is derived in part from agriculture and part from the taxable

business (e.g., tea company, sugar company etc.) for computing the WDV of the assets acquired before the accounting year, the total amount of depreciation shall be computed as if the entire income is taxable and the said depreciation shall be deducted from the WDV of block of assets as if it has been actually allowed. This is in spite of the fact that only a proportionate part of the entire income is taxable. The balance of the income is considered as agricultural income.

Presumptive taxation of business profits:

S. 44AA, S. 44AB, S. 44AF and S. 44AE have been amended and S. 44AD is substituted by new Section. These amendments are effective from A.Y. 2011-12. Scope of presumptive taxation of business profits is extended to all businesses where turnover or gross receipts do not exceed Rs.40 lacs.

The salient features of these amendments are as under:

- (i) The presumptive taxation scheme applies to an eligible resident assessee being an Individual, HUF or a **Firm other than limited liability partnership**.
- (ii) The presumptive scheme shall not apply to eligible assessee claiming deduction u/s.10A — (undertaking in Free Trade Zone), 10AA — (Unit in Special Economic Zone), 10B — (100% Export-Oriented Undertaking) and 10BA — (Export of handmade articles or things) and deductions in respect of income covered under Part C of Chapter VI-A such as S. 80-IA, S. 80-IB, etc.
- (iii) Presumptive income shall be 8% of the total turnover or gross receipts or the income claimed to have been earned from such business, whichever is higher.
- (iv) Eligible assessee will not be required to pay advance tax on presumptive income from such business, and, therefore tax is payable only on self assessment.
- (v) Eligible partnership firm can claim deduction of salary and interest to partners within the ceiling prescribed u/s.40(b) of the Act.
- (vi) Eligible assessee is not required to maintain books of account as required u/s.44AA.
- (vii) Eligible assessee is required to maintain books of account and also get them audited if he declares income below 8% of gross turnover/ receipts and if his total income exceeds the basic exemption limit.

S. 44AE:

This Section provides for presumptive income for truck owners. The Section applies to an assessee who owns not more than ten goods carriages and who is engaged in the business of plying, hiring or leasing of such goods carriages. At present, Rs.3,500 p.m. (for each heavy vehicle) and Rs.3,150 p.m. (for each other vehicle) or such higher amount as shown by the assessee is considered as his business

income. By amendment of this Section, effective from A.Y. 2011-12, the above limits are increased to Rs.5,000 p.m. (for each heavy vehicle) and Rs.4,500 p.m. (for each other vehicle) or such higher amount as shown by the assessee.

Transfer pricing

S. 92C:

This Section deals with determination of arm's-length price (ALP) in cases of international transactions with associated enterprises (AE). The proviso to S. 92C(2) has been amended. The existing proviso provides that where the most appropriate method results in more than one price, the arithmetical mean of such price or, at the option of the assessee, the price which differs from the arithmetical mean by an amount not exceeding 5% of such mean may be taken to be the arm's-length price in relation to the international transaction.

There were different interpretations of this proviso. Therefore, the proviso is modified w.e.f. 1-10-2009. This amendment can be explained by the following illustration:

	Assessee's interpretation of old proviso	Provision in the amended proviso
(i) Arithmetical mean of ALPs	Rs.1000	Rs.1000
(ii) If the assessee pays Rs.1050 (within 5%)	No adjustment	No adjustment
(iii) If the assessee has paid Rs.1200		
Adjustment will be 1200 – 1050	150	
Adjustment as per amendment (1200 – 1000)		200

S. 92CB: Safe Harbour Rules

This is a new Section inserted w.e.f. 1-4-2009. Transfer pricing is a very subjective exercise. There can be many bona fide reasons for the difference between ALP and actual price. To reduce the adjustments leading to avoidable disputes, it is now provided in this Section that the computation of ALP will be subject to safe harbour rules. These rules will now be made by the CBDT. 'Safe Harbour Rules' mean the circumstances under which the prices at which associated enterprises can enter into international transactions which will be considered as acceptable.

New S. 144C: Dispute Resolution Panel

This is a new Section which provides for reference to 'Dispute Resolution Panel' (DRP). The Section comes into force on 1-10-2009. At present, tax disputes relating to international transactions take a long time to resolve. To avoid such time-consuming process, an attempt is made to resolve such disputes through the dispute resolution mechanism provided in this Section. The salient features of this provision are as under:

Draft order of Assessment: Sec. 144C (1)

Notwithstanding anything to the contrary contained in this Act, the Assessing Officer shall, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.

Alternatives for Assessee: Sec. 144C (2)

On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,—

- (a) file his acceptance of the variations to the Assessing Officer; or
- (b) file his objections, if any, to such variation with,—
 - (i) the Dispute Resolution Panel; and
 - (ii) the Assessing Officer.

Completion of Assessment by AO: Sec. 144C (3)

The Assessing Officer shall complete the assessment on the basis of the draft order, if—

- (a) the assessee intimates to the Assessing Officer the acceptance of the variation; or
- (b) no objections are received within the period specified in sub-section (2).

Time Limit: Sec. 144C (4)

Notwithstanding anything contained in section 153 the Assessing Officer shall pass the assessment order under sub-section (3) within one month from the end of the month in which,—

- (a) the acceptance is received; or
- (b) the period of filing of objections under sub-section (2) expires.

Issue of Directions by DRP

In a case where any objection is received under sub-section (2), the Dispute Resolution Panel shall issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

The Dispute Resolution Panel shall issue the directions after considering the following, namely:—

- (a) draft order;
- (b) objections filed by the assessee;
- (c) evidence furnished by the assessee;
- (d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;
- (e) records relating to the draft order;
- (f) evidence collected by, or caused to be collected by, it; and
- (g) result of any enquiry made by, or caused to be made by, it.

The Dispute Resolution Panel may, before issuing any directions-

- (a) make such further enquiry, as it thinks fit; or
- (b) cause any further enquiry to be made by any income-tax authority and report the result of the same to it.

Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

No such direction shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.

No such direction shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

Upon receipt of the directions issued, the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received.

Action by DRP – Sec. 144C (8)

The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it **shall not set aside** any proposed variation or issue any direction for further enquiry and passing of the assessment order.

Decision by Majority – Sec. 144C (9)

If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

Power of Board to make rules

The Board may make rules for the purposes of the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed under sub-section (2) by the eligible assessee.

For the purposes of this section,—

- (a) “Dispute Resolution Panel” means a collegium comprising of three Commissioners of Income-tax constituted by the Board for this purpose;
- (b) “eligible assessee” means,—
 - (i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and
 - (ii) any foreign company.

Clarification regarding filing of Objections before Dispute Resolution Panel (DRP)

A query has been raised as to whether it is compulsory for an assessee to file an objection before the DRP or whether he can choose to file an appeal through the normal appellate channel of CIT (Appeals).

The provisions of sub-section (2) to sub-section (5) of section 144C are quite clear that a choice has been given to the assessee either to go before the DRP or to prefer the normal appellate channel. It is again clarified that it is the choice of the assessee whether to file an objection before the Dispute Resolution panel against the draft assessment order or not to exercise this option and file an appeal later before CIT (Appeals) against the assessment order passed by the Assessing Officer.

