

AMENDMENTS FOR A.Y. 05-06 (LOOK FOR TONNAGE TAX SCHEME BELOW)

SECTION 12AA (CHARITABLE AND RELIGIOUS TRUST)

Under the provisions of section 12AA the procedure for registration of a trust or institution by the Commissioner of Income-tax is provided. Although the power of cancellation of registration flows from the power to register, the same has not been specifically provided in the Income-tax Act thereby leading to unnecessary litigation.

It is now provided that if the Commissioner of Income-tax is satisfied that the activities of any trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, he shall, after giving reasonable opportunity of being heard to the concerned trust or institution, pass an order in writing cancelling the registration granted.

SECTION 32 (REDUCTION IN THE LIMIT FOR INCREASE IN INSTALLED CAPACITY FOR THE PURPOSES OF ADDITIONAL DEPRECIATION)

Under the provisions of clause 32(iia) additional depreciation at the rate of 15 per cent. is allowable on new plant and machinery acquired and installed on or after 1.4.2002. This deduction is available to (i) a new industrial undertaking in the previous year in which it begins manufacture or production ; (ii) an existing undertaking, in the previous year in which it achieves 25% increase in installed capacity. "Installed capacity" has been defined to mean the capacity of production as existing on the 31st day of March, 2002.

In order to give a thrust to investment in the manufacturing sector, it is now reduced the limit for increase in installed capacity from 25% to 10%.

SECTION 40(a) (i) / (ia) (ENFORCING COMPLIANCE OF PROVISIONS OF TDS)

Under the existing provisions of 40(a), failure to make deduction at source from payment of interest, royalty, fees for technical services or any other sum which is payable outside India, or in India to a non-resident or to a foreign company or failure to make payment to the account of the Central Government, attracts disallowance of such payments in the hands of the payer. Deduction of such sum is, however, allowed in the computation of income if tax is deducted, or after deduction, paid in any subsequent year in computing the income of that year.

With a view to augment compliance of TDS provisions, the provisions of section 40(a) is now extended to payments of interest, commission or brokerage, fees for professional services or fees for technical services to residents, and payments to a resident contractor or sub-contractor for carrying out any work (including supply of labour for carrying out any work), on which tax has not been deducted or after deduction, has not been paid before the expiry of the time prescribed under section 200 and in accordance with the other provisions of Chapter XVII-B. It is also proposed to provide that where in respect of payment of any sum, tax has been deducted under Chapter XVII-B or paid in any subsequent year, the sum of payment shall be allowed in computing the income of the previous year in which such tax has been paid.

SECTION 48 SECURITIES TRANSACTION TAX (STT)

Section 48 (Provisio 5) now provide that STT paid on purchase or sale of equity shares/units of equity-oriented funds will not be allowed as a deduction in computing long-term/short-term capital gain or capital loss.

SECTION 2(24) AND 56 (TAXATION OF GIFTS)

It is inserted a new sub-clause in section 56 so as to provide that any sum received on or after the 1st day of September, 2004, by an individual or a Hindu undivided family from any person, in cash or by way of credit, otherwise than by way of consideration of goods and services shall be included within the definition of income under section 2(24). It is also provided a general threshold limit of Rupees twenty five thousand. Such income will be chargeable to tax under section 56 i.e. under the head other sources.

However, in order to avoid hardships in genuine cases, it is also excluded certain sums from the scope of the new definition of income under section 2(24). The sums which shall not be included in the income are : (a) the sum received by, or credited in the account of (i) any individual from a relative out of natural love and affection, or (ii) any individual or Hindu undivided family under a will or by way of inheritance, or (iii) any sum received in contemplation of death of an individual or karta or member of a Hindu undivided family or (iv) any sum received in the event of marriage.

The expression "relative" is also defined for the purposes as (i) spouse of the individual, (ii) brother or sister of the individual, (iii) brother or sister of the spouse of the individual, (iv) brother or sister of either of the parents of the individual, (v) any lineal ascendant or descendant of the individual, (vi) any lineal ascendant or descendant of the spouse of the individual, and (vii) spouse of a person referred to in items (ii) to (vi) mentioned above.

It is also amended section 56 so as to provide that the income referred to in the new sub-clause (xiii) of section 2(24) will be chargeable as "income from other sources".

SECTION 71 (NO SET-OFF OF BUSINESS LOSS AGAINST INCOME FROM SALARY)

Under the existing provisions of section 71, the loss computed in the current year under one head of income is allowed to be set off against income computed under any other head. However, losses under the head "Capital gains" are not allowed to be set-off against income under any other head. In order to prevent abuse of the provisions of set-off of losses, section 71 now provide that an assessee shall not be entitled to set-off of any loss under the head "Profits and gains of business or profession" against income under the head "Salaries".

SECTION 88D REBATE FOR CERTAIN INDIVIDUALS

Section 88D provide for rebate of the entire amount of tax payable in case of a resident individual having total income up to Rs. 1,00,000. Consequent to the proposed amendment, resident individuals having taxable income up to Rs. 1,00,000 will not be required to pay any income-tax.

