Direct taxes

Income tax
And
Wealth tax
AY 2011-12

Finance Act 2010
Circulars Notification Up to 31.10.2010

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This Book Contains

Note:
Every attempt is made to avoid error and Omission free. Any error or omission crept in book is unintentional.
The book is based on Finance Act 2010 and all the notifications up to 31.10.2010

Introduction to taxation.

Constitution of India is supreme law of land. All other laws, including the Income-tax Act, are derived from the Indian Constitution. The Constitution includes three lists in the Seventh Schedule providing authority to the Central Government and the state governments to levy and collect taxes on subjects stated in the lists.

Powers of Central or State Government to levy taxation in India: Article 246 of Indian Constitution provides for levy of tax by Central and state Government as follows

List I : Union List
Entry No. 82 : Income Tax other than Tax on Agricultural Income
Entry No. 83 : Customs duties including export duties
Entry No. 84 : Union Excise Duty (other than liquor, opium, tc.)
Entry No. 85 : Corporation Tax
Entry No. 92A: Taxes on Inter-State Sales (CST)
Entry No. 92B: Tax on Inter-State Consignment of Goods (not yet levied)
Entry No. 92C: Taxes on services
Entry No. 97 : Any other matter not included in List II or List III
[Levy of Service Tax through Finance Act, 1994]

List II : State List
Entry No. 46 : Agricultural Income Tax
Entry No. 51 : State Excise Duty
Entry No. 52 : Tax on Entry of Goods into local area for consumption or use or sale (called octroi)
Entry No. 54 : Tax on intra State Sales (Local/General Sales Tax)

Income tax is direct tax it is levied on the income earned by persons. A person includes an individual, Hindu Undivided Family (HUF), Association of Persons (AOP), Body of Individuals (BOI), a firm, a company etc. Income-tax is the most significant direct tax.
The income-tax law in India consists of the following components (Source or element of income tax law)

1.The Income Tax Act, 1961

(a) Income tax in India is governed by the Income Tax Act,1961 (b) It came into force w.e.f.1.4.1962
(c) The Act contains 298 sections and XIV Schedules
(d) The Finance Act shall bring amendment to this Act.
(e) The Law provides for determination of taxable income, tax liability and procedure for assessment, appeal, penalties and prosecutions.

2. Finance Act

(a) Finance Minister presents this as Finance Bill in both the Houses of Parliament.
(b) Part A of the Budget contains proposed policies of the Government in fiscal areas.
(c) Part B contains the detailed tax proposals.
(d) Once the Finance Bill is approved by the Parliament and gets the assent of the President, it becomes the Finance Act.
(e) The rate of tax at which income shall be charged is prescribed in the Schedule I of Finance Act.
(f) The Finance Act brings amendments to both the Direct Tax Laws (i.e. Income Tax, Wealth Tax etc.) and Indirect Tax Laws (i.e. law relating to Central Excise, Customs Duty, Service Tax etc.)

3. The Income Tax Rules, 1962

(a) The administration of Direct Taxes is vested with Central Board of Direct Taxes (CBDT).
(b) Under Section 295 of IT Act, CBDT is empowered to frame rules from time to time to carry out the purpose and proper administration of the Act.

(c) All forms, procedures and principles of valuation of perquisites prescribed under the Act are provided in the Rules framed by CBDT.

4. Circulars / Notifications from CBDT

(a) In exercise of the powers u/s 119, CBDT issues circulars and notifications from time to time.
(b) These circulars clarify doubts regarding the scope and meaning of the various provisions of the Act.
(c) These circulars act as guidance for officers and assesses.
(d) These circulars are binding on Assessing Officers but not on assesses and Courts.
(e) The circulars issued by the CBDT shall not be in contrary to the provisions of the Act.

5. Supreme Court and High Court Decisions

(a) The Supreme Court and the High Court can give judgment only on the question of law.
(b) The Law laid down by the Supreme Court is the law of the land.
(c) The decision of High Court will apply in the respective States, within its jurisdiction.

CHARGE OF INCOME-TAX:

Section 4 of the Income-tax Act is the charging section which provides that:
(i)Tax shall be charged at the rates prescribed for the year by the annual Finance Act.
(ii)The charge is on every person specified under section 2(31);
(iii) Tax is chargeable on the total income earned during the previous year and not the assessment year. (There are certain exceptions provided by sections 172, 174, 174A, 175 and 176);
(iv) Tax shall be levied in accordance with and subject to the various provisions contained in the Act.
This section can be called as the back bone of the law of income-tax in so far as it serves as the most operative provision of the Act. The tax liability of a person springs from this section.

RATES OF TAX

The Income tax shall be charged at the rates fixed by Annual finance Act and not by the income tax act.

RATES OF INCOME-TAX FOR ASSESSMENT YEAR 2011-12

Individual/HUF/AOP	**Tax rate**
Up to Rs. 1,60,000	Nil
above Rs.1,60,000 to Rs. 5,00,000	10%
above Rs.5,00,000 to 8,00,000	20%
Above Rs.8,00,000	30%

Resident woman below 65 years	**Tax rate**
Up to Rs. 1,90,000	Nil
above Rs.1,90,000 to Rs. 5,00,000	10%
above Rs.5,00,000 to 8,00,000	20%
Above Rs.8,00,000	30%

EC @ 2% + SHEC @ 1%. Surcharge NIL

Resident Senior citizen 65 or above	Tax rate
Up to Rs. 2,40,000	Nil
above Rs.2,40,000 to Rs. 5,00,000	10%
above Rs.5,00,000 to8,00,000	20%
Above Rs 8,00,000	30%

EC @ 2% + SHEC @ 1%. Surcharge NIL

Other Assessees :

Type of Assessee	Rate of tax	**Surcharge**
Firms (including limited liability partnership)	30% + EC @ 2% + SHEC @ 1%.	Surcharge — NIL
Domestic Companies	30% + EC @ 2% + SHEC @ 1%.	Surcharge @ 7.5% if the total income exceeds ` 1 crore
Foreign Companies	40%+ EC @ 2% + SHEC @ 1% Certain royalties -50%+ EC @ 2% + SHEC @ 1%	Surcharge @ 2.5% if the total income exceeds `1 crore
Local Authorities	30% + EC @ 2% + SHEC @ 1%.	(Surcharge is not applicable) Nil
Co-operative Societies	For First ` 10,000 @ 10% For Next ` 10,000 @ 20% For the Balance @ 30% EC @ 2% and SHEC @ 1% are applicable.	Surcharge is not applicable. Nil
MAT = Minimum Alternate Tax	18% of Book Profit + EC 2% + SHEC 1%	Surcharge 7.5% if Book Profits exceed ` 1 crore. In case of foreign companies SC is 2.5%

The above rates are prescribed by the annual Finance Acts. However, in respect of certain types of income, as mentioned below, the Income-tax Act has prescribed specific rates –

(1)Section 112 has prescribed the rate of tax @20% in respect of long term capital gains
(For details, refer Chapter 7 – Capital gains)
(2)Section 111A provides for a concessional rate of tax (i.e. 15%) on the short-term capital gains on transfer of -
(i)an equity share in a company or (ii)a unit of an equity oriented fund.
The conditions for availing the benefit of this concessional rate are –
(i)the transaction of sale of such equity share or unit should be entered into on or after 1.10.2004 and (ii)such transaction should be chargeable to securities transaction tax.
(3)Section 115BB prescribes the rate of tax @30% for winnings from-
(i)any lottery; or (ii)crossword puzzle; or (iii) race including horse race; or
(iv) card game and other game of any sort; or (v)gambling or betting of any form.

Income tax ACT 1961

Section 1: The Income-tax Act, 1961 came into force with effect from 1/4/1962. It has XXIII chapters and 298 sections in all. The income tax act applicable to whole India including Jammu and Kashmir.

India Sec 2 (25A) India means the territory of India as referred to in Article 1 of the Constitution, its territorial waters, seabed and subsoil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive

Economic Zone and other maritime Zones Act, 1976 and the air space above its territory and territorial waters.

Sec 2 :Definitions under Income tax Act

Assessee means: [Section 2(7)]
Any person who is liable to pay any tax or any other sum under the Income Tax Act, 1961, and

Assessee includes
(a) Every person in respect of whom any proceedings has been taken for the assessment of
- **His income or Fringe Benefits** or of the income of any other person.
- **Loss** sustained by him or other person.
- **Refund** due to him or such other person.

(b) Every person who is deemed **to be an assessee under** the Act.
(c) Every person who is deemed **to be an assessee in default under** the Act.

Assessment Year [Section 2 (9)]

1. Assessment Year means the **period of twelve months commencing on the 1st day of April every year.**
2. The year for which tax is paid is called Assessment Year.

The present Assessment Year is 2011-12 relating to previous year 2010-11.

Previous Year [Section 3]
1. Previous Year means **Financial Year** immediately preceding the Assessment Year.
2. The year in respect of the income of which tax is levied is called Previous Year.

The present previous year 2010-11 and its Assessment Year is 2011-12.
Previous Year for Newly established business From the date of setting up of the business to the end of the Financial year in which business was set up. For Example : X Started business on 1.09.2010. So for X . Previous year will be considered as 1.09.2010 to 31.03.2011

PREVIOUS YEAR & ASSESSMENT YEAR WILL BE SAME in the following cases:
1. Shipping business of nonresident [Section 172]
2. Persons leaving India [Section 174]
3. AOP or BOI or Artificial Juridical Person formed for a particular event or purpose [Sec. 174A]
4. Persons likely to transfer property to avoid tax [Section 175]
5. Discontinued business [Section 176]

UNDISCLOSED SOURCES OF INCOME
1. Unexplained Cash Credits u/s 68
2. Unexplained investments u/s69
3. Unexplained money, bullion or jewel or valuable article u/s 69A
4. Undisclosed investments u/s 69B
5. Unexplained expenditure u/s 69C
6. Amount borrowed or repaid on hundi, other than by way of account payee cheque u/s 69D.

Income [Section 2(24)] includes:

1. Profits or gains of business or profession.
2. Dividend.
3. Voluntary Contribution received by a Charitable / Religious Trust or University / Education Institution or Hospital
4. Value of perquisite or profit in lieu of salary taxable u/s 17 and special allowance or benefit specifically granted either to meet personal expenses or for performance of duties of an office or an employment of profit.
5. Export incentives, like Duty Drawback, Cash Compensatory Support, Sale of licences etc.
6. Interest, salary, bonus, commission or remuneration earned by a partner of a Firm from such Firm.
7. Capital Gains chargeable u/s 45.
8. Profits and gains from the business of banking carried on by a cooperative society with its members.
9. Winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.
10. Deemed income u/s 41 or 59
11. Sums received by an assessee from his employees towards welfare fund contributions such as Provident Fund, Superannuation Fund etc.
12. Amount received under Keyman Insurance Policy including bonus thereon.
13. Amount received under agreement for (a) not carrying out activity in relation to any business, or (b) not sharing any knowhow, patent, copyright etc.
14. Benefit or perquisite received from a Company, by a Director or a person holding substantial interest or a relative of the Director or such person.
15. Any allowance granted to the assessee to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living.

(16) The value of any benefit or perquisite, whether convertible into money or not, which is obtained by any representative assessee mentioned under section 160(1)(iii) and (iv), or by any beneficiary or any amount paid by the representative assessee for the benefit of the beneficiary which the beneficiary would have ordinarily been required to pay.

17. Gift as defined u/s 56 (2)(vi). Any sum of money exceeding ` 50,000, received by an Individual or a HUF from any person during the previous year without consideration on then the whole of aggregate of such sums will be taxable.
18. Value of shares of a Company (in which public are not substantially interested), received in any previous year, by a Firm or a Company (in which public are not substantially interested), from any person or persons.

Principles and Concept of income:

- Income includes loss.While income, profits and gains is plus income and loss represents minus income
- The income may be cash or kind. If it is kind, it is valued as per valuation rules.
- The income may arise on receipt basis or accrual basis
- The Income tax act does not make any distinction between legal income and illegal income. Both are taxable
- There is no difference between temporary and permanent income. Both are taxable
- The income may be received in lumpsum or in installments. Both are taxable
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Real Income Vs Notional Income

- Under the Income tax Act notional income will not be charged to tax unless otherwise expressly provided in the Income tax Act. For example father gives interest free loan to son to carry business the notional interest portion will not be assessed as income.
- Income Tax Act provides charging of certain notional income to tax, though they are not real income For example capital gains tax on Conversion of Capital asset in to stock in trade and deemed let out property concept incase of income from house property.

APPLICATION OF INCOME V/S DIVERSION OF INCOME:
Application of income means spending the money after it has been earned by the assessee. Such an amount is always included while computing taxable income in the hands of assessee. In other words once an income has been earned it could not be excluded on the grounds that it has been applied for some purpose.

Diversion of Income
Diversion of income is the process of diverting the income before it is earned by the assessee.
FOR EXAMPLE: J Ltd sells a unit of a product at Rs.100 with very clear message to customer that out of Rs.100 Rs.5 will go to the charitable institution. Now only Rs.95 shall be regarded as the income in the hands of company and Rs.5 will be known as diversion of income.

Diversion of income is an obligation to apply the income in a particular way before it is received by the assessee or before it has arisen or accrued to the assessee results in diversion of income. The source is charged with an overriding title, which diverts the income. Therefore the essentials are the following :

1. Income is diverted at source,
2. There is an overriding charge or title for such diversion, and
3. The charge / obligation is on the source of income and not on thereceiver.

Examples of diversion by overriding title are -
(a) Right of maintenance of dependants or of coparceners on partition
(b) Right under a statutory provision
(c) A charge created by a decree of a Court of law.

REVENUE VS CAPITAL: Any receipt of money can either be categorized as revenue or capital. Revenue receipts are always fully taxable unless specific exemption has been provided for that. Capital receipts are never taxable. That’s why amount received from insurance company at the time of maturity is not taxed u/s 10(10D). Similarly loan taken is also not taxed. However, some of the capital receipts are taxable since they have been specifically provided in the definition of Income such as tax on Capital gains on sale of Capital asset.