Income Tax (Dispute Resolution Panel) Rules, 2009 - Notification No. 84/2009 dated 20-11-2009

In exercise of the powers conferred by sub-section (14) of section 144C of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes makes the following rules to regulate the procedure of the Dispute Resolution Panel, namely:-

1. Short title and commencement.

- (1) These rules may be called the Income- tax (Dispute Resolution Panel) Rules, 2009.
- (2) They shall come into force on the date of their publication in the Official Gazette

2. Definitions.

In these rules, unless the context otherwise requires,—

- (i) “Act” means the Income-tax Act, 1961 (43 of 1961);
- (ii) “panel” means the Dispute Resolution Panel;
- (iii) “Form” means a form appended to these rules;
- (iv) “Secretariat”, in relation to panel, means the designated office for filing of objections by the eligible assessee under section 144C;
- (v) “section” means a section of the Act.
- (vi) words and expressions used herein but not defined and defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Constitution of the Panel.

- (1) The Board may, on the basis of workload and for efficient functioning, constitute panel.
- (2) The Board shall assign by name three Commissioners of Income-tax to each panel as Members who, in addition to their regular duties as Commissioners, shall also carry on the functions of the panel.
- (3) Where any Member of the panel is transferred, the Board shall assign, by name, another Commissioner of Income-tax in the place of the outgoing Member of the panel to carry out the functions of the panel.
- (4) Each panel shall have a secretariat for receiving objections, correspondence and other documents to be filed by the eligible assessee and shall also be responsible for issuing notices, correspondence and direction if any, on behalf of the panel.
- (5) The Chief Commissioner of Income-tax (CCA) shall, for the purposes of sub-rule (4), constitute the secretariat for the panel.

4. Procedure for filing objections.

- (1) The objections if any, of the eligible assessee to the draft order may be filed in person or through his agent within the specified period in Form No. 35A.
- (2) The objections referred to in sub-rule (1) shall be in English and presented to the Secretariat of the panel.
- (3) The objections shall be filed in paper book form in quadruplicate duly accompanied by -
 - (a) four copies of the draft order duly authenticated by the eligible assessee or his authorised representative:

Provided that in the case of draft assessment under sub-section (3) of section 143 read with section 144A, the objections shall also be accompanied by four copies of the directions issued by the Joint Commissioner or Additional Commissioner under section 144A and in the case of draft assessment under sub-section (3) of section 143 read with section 147, the objections shall also be accompanied by four copies of the original assessment order, if any;

Provided further that the Panel may, in its discretion, either accept the objections which are not accompanied by all or any of the documents referred to above or reject it.

(b) the evidence, if any, the eligible assessee intends to rely upon including any document or statement or paper submitted to the assessing officer:

Provided that where the eligible assessee intends to rely upon any additional evidence other than those submitted to the assessing officer, such additional evidence shall not form part of the paper book but may be filed along with a separate application stating the reasons for filing such additional evidence.

5. Notice for hearing

The panel shall issue notice to the eligible assessee and the concerned assessing officer specifying the date and place of hearing of the objection.

6. Call for records.

The panel shall also call for records relating the draft order and permit the assessing officer to file report, if any, to the objections filed by eligible assessee.

7. Hearing of objections.

(1) For the purpose of hearing of objections, the panel may hold its sittings at its headquarters or at such other place or places as it may deem proper.

(2) On the date fixed for hearing, if an authorised representative appears on behalf of eligible assessee, he shall file the authorisation letter before the commencement of the hearing.

(3) The panel may consider the application for filing additional affidavit and may either allow such application or reject it.

(4) The eligible assessee may, with the permission of the panel, urge any additional ground which has not been set forth in the objections.

8. No abatement of proceedings.

After filing objections, if the eligible assessee, being an individual, dies or is adjudicated insolvent, or being a company, is wound up, the proceedings before the panel shall not abate and shall be continued by the executor, administrator or other legal representative of such individual assessee or by the assignee, receiver or liquidator of such assessee being a company, as the case may be.

9. Power to call for or permit additional evidence

Where the panel deems it necessary, it may call upon or, as the case may be, permit the eligible assessee to produce any document or examine any witness or file any affidavit to enable it to issue proper directions:

Provided that the panel shall, while so permitting the eligible assessee record its reasons for such permission.

10. Issue of directions.

(1) On the date fixed for hearing or on any other date to which the hearing may be adjourned, if the eligible assessee or his authorized representative do not appear, or when they appear, upon hearing the objections, the panel may, within the specified time, issue such directions as it deems proper.

(2) While hearing the objections, the panel shall not be confined to the grounds set forth in the objections but shall have power to consider any matter or grounds arising out of the proceedings.

(3) On conclusion of hearing, the panel shall issue directions within the specified period.

11. Directions to be communicated to parties.

The panel shall, after the directions are issued, communicate the same to the eligible assessee and to the assessing officer.

12. Passing of Assessment Order.

Upon receipt of directions from the panel, the Assessing Officer shall pass the Assessment Order in accordance with the procedure prescribed in sub-section (13) of section 144C.

13. Rectification of mistake or error.

After the issue of directions under rule 10, if any mistake or error is apparent in such direction, the panel may, suo motu, or on an application from the eligible assessee or the assessing officer, rectify such mistake or error, and also direct the assessing officer to modify the assessment order accordingly.

14. Appeal against Assessment Order

Any appeal against the Assessment Order passed in pursuance of the directions of the panel shall be filed before the Appellate Tribunal in Form No. 36B.

Capital gains

S. 50C dealing with procedure for determination of full value of consideration in cases of transfer of immovable properties has been amended w.e.f. 1-10-2009. At present, for the purpose of computing capital gains on transfer of land or building or both, the amount adopted or assessed by the stamp duty authority is considered as full value of consideration. If such transfer is not registered and no stamp duty authority has adopted or assessed any valuation for the transfer, the provisions of S. 50C were not applicable as held in some judicial pronouncements. By this amendment, it is provided that if an immovable property is transferred without registration, the amount assessable as per stamp duty valuation will be considered as the full value of the consideration. The term 'Assessable' is defined to mean the price which the stamp valuation authority would have adopted or assessed, if it were referred to such authority for payment of stamp duty. Example: Contribution of Land as capital contribution in to Firm.

Question

"Section 50C can be invoked only in the case of registration of property pursuant to transfer.

In a case where only an agreement for sale is entered into and no registration has taken place, the provisions of section 50C cannot be made applicable."

Discuss the correctness or otherwise of this statement.

Answer

This statement is not correct.

So far, the scope of section 50C did not include within its ambit, transactions which were not registered with stamp duty valuation authority, and executed through an agreement to sell or power of attorney. Therefore, in order to prevent tax evasion on this account, section 50C has been amended by the Finance (No.2) Act, 2009, to provide that where the consideration received or accruing as a result of transfer of a capital asset, being land or building or both, is less than the value adopted or assessed **or assessable** by an authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed **or assessable** shall be deemed to be the full value of the consideration received or accruing as a result of such transfer for computing capital gain. **The term "assessable" has been added to cover transfers executed through an agreement to sell or power of attorney.**

Explanation 2 has been inserted after section 50C(2) to define the term 'assessable' to mean the price which the stamp valuation authority would have, notwithstanding

anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

Income from other sources: **S. 56(2)(vii):**

At present, only the sum of money received by an individual or HUF, if aggregate amount exceeds Rs.50,000 from non-relatives is taxable as income from other sources u/s.56(2)(vi) with certain exceptions. This provision is now replaced by S. 56(2)(vii) w.e.f. 1-10-2009 to cover cases of gifts received by an individual or HUF from non-relatives in cash or kind.