SECTION 88E REBATE FOR SECURITIES TRANSACTION TAX

Rebate of STT will be allowed from the income tax payable on business income arising from such transactions. For this purpose, the income tax on such transactions will be worked out by applying the average rate of income tax payable on taxable income. It is also provided that the credit for the STT will be allowed only to the extent of income tax payable on such transactions. It, therefore, follows that no credit for STT will be available if there is loss in such transactions. For this purpose, the assessee will have to furnish evidence of payment of STT with the return of income in the prescribed form.

SECTION 94(7) MEASURES TO CURB CREATION OF LOSSES VIA DIVIDEND AND BONUS STRIPPING

The existing provisions of section 94(7) provide that where any person buys or acquires any unit or security within a period of three months prior to the record date fixed for declaration of dividend or income in respect of such unit or share, and sells or transfers the same within a period of three months after such record date, and the dividend or income received or receivable is exempt, then, the loss, if any, arising from such sale and purchase shall be ignored to the extent such loss does not exceed the amount of such income or dividend, in computation of income chargeable to tax, of such person.

It had been noticed that the condition specified in 94(7) requiring an investor to hold units for at least ninety days after the record date did not provide the desired effect. In order to provide further deterrence to tax-avoidance, it is necessary to provide for a longer period of holding of units after a record date.

It is accordingly amended the said section so as to provide that where any person buys or acquires any unit within a period of three months prior to the record date and sells or transfers the same within a period of nine months after such record date, and the dividend or income received or receivable is exempt, then, the loss, if any, arising from such sale and purchase shall be ignored to the extent such loss does not exceed the amount of such income or dividend, in computation of the income, chargeable to tax, of such person.

To prevent the practice of bonus stripping, it is provided that the loss on sale of original units where bonus units have been issued, will be ignored and the amount of such loss shall be considered as the cost of purchase or acquisition of the bonus units.

SECTION 10 AND 111A (LEVY OF TRANSACTION TAX AND EXEMPTION / CONCESSION ON CAPITAL GAIN ARISING FROM SECURITIES ENTERED IN A RECOGNIZED STOCK EXCHANGE)

Under the existing provisions, profits or gains arising to an investor from the transfer of securities are charged to tax either as long-term capital gains or short-term capital gains depending on the period of holding of the said securities. Short-term capital gains arising from transfer of securities are taxed at the applicable rates. Long-term capital gains are taxed at 20%, after adjusting for inflation by indexing the cost of acquisition. For listed securities, the taxpayer has an option to pay tax on long-term capital gains at 10 % but without indexation. For Foreign Institutional Investors (FIIs), the long-term capital gains and short-term capital gains are taxed at the rate of 10% (without indexation) and 30% respectively. In case of a trader in securities, however, the gains are taxed as any other normal business income.

With a view to simplify the tax regime on securities transactions, it is proposed to levy a tax at the rate of 0.15 per cent. on the value of all the transactions of purchase of securities that take place in a recognised stock exchange in India. This tax shall be collected by the stock exchange from the purchaser of such securities and paid to the exchequer.

Further, new clause 10(38) provide exemption from long-term capital gains arising out of securities sold on the stock exchange. It is also inserted a new section 111A and amended section 115AD of the Income-tax Act, so as to provide that short-term capital gains arising from sale of such securities to an investor including FIIs shall be charged at the rate of ten per cent.

SECTION 115JB AND 10(23G) (INCOME OF INFRASTRUCTURE CAPITAL COMPANY MADE LIABLE TO MINIMUM ALTERNATE TAX)

Under the provisions contained in 10(23G) any income by way of dividends, other than dividends referred to in section 115-O, interest, or long-term capital gains of an infrastructure capital fund or an infrastructure capital company or a co-operative bank from investments made in any undertaking engaged in an infrastructure project or a housing project or a hotel or hospital project is excluded from the total income.

With a view to rationalise the provision, it is proposed to insert a proviso so as to provide that in the case of an infrastructure capital company the above mentioned incomes shall be taken into account in computing the book profit for the purpose of section 115JB and for payment of tax under that section. It is further made consequential amendments in section 115JB.

SECTION 115R (EXEMPTION TO OPEN-ENDED EQUITY ORIENTED FUNDS)

Under the existing provisions of 115R, no additional tax was to be levied in respect of any income distributed to the unit holders of open-ended equity oriented funds in respect of any distribution made from such funds for a period of one year commencing from 1st April, 2003. The said benefit will continue the said exemption without any time limit.

SECTION 139(9), 139A, 199, 203, 200, 203AA, 272A (DE-MATERIALISATION OF TDS AND TCS CERTIFICATES)

Under the existing provisions of the Income-tax Act, returns of income required to be filed under section 139 are to be accompanied by TDS/TCS certificates for claiming credit of tax deducted or collected. Computerisation of TDS/TCS functions will eventually dispense with this

requirement and will also pave the way for filing of returns through the internet. The Finance Bill incorporates the necessary legislative amendments required to facilitate the above process of computerisation. The Bill propose to provide that—