DIFFERENCE BETWEEN CAPITAL RECEIPT AND REVENUE RECEIPT

Capital Receipt	Revenue Receipts
Capital receipt is generally referable to fixed capital. For eg. Sale price on the sale of assets, which assessee uses as a fixed asset in his business is a capital receipt	Revenue receipt refers to circulating capital. For eg. Sale price of the stock in trade is a revenue receipt
Payment received towards the compensation for the extinction of a profit earning source is a capital receipt	Payment received to compensate loss of earnings is a revenue receipt
A receipt in lieu of source of income is a capital receipt. For eg. Compensation for the loss of employment is a capital receipt.	A receipt in lieu of income is a revenue receipt
Capital receipts are exempt from tax unless they are expressively taxable like in the case of capital gains	Revenue receipts are always taxable unless expressly exempt from tax under section 10

CAPITAL AND REVENUE EXPENDITURE
In computing taxable income normally revenue expenditure incurred for the purpose of earning income is deductible from revenue receipt unless the law provides specific rules to disallow such expenditure wholly or partly. Example income tax paid, penalties etc
On the other hand capital expenditure is not deductible while computing taxable income unless the law expressly so provides. Ex. Expenditure on scientific
Neither the capital expenditure nor revenue expenditure has been defined in the Act. However, from the facts and circumstances of each case and from the judicial decisions the following general principles to be kept in mind :
(i) Capital expenditure is incurred in acquiring, extending or improving a fixed asset whereas revenue expenditure is incurred in the normal course of business as a routine expenditure.
(ii) Capital expenditure incurred for enduring benefits whereas revenue expenditure is consumed within a Previous Year .
(iii) Capital expenditure makes improvement with earning capacity of a business whereas a revenue expenditure maintains the profit making capacity of a business.
(iv) Capital expenditure is a nonrecurring expenditure whereas revenue expenditure is normally a recurring one.

Certain cases when income of a previous year will be assessed in the previous year itself

The income of an assessee for a previous year is charged to income-tax in the assessment year following the previous year. However, in a few cases, this rule does not apply and the income is taxed in the previous year in which it is earned. These exceptions have been made to protect the interests of revenue. The exceptions are as follows:

(i) Shipping business of non-resident [Section 172] - Where a ship, belonging to or chartered by a non-resident, carries passengers, livestock, mail or goods shipped at a port in India, the ship is allowed to leave the port only when the tax has been paid or satisfactory arrangement has been made for payment thereof. 7.5% of the freight paid or payable to the owner or the charterer or to any person on his behalf, whether in India or outside India on account of such carriage is deemed to be his income which is charged to tax in the same year in which it is earned.

(ii) Persons leaving India [Section 174] - Where it appears to the Assessing Officer that any individual may leave India during the current assessment year or shortly after its expiry and he has no present intention of returning to India, the total income of such individual for the period from the expiry of the respective previous year up to the probable date of his departure from India is chargeable to tax in that assessment year.

Example: Suppose Mr. Ram is leaving India for USA on *25.6.2011* and it appears to the Assessing Officer that he has no intention to return. Before leaving India, Mr. X will be required to pay income tax on the income earned during the *P.Y. 2010-11* as well as the total income earned during the period *1.4.2011 to 25.06.2011.*

(iii) AOP / BOI / Artificial Juridical Person formed for a particular event or purpose [Section 174A] - If an AOP/BOI etc. is formed or established for a particular event or purpose and the Assessing Officer apprehends that the AOP/BOI is likely to be dissolved in the same year or in the next year, he can make assessment of the income up to the date of dissolution as income of the relevant assessment year.

(iv) Persons likely to transfer property to avoid tax [Section 175] - During the current assessment year, if it appears to the Assessing Officer that a person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets to avoid payment of any liability under this Act, the total income of such person for the period from the expiry of the previous year to the date, when the Assessing Officer commences proceedings under this section is chargeable to tax in that assessment year.

(v) Discontinued business [Section 176] - Where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year up to the date of such discontinuance may, at the discretion of the Assessing Officer, be charged to tax in that assessment year.

Other Definitions

TOTAL INCOME [Sec. 2(45)]

"Total income" means the total amount of income as referred to in sec. 5 and computed in the manner laid down in the Act. Total income constitutes the tax with reference to which income tax is charged.

GROSS TOTAL INCOME [Section 80B]

Gross Total Income means total income computed in accordance with the provisions of the Income Tax Act before making any deduction under Chapter VIA.

Rounding Off Income [Section 288A] : The Total Income computed under this Act, shall be rounded off to the **nearest multiple of ` 10**.

Rounding Off Tax [Section 288B] : The amount of Tax including Tax Deducted at Source (TDS) and advance tax, interest, penalty, fine or any other sum payable, and the amount of refund due under the Income Tax Act, shall be rounded off to the **nearest Ten Rupees.**

BOOKS OF ACCOUNT [Sec. 2(12A)]

It includes ledgers, day books, cash books, account-books and other books, whether kept in the written form or as printouts or data stored in a floppy, disc, tape or any other form of electromagnetic data storage device.

DOCUMENT [Sec. 2(22AA)]

It includes an electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

INSURER [Sec. 2(28BB)]

It means an insurer being an Indian insurance company, as defined under clause (7A) of section 2 of the Insurance Act, 1938 (4 of 1938), which has been granted a certificate of registration under section 3 of that Act.

SUBSTANTIAL INTEREST [Sec. 2 (32)]

Person who has a substantial interest in the company, in relation to a company, means a person who is the beneficial owner of shares, not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits, carrying not less than twenty per cent of the voting power. In the case of a non-corporate entity, a person can be said to have substantial interest if 20% or more share of profit is held.

INFRASTRUCTURAL CAPITAL COMPANY [Sec.2(26A)]

"*Infrastructure capital company"* means such company which makes investments by way of acquiring shares or providing long-term finance to any enterprise or undertaking wholly engaged in the business referred to in sub- section (4) of section 80 –IA or sub-section (1) of section 80-IAB or an undertaking developing and building a housing project referred to in sub-section (10) of section 80-IB or a project for constructing a hospital with at least one hundred beds for patients.[Sec. 2(26A)].

INFRASTRUCTURAL CAPITAL FUND [Sec.2(26B)]

"*Infrastructure capital fund"* means such fund operating under a trust deed registered under the provisions of the Registration Act, 1908 established to raise monies by the trustees for investment by way of acquiring shares or providing long-term finance to any enterprise or undertaking wholly engaged in the business referred to in sub- section (4) of section 80-IA or sub-section (1) of section 80- IAB or an undertaking developing and building a housing project referred to in sub-section (10) of section 80-IB or a project for constructing a hotel of not less than three star category as classified by the Central Government or a project for constructing a hospital with at least one hundred beds for patients. [Sec 2(26B)].

RELATIVE [Sec. 2(41)]

In relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

RESULTING COMPANY [Sec. 2(41A)]

It means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger

Heads of income/Gross total income Sec 14
Gross total income is the aggregate of income from all five heads of Income, namely
Income under the head salary
Income under the head house property
Income under the head business and profession
Income under the head capital gains
Income under the head other sources

Residential Status and Scope of total income Sec 6

- The scope of taxable income of an assessee is determined by his residential status.
- Residential status is to be determined for each and every previous year separately
- Residential status for each person to be determined separately for each previous year
- A person may be resident in one previous year and nonresident in another Previous year
- Assessee require to provide any information required to A O to determine Residential status
- The onus of responsibility to prove the residential status is on the assessee.

RESIDENTIAL STATUS OF INDIVIDUAL [SEC.6(1)]

Basic Conditions:

1(a) If the Individual **stayed** in India for a period of **182 DAYS OR MORE** during the **Relevant Previous Year he is Resident of India (OR)**

(b) If he stayed in India for a period of **60 DAYS OR MORE** during **Relevant Previous Year and 365 DAYS OR MORE** during the four preceding previous years he is **Resident of India.**

If the any of the above two conditions are not satisfied, he is **Nonresident.**
The day on which he enters India as well as the day on which he leaves India shall be taken into account as the stay of the Individual in India**.** If he stayed only part of the day **,** calculation to be based on no of hours

Special Exceptional Situations:

For the following persons, condition mentioned in 1(a) above only shall apply to determine their Residential Status

(a) Individual, Indian citizen, leaving India for employment outside India, or

(b) Indian Citizen being a crew member of an Indian ship leaving India, or

(c) Individual, Indian citizen or person of Indian origin, visiting India.

Additional Conditions: Sec. 6(6)(a)

1. Resident in India for at least 2 years out of the preceding 10 previous years.
2. Physically present in India for at least 730 days during the 7 preceding previous years.

Status of an Individual	**Basic condition**	**Additional condition/(s)**
Resident and ordinarily Resident u/s 6(6)	Satisfies	Satisfies both the conditions
Resident but not ordinarily Resident u/s 6(6)	Satisfies	Does not satisfy both the additional condition
Non Resident	Fails to satisfy	Not required to check

RESIDENTIAL STATUS OF A COMPANY [SECTION 6 (3)]

1.Indian Company	Resident
2.Other Companies - Control and management is (a) Wholly in India (b) Wholly or partly outside India	 Resident Non-resident

RESIDENTIAL STATUS OF HUF/FIRM/AOP/EVERY OTHER PERSON [Sec. 6(2), SEC.6(4)

Control and Management is	**Residential Status**
1. Wholly or partly in India	Resident
2. Wholly outside India	Non-resident

Incomes which accrue or arise in India or are deemed to accrue or arise in India [Section 9]

Accrue or arise in India: 'Accrue' means 'to arise or spring as a natural growth or result', to come by way of increase. 'Arising' means 'coming into existence or notice or presenting itself'. 'Accrue' connotes growth or accumulation with a tangible shape so as to be receivable. In a secondary sense, the two words together mean 'to become a present and enforceable right' and 'to become a present right of demand'.

The following incomes shall be deemed to accrue or arise in India:

(*a*) *Income from a business connection in India*: Any income which arises, directly or indirectly, from any activity or a business connection in India is deemed to be earned in India.

Business connections may be in several forms *e.g.* a branch office in India or an agent or an organization of a non-resident in India. Formation of a subsidiary company in India to carry on the business of the non-resident parent company would also be a business connection in India.

In the case of a *Non-Resident* the following shall not, however, be treated as business connection in India:

(*i*) Operations confined to purchase of goods in India for purpose of exports;

(*ii*) Operations confined to collection of news and views for transmission outside India by or on behalf of Non-Resident who is engaged in the business of running news agency or of publishing newspapers, magazines or journals;

(*iii*) Operations confined to shooting of cinematograph films in India if such Non-Resident is:

(*a*) an individual—he should not be a citizen of India; or

(*b*) a firm—the firm should not have any partner who is a citizen of India or who is resident in India; or

(*c*) a company—the company does not have any shareholder who is a citizen of India or who is resident in India.

In the case of a business of which all the operations are not carried out in India, only such part of the income as is reasonably attributable to operations carried out in India shall be treated as deemed to accrue or arise in India.

(*b*) *Income from any property, asset or source of income situated in India*: Any income which arises from any property movable or immovable, tangible or intangible which is situated in

India, is deemed to accrue or arise in India.

(*c*) Income from the transfer of any capital asset situated in India: Where the capital asset is situate in India, regardless of the residential status of the transferor or the transferee, capital gain, arising on its transfer, would be deemed to be income accruing or arising in India and hence would be taxable.

(d) Any income which falls under the head 'Salaries' if it is earned in India: Any income payable for services rendered in India shall be regarded as income earned in India though it may be paid in India or outside. It will also include salary of the rest period or leave period which is preceded and succeeded by service rendered in India and forms part of the service contract of employment.

(e) Salary payable by the Government to an Indian citizen/national for services rendered outside India: The following conditions have to be satisfied before such income is treated as deemed to accrue or arise in India:

(*i*) Income should be chargeable under the head 'Salaries';

(*ii*) The payer should be Government of India;

(*iii*) The recipient should be an Indian citizen — whether Resident or Non-Resident;

(*iv*) The services should be rendered outside India.

While salary of Indian citizen in the above case shall be deemed to accrue or arise in India but all allowances or perquisites paid outside India by the Government to the above Indian citizens for their rendering services outside India are exempt under section 10(7).

(*f*) *Dividend paid by an Indian company outside India*: Dividend paid by an Indian company outside India is deemed to accrue or arise in India.

(*g*) *Interest payable by:*

i. Government; or
ii. A person who is a resident in India, except where interest is payable in respect of money borrowed and used for the purpose of business or profession carried on outside India or earning any income from any source outside India; or
iii. A person who is a non-resident in India provided interest is payable in respect of money borrowed and used for a *business or profession* carried on in India,

shall be income which is deemed to accrue or arise in India in the hands of the recipient.

(*h*) *Royalty payable by:*

i. Government; or
ii. A person who is a resident in India except where it is payable in respect of any right/information/property used for the purpose of a business or profession carried on outside India or earning any income from any source outside India; or
iii. A person who is a non-resident provided royalty is payable in respect of any right/information/property used for the purpose of the business or profession carried on in India or earning any *income from any source* in India,

shall be income which is deemed to accrue or arise in India in the hands of the recipient.

Income by way of Interest, Royalty or Fees for Technical Services shall be deemed to accrue or arise in India **whether or not** the Non Resident has a **residence or place of business or business Connection in India** (or) whether or not he has **rendered services in India.**

(*i*) *Fees for technical services payable by:*

i. Government; or
ii. A person who is a resident in India, excepting where services are utilised for a business or profession carried on outside India or earning any income from any source outside India; or

iii. A person who is a non-resident provided fee is payable in respect of services for a *business or profession* carried on in India or earning *any income from any source* in India,

shall be income which is deemed to accrue or arise in India in the hands of the recipient.

STATUS AND INCIDENCE OF INCOME-TAX

The incidence of tax on a tax-payer depends on his residential status as well as on the place and time of accrual or receipt of income. A suitable table is given below :

Particulars of income	**Tax incidence in case of**		
	Resident	**Resident but not ordinarily resident**	**Non- resident**
a. Income received in India whether accrued in India or outside India	Yes	Yes	Yes
b. Income deemed to be received in India whether accrued in India or outside India.	Yes	Yes	Yes
c. Income accruing or arising in India whether received in India or outside India.	Yes	Yes	Yes
d. Income deemed to accrue or arise in India, whether received in India or outside India.	Yes	Yes	Yes
e. Income received and accrued outside India from a business controlled in profession set up in India	Yes	No	No
f. Income received and accrued outside India from a business controlled from outside India or profession set up outside India.	Yes	No	No

In other words

- **a)** Any income which is either received/earned in India or deemed to be received/earned in India is taxable in India, irrespective of the residential status.
- **b)** For a Resident in India (for individual & HUF, resident and ordinarily resident in India) all global income, wherever earned/received is taxable in India.
- **c)** For a non-resident, an income is taxable only if it is either earned in India or it is received in India.
- **d)** For not ordinarily resident, income earned and received outside India will be taxable, only when it is from a business or profession controlled or set up in India.