In brief, the position after 1-10-2009 will be as under:

- (i) The following properties received by an assessee, without consideration, from a person (non-relative) will be considered as income from other sources:
 - (a) A sum of money received from a non-relative, if the aggregate amount exceeds Rs.50,000.
 - (b) Any immovable property (land or building or both) received, without consideration, if the stamp duty value of the property exceeds Rs.50,000. If the assessee has paid consideration for the same, but the difference between the stamp duty valuation and actual consideration paid, is more than Rs.50,000, the entire difference will be liable to tax under this Section.
 - (c) Any movable property viz. (i) Shares and securities, (ii) Jewellery, (iii) Archaeological collections, (iv) Drawings, paintings, sculptures or any work of art, received, without consideration, if the fair value of the property exceeds Rs.50,000. If the assessee has paid consideration for the same, but the difference between the fair value and the actual consideration paid is more than Rs.50,000, such difference will be considered as income under this Section.
- (ii) For this purpose, stamp duty valuation of the immovable property will be considered as provided in S. 50C. For the determination of the fair value of movable property, the CBDT will prescribe rules.
- (iii) S. 49(4) now provides that when the assessee is charged to tax u/s.56(2)(vii) on the difference between the stamp duty valuation/fair value of a property and the actual consideration, this difference will be added to the cost of acquisition of that property for computing capital gains u/s.48.

(iv) It may be noted that the Section does not apply to gifts received, as stated above, from relatives and gifts received on the occasion of marriage, under a will, gifts in contemplation of death, from local authority or from public charitable trusts. The term relatives is defined, as in S. 56(2)(vi). In other words, these exceptions are the same as provided in S. 56(2)(vi).

However recently, Finance Minister has proposed to amend this provision with effect from the date when it came in to operation. It has been proposed that w.e.f. 1.10.09, the provision of sub clause (b) of clause (vii) shall be applicable only if any immovable property has been received without consideration, stamp duty value of which exceeds Rs. 50,000. Besides, it has been proposed that the definition of property is to be restricted to Capital Asset only. Therefore it shall not be applicable to stock in trade.

Question:

Mr. Ganesh received the following gifts during the P.Y.2009-10 from his friend Mr.Sundar, -

- (1) Cash gift of Rs.51,000 on his birthday, 19th June, 2009.
- (2) 50 shares of Beta Ltd., the fair market value of which was Rs.60,000, on his birthday, 19th June, 2009.
- (3) 100 shares of Alpha Ltd., the fair market value of which was Rs.70,000 on the date of transfer. This gift was received on the occasion of Diwali. Mr. Sundar had originally purchased the shares on 10-8-2009 at a cost of Rs.50,000.

Further, on 20th November, 2009, Mr. Ganesh purchased land from his sister's mother-in-law for Rs.5,00,000. The stamp value of land was Rs.7,00,000.

On 15th February, 2010, he sold the 100 shares of Alpha Ltd. for Rs.1 lakh.

Compute the income of Mr. Ganesh chargeable under the head "Income from other sources" and "Capital Gains" for A.Y.2010-11.

Answer:

Computation of "Income from other sources" of Mr.Ganesh for the A.Y.10-11

Particulars	Rs.
(1) Cash gift received before 1.10.2009 is taxable under section 56(2)(vi) since it exceeds Rs.50,000	51,000

(2) Value of shares of Beta Ltd. gifted by Mr.Sundar on 19 th June, 2009 is not taxable since only gift of property after 1 st October, 2009 is chargeable to tax under section 56(2)(vii).	-
(3) Fair market value of shares of Alpha Ltd. is taxable since the gift was made after 1st October, 2009 and the aggregate fair market value exceeds Rs.50,000.	70,000
(4) Purchase of land for inadequate consideration on 20.11.2009 would attract the provisions of section 56(2)(vii), since the difference between the stamp value and consideration exceeds Rs.50,000. Sister's mother-in-law does not fall within the definition of "relative" under section 56(2).	
Stamp Value	7,00,000
Less: Consideration	5,00,000
	2,00,000
Income from Other Sources	3,21,000

Computation of "Capital Gains" of Mr. Ganesh for the A.Y.2010-11

Sale Consideration	1,00,000
Less: Cost of acquisition [deemed to be the fair market value charged to tax under section 56(2)(vii)]	<u>70,000</u>
Short-term capital gains	30,000

S.56(2)(viii) r.w.s 145A - Interest on compensation:

By amendment of S. 145A, effective from A.Y. 2010-11, it is now provided that interest received by an assessee on compensation or on enhancement of compensation shall be deemed to be income of the year in which it is received. Amendment in S. 56(2)(vii) states that this interest is taxable under the head 'Income from Other Sources' w.e.f. A.Y. 2010-11.

By amendment of S. 57, w.e.f. A.Y. 2010 -11, it is now provided that deduction of 50% of such interest will be allowed. Therefore, effectively, only 50% of such interest will be taxed as income.

Question:

Mr. Rajesh received interest of Rs.3 lakh on enhanced compensation on 17.8.2009. Out of this interest, Rs.75,000 relates to the previous year 2006-07, Rs.1,00,000 relates to previous year 2007-08 and Rs.1,25,000 relates to previous year 2008-09. Discuss the tax implication, if any, of such interest income for A.Y.2010-11.

Answer:

- (i) As per section 145(1), income chargeable under the head “Profits and gains of business or profession” or “Income from other sources”, shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.
- (ii) Further, the Hon’ble Supreme Court has, in *Rama Bai v. CIT (1990) 181 ITR 400*, held that arrears of interest computed on delayed or on enhanced compensation shall be taxable on accrual basis. The tax payers faced genuine difficulty on account of this ruling, since the interest would have accrued over a number of years, and consequently the income of all the years would undergo a change.
- (iii) Therefore, to remove this difficulty, clause (b) has been inserted in section 145A to provide that the interest received by an assessee on compensation or on enhanced compensation shall be deemed to be his income for the year in which it is received, irrespective of the method of accounting followed by the assessee.
- (iv) Clause (viii) has been inserted in section 56(2) to provide that income by way of interest received on compensation or on enhanced compensation referred to in clause (b) of section 145A shall be assessed as “Income from other sources” in the year in which it is received.
- (v) Clause (iv) has been inserted in section 57 to allow a deduction of 50% of such income. It is further clarified that no deduction would be allowable under any other clause of section 57 in respect of such income.

Therefore, in this case, the entire interest of Rs.3,00,000 would be taxable in the year of receipt, namely, P.Y.2009-10, under the head “Income from Other Sources”.