- (i) Credit for tax deducted or collected shall be given to the assessee without production of a certificate ; 199(3) and 203 (3).
- (ii) Returns will not be deemed to be defective if they are not accompanied by such certificates. 139(9)
- (iii) Every person deducting or collecting tax shall be required to furnish quarterly statements to the prescribed income-tax authority who will in turn furnish an annual statement of the tax deducted or collected to the assessee. 200(3) and 203AA
- (iv) All assesseees, including non-residents, will be required to intimate the PAN to the person deducting or collecting tax as otherwise credit for TDS/ TCS can not be given. 139A
- (v) Penalty shall be levied in case quarterly statements are not furnished in time. 272A

SECTION 142A (ESTIMATES BY VALUATION OFFICER IN CERTAIN CASES)

For determining the cost of construction of properties, an Assessing Officer has been taking the assistance of a Valuation Officer by exercising his power vested in him under section 131 of the Income-tax Act which provides that the Assessing Officer shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit. One such power is of "issuing commission" empowers the court "to make a local investigation" and also "to hold a scientific, technical or expert investigation". The authority of Valuation Officer was created under the Wealth-tax Act. The scope of power under section 131 vested in an Assessing Officer to make a reference to the Valuation Officer for estimating the cost of construction of properties has been a matter of different legal interpretations.

With a view to remove any doubt in this regard, it is inserted a new section 142A, with retrospective effect from 15.11.1972, so as to clarify that Assessing Officer has and always had the power to make a reference to the Valuation Officer.

Where an estimate of the value of any investment referred to in section 69 or section 69B or the value of any bullion, jewellery or other valuable article referred to in section 69A or section 69B is required for the purposes of making any assessment or re-assessment, the Assessing Officer may require the Valuation Officer to make an estimate of the same and report to the Assessing Officer.

The Valuation Officer to whom such a reference is made shall, for the purpose of dealing with such reference, have all the powers that he has under section 38A of the Wealth-tax Act.

On receipt of the report from the Valuation Officer, the Assessing Officer may after giving the assessee an opportunity of being heard, take into account such report in making such assessment or reassessment.

As the intention of inserting new section 142A retrospectively is not to unsettle the cases already decided (except in cases where a reassessment is required to be made under section 153A), it is provided that section 142A to the effect that the provisions of the same shall not apply in respect of an assessment made on or before the 30th day of September, 2004 and where such assessment has become final and conclusive on or before that date.

SECTION 153 TIME LIMIT FOR COMPLETION OF ASSESSMENT

Section 153 now provide that the period commencing on the date on which application has been filed to the authority for advance ruling and ending on the date on which the order rejecting the application or pronouncing the advance ruling, is received by the commissioner shall be excluded for computing the period of limitation under the Section. Similar amendment is made in S. 153B.

SECTION 194C (PROVISION TO PREVENT SPLITTING OF CONTRACTS)

The existing provisions contained in 194C, provide that no deduction of tax is required to be made at source from any sum credited or paid in pursuance of any contract, the consideration for which does not exceed twenty thousand rupees.

It has been observed that composite contracts are split up into contracts valued at less than Rs. 20,000 each to escape the provisions of TDS. To prevent this practice, it is now provided that tax will be required to be deducted at source where the amount credited or paid to a contractor or sub-contractor exceeds Rs. 20,000 in a single payment or Rs. 50,000 in the aggregate during a financial year.

SECTION 194LA COMPENSATION FOR COMPULSORY ACQUISITION OF PROPERTY.

Section. 194LA is added w.e.f. 1-10-2004 to provide for TDS on payment of compensation for compulsory acquisition of immovable property. Under this Section, a person responsible for paying compensation or enhanced compensation, on or after 1-10-2004, for compulsory acquisition of any immovable property, *i.e.*, land or building (other than agricultural land), will have to deduct tax at the rate of 10% (plus applicable surcharge and education cess), if such compensation amount exceeds Rs.1 lac in any financial year.

SECTION 206C COLLECTION OF TAX AT SOURCE IN RESPECT OF PARKING AUCTIONS, TOLL AUCTIONS, MINING OR QUARRYING LEASES

Under the existing provisions of section 206C, collection of tax is required to be made by the seller of certain specified goods from any amount payable by the buyer to the seller at the specified percentage.

It is now amended the provisions of section 206C to provide for collection of tax by every person who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest in any parking lot or toll plaza or a mine or a quarry to another person, other than a public sector company, for the use of such parking lot or toll plaza or mine or quarry for the purposes of business.

Tax shall be collected as provided, from the licensee or lessee of any such licence, contract or lease of the specified nature, by every person at the rate of two per cent. at the time of debiting of the amount payable by the licensee or lessee to his account or at the time of receipt of such amount from him in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier.

SECTION 245RR APPELLATE AUTHORITY NOT TO PROCEED IN CASE ADVANCE RULING.

The provisions of section 245RR provide that no income-tax authority or the Appellate Tribunal shall proceed to decide any issue in respect of which an application has been made by a resident to the Authority for Advance Rulings.