Agriculture income

Agricultural income means Sec 2(1A) –

(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes

(b) any income derived from such land by-

(i) agriculture; or

(ii) the performance by a cultivator or receiver of rent-in-kind of any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

iii) the sale by a cultivator or receiver of rent in kind of the produce raised or received by him, in respect of which no process has been raised or received by him, in respect of which no process has been performed other than a process of the nature described in para (ii) of the sub-clause:

(c) any income derived from any building owned and occupied by the receiver of rent or revenue of any such land provided the following conditions are satisfied-

(i) the building should be on or in the immediate vicinity of land and is used for agricultural purposes;

(ii) the cultivator or receiver of rent-in-kind uses the building as a dwelling house or a store house; and

(iii) the land is assessed to land revenue or local rate or the land is situated within the jurisdiction of munici- pality/cantonment having a population of not less than 10,000 persons or within distance of not more than 8 k.m.

Agriculture not involving any basic operation like tilling, sowing or dissemination of seeds and planting on land would not constitute agriculture merely because they have relation or connection with land. Term agriculture does not include breeding and rearing of live stock, dairy farming, butter, cheese making, poultry, etc.- CIT v/s Raja Benoy Kumar Sahas Roy 32 ITR 466 (SC).

Examples of agricultural income

If a partnership is having main activity of agriculture then remuneration and interest received by the partners from such firm shall be regarded as agriculture income and hence not chargeable to tax but share in the post tax profits of firm is not agriculture income as was decided by the in the case of R. M. Chidambaram Pillai.

Where the owner himself performs slaughter tapping and then sells the rubber, the income is agricultural income.- Jacob(K.C.) v Ag. ITO 110 ITR 402.

Lease rent received for leasing out land for grazing of cattle required for agricultural pursuits, is agricultural in- come.- CIT v Rai Shamsherjang Bahadur 24 ITR 1.

Compensation received from an insurance company on account of damaged caused to the crop is an agricultural income.- CIT v B. Gupta Tea Pvt. Ltd. 74 ITR 337.

Seeds are clearly a product of agriculture and the income derived from the sale of seeds derived on account of cultivation by the assessee is an agricultural income.- CIT v Soundharya Nursury 241 ITR 530.

Miscellaneous income from plantation: Miscellaneous income from plantation should also be agricultural income except in respect of sale of trees of spontaneous growth. Thus, where a state undertaking owing a forest, had re- ceived income by sale of firewood, grazing permits and compounding fee for trespasses into the plantation, the same shall be treated as agricultural income.-CIT v Tamil Nadu Forest Plantation Corporation 248 ITR 331.

Examples not an agricultural income

Dividend received from company having only agricultural income is not agricultural income for a shareholder-CIT v/s Mrs. Bacha F. Guzdar 27 ITR 1 (SC).

Conversion of sugarcane into Gur- No Agriculture income - Seth Banarasi Dass Gupta v/s CIT. 106 ITR 804 . Income from agricultural lands situated outside India is not agricultural income within the meaning of the Indian income-tax. Similarly if there is a figure of loss from agricultural lands, situated outside India, it has got to be deducted while computing the total income of the resident assessee in India - *CIT* v. *Carew & Co. Ltd.* 120 ITR 540.

Compensation for acquisition of land - Where land of assessee-tea company was requisitioned by State Government and same was given to refugees who carried on cultivation thereon and at time of requisition assessee too was carrying on agricultural operations on land, compensation received by assessee was to be treated as agricultural income - *CIT* v. *All India Tea & Trading Co. Ltd.* 85 Taxman 391/219 ITR 544.

Any loan obtained by a shareholder out of accumulated profits of the company having only agricultural income, which is liable to be treated as 'deemed dividend', is not agricultural income in the hands of recipient.

Interest on arrears of cess or rent payable by a tenant to his landlord is no doubt revenue but it is not revenue derived from land and hence it is not agricultural income.

Commission earned by a broker for selling agricultural produce of an agriculturist is not agricultural income.

Any capital gain arising from the transfer of agricultural land is not treated as revenue derived from land and hence it is not agricultural income.

Aggregation of Agriculture Income for Rate Purpose

Agriculture income is included in the non-agriculture income for tax purpose in each year with a view to increase on tax payable on non-agriculture income. This will be applicable only to individuals and Huf, Aop, and Boi whose income is charged on the basis of slabs. However for Individuals and Huf whose income consists of only long tem Capital gains or winning from lotteries aggregation of income has no impact. These is because longterrm capital gains and winning from lotteries will be charged to tax at flat rates of 20% and 30% respectively. Aggregation of agricultural income in such cases will not alter tax liability and hence it need not be done.

Steps in Aggregation of income:

1. *Aggregate agriculture and non agriculture income and determine tax payable on such* amount
2. Aggregate agriculture income and basic exemption limit and determine tax payable on such amount
3. The difference between step 1 and step 2 is the tax payable on non-agriculture income.

Aggregation of Agriculture income not Applicable

1. Assessee such as partnership firms, companies etc whose income is chargeable at flat rate

2. AOP, BOI that is subject to maximum marginal rate.
3. If non-agriculture income does not exceed basic exemption limit. For example if non agriculture income is Rs. 80000 and Agriculture income is Rs. 50 lakh If the Agriculture income does not exceed Rs. 5000/- during the previous year

Composite Activity

Where the assessee carries manufacturing Activity, which consists of both agricultural and business income, the ratio will be derived as follows

S No	Nature of Activity	Agricultural Income	Non Agricultural Income	Rule
1	Rubber	65%	35%	7A
2	Coffee grown manufacture cured	75%	25%	7 B
3	Coffee grown manufacture cured roasted	60%	40%	7 C
4	Tea	60%	40%	8

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Chapter 2

Income do not form part of total income

Section	Applicable	Type of income Exempt from tax
10(1)	All assessees	Agricultural income.
10(2)	Member of HUF	Sum paid out of income of family or income of impartiable estate.
10(2A)	A person being a partner of a firm	Share in the total income of the firm separately assessed as a firm.
10(7)	Citizen of India	Allowances or perquisites by Government for services rendered outside India.
10 (10BC)	**individual or his legal heir**	Compensation received from Govt or Local Authority on account of disaster caused by natural or man made act. Due to such there is will be loss of life or property. If deduction allowed under any other section no exemption.
10(10D)	All assessees	Any sum received under a life insurance policy including bonus. Refer note below

Note: The following amount shall not be exempt under 10(10D)

Amount received from an insurance company on death of dependent being a person with disability in respect of an insurance policy issued to him for the maintenance of such dependent.
Amount received under a Key man Insurance Policy
Sum received under an insurance policy issued on or after 1-4-2003, where premium payable for any of the years exceeds 20% of the actual capital sum assured unless such sum is received on death of a person.

Section	Applicable	Type of Income exempt from tax
10(11)	All assessees	Payments from a statutory P.F. or public P.F. or from notified P.F.
10(15)(i)	All assessees	Income by way of interest, premium on redemption or other payment from notified securities, bonds, certificates, etc. issued notified by Central Government.
10(15)(iib)	Individual or HUF	Interest on notified 7% capital investment bonds. No bonds to be specified on or after 1-6-2002.
10(15)(iic)	Individual or HUF	Interest on 6.5% Relief Bonds, 2003
10(15)(vi)	All assessees	Interest on Gold Deposit Bond Scheme, 1999.
10(15)(vii)	All assessees	Interest on notified bonds issued by a local authority. Such as Municipal Corporation of Ahmedabad, Hyderabad Nashik Chennai, and water boards of Karnataka , Tamil nadu and Chennai
10(16)	Individual	Scholarship granted to meet cost of education.
Sec. 10(17**)**	MLA and MPs &MLC	Any income by way of— (*i*) daily allowance; (*ii*) any allowance received MP/MLA/MLC under Constituency Allowance Rules (*iii*) all other allowances not exceeding two thousand rupees per month in the aggregate

10(17A)	All assessees	Payment in cash/kind as award instituted by Central/State Government or award instituted by the Central Government approved body.
10(18)	Central or State Government employee	Pension. Provided Such employee is awarded Param Vir Chakra or Maha Vir Chakra or Vir Chakra or such other notified gallantry award.
	Any family member of an employee referred above	Family Pension.
10(19)	Widow, children or nominated heir of a member of the armed forces	Family Pension. Where the death of such member of the armed forces (including paramilitary forces) has occurred in the course of operational duties, in such circumstances and subject to such conditions as may be prescribed.
Sec. 10(19A)	Former Ruler	Annual value of every such palace in the occupation of former Ruler

Section	Applicable	Type of income Exempt from tax
10(20)	Local authority Local authority means Panchayat , Municipality Municipal Committee and District Board and Cantonment Board	**Within Jurisdictional Area**
		The following income is exempt 1.“Income from house property” 2.“Capital gains” 3.Income from other sources and 4 Income from any Commodity Service other than Water or Electricity.
		Outside Jurisdiction Area
		Income from Trade or business carried on by it from Water or Electricity is exempt and all other income will be taxable
10(23AAA)	Any person on behalf of employees welfare fund	Any income, Subject to four conditions as below
		Fund is approved by CIT.
		The income is applied or accumulated for application towards objects of the fund only.
		The funds are invested as permitted u/s. 11(5).
		The approval shall have effect for 3 years at a time
10 23(D)	Income of Mutual fund	Mutual fund registered under SEBI/Mutual funds set up by Public sector banks/Public financial Institutions subject to conditions specified in Chapter XII E
10 (23)EA)	Investor Protection Fund Set up by Stock Exchanges/Commodity Exchanges	Any income: However exempted income during any previous year is shared, either, with a recognized stock exchange, amount is so shared and shall accordingly be chargeable to income-tax;

10(23FB)	Venture Capital Fund (VCF) or Venture Capital Company (VCC)	V C F or VCC set up to raise funds for Venture Capital Undertaking (VCU) Exemption: Any income. Conditions : VCF/VCC granted registration under SEBI Act. VCF is operating under a registered trust deed or operating as venture capital scheme of UTI VCF/VCC fulfils conditions specified by SEBI (Domestic Company and share should not be listed engaged in Specified category of business (IT, Biotech, nanotech, chemicals etc)
10 (24)	Registered Trade Union	Exempted income :Income from house property" and "Income from other sources"— Condition: Such trade union formed primarily for the purpose of regulating the relations between **workmen and employers or between workmen and workmen**
10(*25A*)	Employees' State Insurance Fund	Any Income Employees' State Insurance Fund set up under ESI Act
10(26AAA)	Individual being Sikkimese	Any income from the source in state of Sikkim, and dividend and interest on securities. In case of Sikkim woman married non sikkimese man on after 01.4.2008, exempt will lost
10(26AAB)	Agricultural marketing Committee	Any income of agricultural marketing committee which regulating agricultural produce exempt amendment effective AY 09-10
10 (29)/29A	Specified Boards	Any income of Coffee Board, (b) the Rubber Board ,(c) the Tea Board (d) the Tobacco Board, (e) the Marine Products Export Development Authority (f) the Agricultural and Processed Food Products Export Development Authority (g) the Spices Board under the Spices Board Act, 1986(h) Coir Board under coir Board act 1953 (wef AY 09-10)
10 (30) & (31)	Specified Assessees	Any Subsidy received by Assessee for planting, replanting, growing etc for the products such as tea, coffee, cardamom and such other commodity from the respective board. Condition: Certificate from board for the amount of subsidy received should be attached to Return of Income.

Income of a research association - Sec 10 (21)

Any income of a research association approved u/s 35(1)(ii)
Subject to the following condition: -
Such association applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established, as per the provisions applicable to Charitable Institutions
In relation to any income of the research association, being profits and gains of business, the income will be exempt only
1. The business is incidental to the attainment of its objectives and
2. Separate books of account are maintained by it in respect of such business:
Where the association is approved by the Central Government and subsequently that Government is satisfied that—

(i) the research association has not applied its income for specified objects or

(ii) The research association has not invested or deposited its funds in accordance with sec 11(5) or
(iii) The activities of the research association are not genuine; or
(iv) The activities of the research association are not being carried out in accordance with all or any of the conditions subject to which such association was approved,

The Central Government at any time after giving a reasonable opportunity of against the proposed withdrawal to the concerned association, and by order withdraws the approval and forwards a copy of the order withdrawing the approval to such association and to the Assessing Officer

Income of news agency – Sec. 10 (22B)

Any income news agency set up in India The news agency should apply its income or accumulates it for application solely for collection and distribution of news and does not distribute its income in any manner to its members:

Central Government may if, is satisfied that such news agency has not applied or accumulated or distributed its income for specified purposes it may, at any time after giving a reasonable opportunity of showing cause, rescind the notification and forward a copy of the order rescinding the notification to such agency and to the Assessing Officer;

Notified Agencies for this Purpose- Press Trust of India-New Delhi.

Income of Professional Association – Sec. 10 (23A)

Conditions

1. An association or institution established in India having as its object the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, engineering or architecture or such other profession as the Central Government notify in the Official Gazette:
2. The association or institution applies its income, or accumulates it for application, solely to the objects for which it is established; and
3. The association or institution is for the time being approved by the Central Government by general or special order

Non-Exempt income

Income from house property
Any income received for rendering any specific services
Income by way of interest or dividends derived from its investments
All income other than above is exempt.

Withdrawal of exemption:

That where the association or institution has been approved by the Central Government and subsequently that Government is satisfied that—

(i) Such association or institution has not applied or accumulated its income in for the specified objects or
(ii) The activities of the association or institution are not being carried out in accordance with all or any of the conditions subject to which such association or institution was approved,

It may, at any time after giving a reasonable opportunity of the proposed withdrawal to the concerned association or institution, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such association or institution and to the Assessing Officer;

(*23AAB*) any income of a fund, set up by the Life Insurance Corporation of India or any other insurer under a pension scheme, —

(*i*) to which contribution is made by any person for the purpose of receiving pension from such fund;
(*ii*) Which is approved by the Controller of Insurance or the Insurance Regulatory and Development Authority

Income of Khadi Village industries 10 (*23B*)

Income attributable to the business of production, sale, or marketing, of khadi or products of village industries of an institution constituted as a public charitable trust or registered in India under any law and existing solely for the development of khadi or village industries or both, and not for purposes of profit, to the extent such income is:

Conditions:
The institution applies its income, or accumulates it for application, solely for the development of khadi or village industries or both
The institution is, approved by the Khadi and Village Industries Commission:

Withdrawal of exemption of income—
The institution has not applied or accumulated its income in accordance with objects specified
The activities of the institution are not being carried out in accordance with all or any of the conditions subject to which such institution was approved,
Commission it may, at any time after giving a reasonable opportunity of the proposed withdrawal to the concerned institution, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such institution and to the Assessing Officer.

