ASSESSMENT OF COMPANIES

A. DEFINITIONS

1) **Company** an Indian co or any body corporate inc outside India or any declared institution
2) **Indian Company** formed and registered under CA 1956 + statutory corp + any declared institution *provided their registered office is in India*
3) **Domestic company** Indian or any other co which has made arrangements for declaration and payment of dividend in India
4) **Foreign company** — other than domestic company
5) **Company in which public are substantially interested**
   a) Co. owned or 40% shares held by govt/RBI or corporation owned by them
   b) Sec 25 company
   c) Co. with no share capital and so declared
   d) MBFC
   e) 50% voting power held by Co-op society for entire year
   f) Public listed co.
   g) Public co where 50% or more VP is held by Govt-Stat Corp- Co. in which public are interested or its 100% subsidiary
6) **Demerger -** transfer of one or more undertakings such that
   a) Assets and liabilities are transferred at BV & on going concern basis
   b) Consideration only shares
   c) 75% shareholders become shareholders of resulting co
   d) Conditions of 72A(5) complied
   e) Not a result of acquisition of property/assets/undertaking
7) **Amalgamation** - merger of one co into another or two co into one such that
   a) All assets and liabilities are transferred
   b) 75% shareholders are shareholders of amalgamated co
   c) Not result of acquisition of property or distribution on winding up

B. TAX IMPLICATIONS OF AMALGAMATION, DEMERGER

a) Expenses u/s 35ABB/35D/35DDA/35E/42 are allowed
b) Expenditure on amalgamation and demerger in 5 instalments u/s 35DD
c) Sec 41(1) applicable
d) WDV / actual cost
e) Transfer of capital assets / issue of shares for exchange exempted from capital gains
f) Unabsorbed losses allowed u/s 72A
g) 80IA-80IC, 10A, 10AA, 10B continue to be allowed

C. RIGHTS & LIABILITIES of LIQUIDATOR OF CO [Sec 178]

a) Within 30 days of appointment intimate to AO
b) Within 3 months of such intimation AO issues notice for tax due
c) Cannot part with any assets without approval- can part only after setting aside dues
d) Can part with assets for payment of tax, for cost of winding up or secured creditors
e) Non compliance will result in personal liability and prosecution u/s 276A [2 years III]

D. LIABILITY OF DIRECTOR OF Pvt. Co.

If tax cannot be recovered from co then every director shall be severally liable. No need of demand notice to directors for taking any action

No liability if proves that such non recovery is not due to his negligence…

E. MAT 115JB

If tax payable by co < 10% of Book Profits then

- such Book profits is total income and
- tax payable = 10% of Book profits

Computation of Book Profits [Expln. 1 to 115JB] *[amendments in bold]*

Net Profit as per P&L a/c		xxx
ADD (if debited to P&L a/c)		
1. Income tax	1. Paid/payable/provision/**115O/115R/Int/EC/SHEC** *Wealth tax/STT/BCT/FBT* ***[Except Int/EC/SHEC on FBT]*** *no adjustment required*	
2. Amt transferred to reserves		
3. Provisions for unascertained liabs	3. Provision for payment of bonus u Bonus act /gratuity based on actuarial valuation are ascertained liability provision for bad debts not be added back	
4. Provision for losses of subsidiary		
5. Dividends paid or proposed		
6. Exp relating to 10/11/12 incomes	6. Except 10(38)	
7. Depreciation		
8. **Deferred tax and provision**		
	Add	xxx
LESS		
1. Reserves/provision credited to P&L	1. Only if earlier BP increased by those res/provisions	
2. Income u/s 10/11/12	2. Except 10(38)	
3. Amt of Dep debited to P&L	3. Excluding depreciation on revaluation of assets	
4. Revaluation reserve credited to P&L	4. Not exceeding depreciation on revaluation of assets	
5. Amt of B/f loss or Unabsorbed dep.	5. Loss is excluding current depreciation	
6. Profits of sick industrial undertaking	6. During period of sickness only	
7. **Deferred tax credited to P&L**		
	Less	xxx
	Book Profits	xxx

Note: for point (5) under LESS: B/f book loss (excluding dep) or unabsorbed depreciation whichever is less can be deducted [AAR]

Other Points in 115JB

1. Surcharge if book profits exceed Rs 1 crore relief also available
2. Other provisions of 115JB
   a) Section does not apply to SEZ units
   b) Accounts to be prepared in accordance with schedule VI
   c) AS, policies and depreciation as per companies act to be applied
   d) Furnish report of CA along with return regarding correctness of book profits
   e) No effect on carry forward of losses
3. MAT applies to foreign companies
4. No power to AO to examine correctness of net profits shown in P & L a/c [Apollo Tyres]
5. MAT payable in advance and interest u/s 234A/234B is payable for any failure – Circular

F. MAT CREDIT Sec 115JAA

- Credit allowed — MAT ***less*** tax as per normal provisions
- Period — 7 assessment years

- Set off in which year — Tax is payable under normal provisions [i.e., when MAT NA]
- Credit eligible for setoff — Tax under normal provisions *less* MAT of such asst year

G. CORPORATE DIVIDEND TAX or DDT [Sec 115O – 115Q] applicable only for domestic company

1. **Payable :** When declared/distributed/paid dividend (interim or final) except for 2(22)(e) dividend
2. **Rate:** 15% +10% [2%+1%] = 16.995%
3. Amount of dividend shall be reduced by amount of dividend if
   a) Received from subsidiary
   b) Subsidiary has paid CDT
   c) Receiver company is not subsidiary of any company

   Subsidiary = holding > 50% in nominal value of equity
4. **Time Limit –** 14 days from the date of declaration/distribution/payment
5. CDT Not allowed as deduction
6. Does not apply to SEZ units
7. Consequences on failure
   a) Interest @ 1% from date of failure
   b) Deemed to be assessee in default
   c) Penalty = unpaid tax u/s 271C
   d) Prosecution 3months – 7 years

H. TAX ON INCOME DISTRIBUTED TO UNIT HOLDERS Sec 115R – 115T

1. **Payable :** On distribution of income by UTI/MF other than
   a) Distributed by administrator of specified undertaking
   b) To unit holder of equity oriented funds
2. **Time Limit –** within 14 days
3. Rate

Fund Type	Unit Holder	Rate
Money market / liquid fund	Any person	25%
Any other fund	Individual / HUF Any other Person	12.5% 20%

   Add: 10% + [2%+1%]
4. **Return** of income distribution within 15th Sep of every year to be files [in Form 63/63A]
5. Not allowed as deduction
6. **Consequences** on failure Interest @ 1%, deemed assessee in default and provisions of collection & recovery shall apply

I. Chapter VIA Sections applicable to companies

80G, 80GGA, 80GGB, 80IA, 80IAB, 80IB, 80IC, 80JJA, 80JJAA, 80LA