Particulars	Rs.
Interest on enhanced compensation taxable u/s 56(2)(viii)	3,00,000
Less: Deduction under section 57(iv) @50%	<u>1,50,000</u>
Interest chargeable under the head “Income from other sources”	1,50,000

Taxation of Limited Liability Partnerships

The Limited Liability Partnership Act, 2008 (LLP Act) was passed by the Parliament in December, 2008. In the Income-tax Act, S. 2(23) and S. 140 have been amended w.e.f.

A.Y. 2010-11. New S. 167C is also added effective from A.Y. 2010-11. The effect of these amendments is that the LLP will be taxed in the same manner as a partnership firm.

In the definition of the term 'Firm' and 'Partnership' in S. 2(23) of the Income-tax Act, it is stated that the term 'Firm' or 'Partnership' will include any LLP w.e.f. 1-4-2009. Further, the definition of a 'Partner' will include a partner of LLP. Therefore, all the provisions for taxation of 'Firm' and its partners will apply to LLP and its partners. Tax will be payable by the LLP at 30% plus Education Cess. No surcharge will be payable by the LLP from A.Y. 2010 -11.

Question:

Explain the tax treatment of Limited Liability Partnership under the Income-tax Act, 1961.

Answer:

Tax treatment for Limited Liability Partnership (LLP)

- (a) Consequent to the Limited Liability Partnership Act, 2008 coming into effect in 2009 and notification of the Limited Liability Partnership Rules w.e.f. 1st April, 2009, the Finance (No.2) Act, 2009 has incorporated the taxation scheme of LLPs in the Income-tax Act on the same lines as applicable for general partnerships, i.e. tax liability would be attracted in the hands of the LLP and tax exemption would be available to the partners. Therefore, the same tax treatment would be applicable for both general partnerships and LLPs.
- (b) Consequently, the following definitions in section 2(23) have been amended -
 - (1) The definition of 'partner' to include within its meaning, a partner of a limited liability partnership;
 - (2) The definition of 'firm' to include within its meaning, a limited liability partnership; and
 - (3) The definition of 'partnership' to include within its meaning, a limited liability partnership.

The definition of these terms under the Income-tax Act would, in effect, also include the terms as they have been defined in the Limited Liability Partnership Act, 2008. Section 2(q) of the LLP Act, 2008 defines a 'partner' as any person who becomes a partner in the LLP in accordance with the LLP agreement. An LLP agreement has been defined under section 2(o) to mean any written agreement between the partners of the LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to the LLP.

- (c) The LLP Act provides for nomination of "designated partners" who have been given greater responsibility. Therefore, clause (cd) has been inserted in section 140, which lays down the "Authorised signatories to the return of income", to provide that the designated partner shall sign the return of income of an LLP.

However, where, for any unavoidable reason such designated partner is not able to sign and verify the return or where there is no designated partner as such, any partner can sign the return.

- (d) New section 167C provides for the liability of partners of LLP in liquidation. In case of liquidation of an LLP, where tax due from the LLP cannot be recovered, every person who was a partner of the LLP at any time during the relevant previous year will be jointly and severally liable for payment of tax unless he proves that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the LLP. This provision would also apply where tax is due from any other person in respect of any income of any previous year during which such other person was a LLP.
- (e) Since the tax treatment accorded to a LLP and a general partnership is the same, the conversion from a general partnership firm to an LLP will have no tax implications if the rights and obligations of the partners remain the same after conversion and if there is no transfer of any asset or liability after conversion. However, if there is a change in rights and obligations of partners or there is a transfer of asset or liability after conversion, then the provisions of section 45 would get attracted.
- (f) The LLP shall be entitled to deduction of remuneration paid to working partners, if the same is authorized by the partnership deed, subject to the limits specified in section 40(b)(v), i.e., -
 - (a) On the first Rs.3,00,000 of book profit or in case of a loss
Rs.1,50,000 or 90% of book profit, whichever is higher
 - (b) On balance book profit 60% of book profit
- (g) The LLP shall be entitled to deduction of interest paid to partners if such payment is authorized by the partnership deed and the rate of interest does not exceed 12% simple interest per annum.
- (h) The LLP shall comply with section 184, which requires that -
 - (1) the partnership is evidenced by an instrument;
 - (2) the individual shares of the partnership are specified in that instrument;
 - (3) a certified copy of the LLP agreement shall accompany the return of income of the LLP of the previous year relevant to the assessment year in which assessment as a firm is first sought.
- (i) If the LLP does not comply with section 184, it shall not be entitled to deduction of payments of interest or remuneration made by it to any partner in computing the income under the head "Profits and gains of business or

Profession”.

Salary income

S. 17(2)(vi) & (vii):

With the abolition of Fringe Benefit Tax (FBT), from A.Y. 2010-11 (A/c. year 1-4-2009 to 31-3-2010) certain perquisites, on which FBT was payable by the employer, will now be considered as part of salary income of the employee. For this purpose, S. 17(2)(vi) and (vii) have been amended effective from A.Y. 2010-11. This amendment provides that perquisite will include the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assessee. The value of the specified security or sweat equity shares shall be the fair market value on the date on which the option is exercised by the assessee as reduced by the amount actually paid by the assessee. For this purpose, the fair market value will be determined in accordance with the method prescribed by the CBDT. Similarly, perquisite will include the amount of any contribution to an approved superannuation fund by the employer in respect of assessee, to the extent it exceeds Rs.1,00,000. Further, perquisite will also include any other fringe benefit or amenity as may be prescribed.

S. 49(2AA):

This Section is also amended effective from A.Y. 2010-11 to provide that when capital gain arises on the transfer of the above-specified security or sweat equity shares allotted u/s.17(2) (vi), the cost of acquisition of such security or shares shall be the fair market value which has been taken into account for the purpose of levy of tax under that Section.

Chapter VIA deductions

S. 80A:

This Section deals with deductions to be made in computing total income. Two sub-sections (4) and (5) have been inserted in this Section with retrospective effect from 1-4-2003 (A.Y. 2003-04) probably with a view to prevent abuse of tax incentives. Ss.(6) has been added w.e.f. 1-4-2009 (A.Y. 2009-10). Briefly stated these sub-sections provide as under:

- (i) Ss. (4) effective from 1-4-2003, provides that if an assessee has claimed and has been allowed deduction of any amount of profit u/s.10A or u/s.10AA or u/s.10B or u/s.10BA or under Chapter VIA, the assessee shall not be allowed deduction under any other Section of the Act in respect of, and to

- the extent of, such profits and the total deduction shall not exceed the profits of the undertaking.
- (ii) Ss.(5), effective from 1-4-2003, provides that if the assessee does not claim deduction u/s.10A or u/s.10AA or u/s.10B or u/s.10BA or under Chapter VIA in the return of income, he shall not be allowed deduction under those Sections.
- (iii) Ss.(6), effective from 1-4-2009, provides that in the case of an undertaking, unit, business or enterprise (for sake of brevity, unit), the profits of which are eligible for deduction u/s.10A or u/s.10AA or u/s.10B or u/s.10BA or under Chapter VIA, where the unit transfers any goods or services to other business of the assessee or the unit acquires goods or services from other business of the assessee, then the deduction will be computed by taking the market value of the goods or services transferred or acquired by the unit from the other business of the assessee. Market value has been defined to be the price at which the unit would have transferred in the open market or acquired from the open market, the goods and services, subject to statutory or regulatory restrictions, if any.