Any income of the following institutions is exempt from Tax (10 (23) BB BBC BBD BBE BBF BBG)
1. Authority for development of Khadi and Village Industries in the state
2.European Economic Community
3.SAARC Fund
4.Secretariat of the Asian Organization of the Supreme Audit Institutions up to 2011-12
5. Insurance Regulatory and Development Authority
6. Central Electricity Regulatory Commission constituted under sub-section (1) of Section 76 of the Electricity Act, 2003.
7. North eastern finance development corporation Ltd. Exemption- 80% for AY 06-07, 60% for AY 07-08, 40% for AY 08-09, 20% for AY 09-10, Nil from AY 10-11 onwards,

Income of Certain Funds / Educational Institutions / Hospitals – Sec. 10 (23C)

Any income received by any person on behalf of—

(*i*)the Prime Minister's National Relief Fund; or
(*ii*) the Prime Minister's Fund (Promotion of Folk Art); or
(*iii*) the Prime Minister's Aid to Students Fund; or
(*iiia*) the National Foundation for Communal Harmony;

Shall be totally exempt from tax

The following institutions income is exempt from tax subject to following conditions as below

Institution	Purpose
University or other educational institution	Solely for educational purposes and not for purposes of profit,
Any hospital or other institution	Treatment of persons suffering from illness and Existing solely for philanthropic purposes and not for purposes of profit,

The above institutions are divided in to three categories as mentioned below:

Category 1 - Wholly or substantially financed by Government
Category 2 - Annual receipts does not exceed Rs. 1 crore
Category 3 - Approved by Director General/Chief Commissioner of Income tax.
As far as Category 1 and 2 is concerned to claim exemption the purpose is the main consideration. With regard to Category 3 it should be approved by the Director General/ Chief Commissioner of Income tax
In addition to above three categories, Income of fund, trust /institutions established for charitable purposes, which may be notified by the Central Government, is also exempt from tax
The fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to category III shall make an application in the prescribed form and manner to Director General / Chief Commissioner of Income tax for the purpose of grant of the exemption, The Application should be made on or before 30th September
Of relevant Assessment year which the exemption is sought. (FA 2009)

The Central Government, before approving any university or other educational institution or any hospital or other medical institution, may call for such documents (including audited annual accounts) or any other information as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities, and also make such inquiries as it deems necessary in this behalf.
The fund or trust or institution or any university or other educational institution or any hospital or other medical institution

(*a*) Applies its income, at least 85% or accumulates it for application for a period of 5 years, wholly and exclusively to the objects for which it is established.
(*b*) Invest or deposit its funds, as specified 11 (5)

Income from such Institution from profits and gains of business is exempt only if the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business:

Withdrawal of exemption

Where
(i) Such fund or institution or trust or any university or other educational institution or any hospital or other medical institution
(A) has not applied its income as per the objects specified or
(B) invested or deposited its funds other than modes specified in 11(5)
(ii) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution—
(A) are not genuine; or
(B) are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved,

Prescribed authority at any time after giving a reasonable opportunity of proposed action to the concerned institution it may, rescind the notification or, withdraw the approval, and forward a copy of the order to such institution and to the Assessing Officer;

Income of Infrastructure Capital Companies / Co-Operative Banks – Sec. 10 (23G)

Eligible Assessee	Infrastructure capital fund Infrastructure capital company and or a co-operative bank
Incomes exempt:	Dividends
Mode of investments	Shares or long-term finance
Investments to be made in	Undertaking wholly engaged in the business of Developing, maintaining and operating infrastructure facility,(80 I A (4)) housing project 80 I B (10) or hotel project (project for constructing a hotel of not less than three-star category) or hospital project (a project for constructing a hospital with at least one hundred beds for patients.

With effect from AY 07-08 Interest & Long-term Capital gains exemption withdrawn and they are taxable

Explanation —

"Interest" includes any fee or commission received by a financial institution for giving any guarantee to, or enhancing credit in respect of, an enterprise, which has been approved by the Central Government for the purposes of this clause;

This section become redundant after exemption is withdrawn Dividend is also exempted under 10(34)

Section	Applicable	Type of income Exempt from tax
10(32)	Individual — Parent	All income of a minor child, which is clubbed. Exempt Up to Rs. 1,500 per minor child
10(33)	All assessees	Capital Gain arising on transfer of Unit 64 on or after 1-4-2002.
10(34)	All assessees	Dividends referred to in sec. 115-O.(115-O shall not be included in the total income of the assessee, being a Developer or Entrepreneur)
10(35)	All assessees	• Income in respect of Units of UTI • Income in respect of Units of Mutual Fund specified u/s. 10(23D) Does not apply to income arising from transfer of units of UTI or Mutual Fund.

10(36)	All assessees	LTCG on transfer of equity shares purchased between 1-3-2003 and 1-3-2004. Such equity shares should be of a company which is part of BSE-500 Index as on 1-3-2003 or where shares are allotted through public issue after 1-3-2003 and listed on a recognized stock exchange in India before 1-3-2004 Transactions of purchase/sale are entered through recognized stock exchanges in India
10(37)	Individual or HUF	Capital gains arising from transfer by way of compulsory acquisition under any law of the agricultural land in urban area referred to in s. 2(14)(iii)(a) or (b) or a transfer the consideration for which is determined or approved by the Central Govt. or the RBI. Land should have been used for agricultural purposes for at least last 2 years immediately preceding the date of transfer. Exemption applies to compensation/ consideration/additional compensation received on or after 1-4-2004
10(38) [w.e.f. 01.10.2004]	All assessees	LTCG on transfer of equity share in a company or a unit of an equity oriented fund where such transaction of sale is entered into on or after 01.10.2004 and is subjected to Securities Transaction Tax (STT).
10 (39)	International Sport event persons	Any specified income, arising from any international sporting event held in India which is approved by International sport body, authority and notified by Central Government.
10 (40)	Any subsidiary company	Any income of any subsidiary company by way of grant or otherwise received from an Indian holding company engaged in the business of generation or transmission or distribution of power if receipt of such income is for settlement of dues in connection with reconstruction or revival of an existing business of power generation :

10(41)	Undertaking engaged in the business of generation or transmission or distribution of power	Any income arising from transfer of a capital asset, being an asset of an undertaking engaged in the business of generation or transmission or distribution of power where such transfer is effected on or before the 31st day of March, 2006, to the Indian company engaged generation and distribution of power beginning between 1.4.93 to 31.03.2006.
10(42)	Non-profit body or authority notified by the Central Govt.,	Such Body is established, constituted or appointed under a multilateral treaty, agreement or convention, to which the Central Govt. is a signatory .any specified income as notified by the government
10(43)	Any Assessee	Any amount received as a loan , lump sum amount, installment received from a transaction of reverse mortgage specified u/s 47 is exempt . WEF AY 09-10
10 (44)	Pension Trust	Any income received by any person for or on behalf of the New Pension System Trust established on 27.02.2008 under the provisions of the Indian Trusts Act, 1882.

Exemptions Applicable to Non Residents

10(4)(i)	Non-resident	Interest on Govt. securities or bonds.
10(4)(ii)	Individual, being resident outside India under FERA permitted by RBI to maintain NRE account	Interest from NRE account.
10(4B)	Non-resident being a citizen of India or a person of Indian origin	Interest on specified saving certificate issued before 1-6-2002 subscribed in foreign currency.
10(15)(iid)	Individual who is NRI at the time of acquisition of the bonds or his successor or the donee	Interest on notified Bonds being NRI Bonds 1988, NRI Bonds (second series) issued by SBI. No exemption available in the year of premature encashment. No bonds to be specified on or after 1-6-2002
10(15)(iv)(c)	Non resident	Interest payable by industrial undertaking on money borrowed or debt incurred prior to 1-6-2001 in foreign country in respect of purchase of raw materials, components or plant and machinery and approved by Central Government including usance interest payable outside India by an undertaking engaged in the business of ship breaking in respect of purchase of a ship from outside India.
10(15)(iv)(fa)	NR or NOR	Interest paid by a scheduled bank on RBI approved foreign currency deposits, FCNR and RFC accounts.

Remuneration received by official of embassy/ high commission - 10 (6) (ii)

The remuneration received by an official, of an embassy, high commission, consulate or the trade representation of a foreign State, or as a member of the staff of any of these officials, for their service in such capacity:

Such remuneration will be exempted only if the following conditions are satisfied:

1. That the remuneration received by above persons shall be exempt only if the remuneration of the corresponding officials or, members of the staff, if any, of the Government resident for similar purposes in the country concerned enjoys a similar exemption in that country;

2. That such members of the staff are subjects of the country represented and are not engaged in any business or profession or employment in India otherwise than as members of such staff;

Remuneration received employee of foreign enterprise - 10 (6) (vi)

The remuneration received an employee of a foreign enterprise for services rendered by him during his stay in India, provided the following conditions are fulfilled—

(*a*) The foreign enterprise is not engaged in any trade or business in India;

(*b*) His stay in India does not exceed in the aggregate a period of ninety days in such previous year; and

(*c*) Such remuneration is not liable to be deducted from the income of the employer chargeable under this Act;

Salary of Non Resident working in foreign ship - 10 (6) (viii)

Any income chargeable under the head "Salaries" received by or due to any such a non-resident individual as remuneration for services rendered in connection with his employment on a foreign ship where his total stay in India does not exceed in the aggregate a period of ninety days in the previous year;

Remuneration of Employee of Govt. Foreign State - 10 (6) (xi)

Any remuneration received by an employee of the Government of a foreign State during his stay in India in connection with his training in any establishment or office of, or in any undertaking owned by, —

(i) the Government ; or

(ii) any company in which the entire paid-up share capital is held by the Central/State Government, or partly by Central/State Government

(iii) any company which is a subsidiary of Central/State Government

(iv) any corporation established by or under a Central, State or Provincial Act ; or

(v) any society registered under the Societies Registration Act, 1860, wholly or partly financed by the Central / State Government

(vi)

Income of Foreign Company - 10 (*6C*)

Any income arising foreign company by way of *royalty or* fees for technical services received in pursuance of an agreement entered into with that Government for providing services in or outside India in projects connected with security of India;

Any allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India;

Income of Individual reg. Technical assistance programmes - Sec 10 (8)

In the case of an individual who is assigned to duties in India in connection with any co-operative technical assistance programmes and projects in accordance with an agreement entered into by the Central Government and the Government of a foreign State

(*a*) The remuneration received by him directly or indirectly from the Government of that foreign State for such duties, and

(b) Any other income of such individual, which accrues or arises outside India, and is not deemed to accrue or arise in India, which becomes taxable in the respective country.

Remuneration of Non resident Consultant - Sec 10 (*8A*)

In the case of a consultant—

(*a*) any remuneration or fee received , directly or indirectly, out of the funds made available to an international organization under a technical assistance grant agreement between the agency and the Government of a foreign State; and

(*b*) any other income which accrues or arises to him or it outside India, and is not deemed to accrue or arise in India, which becomes taxable in the respective country.

"Consultant" means—

(*i*) any individual, who is either not a citizen of India or, being a citizen of India, is not ordinarily resident in India ; or

(*ii*) any other person, being a non-resident,

engaged by the agency for rendering technical services in India in connection with any technical assistance programme or project, provided the following conditions are fulfilled, namely :—

(*1*) the technical assistance is in accordance with an agreement entered into by the Central Government and the agency ; and

(2) the agreement relating to the engagement of the consultant is approved by the prescribed authority;

Remuneration of Individual in Connection with technical programme - Sec 10 (*8B*)

In the case of an individual who is assigned to duties in India in connection with any technical assistance Programme and project in accordance with an agreement entered into by the Central Government and the agency

(*a*) The remuneration received by him, directly or indirectly, for such duties from any consultant referred to in (*8A*); and

(*b*) Any other income of such individual which accrues or arises outside India, and is not deemed to accrue or arise in India, in respect of which such individual is required to pay any income or social security tax to the country of his origin, provided the following conditions are fulfilled, namely: —

(*i*) The individual is an employee of the consultant referred to in clause (*8A*) and is either not a citizen of India or, being a citizen of India, is not ordinarily resident in India; and

(*ii*) The contract of service of such individual is approved by the prescribed authority before the commencement of his service

(c) the income of any member of the family of any such individual as is referred to in clause (*8*)or clause (*8A*) or, as the case may be, clause (*8B*) accompanying him to India, which accrues or arises outside India, and is not deemed to accrue or arise in India, income which becomes taxable in the respective country.

Special provision in respect of newly established undertakings in SEZ/STP/EHTP/ EPZ /FTZ etc. – Sec. 10A

- Applicable to undertaking which manufacture/produce or computer software
- The undertaking does not form by the splitting up, or the reconstruction, of a business already in existence
- Old machinery can be used up to 20% of total value of Plant and Machinery.
- Old imported machinery (not used in India) can be used with out 20% limit
- Deduction available only if the export sale proceeds are received in convertible foreign exchange, to India within a period of six months from the end of the previous year or, within such further period as the RBI may allow in this behalf.
- Deduction of export profits and gains will be available for 10 consecutive assessment years
- In case of existing units as on 1.4.2000, the undertaking shall be entitled to deduction for the un-expired period of the ten consecutive assessment years;
- For the assessment year beginning on the 1st day of April 2003, the deduction under this sub-section shall be ninety per cent of the profits and gains
- No deduction will be allowed to any undertaking for the assessment year beginning on the 1st day of April 2011 and subsequent years.
- Units starting on or after 01.4.2003 set up in any SEZ

, the deduction will be available as mentioned

Period	***% of profits allowed as deduction***
First 5 years	*100%*
Next 2 years	*50%*
Next 3 years	*50% of Profits or amount transferred to reserve which ever is less*

- The amount credited to the Special Economic Zone Re-investment Allowance Reserve Account is to be utilised
- Reserve should be used with in a period of 3 years for purchase of new plant or machinery or other purpose. Reserve should not be used for distribution of dividend or acquiring assets outside India.
- the particulars of plant and Machinery should be furnished along with the return of income
- If reserve not used up to 3 years or used for distribution of dividend or acquiring assets outside India. The amount treated as income

$$\text{Amount of Deduction} = \frac{\text{Profits of business of undertaking X Export turnover}}{\text{Total Turnover of business carried by the under taking}}$$

- An assessee who claims deduction under this section shall not entitle deduction under section 80HH or section 80HHA or section 80-I or section 80-IA or section 80-IB in relation to the profits and gains of the undertaking; and
- In computing the depreciation allowance under section 32, the written down value of any asset shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.
- In case of amalgamation or demerger No deduction will be available in case of amalgamating company and demerged company in the year of amalgamation/demerger.
- Availing exemption is optional . Assesseee before the due date for furnishing the return of income of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the

provisions of this section shall not apply to him for any of the relevant assessment years.

