ASSESMENT OF COMPANIES

There are so many types of companies. Company can paid dividend to their shareholders when company has paid income tax on their income. We know very well that every company have to pay income tax However, income tax rule is same on every company.

Types of company

1. **Companies in which public has substantial interest**
2. **Widely held company (**public are substantially interested **)**
3. **Closely held company (**in which public has not substantial interest)
4. **Indian company**
5. **Domestic company**
6. **Investment company (** income chargeable to house property, capital gain & other sources)
7. **Foreign company**

Income tax charge on company on the basis of their status. It may be Resident and non-resident.(Sec-6(3))

Company said to be resident in India in any previous year if:

A. It is an Indian company and
B. During the relevant year it directly control and managed wholly situated in India.

Company said to be Non- resident in India in any previous year if:

A. It is not an Indian company and
B. During the relevant year it wholly or partially control and managed outside India.

At the time of computation of total income of the company. Deduction under chapter VIA is allowed to company.

Computation of tax:

Step -1: Calculation of total income (Profit) as per normal provisions of the I.T. Act

(a) compute income under all heads of income.
(b) Set off of B/F losses, depreciation. etc.
(c) Deduction under chap VIA Calculate net income & tax payable.

Tax rates:

Particulars	**Indian Company**	**Foreign Company**
LTCG	20%	20%
Lottery income	30%	30%
Other incomes except royalty	30%	40%
Royalty		50%

Surcharge:

Indian Company : 5% if income exceeds Rs. 1 Crore
Foreign Company : 2% if income exceeds Rs. 1 Crore

Marginal Relief in case of surcharge : Surcharge should **not exceed by more** than the amount of income which exceeds Rs. 1 crore.

Education Cess: 2%

Secondary & Higher Education Cess: 1%

Section 115BBD: From AY 12-13: If total income of an Indian Company includes any income by way of dividends by a foreign specified company, then such dividend will be taxable in the hands of the Indian company @ 15% + (SC and Cess as applicable) on gross amount of dividends and no expenditure in respect of such dividend will be allowed as deduction.

Definition of foreign specified company for above purpose

A foreign company in which the Indian company holds at least 26% in nominal value of the equity share capital of the company.

Provisions regarding set off and carry forward of losses [SEC. 79]

Companies where public is not substantially interested, losses will not be carry forward and eligible for set off unless 51% of shareholding in the year in which occurred and in which desired to be set off is same.

Exception:

- Above rule is not applicable if due to death of share holder or transfer by way of gift to relatives.
- Sec. 79 applicable only in case of business losses and not on depreciation. or scientific research loss.

Minimum Alternative Tax: As per section 115JB (1), every company shall liable to pay a Minimum Alternate Tax. If its tax on total income, computed at the normal rate, is less than 10% of its book profit, such book profit shall be deemed to be the total income of the Assessee and the tax payable by the company shall be 10%.

Step- 2: Calculation of profit as per S. 115JB [MAT]

It has been applicable from A/Y. 97-98 as 115JA. Same from A/Y 01-02 is in form of sec. 115JB. Net profit is checked as per following:

- P&L a/c is prepared in accordance with Schedule III of Companies Act.
- Same accounting policies are followed.

Calculation of Book Profits:

Book profit is calculated as follow. First of all, net profit as per P&L a/c is worked out. Following adjustments are required to be made to convert net profit into book profit

(i) Additions:

(a) Income tax paid / payable. (Including interest)

(b) Provision for unascertained liabilities.

(c) Proposed dividend & CDT (including interest)

(d) Losses of subsidiary companies.

(d) Amount transferred to reserves if any.

(e) Expenditure relating to income exempted u/s 10 except u/s 10(38), 10A and 10B

Amendment from AY 2012-13

At present provisions of MAT are not applicable in respect of any income which accrues / arises on or after 1/4/2005 from any business carried by any entrepreneur or developer in a unit or SEZ. This exemption has been withdrawn from AY 2012-13. As a result exemption u/s 10AA will also not be available from book profit from AY 2012-13.

(f) Depreciation debited to P&L A/c

(g) Deferred Tax

(h) Interest under any provision of IT Act will be added back in book profit

(i) Provision for diminution in value of assets debited to P&L A/c.

(j) Amount set apart for impairment of assets as per AS-28.

(k) From AY 13-14: Amount standing in the revaluation reserve relating to revalued asset which has been retired or disposed if same is not credited to P&L A/c.

(ii) Deductions

(a) Amount withdrawn from reserves.

(b) Income mentioned u/s 10 except LTCG u/s 10(38), 10A and 10B and *10AA from AY 2012-13.*

(c) Profits of sick industrial company

(d) Depreciation debited to P&L a/c except depreciation on revaluation of assets

(e) Amount withdrawn from revaluation reserve credited to P&L a/c to the extent it does not exceed amount of depreciation on revaluation.

(f) Brought forward depreciation or business loss whichever is less as per the companies act i.e. as per books of accounts. If the company has only one loss B/F, then no deduction will be available since the other figure is Nil.