SECTION 277A PENALTY FOR FALSIFICATION OF BOOKS

When the Finance Bill was introduced, the proposal to introduce this section was opposed by trade and professional bodies. Instead of deleting this provision, the section is enacted in a modified form. This Section provides that if any person willfully and with intent to enable any other person (assessee) to evade any tax or interest or penalty chargeable and imposable under the Income-tax Act, makes or causes to be made any entry or statement in any books or other documents relevant for any proceedings under the Act, which is false and which that person either knows to be false or does not believe to be true, that person shall be punishable with rigorous imprisonment for a term which shall not be less than 3 months, but which may extend to 3 years and with fine. This would mean that a chartered accountant, advocate, or a tax consultant on whose advice the assessee or other person makes a false entry in the books or document or a false statement during the income tax proceedings with a view to evade any tax, interest or penalty chargeable under the Act, such chartered accountant, advocate or tax consultant can be prosecuted under this section. It is now provided in S. 279 that no such prosecution shall be launched by any income-tax authority without prior permission of the CIT or appropriate authority.

The explanation to the above section provides that for the purpose of establishing the charge under this Section, it shall not be necessary to prove that the assessee has actually evaded any tax, interest or penalty chargeable under the Act. It should be noticed that this provision will

expose all tax consultants to the danger of prosecution, if they do not take proper care in advising their clients on tax matters.

SECTION 278B PROSECUTION FOR OFFENCE BY COMPANIES

Section 278B provides for prosecution for offences by companies. This section is now amended w.e.f. 1-10-2004 to provide that when punishment is to be awarded for such offences, it can be in the form of fine to the company and other punishment to directors, managers, officers, etc. who are responsible for the offence.

SECTION 285BA AND 271FA (OBLIGATION TO FURNISH ANNUAL INFORMATION RETURN)

Existing provision of section 285BA, any assessee who enters into any financial transaction, as may be prescribed, with any other person, is required to furnish, within the prescribed time, an annual information return in such form and manner, as may be prescribed, in respect of such financial transactions entered into by him during any financial year. Said section do not cast any obligation to furnish such a return on Government agencies and other authorities, who are valuable sources of information for the purposes of the Income-tax Act. Existing provisions of this section also do not provide for a mechanism to enforce the furnishing of such a return.

It is, therefore, substituted the said section by a new section. New section provides that an assessee or the prescribed person in the case of an office of Government or certain other authorities, who are responsible for registering or maintaining a record of, or who enter into any specified financial transaction shall furnish an annual information return in respect of such transactions registered or recorded or entered into on or after 1st April, 2004, to the prescribed income-tax authority or such other authority or agency as may be prescribed.

Section provides that the annual information return shall be furnished within the prescribed time in such form and manner (including on floppy, diskette, magnetic cartridge tape, CD-ROM or any computer readable media) as may be prescribed.

Section defines the expression "specified financial transaction" so as to include a transaction of purchase, sale or exchange of goods or property or right or interest in a property, or a transaction for rendering any service which may be prescribed, or a transaction under a works contract, or a transaction by way of an investment made or an expenditure incurred, or a transaction for taking or accepting any loan or deposit, where the value or the aggregate value of such transaction during a previous year exceeds fifty thousand rupees or such other higher value as may be prescribed. It is also proposed to provide that the Board may prescribe different values for different specified transactions, having regard to the nature of the financial transaction, for different persons.

Where the prescribed income-tax authority considers that the annual information return is defective he may intimate such defect to the person who has furnished such return and give him an opportunity to rectify the same within one month or such further period as allowed and if the defect is not rectified, such return shall be treated as an invalid return and the provisions of the Act shall apply as if such person had failed to furnish the annual information return.

Where a person has not furnished the annual information return within the prescribed time, the prescribed income-tax authority may serve upon him a notice requiring him to furnish such

return within a period of sixty days from the date of service of such notice and such person shall furnish such return within the time specified in the notice.

To provide a penalty for not furnishing a return as required new section 271FA is inserted to provide that, if a person who is required to furnish an annual information return in respect of any financial year beginning on or after the 1st April 2004, fails to furnish such return within the time prescribed, the prescribed income-tax authority under the said sub-section may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

SECTION 115V TO 115VZC TAX TONNAGE SCHEME (TTS) FOR SHIPPING COMPANIES

The Finance Minister has stated in the budget speech that the shipping industry has demanded the levy of tonnage tax to make it internationally competitive. Tonnage Tax will induce more ships to fly Indian Flag. Therefore, the Income-tax Act is amended by the introduction of a new Chapter XIIG [S. 115VA to S. 115VZC] to provide an alternative scheme of tonnage tax. This chapter comes into force from A.Y. 2005-06. Consequently, the incentive granted by S. 33AC has been withdrawn from A.Y. 2005-06. It may be noted that, at present, shipping companies are assessed under the normal provisions of the Income-tax Act dealing with computation of profits and gains of business or profession. With the introduction of tonnage tax scheme, (TTS) the companies will have to exercise the option to be assessed under TTS or under the normal provisions of the Income-tax Act in Chapter IV-D. The Chapter is to be understood in following parts and subparts.

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NATURE OF INCOME 115VA

The income from the business of operating qualifying ships, may, at its option, be computed in accordance with the provisions of this Chapter and such income shall be deemed to be the profits and gains of such business chargeable to tax under the head “Profits and gains of business or profession”.

TONNAGE INCOME. 115VF.