- The deduction will be admissible for any assessment year only when assessee furnishes the return of income, **with in due date and a** report of an Chartered accountant, shall be attached that deduction has been correctly claimed as per the provision.
-

Explanation :Export turnover means: Convertible foreign exchange received with in six months from the end of relevant previous year but does not include freight, telecommunication charges or insurance outside India or expenses, towards the technical services outside India;

(13) The provisions of this section shall not apply in case of companies carrying on business of scientific development, housing project companies referred in 80 IA (8) & (10)
(14) In respect of unit set up in SEZ on or after 1.4.2005 no deduction u/s 10 A available.

Tax holiday for newly established Units in SEZs [New Section 10AA]

1. This section applies to any undertaking, being the Unit, which has begun or begins to manufacture or produce articles or things or provide any services during the previous year on or after 1st April, 2005, in any SEZ.
2. It provides for a tax holiday in computing the total income of an assessee, being an entrepreneur, from his Unit set up in a SEZ.
3. Such assessee should be an entrepreneur being a person who has been granted a letter of approval by the Development Commissioner under section 15(9). The unit should not be formed by splitting or reconstruction of existing unit. Old machinery used in India only up to 20% can only be permitted.
4. He should begin to manufacture or produce articles or things or provide any services during the previous year relevant to any assessment year commencing on or after 1st April, 2006.

S No	Period from which unit began to Manufacture	Quantum of deduction of Export profits
1	5 consecutive assessment years	100% of such profits
2	further 5 assessment years	50% of such profits
3	the next 5 consecutive assessment years	50% of such profits or Amount transfer to Special reserve by debiting p&L A/c

5. The profits derived from the export of articles or things or services (including computer software) shall be the amount which bears to the profits of the business of the *undertaking,* being the Unit, the same proportion as the export turnover in respect of such articles or things or services bears to the total turnover of the business carried on by **Undertaking**

6. The profits and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.
The deduction for the last 5 years shall be allowed only if the following conditions are fulfilled, namely:

(a) the amount credited to the Special Economic Zone Re-investment Reserve Account is utilised

(1) for the purposes of acquiring machinery or plant which is first put to use before the expiry of a period of three years following the previous year in which the reserve was created; and

(2) Until the acquisition of the machinery or plant as aforesaid, for the purposes of the business of the undertaking. However, it should not be utilized for

(i) distribution by way of dividends or profits; or
(ii) for remittance outside India as profits; or
(iii) for the creation of any asset outside India;

(b) The particulars to be furnished by the assessee in respect of machinery or plant. Such particulars have to be furnished along with the return of income for the assessment year relevant to the previous year in which such plant or machinery was first put to use.

7. Where any amount credited to the Special Economic Zone Re-investment Reserve Account

(a) has been utilised for any purpose other than specified purpose, the amount so utilized shall be deemed to be the profits in the year in which the amount was so utilized and charged to tax accordingly; or

(b) has not been utilised before the expiry of the said period of 3 years, the amount not so utilised, shall be deemed to be the profits in the year immediately following the said period of three years and be charged to tax accordingly.

8. However, where, in computing the total income of the Unit for any assessment year, its profits and gains had not been included, the undertaking, being the Unit shall be entitled to deduction under above only for the unexpired period of ten consecutive assessment years.

9. If an undertaking being the Unit, has already availed the deduction referred to in section 10A for ten consecutive assessment years before the commencement of the SEZ Act, 2005, such Unit is not eligible for deduction from income under this section.

10. Further, where a Unit initially located in any FTZ or EPZ is subsequently located in a SEZ by reason of conversion of such FTZ or EPZ into a SEZ, the period of 10 consecutive assessment years referred to above shall be reckoned from the assessment year relevant to the previous year in which the Unit began to manufacture, or produce or process such articles or things or services in such FTZ or EPZ.

(11) Where a Unit initially located in any FTZ or EPZ is subsequently located in a SEZ by reason of conversion of such FTZ or EPZ into a SEZ and has completed the period of ten consecutive assessment years referred to above, it shall not be eligible for deduction from income with effect from 1.4.2006.

(12) In the event of any undertaking, being the Unit which is entitled to deduction under this section, being transferred, before the expiry of the period specified in this section, to another undertaking, being the Unit in a scheme of amalgamation or demerger,

(a) no deduction shall be admissible under this section to the amalgamating or the demerged Unit for the previous year in which the amalgamation or the demerger takes place; and

(b) the provisions of this section would apply to the amalgamated or resulting Unit, as they would have applied to the amalgamating or the demerged Unit had the amalgamation or demerger had not taken place.

(13) The Business loss, Loss from Capital gains, in so far as such loss relates to the business of the undertaking, being the Unit shall be allowed to be carried forward or set off.

(14)In order to claim deduction under this section, the assessee should furnish report from a Chartered Accountant in the prescribed form along with the return of income certifying that the deduction is correct.

(15)During the period of deduction, depreciation is deemed to have been allowed on the assets. Written down value shall accordingly be reduced.

(16) No deduction under section 80-IA and 80-IB shall be allowed in relation to the profits and gains of the undertaking.

(17) Where any goods or services held for the purposes of eligible business are transferred to any other business carried on by the assessee, or where any goods held for any other business are transferred to the eligible business and, in either case, if the consideration for such transfer as recorded in the accounts of the eligible business does not correspond to the market value thereof, then the profits eligible for deduction shall be computed by adopting market value of such goods or services on the date of transfer. In case of exceptional difficulty in this regard, the profits shall be computed by the Assessing Officer on a reasonable basis as he may deem

fit. Similarly, where due to the close connection between the assessee and the other person or for any other reason, it appears to the Assessing Officer that the profits of eligible business is increased to more than the ordinary profits, the Assessing Officer shall compute the amount of profits of such eligible business on a reasonable basis for allowing the deduction.

Definitions – For the purpose of this section, the definition of certain terms and expressions shall be as follows

(1) "Export turnover" means the consideration in respect of export by the undertaking, being the Unit of articles or things or services received in, or brought into, India by the assessee but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India;

(2) "Export" in relation to the SEZs means taking goods or providing services out of India from a SEZ by land, sea, air, or by any other mode, whether physical or otherwise;

(3) "Manufacture" shall have the same meaning as assigned to it in clause (r) of section 2 of the Special Economic Zones Act, 2005 i.e. to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, cutting, polishing, blending, repair, remaking, re-engineering and includes agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining;

(4) "Relevant assessment year" means any assessment year falling within a period of fifteen consecutive assessment years referred to in this section.

(5) "Special Economic Zone" and "Unit" shall have the same meanings as assigned to them under clause (za) and (zc) of section 2 of the SEZ Act, 2005 i.e.

"Special Economic Zone" means each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone.

"Unit" means a Unit set up by an entrepreneur in a SEZ and includes an existing Unit, an Offshore Banking Unit and a Unit in an International Financial Services Centre, whether established before or established after the commencement of this Act.

Special provisions in respect of newly established hundred per cent export-oriented undertakings – Sec. 10B

- A deduction of such profits and gains as are derived by a hundred per cent export-oriented undertaking from the export of articles or things or computer software
- already in existence
- Old machinery can be used up to 20% of total value of Plant and Machinery.
- Old imported machinery (not used in India) can be used with out 20% limit
- Deduction available only if the export sale proceeds are received in convertible foreign exchange, to India within a period of six months from the end of the previous year or, within such further period as the RBI may allow in this behalf.
- Deduction of export profits and gains will be available for 10 consecutive assessment years
- In case of existing units as on 1.4.2000, the undertaking shall be entitled to deduction for the un-expired period of the ten consecutive assessment years;
- For the assessment year beginning on the 1st day of April 2003, the deduction under this sub-section shall be ninety per cent of the profits and gains
- No deduction will be allowed to any undertaking for the assessment year beginning on the 1st day of April 2011 and subsequent years.

$$\text{Amount of Deduction} = \frac{\text{Profits of business of undertaking X Export turnover}}{\text{Total Turnover of business carried by the under taking}}$$

- An assessee who claims deduction under this section shall not entitle deduction under section 80HH or section 80HHA or section 80-I or section 80-IA or section 80-IB in relation to the profits and gains of the undertaking; and
- In computing the depreciation allowance under section 32, the written down value of any asset shall be computed as if the assessee had claimed and been actually allowed the deduction in respect of depreciation for each of the relevant assessment year.
- In case of amalgamation or demerger No deduction will be available in case of amalgamating company and demerged company in the year of amalgamation/demerger.
- Availing exemption is optional . Assesseee before the due date for furnishing the return of income of section 139, furnishes to the Assessing Officer a declaration in writing that the provisions of this section may not be made applicable to him, the provisions of this section shall not apply to him for any of the relevant assessment years.
- The deduction will be admissible for any assessment year only when assessee furnishes the return of income, **with in due date and a** report of an Chartered accountant, shall be attached that deduction has been correctly claimed as per the provision.

(*i*) "computer software" means—

(*a*) any computer programme recorded on any disc, tape, perforated media or other information storage device; or

(*b*) any customized electronic data or any product or service of similar nature as may be notified by the Board,

(ii) which is transmitted or exported from India to any place outside India by any means;

(*iii*) "Export turnover means: Convertible foreign exchange received with in six months from the end of relevant previous year but does not include freight, telecommunication charges or insurance outside India or expenses, towards the technical services outside India;;

(*iv*) "hundred per cent export-oriented undertaking" means an undertaking which has been approved as a hundred per cent export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the I R D A Act

Special provisions in respect of export of certain articles or things – Sec. 10BA

(1) Deduction of such profits and gains as are derived by an undertaking from the export out of India of eligible articles or things such as all hand-made which requires the use of wood as the main raw material; shall be allowed from the total income of the assessee subject to the following conditions:

Where in computing the total income of the undertaking for any assessment year, deduction under *section 10A* or *section 10B* has been claimed, the undertaking shall not be entitled to the deduction under this section;

No deduction under this section shall be allowed to any undertaking for the assessment year beginning on the 1st day of April, 2011 and subsequent years.

(2) This section applies to any undertaking which fulfils the following conditions, namely:—

(a) it manufactures or produces the eligible articles or things without the use of imported raw materials;

(b) it is not formed by the splitting up, or the reconstruction, of a business already in existence :

(c) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

(d) ninety per cent or more of its sales during the previous year relevant to the assessment year are by way of exports of the eligible articles or things;

(e) it employs twenty or more workers during the previous year in the process of manufacture or production.

(3) This section applies to the undertaking, if the sale proceeds of the eligible articles or things exported out of India are received in or brought into, India by the assessee in convertible foreign exchange, within a period of six months from the end of the previous year or, within such further period as the RBI may allow in this behalf.

(4) Amount of Deduction = $\dfrac{\text{Profits of business of undertaking X Export turnover}}{\text{Total Turnover of business carried by the under taking}}$

(5) The deduction under section shall not be admissible, unless the assessee furnishes in the prescribed form, along with the return of income, the report of Chartered Accountant, certifying that the deduction has been correctly claimed in accordance with the provisions of this section.

(6) Where a deduction is allowed under this section in computing the total income of the assessee, no deduction shall be allowed under any other section in respect of its export profits.

(7) The provisions of this section shall not apply in case of companies carrying on business of scientific development, housing project companies referred in 80 IA (8) & (10)
Explanation.—For the purposes of this section,—

> (b) "Export turnover" means the consideration in respect of export by the undertaking of eligible articles or things received in, or brought into, India by the assessee in convertible foreign exchange but do not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India;

Difference between Section 10 and Chapter VI-A deductions - Difference between exemptions under section 10 and the deductions under Chapter VI-A. While the incomes which are exempt under section 10 will not be included for computing total income, incomes from which deductions are allowable under Chapter VI-A will first be included in the gross total income and then the deductions will be allowed.

Restrictions on allow ability of expenditure [Section 14A]

As per section 14A, expenditure incurred in relation to any exempt income is not allowed as a deduction while computing income under any of the five heads of income [Sub-section (1)].

However, the Assessing Officer is not empowered to reassess under section 147 or to pass an order increasing the liability of the assessee by way of enhancing the assessment or reducing a refund already made or otherwise increase the liability of the assessee under section 154, for any assessment year beginning on or before 1.4.2001 i.e. for any assessment year prior to A.Y. 2002-03 [Proviso to sub-section (1)].

The Assessing Officer is empowered to determine the amount of expenditure incurred in relation to such income which does not form part of total income in accordance with such method as may be prescribed [Sub-section (2)].

The method for determining expenditure in relation to exempt income is to be prescribed by the CBDT for the purpose of disallowance of such expenditure under section 14A. Such method should be adopted by the Assessing Officer if he is not satisfied with the correctness of the claim of the assessee, having regard to the accounts of the assessee.

Further, the Assessing Officer is empowered adopt such method, where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of total income [Sub-section (3)].

Rule 8D lays down the method for determining the amount of expenditure in relation to income not includible in total income.

If the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with –
(a) the correctness of the claim of expenditure by the assessee; or
(b) the claim made by the assessee that no expenditure has been incurred in relation to exempt income for such previous year,
he shall determine the amount of expenditure in relation to such income in the manner provided hereunder –
The expenditure in relation to income not forming part of total income shall be the aggregate of the following:
(i) the amount of expenditure directly relating to income which does not form part of total income;
(ii) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely :
A × B/ C
Where,
A = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;
B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;
C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;
'Total assets' means total assets as appearing in the balance sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets.
(iii) an amount equal to one-half per cent of the average of the value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.