S. 80CCD:

- (i) S. 80 CCD provides for deduction for contribution to certain notified pension schemes by salaried assessees. The amendment to Ss.(1) extends the benefit of deduction to all individuals, whether employed or otherwise. This will be effective from 1st April, 2009 (A.Y. 2009-10). However, the limit of 10% of salary on contribution to the scheme continues in this sub-section. In the case of self-employed assessee, the limit will be 10% of his gross total income.
- (ii) Amount received on closure of account or on opting out of the pension scheme or pension received from annuity purchased is chargeable to tax. Ss.(5) has been introduced to provide that the amount received shall not be considered as received and will not be chargeable to tax if it is utilised for purchase of annuity plan in the same year. This is to avoid unintended double taxation.

S. 80DD:

S. 80DD presently provides for deduction of Rs.50,000 for expenditure incurred for maintenance, medical treatment, etc. of a dependant having disability as defined in the Section. The deduction is Rs.75,000 where the disability is severe. This limit of Rs.75,000 is increased to Rs.1,00,000 and the other limit remains unchanged. The amendment is effective from A.Y. 2010 -11.

S. 80E:

S. 80E provides for deduction of interest on loan taken for pursuing higher education. Presently, higher education is defined to include professional courses like medicine, engineering or post-graduate course in applied or pure sciences. The Section has been amended effective from A.Y. 2010-11 to include any course pursued after passing Senior Secondary Examination or recognised equivalent examination. Further, the term 'relative' will now include spouse and children of the individual or the student for whom the individual is the legal guardian.

S. 80IA:

This Section provides for deduction in respect of undertakings in certain infrastructure activities. The Section will not now apply to undertaking which lays and begins to operate a cross- country natural gas distribution network effective from A.Y. 2010-11 in view of insertion of new S. 35 AD. The Section covers undertakings set up for generation and/or transmission or distribution of power or renovation and modernisation of transmission network or distribution lines. In all these cases, the date before which the undertaking will have to start operating to be eligible for deduction has been extended to 31st March, 2011.

Further, Explanation below Ss.(13) is substituted retrospectively with effect from 1st April, 2000 (A.Y. 2000-01) to clarify that this Section shall not apply to business in the nature of works contract, awarded by any person including the Central or State Governments, executed by the undertaking or enterprise.

S. 80IB(9):

This Section relates to deduction in respect of profits and gains from certain industrial undertakings. The deduction given is 100% of profits of the undertaking for 7 assessment years. New Ss.(9) replaces old Ss.(9) effective from A.Y. 2000-01. The benefit will now be available to undertaking engaged in refining of mineral oil which begins such refining on or after 1-10-1998 and not later than 31-3-2012. This benefit will be available if the financial undertaking is engaged in commercial production of natural gas in blocks licensed under the VIII Round of bidding for award of exploration contracts under NELP announced by the Government on 10-2-1999. This benefit will also be available if the undertaking is engaged in commercial production of natural gas licensed under the IV Round of bidding for award of exploration contracts for coal bed Methane blocks and begins such production on or after 1-4-2009. It is further clarified that the term 'undertaking' will mean all blocks licensed under a single contract under NELP. Thus, each well in the block cannot be considered as a separate undertaking for the purpose of claiming deduction under this Section.

✚ S. 80IB(10):

This Section provides for deduction of profits derived from developing and building housing projects. The first condition that the housing project should be approved before 31-3-2007 has now been amended and it is provided w.e.f. 1-4-2009 (A.Y. 2009-10) that even if the project is approved before 31-3-2008 by local authority, the benefit of the Section will be available. Further, the Section has been amended by inserting additional condition for entitlement to deduction. The newly inserted condition requires that where the buyer of the residential unit is not an individual, not more than one unit in the project shall be allotted to such buyer; and where the buyer is an individual, no unit in the project shall be allotted to the spouse, minor children or HUF of which the individual is karta or to any person representing such individual, spouse, minor children or HUF. This is applicable from A.Y. 2010-11.

An explanation has been added in this Section w.e.f. 1-4-2001 to clarify that deduction under this Section shall not be available to a person executing such housing project as works contract.

✚ S. 80IB(11A):

This sub-section provides for deduction of specified profits of an undertaking for a period of 10 years from the business of processing, preservation and packaging of fruits and vegetables, etc. Effective from A.Y. 2010-11, this benefit is extended to production of meat and meat products or poultry, marine or dairy products, provided that the undertaking for this purpose is started on or after 1-4-2009.

✚ S. 80U:

This Section allows deduction in the computation of total income of an individual with disability. This deduction is Rs.50,000. If the assessee is suffering from severe disability, as defined in the Section, the deduction allowable at present is of Rs.75,000. From A.Y. 2010-11 this deduction of Rs.75,000 is increased to Rs.1,00,000.

Question :

The Finance (No.2) Act, 2009 has introduced investment-linked tax incentives for specified businesses. In this context, explain the concept of investment-linked tax incentives and name the specified businesses eligible for such benefits.

Answer:

Although there are a plethora of tax incentives available under the Income-tax Act, they do not fulfill the intended purpose of creating infrastructure since these incentives are linked to profits and consequently have the effect of diverting profits from the taxable sector to the tax-free sector. Therefore, with the specific objective of creating rural infrastructure and environment friendly alternate means for transportation of bulk goods, investment-linked tax incentives have been introduced for specified businesses, namely, –

- setting-up and operating 'cold chain' facilities for specified products;
- setting-up and operating warehousing facilities for storing agricultural produce;
- laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network.

100% of the capital expenditure incurred during the previous year, wholly and exclusively for the above businesses would be allowed as deduction from the business income. However, expenditure incurred on acquisition of any land, goodwill or financial instrument would not be eligible for deduction.

Further, the expenditure incurred, wholly and exclusively, for the purpose of specified business prior to commencement of operation would be allowed as deduction during the previous year in which the assessee commences operation of his specified business. A condition has been inserted that such amount incurred prior to commencement should be capitalized in the books of account of the assessee on the date of commencement of its operations.

Minimum Alternate Tax (MAT)

S. 115JB:

This Section, dealing with Minimum Alternate Tax has been amended as under:

- (i) It is now provided that for computing 'Book Profit' for levy of MAT, the net profit as per books will be increased by the provision for diminution in the value of any asset debited to the Profit & Loss A/c. This provision is made with retrospective effect from 1-4-2001 (A.Y. 2001-02).
- (ii) The rate of tax payable on book profit is increased from 10% to 15% plus applicable surcharge and education cess from A.Y. 2010-11.

S. 115JAA:

Under this Section tax credit (MAT credit) is allowed to be carried forward for 7 assessment years immediately succeeding the assessment year in which MAT is paid u/s.115JB. This can be set off in the assessment year in which tax is payable under the normal provisions of the Act. This period is now extended from 7 years to 10 years and this will apply to MAT credit carried forward from earlier years also.