The tonnage income shall be computed in accordance with section 115VG and the income so computed shall be deemed to be the profits chargeable under the head “Profits and gains of business or profession” and the relevant shipping income referred to in 115V-I shall not be chargeable to tax.

RELEVANT SHIPPING INCOME. 115V-I.

The relevant shipping income of a tonnage tax company means—

- (i) Its profits from core activities ((a) its activities from operating qualifying ships and (b) other ship-related activities)
- (ii) Its profits from incidental activities

Where the aggregate of all such incomes specified in clause (ii) exceeds one-fourth per cent of the turnover from core activities, such excess shall not form part of the relevant shipping income for the purposes of this Chapter and shall be taxable under the other provisions of this Act.

The incidental activities shall be the activities which are incidental to the core activities and which may be prescribed for the purpose.

Where a tonnage tax company operates any ship, which is not a qualifying ship, the income attributable to operating such non-qualifying ship shall be computed in accordance with the other provisions of this Act.

Where any goods or services held for the purposes of tonnage tax business are transferred to any other business carried on by a tonnage tax company, or where any goods or services held for the purposes of any other business carried on by such tonnage tax company are transferred to the tonnage tax business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the tonnage tax business does not correspond to the market value of such goods or services as on the date of the transfer, then, the relevant shipping income under this section shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date:

POWERS OF THE OFFICER 115V-I.

Where, in the opinion of the Assessing Officer, the computation of the relevant shipping income in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such income on such reasonable basis as he may deem fit.

Where it appears to the Assessing Officer that, owing to the close connection between the tonnage tax company and any other person, or for any other reason, the course of business

between them is so arranged that the business transacted between them produces to the tonnage tax company more than the ordinary profits which might be expected to arise in the tonnage tax business, the Assessing Officer shall, in computing the relevant shipping income of the tonnage tax company for the purposes of this Chapter, take the amount of income as may be reasonably deemed to have been derived therefrom.

For the purposes of this Chapter, in case the relevant shipping income of a tonnage tax company is a loss, then, such loss shall be ignored for the purposes of computing tonnage income.

QUALIFYING COMPANY 115VC

A company is a qualifying company if—

- (a) It is an Indian company;
- (b) The place of effective management of the company is in India;
- (c) It owns at least one qualifying ship (defined in 115VD); and
- (d) The main object of the company is to carry on the business of operating ships (defined in 115VB).

QUALIFYING SHIP. 115VD.

A ship is a qualifying ship if—

- (a) It is a sea going ship or vessel of fifteen net tonnage or more;
- (b) It is a ship registered under the merchant shipping act, 1958 (44 of 1958), or a ship registered outside india in respect of which a licence has been issued by the director-general of shipping under section 406 or section 407 of the merchant shipping act, 1958 (44 of 1958); and
- (c) A valid certificate in respect of such ship indicating its net tonnage is in force, but does not include—
 - (i) A seagoing ship or vessel if the main purpose for which it is used is the provision of goods or services of a kind normally provided on land;
 - (ii) Fishing vessels;
 - (iii) Factory ships;
 - (iv) Pleasure crafts;
 - (v) Harbour and river ferries;
 - (vi) Offshore installations;
 - (vii) Dredgers;
 - (viii) A qualifying ship which is used as a fishing vessel for a period of more than thirty days during a previous year.

OPERATING SHIPS. 115VB

A company shall be regarded as operating a ship if it operates any ship whether owned or chartered by it and includes a case where even a part of the ship has been chartered in by it in an arrangement such as slot charter, space charter or joint charter :

Provided that a company shall not be regarded as the operator of a ship which has been chartered out by it on bareboat charter-cum-demise terms or on bareboat charter terms for a period exceeding three years.

PROCEDURE FOR TTS 115VP

METHOD AND TIME OF OPTING FOR TONNAGE TAX SCHEME. 115VP

MUST MAKE AN APPLICATION FOR TTS

Category	Time Limit
Existing qualifying companies	Any time after the 30th day of September, 2004 but before the 1st day of January, 2005, The initial period.
A company incorporated after the initial period	May make an application within three months of the date of its incorporation
A qualifying company incorporated before the initial period but which becomes a qualifying company for the first time after the initial period	May make an application within three months of the date on which it became a qualifying company.

PROCESSING OF APPLICATION

On receipt of an application for option for tonnage tax scheme the Joint Commissioner may call for such information or documents from the company as he thinks necessary in order to satisfy himself about the eligibility of the company and after satisfying himself about such eligibility of the company to make such option for tonnage tax scheme, he

- (i) Shall pass an order in writing approving the option for tonnage tax scheme; or
- (ii) Shall, if he is not so satisfied, pass an order in writing refusing to approve the option for tonnage tax scheme, (provided that no order under this clause shall be passed unless the applicant has been given a reasonable opportunity of being heard.)

and a copy of such order shall be sent to the applicant:

Every order granting or refusing the approval of the option for tonnage tax scheme shall be passed before the expiry of one month from the end of the month in which the application was received.

Where an order granting approval is passed the provisions of this Chapter shall apply from the assessment year relevant to the previous year in which the option for tonnage tax scheme is exercised.