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Chapter 3 Charitable Trusts sec 11 to 13

Meaning of Charitable purpose

●Charitable purpose' includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest and the advancement of any object of general public utility.

●the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity;'.

●Any nature/trade/commerce in the nature of relief for poor, education , medical relief will continue to be charitable purpose

Advancement of any other object of general public utility" would continue to be a "charitable purpose", if the total receipts from any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business does not exceed Rs.10 lakh in the previous year.(Amendment by FA 2010)

Development of ports is charitable Purpose: *Gujarat Maritime Board (2007) 295 ITR 561*,(SC)

Gujarat Maritime Board was established for the predominant purpose of development of minor ports within the State of Gujarat, the management and control of the Board was essentially with the State Government and there was no profit motive.

Association both chartable and mutual association and service to member only contine to charitable purpose: Circular No.11/2008 dated 19.12.2008

Where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members. However, if such organizations have dealings with non-members, it amount to nature of trade commerce etc., and would not be charitable purpose

Promotion of sports is charitable: Circular No. 395, dated 24.9.1984 - Promotion of sports and games is considered to be charitable purposes within the meaning of section 2(15). Therefore, an association or institution engaged in the promotion of games and sports can claim exemption under section 11 even if it is not approved under section 10(23).

Charitable Trust income usually consists of

●Income derived from property held under trust or of an institution ('trust') wholly for charitable/religious purpose Sec 11

●Voluntary contributions. Sec 12

●Both the categories of income is exempt from tax subject to conditions

Conditions to Claim exemption:

●Application of income towards the objects of the trust

●Registration in income tax

●Audit

●Other Conditions

Registration:

●Trust's application for registration is to be made to the Commissioner at any time after creation.

●Trust is entitled to exemption only from 1st day of financial year in which application is made.

Application of Income:

●At least 85% of the income is spent on the objects of the trust, during the year.

● If the amount spent is less than 85% of the income, the shortfall is taxable, unless the trust has made application for accumulation of income

●15% will always be exempt whether even it if not spent.

● 85% can be applied towards revenue or Capital expenditure, provided incurring of such capital expense is within the objects of the trust.

● Indirect expense, Administration expenses, Other Miscellaneous expenses will all be considered as application of 85% income.

● If 85% could not be applied for the approved objects, by the end of the Previous Year, then it can still be applied for the approved objects in the next Previous Year, on or before the due date of filing the return of income of next previous year. [Explanation to Sec.11(1)]

●If some portion of the income was not received by end of the Previous Year, then such part of income which is not received shall be reduced from 85% of the net income and it shall then be considered and it should be applied in the Previous Year, in which such income is actually received.

●For the purpose of application of income, income to be computed as per normal accounting principles and not under tax provisions.

● Depreciation can be claimed on assets even the full cost of asset is claimed as application of income. It does not amount double deduction. **Institute of Banking Personnel Selection (2003) (Bom.)**

●deficit of earlier years, is also allowed to be deducted from the gross income for the purpose of finding out the net income

●Loan advanced by trust within the approved objects cannot be treated application of income. However if the loan does not received and write off in the books is amount to application of income ***Sacred Heart Church (2005) (Guj.)***

●Reimbursement of expense is amounting to application of income in the year of reimbursement ***Janmabhumi Press Trust (2000) (Karnataka)***

●*Repayment of loan will be application of income in the year of repayment*

Audit

● To qualify for exemption u/s. 11 and 12, a trust having total income (before exemption u/s. 11 and 12) exceeding basic exemption limit, its accounts audited by a Chartered Accountant.

Other Conditions

●The trust should not be created for the purpose of any particular religion/Community

●No part of income should endure directly, or indirectly for the benefit of settlor or other specified persons

●The property should be held wholly for charitable purpose

●Income of the trust should be invested in specified securities

Circumstances for not spending 85% of income

● Where the trust not able to spend the 85% of Income because Where whole/part of the income not received during previous year or for any other reason

● Such income to be spent in the year of receipt, or in the next year,

● For this purpose an application in (Form. No. 10) before the expiry due date for filing of ROI specifying purpose for accumulation of income for period up to 5 years.

●In calculating the Period for which unable to apply income for that purpose due to court order/injunction to be excluded

Consequences if conditions not satisfied

●Such income deemed to be income of the previous year in which any of the conditions not satisfied.

● If income not spent within stipulated time, for the purpose of accumulation, deemed to be income of the previous year immediately following period of accumulation,

●Assessing officer's permission obtained to spend it on other objects of the trust

Cancellation of Registration of trust

The commissioner to cancel the registration of the trust by an order in writing

●If he is satisfied that the activities of trust are not genuine or

● not being carried out in accordance with the objects of the trust

Specified Investments 11(5)

●Investment in Shares of Government Company, Company formed by state or Central Provincial act Securities/Public sector Companies

●Deposit in any account with the Post Office Savings Bank;/ scheduled/co-operative bank/IDBI /Government Savings scheme

●Units of the Unit Trust of India;/Any security of Government

●Investment in debentures whose principal and interest are fully and unconditionally guaranteed by Central/State Government;

●Investment or deposit in any public sector company (PSC); Shares of PSC

●Deposits with or investment in any bonds issued by an approved financial corporation/Public Ltd. Company engaged in providing long-term finance for industrial development in India;

●Investment in immovable property;

●Investment in "Indira Vikas Patra" and "Kisan Vikas Patra"

Computation of income of a trust (Cir. No. 5 dated 19-6-1968)

●The income of the trust is to be understood in the commercial sense;

●Trust derives income from property, or dividends, such income will be computed on actual commercial basis and not under provisions relating to income from House Property or Income from Other Sources.

Corpus donations 11(1)(d),

●voluntary contributions with specific direction that they shall form part of the corpus of the trust

●Corpus donations are not includible in the total income of the trust.

Business income of trust

●Exemption is available only in relation to any profit and gains of business of a trust, if

●If business is incidental to the attainment of the objectives of the trust

●Separate books of account are maintained in respect of such business.

Capital gains of trust

●Exempt if Gain /Consideration is invested in new capital asset

●Trust can also get exemption if gain is used for the purpose of objects of the trust

Procedure for Registration sec 12 AA

●Application at any time after formation to Commissioner in form 10 A

●In respect of trust created before 01.06.2007 application for registration can be made with in one year from the date of formation. Commissioner has got power to condone delay

●Commissioner can call for information, documents and enquire about the genuineness of trust

●If Commissioner is satisfied registration will be granted from the previous year which application was made

●If commissioner not satisfied with the genuineness of trust pass an order refusing for registration after giving opportunity to assessee being heard.

●If commissioner not satisfied with the genuineness of trust or trust is not carried as per the objects specified he may cancel the registration.

Forfeiture of exemption sec 13

The following incomes of trust will not qualify for exemption

●Income of private religious trusts
●Income for the benefit of any particular religious community
●Income of the trust applies directly or indirectly for the benefit of interested persons

List of Interested Persons

●Author or settlor of trust
●Persons who made contribution up to Rs. 50,000 up to the end of previous year (substantial Contributor) & /HUF whose such contributor is a member
●Trustee, manager of trust
●Relative of author, settlor, substantial Contributor, trustee, manager of trust
●Any concern Where the above Persons has substantial interest
●Meaning of relative similar to Gifts provisions
●Meaning of Substantial interest means 20% or more share of profits/voting power
●Where any property, income lent to the above persons without adequate Security and without interest, it amounts applies income for the benefit of such persons

Tax in case of forfeiture of exemption

●Where the trust exemption was forfeited because of the following reasons
●Application of income for the benefit of specified persons
●Investment in other than approved securities
●The portion of income which is applied for the benefit of specified persons/ portion of income which is not invested in approved securities will be taxed at MMR not the entire income.

Tax in case of partly charitable and partly other purpose Sec 164(2)

●In case of income of Charitable portion provisions of sec 11 to 13 will apply
●In case of other portion the provisions of private trust will apply.
●

Income of a Political Parties Sec 13 A

Exempted Income

●Income from house property"
●Income from other sources"
●Capital gains"
●Voluntary contributions

Conditions to be fulfilled to exempt income

●Registration of political party with Election Commission
●Maintaining Books of Accounts and Other documents to enable Assessing Officer to enable the Assessing] Officer to properly deduce its income there from;
●in respect of each such voluntary contribution in excess of Rs 20000 such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and
●The accounts of such political party are audited by a Chartered accountant
●Political party should file ROI when the income exceeds basic exemption limit
●The treasurer of such political party or any other person authorized by that political party should submit report under sec 29© of the Representation of the People Act, 1951 for a financial year,

Income of Electoral Trust Sec 13 B

Electoral Trust means a Trust approved by the Board in accordance with the scheme made by the Central Government. Sec 2 **(22AAA)**

1. **Exempted Income:** Voluntary contributions received by an electoral trust shall be exempt.
2. **Conditions:**

(a) 95% of the aggregate donations received during the previous year along with the surplus brought forward from earlier previous year is distributed to any Political party registered u/s 29A of the Representation of the People Act, 1951,

(b) Electoral trust functions in accordance with the rules made by the Central Government.

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Income from Salaries

Pre-requisite: For an income to be computed under the head Salaries there should be employee and employer relation, i.e., one must be an employee. Income must arise out of employment, past or present. Unless one is an employee, the income received from the employment cannot be taxed under the head Salaries.

Salary is taxable on either accrual or receipt basis which ever is earlier. For the purpose of chargeability to tax, salary consists of:

- ☐Any salary *due* from an employer or a former employer to an assessee in the previous year, *whether paid or not*.
- ☐any salary *paid* or *allowed* to him in the previous year by or on behalf of an employer or a former employer though *not due* or *before it became due to him*.
- ☐any arrears of salary *paid* or *allowed* to him in the previous year by or on behalf of an employer or a former employer, *if not charged to tax for an earlier previous year*.

As an exception, where advance salary has been taxed in the year of receipt, it will not be taxed once again in the year in which it becomes due. Salary includes wages, annuity or pension, gratuity, fees, commission, perquisites or profits in lieu of salary, advance salary, leave encashment, etc

Place of accrual of salary"

- The place of accrual of salary is the place of employment.
- Service rendered in India: U/s 9(1)(ii), salary earned in India is deemed to accrue or arise in India even if –
  - (a) it is paid outside India,
  - (b) it is paid or payable after the contract of employment in India comes to an end.
- If an employee gets pension paid abroad in respect of services in India, the same will be deemed to accrue or arise in India
- Leave salary paid abroad in respect of leave earned in India is deemed to accrue or arise in India.
- Services rendered outside India: Sec.9(1)(iii) provides that income chargeable under the head "Salaries" payable by the Government to a citizen of India for service provided outside India will be deemed to accrue or arise in India.
- U/s 10(7), any allowance or perquisites paid or allowed outside India by the Government to a citizen of India for rendering services outside India will be fully exempted.

Full-time or part-time employment: It does not matter whether the employee is a full- time employee or a part-time one. Once the relationship of employer and employee exists, the income is to be charged under the head "salaries". If, for example, an employee works with more than one employer, salaries received from all the employers should be clubbed and brought to charge for the relevant previous years.

Foregoing of salary: Once salary accrues, the subsequent waiver by the employee does not absolve him from liability to income-tax. Such waiver is only an application and hence, chargeable to tax.

Surrender of salary: If an employee surrenders his salary to the Central Government under section 2 of the Voluntary Surrender of Salaries (Exemption from Taxation) Act, 1961, the salary so surrendered would be exempt while computing his taxable income.

Salary paid tax-free: When the employer bears the burden of the tax on the salary of the employee. In such a case, the income from salaries in the hands of the employee will consist of his salary income and also the tax on this salary paid by the employer.

Definition of Salary- section 17(1), Salary includes the following:
(i) wages,
(ii) any annuity or pension, (iii) any gratuity,
(iv) any fees, commission, perquisite or profits in lieu of or in addition to any salary or wages, (v) any advance of salary,
(vi) any payment received in respect of any period of leave not availed by him i.e. leave salary or leave encashment,
(vii) the portion of the annual accretion in any previous year to the balance at the credit of an employee participating in a recognised provident fund to the extent it is taxable and
(viii) transferred balance in recognized provident fund to the extent it is taxable,
(ix) the contribution made by the Central Government or any other employer in the previous year to the account of an employee under a pension scheme referred to in section 80CCD.

Salary components and their tax treatment

Salary is made up of many components as below:

Basic salary - Basic salary or pay an employee receives from ones employer is fully taxable. Following three points must be carefully noted:

- Salary includes wages and conceptually there is no difference between the two.
- If salary is received from more than one employer, total salaries received from different employers is taxable.
- Salary consists of payments received from past and future employer also.

Advance salary - If an employee has received any advance salary from his employer, the same is taxable in the year of receipt. However, certain relief can be claimed under section 89.

Arrears of salary - Arrears of salary as and when received will be taxable in the year of receipt, if the same has not been taxed on due basis earlier.

Leave salary - Leave salary received during service will be taxable as part of salary.

B*onus* - It is taxable in the year of receipt. If bonus is received in arrears relief under section 89 .

Salary in lieu of notice - Salary in lieu of notice is taxable on receipt basis.

Fees or commission - Fees and commission are taxable as salary, irrespective of fact that they are paid in addition or in lieu of salary.

Remuneration for extra work - Any extra remuneration received from employer for any extra work done is taxable in full.

Compensation/annuity from employer - Any compensation received from employer or former employer in connection with termination of employment or modification of terms of employment is taxable.

Similarly an annuity received from ex-employer is taxable as profits in lieu of salary.

Encashment of unutilised leave - Where, employee's encash unutilised leave even while in service and obtain cash equivalent of leave salary. Amounts so received are taxable. However relief under section 89 can be obtained.