Assessment procedure **S. 147:**

There are several judicial pronouncements that reassessment proceedings shall be restricted to only such issues which have been specifically recorded by the AO before issuing the notice for re-opening of the assessment. An explanation is now inserted with retrospective effect from 1st April, 1989 to provide that the AO can assess or re-assess income in respect of any issue which has escaped assessment even if the same comes to his notice subsequently in the course of the re-assessment proceedings and the same was not recorded by him earlier at the time of issuing the notice for re-opening the assessment.

 S. 281B:

The Assessing Officer is presently empowered to make provisional attachment to protect the interest of the Revenue. This provisional attachment is valid for a period of six months from the date of the order and its validity can be extended up to a maximum period of two years with the permission of the Chief Commissioner.

Now, it is provided that the period for which stay on assessment or re-assessment proceeding is granted by the High Court or the Supreme Court shall be excluded while calculating the maximum period available for provisional attachment.

This amendment is effective retrospectively from 1st April, 1988.

 S. 282:

Presently, a notice or summon or requisition under the Act may be served either by post or in a manner by which summons are issued by a Court.

Now, service of a notice or summon or requisition or any other communication or order can also be made by courier services or in the form of electronic record or by any other means as may be prescribed by the CBDT.

It is also provided that the CBDT may make rules providing for the addresses, including the address for electronic mail, to which such communication may be delivered. This amendment is effective from 1st October 2009.

Question:

“Any summons under the Income-tax Act has to be delivered only in such manner as provided in the Code of Civil Procedure, 1908 for the purpose of service of summons.” Is this statement correct? Discuss.

Answer:

Section 282 has been substituted w.e.f. 1.10.2009 to provide that the service of notice or summon or requisition or order or any other communication under this Act may be made by delivering or transmitting a copy thereof to the person named therein -

- (1) by post or such courier services as approved by the CBDT; or
- (2) in such manner as provided in the Code of Civil Procedure, 1908 for the purposes of service of summons; or
- (3) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or
- (4) by any other means of transmission as may be provided by rules made by the CBDT in this behalf.

Therefore, there is no restriction that the summons under the Income-tax Act have to be delivered only in such manner as provided in the Code of Civil Procedure, 1908 for the purpose of service of summons. Hence, the statement is not correct.

S. 282B:

Every Income-tax authority shall allot a computer-generated Document Identification Number (DIN) in respect of every notice, order, letter or any correspondence issued by him to any other Income-tax authority or to assesseees or to any other person and such number shall be quoted thereon. If such notice, order, etc. does not bear a DIN, such notice, order, etc. shall be treated as invalid and shall be deemed never to have been issued.

It is further provided that every document, letter or any correspondence received by an Income-tax authority or on behalf of such authority, shall be accepted only after allotting and quoting computer-generated DIN. If such document, etc. does not bear DIN, the same shall be treated as invalid and shall be deemed never to have been received. This is effective from 1st October, 2010.

Other amendments

Fringe Benefit Tax:

Chapter XII-H containing S. 115W to S. 115WL providing for levy of Fringe Benefit Tax was inserted by the Finance Act, 2005 w.e.f. 1-4-2006. This provision was most controversial. By insertion of S. 115WM it is provided that no FBT will be payable from A.Y. 2010-11 (A/c year 1-4-2009 to 31-3-2010) onwards. This tax was payable in advance on a quarterly basis.

CIRCULAR NO. 2/2010.

During the current Financial Year 2009-10 some assessees have paid “advance tax in respect of fringe benefits” for Assessment Year 2010-11. In such cases the Board has decided that any installment of “advance tax paid in respect of fringe benefits” for A.Y. 2010-11 shall be treated as Advance Tax paid by assessee concerned for A.Y. 2010-11. The assessee can adjust such sum against its advance tax obligation in respect of income for A.Y. 2010-11 or in case of loss etc claim such payment as refund as advance tax paid in A.Y. 2010-11.

S. 208:

This Section specifies that advance tax shall be payable in every case where the amount of such tax for the financial year is Rs.5,000 or more. This limit is now increased to Rs.10,000 w.e.f. 1-4-2009.

S. 271(1) — New Explanation 5A:

In the course of search initiated on or after 1st June, 2007, if the assessee is found to be the owner of

- (i) any money, bullion, jewellery or other valuable article or thing acquired out of income of any previous year ended before the date of search, or
- (ii) any income based on any entry in any books or other documents or transactions which represent income of any previous year ended before the date of search;

he shall be deemed to have concealed particulars of income or furnished inaccurate particulars of income if :

- (i) return of income submitted before the date of search does not reflect this income, or
- (ii) return of income has not been submitted where the due date of filing has expired.

The amended provision will now cover cases where return of income submitted prior to search does not include such income. This amendment is effective from 1-6-2007.

S. 13 of Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002:

Income-tax exemption to erstwhile UTI which was to expire on 31-3-2009 has been extended up to 31-3-2014.

 Securities Transaction Tax:

It is now provided w.e.f. 1-10-2009 that STT will not be payable for any transaction through recognised Stock Exchange entered into by the New Pension System Trust.

 Commodities Transaction Tax:

The Finance Act, 2008, had provided for levy of CTT w.e.f. 1-4-2009. This provision is now amended and this tax is withdrawn w.e.f. 1-4-2009.

 Wealth-tax :

Presently wealth-tax is payable on specified assets with a threshold limit of Rs.15 lacs at the rate of 1%. By amendment of S. 3 of the Wealth-tax Act, this threshold limit is increased to Rs.30 lacs effective from A.Y. 2010-11.

**New Perquisite Rules not to apply for May 2010
Pronouncement of the Institute**

(1) Fringe Benefit Tax is not applicable from A.Y.2010-11 and hence, is not relevant for May 2010 examination.

(2) Consequential Notification of new perquisite rules on 18.12.2009 not to apply for May 2010 examination.

Consequent to abolition of fringe benefit tax, certain benefits taxed earlier as fringe benefits in the hands of the employer would now be taxable as perquisites in the hands of the employees. For this purpose, new perquisite valuation rules have been notified vide Notification No.94/2009/ F.No.142/25/2009-S.O.(TPL), dated 18.12.2009 with retrospective effect from 1.4.2009. However, the new perquisite valuation rules would be applicable only for November 2010 examination. They would not be applicable for May 2010 examination, since only notifications/circulars issued up to 31st October, 2009 are relevant for May 2010 examination.

(3) Applicability of erstwhile Rule 3 for May 2010 examination. Therefore, the erstwhile Rule 3 would be applicable for May 2010 examination. All the perquisites which were earlier taxable in the hands of the employee, only if the employer was not liable to pay fringe benefit tax, would now be taxable in the hands of the employee in all cases, since no employer is liable to pay fringe benefit tax for A.Y.2010-11.

Rule 3(7), providing for valuation of “other fringe benefits and amenities”, is based on the terms of the provisions contained in the erstwhile clause (vi) of section 17(2). The Finance (No.2) Act, 2009 has amended section 17(2) by including certain other perquisites under clauses (vi) and (vii) of section 17(2). Consequently, the residual clause, namely, clause (viii) of section 17(2), now provides for taxing the value of any other fringe benefit or amenity as may be prescribed. Therefore, the Rule 3(7), prescribing the fringe benefits or amenities in terms of the erstwhile clause (vi) [now clause (viii)] of section 17(2)] have been given in the latest study material relevant for May 2010 examination.