COMPUTATION OF TTS 115VG

The tonnage income of a tonnage tax company for a previous year shall be the aggregate of the tonnage income of each qualifying ship computed as follows.

The tonnage income of each qualifying ship = the daily tonnage income of each such ship multiplied by the number of days in the previous year or the number of days in part of the previous year in case the ship is operated by the company as a qualifying ship for only part of the previous year, as the case may be.

The daily tonnage income of a qualifying ship having tonnage will be as follows:

Qualifying ship having net tonnage (as per certificate referred to in 115VX)	Amount of daily tonnage income
(1)	(2)
Up to 1,000	Rs. 46 for each 100 tons

exceeding 1,000 but not more than 10,000	Rs. 460 plus Rs. 35 for each 100 tons exceeding 1,000 tons
exceeding 10,000 but not more than 25,000	Rs. 3,610 plus Rs. 28 for each 100 tons exceeding 10,000 tons
exceeding 25,000	Rs. 7,810 plus Rs. 19 for each 100 tons exceeding 25,000 tons.

The tonnage shall be rounded off to the nearest multiple of hundred tons and for this purpose any tonnage consisting of kilograms shall be ignored and thereafter if such tonnage is not a multiple of hundred, then, if the last figure in that amount is fifty tons or more, the tonnage shall be increased to the next higher tonnage which is a multiple of hundred and if the last figure is less than fifty tons, the tonnage shall be reduced to the next lower tonnage which is a multiple of hundred; and the tonnage so rounded off shall be the tonnage of the ship for the purposes of this section.

No deduction or set off shall be allowed in computing the tonnage income under this Chapter.

MANNER OF COMPUTATION OF INCOME. 115VE.

- (1) A tonnage tax company engaged in the business of operating qualifying ships shall compute the profits from such business under the tonnage tax scheme.
- (2) The business of operating qualifying ships giving rise to income shall be considered as a separate business (The tonnage tax business) distinct from all other activities or business carried on by the company.
- (3) The profits shall be computed separately from the profits and gains from any other business.
- (4) The tonnage tax scheme shall apply only if an option to that effect is made in accordance with the provisions of section 115VP.
- (5) Where a company engaged in the business of operating qualifying ships is not covered under the tonnage tax scheme or, has not made an option to that effect, as the case may be, the profits and gains of such company from such business shall be computed in accordance with the other provisions of this Act.

CALCULATION IN CASE OF JOINT OPERATION, ETC. 115VH.

Where a qualifying ship is operated by two or more companies by way of joint interest in the ship or by way of an agreement for the use of the ship and their respective shares are definite and ascertainable, the tonnage income of each such company shall be an amount equal to a share of income proportionate to its share of that interest.

Where two or more companies are operators of a qualifying ship, the tonnage income of each company shall be computed as if each had been the only operator.

TREATMENT OF COMMON COSTS.115VJ.

Where a tonnage tax company also carries on any business or activity other than the tonnage tax business, common costs attributable to the tonnage tax business shall be determined on a reasonable basis.

Where any asset, other than a qualifying ship, is not exclusively used for the tonnage tax business by the tonnage tax company, depreciation on such asset shall be allocated between its tonnage tax business and other business on a fair proportion to be determined by the Assessing Officer, having regard to the use of such asset for the purpose of the tonnage tax business and for the other business.

GENERAL EXCLUSION OF DEDUCTION AND SET OFF, ETC. 115VL.

In computing the tonnage income of a tonnage tax company for any previous year in which it is chargeable to tax as follows

- (i) Sections 30 to 43B shall apply as if every loss, allowance or deduction referred to therein and relating to or allowable for any of the relevant previous years, had been given full effect to for that previous year itself;
- (ii) No loss referred to in 70, 71, 72, or 72A, in so far as such loss relates to the business of operating qualifying ships of the company, shall be carried forward or set off where such loss relates to any of the previous years when the company is under the tonnage tax scheme;

- (iii) No deduction shall be allowed under Chapter VI-A in relation to the profits and gains from the business of operating qualifying ships; and
- (iv) In computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the tonnage tax business shall be computed as if the company has claimed and has been actually allowed the deduction in respect of depreciation for the relevant previous years.

EXCLUSION OF LOSS. 115VM.

(1) Section 72 shall apply in respect of any losses that have accrued to a company before its option for tonnage tax scheme and which are attributable to its tonnage tax business, as if such losses had been set off against the relevant shipping income in any of the previous years when the company is under the tonnage tax scheme.

(2) The losses referred to in sub-section (1) shall not be available for set off against any income other than relevant shipping income in any previous year beginning on or after the company exercises its option under section 115VP.

(3) Any apportionment necessary to determine the losses shall be made on a reasonable basis.

CAPITAL GAINS FROM TRANSFER OF TONNAGE TAX ASSETS. 115VN.

Any profits or gains arising from the transfer of a capital asset being an asset forming part of the block of qualifying assets shall be chargeable to income-tax in accordance with the provisions of section 45, read with section 50, and the capital gains so arising shall be computed in accordance with the provisions of sections 45 to 51

Provided that for the purpose of computing such profits or gains, the provisions of section 50 shall have effect as if for the words “written down value of the block of assets”, the words “written down value of the block of qualifying assets” had been substituted.