Salary paid by a foreign Government to its employees serving in India is taxable under the head Salaries under section 15 - *Circular : No. 2(LVIII-32)-D of 1966, dated 21-2-1966.*

Allowances and Taxability

Tax treatment of various allowances received by any employee from his employer is as under:

City compensatory allowance - It is taxable in full

Dearness Allowance - It is also taxable in full,

Allowances fully exempt from Tax

The allowances prescribed for this purpose (which are fully exempt) are spelt out in rule 2BB(1). These allowances are as follows:

- ☐ Any allowance granted to meet the cost of travel on tour or on transfer, including any sum paid in connection with transfer, packing and transportation of personal effects on such transfer.
- ☐ Any allowance, whether granted on tour or for the period of journey in connection with transfer, to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty.
- ☐ Any allowance granted to meet the expenditure incurred on conveyance in performance of duties of an office or employment of profit, provided that free conveyance is not provided by the employer.
- ☐ Any allowance granted to meet the expenditure incurred on a helper, where such helper is engaged for the performance of duties of an office or employment of profit.
- ☐ Any allowance granted for encouraging the academic, research and training pursuits in educational and research institutions.
- ☐ Any allowance granted to meet the expenditure incurred on the purchase or maintenance of uniform for wear during the performance of the duties of an office or employment of profit.

Allowances exempt from Tax based on monetary limits sec 10(14)

Name of allowance	**Extent of exemption**
Special Compensatory Allowance in specified areas	To extent specified,
Tribal Area Allowances in specified states	Up to Rs. 200 p.m.
For meeting personal expenditure of employee of transport system running transport vehicle provided no daily allowance for the said duty is received.	Up to 70% of allowance, maximum 6,000 p.m.,
Children educational allowance, maximum of two children	@ Rs. 100 p.m. per Child
Children hostel allowance, maximum of two children	@ Rs. 300 p.m. per child
Compensatory Field Area Allowance in specified areas,	@ Rs. 2,600 p.m.

Compensatory modified field area allowance	@ Rs. 1,000 p.m.
Counter insurgency allowance. to members of armed forces.	@ Rs. 3,900 p.m
Transport allowance granted to an employee to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty (whole of India)	Rs. 800 per month
Transport allowance granted to an employee, who is blind or orthopaedically handicapped, to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty (whole of India)	Rs. 1,600 per month
Underground allowance granted to an employee who is working in uncongenial, unnatural climate in underground coal mines (whole of India)	Rs. 800 per month
Any special allowance in the nature of high altitude (uncongenial climate) allowance granted to the member of the armed forces operating in high altitude areas	
(*a*)For altitude of 9,000 to 15,000 feet	Rs. 1,060 per month
(*b*)For altitude above 15,000 feet	Rs. 1,600 per month
Any special allowance granted to the members of the armed forces in the nature of special compensatory highly active field area allowance (whole of India)	Rs. 4,200 per month
Any special allowance granted to the member of the armed forces in the nature of island (duty) allowance (Andaman and Nicobar and Lakshadweep Group of Islands)	Rs. 3,250 per month

Tiffin allowance/Fixed medical allowance/Servant allowance - They are fully taxable.

Other allowances - Allowances paid to certain specific categories of employees is given below:

GOVERNMENT EMPLOYEES RENDERING SERVICES OUTSIDE INDIA - Any allowance paid or allowed outside India by the Government to its employees (Indian citizens) for rendering services outside India is fully exempt.

JUDGES - Allowances paid to a Judge of a High Court under section 22A(2) of the High Court Judges (Conditions of Service) Act, 1954 are fully exempt.Again compensatory/conveyance allowances/facility and sumptuary allowance paid to Judges is Exempt and not taxable

Allowances and exemptions deductible from Salary

House rent allowance - It is also a taxable receipt, However, section 10(*13A*) of the Act grants exemption in respect of any house rent allowance received by an employee from his employer, but certain basic conditions must be satisfied for this purpose.

CONDITIONS TO BE SATISFIED - The following conditions must be satisfied:

- ☐The allowance must be specifically granted to the employee to meet expenditure actually incurred on payment of rent in respect of residential accommodation occupied by the employee.
- ☐The employee must have actually incurred expenditure on payment of rent.
- ☐ The residential accommodation occupied by the employee should not be owned by him.
- ❑ The assessee should pay more that 10% of Salary as rent

Exemption of House Rent Allowance:

	Least of the following will be exempt
1	Allowance actually received
2	Rent paid in excess of 10 per cent of salary
3	50 per cent of salary in Case of Delhi, Bombay Calcutta and Madras and 40 per cent of salary in Case of Other places

Pension (S. 10 (10A))

Un-commuted Pension, i.e., periodical payment is taxable as salary (S. 17(1)(ii)).

Commuted Pension: Government Employees Exempt. Other as below

	Particulars	Amount of Exemption
1	If employee has received gratuity	Commuted value of 1/3rd of the pension
2	If employee has not received gratuity	Commuted value of 1/2 of the pension

Leave Travel Concession or Assistance (S. 10(5) — Rule 2B)

- Available to Indian as well as foreign citizen for himself/spouse/children/dependent parents, brothers and sisters.
- Limited to amount actually spent on travelling of employee and his family members.
- During employment or on retirement or on termination.
- For traveling to any place in India.
- Allowed twice in a block of four calendar years.
- Block commenced from calendar year 1986. (Current block — 2010.2013).
- Exemption on travel concession will not be admissible to more than two surviving children of an individual born after 1-10-1998.
- Allowance in cases of destination connected by air/rail is restricted to economy class air fare/A.C. first class fare. For places not connected by rail, please refer Rule 2B.

Gratuity (S. 10(10))

Death-cum-retirement gratuity received by the Government employees or employees under Civil Services — wholly exempt from tax.

In case of Other Employees exemption will be as below

Particulars	Amount of Exemption **Least of below**
If employee Covered	Actual Gratuity received

under gratuity Act	Rs. 10,00,000
	15 days salary (denominator taken as 26 in case of monthly salary) for every completed year/part thereof in excess of 6 months (last drawn salary to be considered)
If employee Covered under gratuity Act	Actual Gratuity received
	Rs. 10,00,000
	½ month salary (based on last ten months' immediately preceding the month of retirement average salary), for every completed year of service (fraction should be ignored)

Retrenchment Compensation (S. 10(10B))
Exempt to the extent of the **lower of the following**:

1	15 days salary based on the last 3 months average salary for every completed year of Service or part there of in excess of 6 months
2	Compensation actually received
3	Rs 5,00,000

In cases where the scheme is approved by the Central Government the entire amount is exempt.

Voluntary Retirement Compensation (S. 10(10C))
any amount received or receivable by an employee of

1	A public sector company, or any other company, or
2	An authority established under a Central, State or Provincial Act, or
3	A local authority or co-operative society
4	A university established under a Central, State or Provincial Act
5	An Indian Institute of Technology
6	Any State or Central Government; or
7	Notified institutions having importance throughout India or in any state or states.
8	Notified Institute of Management

Conditions: Employee should be at least 40 years of age. Exemption will be allowed only for one Assessment Year. Amount of Exemption: **Least of the below**

1. Actual VRS Compensation received 2. Rs. 5,00,000 3. Last Drawn Salary X 3 X No. of fully completed years of service 4. Last Drawn Salary X Balance Number of Months of Service Left

VRS Compensation not eligible for Relief u/s 89(1), if exemption u/s 10(10C) is claimed wef AY 2010-11.

Tax on Perquisite: Any Tax on perquisite paid by the employer, at his option is exempt

Leave Encashment (S. 10(10AA))
Encashment of earned leave while in service will be treated as income. S. 17(1)(va).
Encashment of earned leave on retirement for government employees fully exempt however, and in case of other the exemption will be to the extent **of least of:**

1	Last 10 months salary immediately preceding the month of retirement months or
2	Leave encashment actually received
3	Rs 3,00,000
4	Cash equivalent of leave encashment for every completed year of service based on last 10 months average salary

Note: Entitlement to earned leave not to exceed 30 days for every year of actual service.\

Medical benefits (S. 17) Medical treatment provided to an employee or any member of his family (spouse, children and dependent brothers, sisters and parents) would be exempt in the following cases:

S.No	**Particulars**	**Exemption**
1	Treatment in a hospital (including dispensary or clinic or nursing home) maintained by the employer	Fully exempt
2	Treatment in any hospital maintained by the Government, or any local authority or any other hospital approved by Govt.,	Fully exempt
3	Treatment in respect of prescribed diseases in a hospital approved by the Chief Commissioner, provided certificate from the hospital specifying the disease and receipt for amount paid is attached along with the return of income	Fully exempt
4	Reimbursement of amounts actually spent for medical treatment **other than** treatment referred in (1), (2) & (3) above	Not exceeding in aggregate Rs. 15,000 in F.Y.,
5	Employer Contribution to an insurance policy on their health (*not* life) under a group insurance scheme	Fully exempt
6	Employee Contribution an insurance policy on his health or on the health of any member of his family, pay the premium and get the amount reimbursed by the employer.	Fully exempt

Medical Expenses outside India along with one attendant

1	Traveling exp (air ticket)	Exempt only The employee Gross total income before this perquisite should be Rs. 2lakhs or less.
2	Stay Expenses	To the extent permitted by RBI is exempt
3	Medical treatment expenses	To the extent permitted by RBI is exempt

Perquisites not taxable for all employees	
1	The provision of medical facilities as explained earlier..
2	Free meals provided to all employees in office up to Rs. 50/- per employee or provided by the employer through paid vouchers usable at eating joints.
3	Telephone including mobile phone provided to the employee
4	Supply of tea and snacks during working hours will not be a taxable perquisite in the case of all employees without any monetary limit.
5	Food and non-alcoholic beverages are supplied from employers canteen
6	Free food and non-alcoholic beverages provided during working hours in a remote area, or an offshore installation.
7	Perquisites allowed outside India by the Government to a citizen of India for rendering services outside India.
8	Sum payable by an employer to pension or deferred annuity scheme.
9	Actual traveling expenses paid/reimbursed for journeys undertaken for business purposes.
10	Payment of annual premium on personal accident policy, if such policy is taken to safeguard the employer's interest.
11	Employer's contribution to staff group insurance scheme
12	Life insurance premium paid by Employer on life of employee and members of the family Where such insurance scheme is approved by IRDA
13	Value of gift voucher or token, if it is below Rs. 5,000 in one previous year
14	Allotment of shares, debentures or warrants to its employees under ESOP or ESOS in accordance with guidelines issued by Central Government.
15	Conveyance facility to High Court/Supreme Court Judges.
16	Rent-free official residence to a High Court or Supreme Court Judge.
17	Rent-free furnished residence to official of Parliament Ministers and leader of opposition
18	Any accommodation located in a remote area which is provided to an employee working at (*i*) a mining site, or (*ii*) an on-shore oil exploration site, or (*iii*) a project execution site, or
19	Any accommodation provided in an offshore site of a similar nature.
Perquisites taxable in hands of all employees	
1	Value of rent-free accommodation
2	Value of concession in rent.
3	Amount paid by employer in respect of any obligation which otherwise would have been payable by employee
4	Value of any specified Security or Sweat Equity Shares allotted or transferred by the Employer at free of cost or at concessional rate
5	Amount contributed by Employer to Superannuation Fund in excess of Rs.1 Lakh.
6	Value of any fringe benefit or amenity as may be prescribed.

Perquisites taxable only in hands of specified employees

1. Provision of domestic servants [Rule 3(3)]

2.Provision of gas/electricity/water [Rule 3(4)]

3.Provision of free or concessional educational facilities [Rule 3(5)]

The specified employees - Following employees are specified employees:

☐Director-employee.

☐An employee having 20 per cent or more of voting power in employer-company.

☐An employee who is drawing salary in excess of Rs. 50,000

For computing the limit of Rs. 50,000 following are excluded/deducted:

(*a*) Non-monetary benefits.

(*b*) Deduction on account of profession tax.

(*c*) Exempt entertainment allowance.

(*d*) Non-taxable allowance.

Profits in lieu of Salary (S. 17(3)), which is taxable as salary,
It includes —

a. Any compensation from employer or former employer on termination or modification of the terms of employment.
b. Any receipt from employer/former employer or from provident/other fund (other than gratuity, commuted pension, retrenchment compensation, house rent allowance, provident fund or such other funds) to extent not consisting of contributions by assessee/interest on such contributions.
c. Any sum received under a key man insurance policy including the sum allocated by way of bonus on such policy.
d. Any sum received before his joining any employment or after cessation of his employment.

Deductions from Salary — S. 16

1	Entertainment allowance- Allowed only for government employees- least of	Rs. 5,000; or
		20% of salary; or
		Actual amount of entertainment allowance
2	Tax on employment	Actual

Valuation of perquisites

Rent-free unfurnished accommodation (Rule 3)

GOVERNMENT EMPLOYEES - In respect of Government (Central/State) employees including those deputed to any body or undertaking under the control of the Government which has provided the accommodation, the value of the perquisite will be the licence fee in respect of such accommodation fixed in accordance with the rules framed by that Government (commonly referred to as standard rent), less any rent actually paid by the employee.

For Other Employees

	Type of accommodation	*Place where the accommodation is situated*	*Value of the perquisite*
1	Accommodation owned by the employer	City population exceeds 25 lakhs – 2001 Census	15 per cent of the salary of the employee
		City population exceeds 10 lakhs but up to 25 lakhs –2001 Census	10 per cent of the salary of the employee
		(*b*) Other city	7.5% per cent of the salary of the employee
2	Accommodation taken on lease or rent by employer	Any Place	Lease rental payable or paid, or 15 per cent of the salary of the employee, whichever is lower.

Perquisite Value = the value of the perquisite as computed above, less rent, if any, actually paid by the employee.

Value of furnished accommodation - Where the rent-free accommodation is furnished, the value of the accommodation should first be determined as above and an addition towards the cost of furnishings should be made as follows:

Where the furnishings are owned by the employer	10 per cent of the original cost of furnishings
Where the furnishings are hired by the employer	The actual hire charges payable by the employer for such furnishings.

For this purpose, furnishings means furniture, including television sets, radio sets, refrigerators, other household appliances and air-conditioning plant and equipment (or other similar appliances or gadgets).

Perquisite Value = the value of the perquisite as computed above, less, if any, actually paid by the employee towards furniture

VALUE OF THE PERQUISITE IN CASE OF ACCOMMODATION IN HOLTEL - The value of the perquisite in such cases is laid down as the ***lower*** of the following two amounts:

(*a*) Amount calculated at 24 per cent of the salary (paid or payable) for the relevant previous year, for the period during which accommodation is provided in hotel.

(*b*) Actual charges paid or payable to the hotel for the period during which accommodation is provided in the hotel.