Rule 3(7): The following Rule 3 (7) shall be applicable for May 2010 exams. The point to be noted is that all the below mentioned perquisites shall be considered as taxable for all employees irrespective of the fact that employer was liable for payment of FBT on these perquisites under FBT provisions.

(i) Provision of **interest-free or concessional loan** for any purpose made available to the employee or any member of his household - the sum equal to the interest computed at the rate charged per annum by the State Bank of India, as on the 1st day of the relevant previous year in respect of loans for the same purpose advanced by it on the maximum outstanding monthly balance as reduced by the interest, if any, actually paid by him or any such member of his household.

However, no value would be charged if such loans are made available for medical treatment in respect of diseases specified in rule 3A of these Rules or where the amount of loans are petty not exceeding in the aggregate Rs. 20,000 :

Provided that where the benefit relates to the loans made available for medical treatment referred to above, the exemption so provided shall not apply to so much of the loan as has been reimbursed to the employee under any medical insurance scheme.

(ii) The value of **travelling, touring, accommodation and any other expenses paid for or borne or reimbursed by the employer**, who is not liable to pay fringe benefit tax under Chapter XII-H of the Act, for any holiday availed of by the employee or any member of his household, other than concession or assistance

referred to in rule 2B of these rules - sum equal to the amount of the expenditure incurred by such employer in that behalf.

Where such facility is maintained by the employer, and is not available uniformly to all employees, the value of benefit shall be taken to be the value at which such facilities are offered by other agencies to the public. Where the employee is on official tour and the expenses are incurred in respect of any member of his household accompanying him, the amount of expenditure so incurred shall also be a fringe benefit or amenity. However, where any official tour is extended as a vacation, the value of such fringe benefit shall be limited to the expenses incurred in relation to such extended period of stay or vacation. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity.

(iii) The value of **free food and non-alcoholic beverages provided by the employer**, who is not liable to pay fringe benefit tax under Chapter XII-H of the Act, to an employee shall be the amount of expenditure incurred by such employer. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity:

Provided that nothing contained in this sub-rule shall apply to free food and non-alcoholic beverages provided by such employer during working hours at office or business premises or through paid vouchers which are not transferable and usable only at eating joints, to the extent the value thereof in either case does not exceed Rs. 50 per meal or to tea or snacks provided during working hours or to free food and non-alcoholic beverages during working hours provided in a remote area or an off-shore installation.

(iv) The value of any gift, or voucher, or token in lieu of which such gift may be received by the employee or by member of his household on ceremonial occasions or otherwise from the employer, who is not liable to pay fringe benefit tax under Chapter XII-H of the Act, shall be determined as the sum equal to the amount of such gift. However, where the value of such gift, voucher or token, as the case may be, is below Rs. 5,000 in the aggregate during the previous year, the value of perquisite shall be taken as 'nil'.

(v) The amount of expenses including membership fees and annual fees incurred by the employee or any member of his household, which is charged to a credit card (including any add-on-card), provided by the employer, who is not liable to pay fringe benefit tax under Chapter XII-H of the Act, or otherwise, paid for or reimbursed by such employer shall be taken to be the value of perquisite chargeable to tax. However, there shall be no value of such benefit where the

expenses are incurred wholly and exclusively for official purposes and the following conditions are fulfilled—

(a) complete details in respect of such expenditure are maintained by the employer which may, inter alia, include the date of expenditure and the nature of expenditure;

(b) the employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.

The amount so determined shall be reduced by the amount, if any paid or recovered from the employee for such benefit or amenity.

(vi) (A) The value of benefit to the employee resulting from the payment or reimbursement by the employer, who is not liable to pay fringe benefit tax under Chapter XII-H of the Act, of any expenditure incurred (including the amount of annual or periodical fee) in a club by him or by any member of his household shall be determined to be the actual amount of expenditure incurred or reimbursed by such employer on that account. The amount so determined shall be reduced by the amount, if any paid or recovered from the employee for such benefit or amenity. However, where the employer has obtained corporate membership of the club and the facility is enjoyed by the employee or any member of his household, the value of perquisite shall not include the initial fee paid for acquiring such corporate membership.

(B) Nothing contained in this sub-rule shall apply if such expenditure is incurred wholly and exclusively for business purposes and the following conditions are fulfilled:—

(a) complete details in respect of such expenditure are maintained by the employer which may, inter alia, include the date of expenditure, the nature of expenditure and its business expediency;

(b) the employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties;

(c) nothing contained in this sub-rule shall apply for use of health club, sports and similar facilities provided uniformly to all employees by the employer.]

(vii) The value of benefit to the employee resulting from the use by the employee or any member of his household of any movable asset (other than assets already specified in this rule and other than laptops and computers) belonging to the employer or hired by him shall be determined at 10% per annum of the actual cost of such asset or the amount of rent or charge paid or payable by the employer, as the case may be, as reduced by the amount, if any, paid or recovered from the employee for such use.

(viii) The value of benefit to the employee arising from the transfer of any movable asset belonging to the employer directly or indirectly to the employee or any member of his household shall be determined to be the amount representing the actual cost of such asset to the employer as reduced by the cost of normal wear

and wear calculated at the rate of 10% of such cost for each completed year during which such asset was put to use by the employer and as further reduced by the amount, if any, paid or recovered from the employee being the consideration for such transfer:

Provided that in the case of computers and electronic items, the normal wear and tear would be calculated at the rate of 50% and in the case of motor cars at the rate of 20% by the reducing balance method.

(ix) The value of any other benefit or amenity, service, right or privilege provided by the employer shall be determined on the basis of cost to the employer under an arm's length transaction as reduced by the employee's contribution, if any:

Provided that nothing contained in this item shall apply to the expenses on telephones including a mobile phone actually incurred on behalf of the employee by the employer.

Recent Circulars

Circular No.9/2009 - Section 194J of the Income-tax Act, 1961 - Deduction of tax at source - Fees for professional or technical services - Applicability of provisions under section 194J, in the case of transactions by the Third Party Administrators (TPAs) with hospitals etc

A number of representations have been received from various stakeholders regarding applicability of provisions under section 194J of Income-tax Act, 1961 on payments made by Third Party Administrators (TPAs) to hospitals on behalf of insurance companies for settling medical/insurance claims etc. with the hospitals.

2. The matter was examined by the Board. As per provisions of section 194J(1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any sum by way of

- (a) fees for professional services, or
- (b) fees for technical services, or
- (c) royalty, or
- (d) any sum referred to in clause (va) of section 28,

shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per cent of such sum as income-tax on income comprised therein.... Further as per *Explanation (a)* to section 194J professional services means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession etc..

3. The services rendered by hospitals to various patients are primarily medical services and, therefore, provisions of section 194J are applicable on payments made by TPAs to hospitals etc. Further for invoking provisions of section 194J, there is no stipulation that the professional services have to be necessarily rendered to the person who makes payment to hospital. Therefore TPAs who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes including Cashless schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc.