Explanation.—For the purposes of this Chapter, “written down value of the block of qualifying assets” means the written down value computed in accordance with the provisions of sub-section (2) of section 115VK.

DEPRECIATION. 115VK.

A company opting for the scheme is not allowed any set-off of loss nor is any depreciation allowed. However, both loss and depreciation are deemed to have been allowed and notional adjustments are made against the relevant shipping income. Although depreciation is not allowed, it is necessary to bifurcate the qualifying ships and non-qualifying ships at the time a company joins the scheme. Section 115VK lays down the method for allocating the written down value amongst qualifying and non-qualifying ships. Any income from transfer of qualifying assets is treated in the same manner as for any other business asset in terms of section 115VN.

For the purposes of computing depreciation, the depreciation for the first previous year of the tonnage tax scheme shall be computed on the written down value of the qualifying ships as the written down value of the block of assets, being ships, as on the first day of the first previous year, shall be divided in the ratio of the book written down value of the qualifying ships and the

book written down value of the non-qualifying ships. The block of qualifying assets as determined shall constitute a separate block of assets for the purposes of this Chapter.

Where an asset forming part of a block of qualifying assets begins to be used for purposes other than the tonnage tax business, an appropriate portion of the written down value allocable to such asset shall be reduced from the written down value of that block and shall be added to the block of other assets and vice a versa.

For the purposes of computing depreciation under section 115VL, depreciation computed for the previous year shall be allocated in the ratio of the number of days for which the asset was used for the tonnage tax business and for purposes other than tonnage tax business.

PERIOD FOR WHICH TONNAGE TAX OPTION TO REMAIN IN FORCE. 115VQ.

(1) An option for tonnage tax scheme, after it has been approved, shall remain in force for a period of ten years from the date on which such option has been exercised and shall be taken into account from the assessment year relevant to the previous year in which such option is exercised.

(2) An option for tonnage tax scheme shall cease to have effect from the assessment year relevant to the previous year in which

(a) the qualifying company ceases to be a qualifying company;

(b) a default is made in complying with the provisions contained in section 115VT (Transfer of profits to Tonnage Tax Reserve Account.) or section 115VU (Minimum training requirement for tonnage tax company.) or section 115VV (Limit for charter in of tonnage.);

(c) the tonnage tax company is excluded from the tonnage tax scheme under section 115VZC (Specific Exclusion from tonnage tax scheme) ;

(d) the qualifying company furnishes to the Assessing Officer, a declaration in writing to the effect that the provisions of this Chapter may not be made applicable to it, and the profits and gains of the company from the business of operating qualifying ships shall be computed in accordance with the other provisions of this Act.

RENEWAL OF TONNAGE TAX SCHEME. 115VR.

An option for tonnage tax scheme approved may be renewed within one year from the end of the previous year in which the option ceases to have effect.

The provisions of sections 115VP and 115VQ shall apply in relation to a renewal of the option for tonnage tax scheme in the same manner as they apply in relation to the approval of option for tonnage tax scheme.

PROHIBITION TO OPT FOR SCHEME IN CERTAIN CASES. 115VS.

A qualifying company, which, on its own, opts out of the tonnage tax scheme or makes a default in complying with the provisions of section 115VT or section 115VU or section 115VV or whose option has been excluded from tonnage tax scheme in pursuance of an order made under section 115VZC, shall not be eligible to opt for tonnage tax scheme for a period of ten years from the date of opting out or default or order, as the case may be.

TRANSFER OF PROFITS TO TONNAGE TAX RESERVE ACCOUNT. 115VT.

A tonnage tax company shall, be required to credit to a reserve account an amount not less than twenty per cent or more of the book profit in each previous year to be utilised in the manner laid down. “book profit” shall have the same meaning as in 115JB the so far as it relates to the income derived from the activities

Where the company has book profit from the business of operating qualifying ships and book loss from any other sources, and consequently, the company is not in a position to create the full or any part of the reserves the company shall create the reserves to the extent possible in that previous year and the shortfall, if any, shall be added to the amount of the reserves required to be created for the following previous year and such shortfall shall be deemed to be part of the reserve requirement of that following previous year. To the extent the shortfall in creation of reserves during a particular previous year is carried forward to the following previous year the company shall be considered as having created sufficient reserves for the first mentioned previous year.

Benefit of creation of reserve in subsequent year shall not apply in respect of the second year in case the shortfall in creation of reserves continues for two consecutive previous years.

The amount credited to the Tonnage Tax Reserve Account shall be utilised by the company before the expiry of a period of eight years next following the previous year in which the amount was credited

- (a) for acquiring a new ship for the purposes of the business of the company; and
- (b) until the acquisition of a new ship, for the purposes of the business of operating qualifying ships other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India.