Tax Amount u/s 115JB

18.50% of Book Profits from AY 2012-13

Surcharge:

Indian Company	:	5% from AY 2012-13 if income exceeds Rs. 1 Crore
Foreign Company	:	2% from AY 2012-13 if income exceeds Rs. 1 Crore

Marginal Relief in case of surcharge : Surcharge should **not exceed by more** than the amount of book profit which exceeds Rs. 1 crore.

Education Cess:	2%
Secondary & Higher Education Cess:	1%

Step - 3: Net tax payable

Net tax to be paid by the company is tax under Rule 1 or Rule 2 whichever is higher.

AMENDMENTS FROM AY 2013-14

(a) MAT (115JB) provisions will not be applicable to any income arising to a company from life insurance business referred in section 115B.

(b) At present provisions of MAT are not applicable to insurance, banking and electricity companies since they are not required to prepare their P&L A/c as per schedule VI of Companies Act. From AY

13-14, section 115JB is amended as under: In case of insurance / banking / electricity company / any class of company which is not required to prepare P&L A/c as per Schedule VI but are required to prepare P&L A/c as per the act governing these companies, book profit shall be calculated on the basis of P&L A/c prepared in accordance with their regulatory acts.

Tax credit u/s 115JAA:

Tax credit u/s 115JAA is available to the Assessee with regard to tax paid under MAT.

Rules of credit:

1. If tax is paid under MAT, then only tax credit will be allowed.
2. Excess of tax paid under MAT over regular tax is allowed to be carry forward for set off.
3. Credit can be availed only in the year in which regular tax exceeds tax under MAT.
4. Only so much of the portion which is in excess of tax payable under MAT.

MAT Credit can be carry forward for set off up to 10 years.

Carry forward MAT Credit will not apply to a LLP which has been converted from a Pvt. Ltd. Co. or unlisted public company. The same rule will be applicable whether or not conversion takes place by satisfying provisions of Section 47(xiiib).

Report of CA: Book profit is required to be certified by a CA in F.N. 29B.

Power of assessing officer to alter net profit / book profit:

- The AO can alter net profit for the purpose of book profits if it is not prepared in accordance with schedule III or accounting policies are different.
- However, only restricted powers in case of book profits. No adjustment can be made in book profit other than those as discussed above.
- Only tax credit can be varied.
- Additions can be made only on regular income and not on book profit and accordingly variation in tax credits.

Tax on distributed profits (Dividend)

Sec. 115O: Basis of charge

- Domestic company is liable to pay tax on dividend.
- Applicable on interim dividend also.
- It is not material if dividend is paid out of current profit or accumulated profits
- **Rate of dividend tax**

Basic	15%
Surcharge	5%
Education cess	3%

Net effective DDT = 16.2225%

- Dividend tax should be paid within 14 days from date of declaration / distribution / payment of dividend whichever is earlier.
- Dividend tax is part of apportionment from Profit and therefore not allowed as a deduction

Dividend from Subsidiary Companies

The dividend tax will be paid on [declared dividend minus dividend received during the same financial year by the Assessee company from its subsidiary company if following conditions are fulfilled.

- The subsidiary company has paid CDT u/s 115O on such dividend.

- The Assessee company is not a subsidiary of any other company. ***It is deleted from 1/7/2012.***
- Same amount of dividend is not considered more than once.

A company shall be treated as a subsidiary of another company if such other company holds more than half in nominal value of equity share capital of the company

Dividend to NPS Trust

No CDT will be applicable in respect of dividend paid to any person for, or on behalf of, the New Pension System Trust.

From AY 2012-13: Dividend tax shall be applicable in case of dividend declared, distributed or paid by SEZ developers of SEZ units from 1/6/2011.

Sec. 115P - Interest

Interest @1% per month on short payment from due date to date of payment.

Sec -115Q: Company in default

If the company or principal officer/s fail to pay the dividend tax, the company will be treated as defaulter Assessee and therefore, the provisions of recovery and collection of tax will be applicable.

Section 115JG: Special provisions relating to conversion of Indian branch of a foreign bank into a subsidiary Indian Company:

From AY 13-14, (Sec-115JG) is introduced to provide some special provisions in case a foreign company is engaged in banking business in India through its branch situated in India and such branch is converted into a subsidiary Indian company. The provisions are as under:

1. The RBI will frame a scheme for purpose of conversion of an Indian branch of a foreign bank into an Indian subsidiary company of the foreign company.

2. Capital gain arising on such conversion will not be taxable if conversion is as per the scheme framed by RBI and in accordance with conditions specified by the Central Govt.

3. Provisions relating to treatment of unabsorbed depreciation, set off of losses, tax credit u/s 115JB and computation of income in case of foreign company and the Indian subsidiary company will apply with such exceptions, modifications and adaptations as may be specified in that notification.

4. If the Assessee fails to comply with any of the conditions laid by RBI / CG, then normal provisions of the act will apply without giving effect to the aforesaid exemption.

5. If any default takes place after claiming exemption of capital gain, then the benefit of exemption will be forfeited by re-computing the income of Assessee of the previous year in which conversion took place u/s 154. The time limit of 4 years will be determined from the end of the year in which default is committed.