3.1 In view of above, all such past transactions between TPAs and hospitals fall within provisions of section 194J and consequence of failure to deduct tax or after deducting tax failure to pay on all such transactions would make the deductor (TPAs) deemed to be an assessee in default in respect of such tax and also liable for charging of interest under section 201(1A) and penalty under section 271C.

4. Considering the facts and circumstances of the class of cases of TPAs and insurance companies, the Board has decided that no proceedings under section 201 may be initiated after the expiry of six years from the end of financial year in which such payment have been made without deducting tax at source etc. by the TPAs. The Board is also of the view that tax demand arising out of section 201(1) in situations arising above, may not be enforced if the deductor (TPA) satisfies the officer in charge of TDS that the relevant taxes have been paid by the deductee-assessee (hospitals etc.). A certificate from the auditor of the deductee assessee stating that the tax and interest due from deductee-assessee has been paid for the assessment year concerned would be sufficient compliance for the above purpose. However, this will not alter the liability to charge interest under section 201(1A) of the Income-tax Act till payment of taxes by the deductee assessee or liability for penalty under section 271C of the Income-tax Act as the case may be.

5. The contents of the circular may be brought to the notice of officers and officials working under you for strict compliance.

Circular No. 7/2009 - Section 9 of the Income-tax Act, 1961 - Income - Deemed to accrue or arise in India - Withdrawal of Circulars No. 23 dated 23rd July, 1969, No. 163 dated 29th May, 1975 and No. 786 dated 7th February, 2000

1. The Central Board of Direct Taxes had issued Circular No. 23 (hereinafter called "the Circular") on 23rd July 1969 regarding taxability of income accruing or arising through, or from, business connection in India to a non-resident, under section 9 of the Income-tax Act, 1961.
2. It is noticed that interpretation of the Circular by some of the taxpayers to claim relief is not in accordance with the provisions of section 9 of the Income-tax Act, 1961 or the intention behind the issuance of the Circular.

3. Accordingly, the Central Board of Direct Taxes withdraws Circular No 23 dated 23rd July, 1969 with immediate effect.
4. Even when the Circular was in force, the Income-tax Department has argued in appeals, references and petitions that-
 - (i) the Circular does not actually apply to a particular case, or
 - (ii) that the Circular can not be interpreted to allow relief to the taxpayer which is not in accordance with the provisions of section 9 of the Income-tax Act or with the intention behind the issue of the Circular.

It is clarified that the withdrawal of the Circular will in no way prejudice the aforesaid arguments which the Income-tax Department has taken, or may take, in any appeal, reference or petition.

5. The Central Board of Direct Taxes also withdraws Circulars No. 163 dated 29th May, 1975 and No. 786 dated 7th February, 2000 which provided clarification in respect of certain provisions of Circular No 23 dated 23rd July, 1969.

Direct Tax Code

Question:

The Finance Minister while delivering a budget speech has proposed to bring into new Direct Tax Code, Please give glimpse of New Proposed Direct Tax Code:

Answer:

The **New Direct Tax Code (DTC)** is said to replace the existing **Income Tax Act of 1961 in India** - and would be presented in the winter session of the Parliament. It is expected to be passed in the monsoon session of 2010 and is expected to be enforced from 2011. During the budget 2010 presentation, the finance minister Mr. Pranab Mukherjee reiterated his commitment to bringing into fore the new direct tax code (DTC) into force from 1st of April, 2011.

The new code will completely overhaul the existing tax proposals for not only individual tax payers, but also corporate houses and foreign residents. It has been drawn with inspiration from the prevailing tax legislation in US, Canada, UK. It is a topic of interest and a matter of concern for every taxpayer in India. **The new DTC also seeks to take the bold step of moving from EEE (Exempt-Exempt-Exempt) to EET (Exempt-Exempt-Taxed)** system of taxation for various investment avenues, most importantly the PPF.

The most striking feature is the **rationalisation level of tax slabs** at various levels. The proposed slabs suggest a major overhaul in the intent of CBDT. A glimpse of the

intended structure has already been seen in the Union Budget 2010 wherein the tax slabs have been liberalised to a great extent. More on Budget 2010 [here](#):

Here are some of the salient features and highlights of the DTC:

1. **The concept of “Previous Year” has been replaced with “Financial Year”**, which essentially means the year beginning from 1st of April of the respective year. Thus financial year 2009-10 would mean the year beginning on 1st of April, 2009.

2. **Income has been broadly classified into two heads**, which are:

- Income from Ordinary Sources
- Income from Special Sources

3. **Income from Ordinary Sources includes:**

- Income earned as Salary
- Income from Business or Profession
- Income from House Property (rental income)
- Capital Gains
- Residual income from miscellaneous sources

4. **Income from Special Sources includes:**

- Winning from Lotteries
- Winning from Horse Race etc.
- Specified income of Non Residents

5. **Any losses arising of Ordinary Sources may be eligible to be set off or carried forward** against income from Ordinary Sources ONLY without any time limit. Similarly for Income from Special Sources.

6. **Scope of income is expanded** to include value of perks, gifts, profit in lieu of salary and capital gains but excludes farm income.

7. **DTC removes most of the categories of exempted income.** In order to make up for the same, the tax rates and slabs have been modified. In effect on the first glance the tax liability looks a lot less with the new rates and slabs – however, there needs to be calculations made to get the true impact of overall tax liability. This particularly holds true for people who have been claiming the “home loan” tax benefits.

8. **The tax rates and slabs have been modified.** The proposed rates and slabs are as follows:

Annual Income	Tax Slab
Upto INR 160,000	Nil
Between INR 160,000 to 1,000,000	10%
Between INR 1,000,000 to 2,500,000	20%

Above INR 2,500,000	30%
---------------------	-----

9. **The DTC abolishes the difference between Short Term Capital Gain and Long Term Capital Gain** - and makes Long Term Capital Gain taxable. Therefore, the “Capital Gains” on shares and securities is to be taxed as income.

10. **The securities transaction tax or STT has been abolished.**

11. **The upper limit on Tax Savings** based investment has been hiked from INR 100,000 to 300,000.

12. **The long term savings schemes** (e.g. PPF) would be **moved from EEE** (Exempt-Exempt-Exempt) to **EET** (Exempt-Exempt-Taxed) method of taxation.

- The savings are exempted from Taxation (subject to the INR 300,000 limit)
- The accretion of income till withdrawal is exempted
- Any withdrawal made is taxable with the only exception of: Withdrawals pertaining to approved Provident Fund accumulated balance as on 31st of March, 2011.

13. **No tax deduction is allowed on interest payable** to banking firms and insurers.

14. **Dividend** will continue to be **tax-free** in the hands of investors.

15. **For incomes arising of House Property**, the Gross rent is to be calculated as the higher amount of:

- The contractual value of the rent'
- Presumptive rate of six percent of rateable value / construction cost / acquisition cost

16. **Deductions towards interest payment of House Loan** for the self occupied property would **not be allowed** in the DTC.

17. **Deductions for Rent and Maintenance** would be **reduced** from **30% to 20%** of the Gross Rent.