Where any amount credited to the Tonnage Tax Reserve Account —

- (a) has been mis-utilised or
- (b) has not been utilised or
- (c) has been utilised for the purpose of acquiring a new ship as specified in clause (a) of sub-section (3), but such ship is sold or otherwise transferred, other than in any scheme of demerger by the company to any person at any time before the expiry of three years from the end of the previous year in which it was acquired,

an amount which bears the same proportion to the total relevant shipping income of the year in which such reserve was created, as the amount out of such reserve so utilised or not utilised bears to the total reserve created during that year shall be taxable under the other provisions of this Act

- (i) in a case referred to in (a), in the year in which the amount was so utilised; or
- (ii) in a case referred to in (b), in the year immediately following the period of eight years or
- (iii) in a case referred to in (c), in the year in which the sale or transfer took place

Provided that the income so taxable under the other provisions of this Act shall be reduced by the proportionate tonnage income charged to tax in the year of creation of such reserves.

Where the amount credited to the Tonnage Tax Reserve Account is less than the minimum amount required to be credited, an amount which bears the same proportion to the total relevant shipping income, as the shortfall in credit to the reserves bears to the minimum reserve required to be credited shall not be taxable under the tonnage tax scheme and shall be taxable under the other provisions of this Act.

If the reserve required to be created is not created for any two consecutive previous years, the option of the company for tonnage tax scheme shall cease to have effect from the beginning of the previous year following the second consecutive previous year in which the failure to create the reserve had occurred.

“new ship” includes a qualifying ship which, before the date of acquisition by the qualifying company was used by any other person, if it was not at any time previous to the date of such acquisition owned by any person resident in India.

MINIMUM TRAINING REQUIREMENT FOR TONNAGE TAX COMPANY. 115VU.

A tonnage tax company, after its option has been approved shall comply with the minimum training requirement in respect of trainee officers in accordance with the guidelines framed by the Director-General of Shipping and notified in the Official Gazette by the Central Government.

The tonnage tax company shall be required to furnish a copy of the certificate issued by the Director-General of Shipping along with the return of income under section 139 to the effect that such company has complied with the minimum training requirement in accordance with the guidelines.

If the minimum training requirement is not complied with for any five consecutive previous years, the option of the company for tonnage tax scheme shall cease to have effect from the beginning of the previous year following the fifth consecutive previous year in which the failure to comply with the minimum training requirement had occurred.

MAINTENANCE AND AUDIT OF ACCOUNTS.115VW.

An option for tonnage tax scheme by a tonnage tax company shall not have effect in relation to a previous year unless such company

- (i) maintains separate books of account in respect of the business of operating qualifying ships; and
- (ii) furnishes, along with the return of income for that previous year, the report of an accountant, in the prescribed form duly signed and verified by such accountant.

AVOIDANCE OF TAX. 115VZB.

The tonnage tax scheme shall not apply where a tonnage tax company is a party to any transaction or arrangement which amounts to an abuse of the tonnage tax scheme.

A transaction or arrangement shall be considered an abuse if the entering into or the application of such transaction or arrangement results, or would but for this section have resulted, in a tax advantage being obtained for (i) a person other than a tonnage tax company or (ii) a tonnage tax company in respect of its non-tonnage tax activities.

EXCLUSION FROM TONNAGE TAX SCHEME. 115VZC.

Where a tonnage tax company is a party to any transaction or arrangement referred to in of section 115VZB, the Assessing Officer shall, by an order in writing, exclude such company from the tonnage tax scheme.

An opportunity shall be given by the Assessing Officer by serving a notice calling upon such company to show cause, on a date and time to be specified in the notice, why it should not be excluded from the tonnage tax scheme:

Provided further that no order shall be passed without the previous approval of the Chief Commissioner.

No order shall be passed where the company shows to the satisfaction of the Assessing Officer that the transaction or arrangement was a bona fide commercial transaction and had not been entered into for the purpose of obtaining tax advantage under this Chapter.

Where an order has been passed by the Assessing Officer excluding the tonnage tax company from the tonnage tax scheme, the option for tonnage tax scheme shall cease to be in force from the first day of the previous year in which the transaction or arrangement was entered into.

EFFECT OF TEMPORARILY CEASING TO OPERATE SHIPS 115VZA.

A temporary cessation (as against permanent cessation) of operating any qualifying ship by a company shall not be considered as a cessation of operating of such qualifying ship and the company shall be deemed to be operating such qualifying ship for the purposes of this Chapter.

Where a qualifying company continues to operate a ship, which temporarily ceases to be a qualifying ship, such ship shall not be considered as a qualifying ship for the purposes of this Chapter.

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SECTION 115R CHANGE IN RATE OF DIVIDEND TAX

It is provided that the specified company or a mutual fund shall continue to pay income tax on such distributed income at the rate of twelve and one-half per cent, if distribution is made to any individual or Hindu undivided family. The rate of tax shall, however, be twenty per cent. if income is distributed to any person, other than individual or HUF.

SECTION 206C CHANGE IN RATES OF TCS

By ordinance 2 of 2003 the rates of tax collection are as.

Sl. No.	Nature of goods	Percentage
(1)	(2)	(3)
(i)	Alcoholic liquor for human consumption	One per cent.
(ii)	Tendu leaves	Five per cent.
(iii)	Timber obtained under a forest lease	Two and one-half per cent.
(iv)	Timber obtained by any mode other than under a forest lease	Two and one-half per cent.
(v)	Any other forest produce not being timber or tendu leaves	Two and one half per cent.
(vi)	Scrap	One per cent.