The amount is required to be further reduced by any rent paid by the employee for the period for which the accommodation is provided. Thus, it is a simple question of comparing amount arrived at under (*a*) above with the actual charges paid or payable to the hotel, and take the lesser of the two amounts as the gross value of the perquisite and then deduct amount, if any, paid by or recovered from the employee, so as to arrive at the taxable value of the perquisite.

RELIEF TO EMPLOYEES PROCEEDING ON TRANSFER - In the case of employees proceeding on transfer, it is provided that where accommodation (apparently at the new place) is provided in a hotel for a period not exceeding 15 days, there need be no taxable perquisite. In the absence of any clarification to the contrary issued by the Board, it is to be presumed that where the period of stay exceeds 15 days, the value relatable to the period beyond 15 days must only be treated as a perquisite,

Valuation in case of Motor Car

Owner of Car	Expenses borne by	Purpose	Taxable Value of Perquisite
1(a) Employer	Employer	Fully official	Not a perquisite provided the documents as specified in Rule
1(b) Employer	Employer	Fully private	Total of: (i) Actual expenditure on car (ii) Remuneration to chauffeur (iii) 10% of the cost of car (normal wear & tear) Less: Amount charged from employee
1(c)(i) Employer	Employer	Partly official and partly personal	Cubic Capacity of Car Engine upto 1.6 litres Rs. 1,800 p.m+ ` 900 p.m. for chauffeur Cubic Capacity of Car Engine above 1.6 litres Rs. 2,400 p.m. + ` 900 p.m. for chauffeur
1(c)(ii) Employer	Employee	Partly for official and partly for personal	Cubic Capacity of Car Engine upto 1.6 litres 600 p.m + ` 900 p.m. for chauffeur Cubic Capacity of Car Engine above 1.6 litres ` 900 p.m. + ` 900 p.m. for chauffeur

Owner of Car	Expenses borne by	Purpose	Taxable Value of Perquisite
2(i) Employee	Employer	Fully official use	Not a perquisite provided the documents as specified in Rule 3(2)(B) are maintained.
2(ii) Employee	Employer	Partly official and partly personal	Subject to Rule 3(2)(B) Actual expenditure incurred. **Less:** Car cubic capacity upto 1.6 litres [i.e. value as per 1(c)(i)] **OR** Car cubic capacity upto 1.6 litres above 1.6 litres [i.e. value as per 1(c)(i)
3(i) Employee owns other auto-motive	Employer	Fully official use	Not a perquisite provided the documents as specified in Rule 3(2)(B) are maintained.

3(ii) Employee owns other auto-motive but not car	Employer	Partly for official use	Subject to Rule 3(2)(B) Actual expenditure incurred by employer. **Less:** ` 900 p.m.

1. Using cars from pool of cars owned or hired by Employer:

The employee is permitted to use any or all cars for both official and personal use:

For one car	Valued as per 1(c)(i)
For more than one car	Valued as per 1(b) as if fully used for personal purpose

2. Documents to be maintained for claiming 'not taxable perquisite' or higher deduction wherever applicable [Rule 3(2)(B)]

(a) Employer should maintain complete details of journey undertaken for official purpose, which includes date of journey, destination, mileage and amount of expenditure incurred thereon.

(b) Certificate of supervising authority of the employee, wherever applicable, to the effect that the expenditure incurred for wholly and exclusively for performance of official duties, should be provide

Interest free or concessional loan

Value of loan to the employee or any member of his household shall be at the rates charged by State Bank of India in respect of the loans for the same purpose advanced by the employer on the maximum outstanding monthly balance as reduced by interest actually paid by employee

However, perquisite value for loans (net of amount reimbursed under medical insurance scheme) given for medical treatment of specified disease or small loans up to Rs. 20,000 is not taxable.

Use of movable assets

Value of benefit shall be 10% p.a. of the actual cost of asset or the rent charges paid by the employer as reduced by amount paid by the employee. Use of movable assets such as Computer and laptop exempted from perquisite.

TRANSFER OF MOVABLE ASSETS TO EMPLOYEES [Rule 3(7)(viii)]

Particulars	**Computer & Electronic Gadgets**	**Car**	**Other Movable Assets**
Method of Depreciation	**WDV**	**WDV**	**SLM**
Rate of Depreciation for every completed year	50%	20%	10%
Actual Cost *Less* : Depreciation for completed years	XXXXX XXXXX	XXXXX XXXXX	XXXXX XXXXX
WDV at the end of completed years *Less* : Sale Value taken from Employee	XXXXX XXXXX	XXXXX XXXXX	XXXXX XXXXX

Taxable Value of Perquisite	XXXXX	XXXXX	XXXXX

Note:
(a) Electronic gadgets include computer, digital diaries and printers, but exclude washing machines, microwave ovens, hot plates, mixers, ovens, etc.
(b) Transfer of Assets, which are 10 years old, No perquisite and shall not attract tax liability.
(c) Member of household includes: Spouse(s), children and their spouses, parents, servants and dependents.
(d) Completed year means actual completed year from the date of acquisition of the asset to the date of transfer of such asset to the employees.

Gas, electricity or water supply provided

	Particulars	Value of perquisite
1	Supplied by employer from own source	Manufacturing cost per unit
2	Supplied by employer from purchase from outside	Amount actually paid by

Where any amount paid by employee the amount so paid shall be deducted from value so arrived.

Free Domestic Servants
Actual cost to employer in respect of free services of a sweeper, a gardener, a watchman or a personal attendant as reduced by the amount paid by an employee.

Free or concessional educational facility

Where educational institution is maintained and owned by the employer or education is allowed in other educational institution due to his employment, the value shall be the cost of such education in a similar institution in or near the locality provided the cost exceeds Rs. 1,000 per month per child as reduced by the amount paid by the employee and in other cases the value shall be the expenditure incurred by the employer.

Computation of Taxable Value of ESOP as perquisite – Rule 3(8) (W.e.f. 01.04.2009 vide Notification No.94/2009 dt. 18.12.2009

The value of specified securities or sweat equity shares shall be fair market value of the shares on the date of exercising of option. The fair market value shall be determined as under –

Particulars	Fair Market Value
1. **Shares of an Unlisted Company**	As determined by a Merchant Banker on the specified date
2. **Shares of a Listed Company**	
(a) When **Trading on the date of exercising of option:**	
Listed in one recognized Stock Exchange	Average of Opening and Closing Price on the date of exercising of option
Listed in more than one recognized Stock Exchange	Average of Opening and Closing Price in the stock exchange that records the highest volume of trading in shares on the date of exercising of option.

• Listed in one recognized Stock Exchange	Closing Price of the share on any recognized stock exchange on a date closest and immediately preceding the date of exercising of option.
• Listed in more than one recognized Stock Exchange	Closing Price of the share on any recognized stock exchange on a date closest and immediately preceding the date of exercising of option in the stock exchange that records the highest volume of trading in shares.
3. Fair Market Value of Specified security, not being, equity share in company (Rule 3(9))	As determined by a Merchant Banker on the specified date

i. Closing price shall be the sell price of the last settlement.
ii. Opening price shall be the sell price of the first settlement.
iii. Specified date means – (a) the date of exercising of the option, (b) any date earlier than the date of the exercising of the option, not being a date which is more than 180 days earlier than the date of the exercising.

TAXABILITY OF OTHER BENEFITS

Rule	Nature of Perquisite	Taxable Value of Perquisite
3(6)	Transportation of goods or passengers at free or concessional rate provided by the employer engaged in that business (other than railways/ airlines)	Value at which offered to public **Less:** amount recovered from the employee
3(7)(ii)	Traveling, touring, accommodation and other expenses met by the employer other than specified in Rule 2B. (this shall be calculated only for the period of vacation)	Amount recovered by employer or Value at which offered to public **Less:** amount recovered from the employee
3(7)(iii)	Free meals during office hours Free meal in remote area or offshore installation area is not a taxable perquisite	Actual cost to the employer in excess of ` 50 per meal or tea or snacks **Less:** amount recovered from the employee. Tea or non-alcoholic beverages and snacks during working hours is not taxable.
3(7)(iv)	Value of any gift or voucher or taken other than gifts made in cash or convertible into money (e.g. gift cheques) on ceremonial occasion	Value of gift In case the aggregate value of gift during the previous year is **less than ` 5,000**, then it is not a taxable perquisite
3(7)(v)	Expenditure incurred on credit card or add on card including membership fee and annual fee	Actual expenditure to employer is taxable **Less:** amount recovered from employee If it is incurred for official purpose and supported by necessary documents then it is not taxable.

3(7)(vi)	Expenditure on club other than health club or sports club or similar facilities provided uniformly to all employees	Actual expenditure incurred by the employer **Less:** amount recovered from employee If the expenditure is incurred exclusively for official purposes and supported by necessary documents then it is not taxable.
3(7)(ix)	Any other benefit or amenities or service or right or privilege provided by the employer other than telephone or	Cost to the employer **Less:** amount recovered from employee

Note: Members of household includes: spouse(s), children and their spouses, parents, servants and dependents.

Meaning of Salary for the various Calculations

For the purpose of Calculation of	Salary Means
1. Entertainment Allowance	Basic pay
2.Voluntary Retirement Compensation	Basic Pay + D.A.(forming part of salary for etirement benefits)
3. Gratuity covered under Payment Of Gratuity Act	Basic Pay + D.A
4. Gratuity not covered under Payment of Gratuity Act)	Basic Pay + D.A. (forming part of salary for retirement benefits) + Commission as a
5. Leave Salary	Same as above
6.House Rent Allowance	Same as above
7.Contribution to Recognized Provident Fund	Same as above
8.Determination of Specified employee u/s 17	Income under the head salaries without Benefits including the value of non-monetary
9 For Perquisites Calculation	Salary + All taxable allowances & all allowances which are exceed the limits u/s 10 excluding perquisites under Rule 2, 3

PROVIDENT FUNDS AND TAXABILITY

PARTICULARS	STATUTORY PF	RECOGNIZED PF	UNRECOGNIZED PF	PUBLIC PF
Constituted under	Provident Funds Act, 1952	EPF and Misc, Provisions Act, 1952 & recognized by the Commissioner of PF and CIT	Not recognized by the Commissioner of Income Tax	Public Provident FundAct,1968 Account in SBI or Post Offices
Contribution by	Employer and Employee	Employer and Em-ployee	Employer and Employee	All assessees in-dependently
Assessee's Contribution	Deduction u/s 80C	Deduction u/s 80C	No Income Tax Benefit- No deduction	Deduction u/s 80C
Employer's Contribution	Not taxable	Amount exceeding 12% of salary is taxable	Not taxable at the time of contribution	Not applicable
Interest credited	Fully exempted	Exempted upto 9.5% p.a. Any excess is taxable	On Employee's contri-bution taxable under the head "Other Sources" On Employer's contri-bution not taxable at the time of credit	Fully exempt
Withdrawal at the time of retire-ment/ resignation/ termination, etc	Exempted u/s 10(11)	Exempted u/s 10(12) Subject to conditions	Employee's contribution and interest thereon is not taxable. Employer's contribution and interest thereon is taxable as Profits in lieu of Salary, under" Salaries"	Exempted u/s 10(11)

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Chapter 5

Income From House Property

Charging Section - Sec. 22

Chargeability of" Income from house property" is subject to the following three conditions:
1. The Property should consist of building or land appurtenant there to
2. The assessee shall be owner of the property
3. The property shall not be used for the purpose of business or profession carried on by him.

1st Condition: Building or land appurtenant there to

Meaning of building: The word building has not been defined under the Act. We can understand from the decided cases that
(a) Building is an enclosure of brick or stone work
(b) It may consist even mud of walls
(c) An existence without roof is also building. For example swimming pool, stadium
(d) An incomplete house without doors, gates and wall cannot be a building

Meaning of land appurtenant there to: This may be in the form or approach to roads, compounds, courtyards, backyards, kitchen garden, motor garage and cattle shed etc:

2nd Condition: Assessee should be the owner of the Property

Income is taxable under the head income from house property only if the assessee is the owner. The owner includes legal owner as well as deemed owner. If the ownership is under dispute, the decision to decide who is owner rest with income tax department.

In the context of ownership, the ownership may be real ownership, deemed ownership or co-ownership.

Deemed ownership - Sec. 27: The following persons shall be deemed owners
1. An individual who transfers any house property to spouse for inadequate consideration. The transfer should be not in connection with an agreement to live apart or to a minor child not being a married daughter.
2. The holder of impartiable estate. This means holding of property as per family convention and which cannot be divided .The person who holds on behalf of others will be deemed owner.
3. A member of Cooperative society, company or other association of persons whom a building or part thereof is allotted or leased under the scheme of the society, association or company to a member.
4. A person who is acquired a property under power of attorney transaction though he is not a registered owner
5. Persons acquiring right of building under U/s 269 UA of income tax act, i.e. sale exchange lease of a property for 12 years or more.
6.

Co ownership - Sec. 26

When property owned by two or more persons it is known as C0-ownership. In case of Co-Ownership if respective shares of Co-Owner are definite and ascertainable, co-owners will be assessed separately as per their respective shares; otherwise they will be assessed as Association of persons.

3rd Condition

The property should not be occupied by the assessee for the purpose of his own business or profession, for example as an office or godown or a factory. If the property is used for his own business purpose and such income will not be charged under the head income from house property.

Taxability of Property held as stock in Trade

Annual value of house property will be charged under the head "Income from house property" in the following cases also –

(a) Where it is held by the assessee as stock-in-trade of a business;

(b) Where the assessee is engaged in the business of letting out of property on rent;

Exceptions

(a) **Letting out is supplementary to the main business**

(i) Where the property is let out with the object of carrying on the business of the assessee in an efficient manner, then the rental income is taxable as business income, provided letting is not the main business but it is supplementary to the main business.

(ii) In such a case, the letting out of the property is supplementary to the main business of the assessee and deductions/allowances have to be calculated as relating to profits/gains of business and not relating to house property.

(b**) Letting out of building along with other facilities**

(i) Where income is derived from letting out of building along with other facilities like furniture, the income cannot be said to be derived from mere ownership of house property but also because of facilities and services rendered and hence assessable as income from business.

(ii) Where a commercial property is let out along with machinery e.g. a cotton mill including the building and the two lettings are inseparable, the income will either be assessed as business income or as income from other sources, as the case may be.

Concept of Composite Rent

The term Composite rent means, where owner receives rent for providing services or facilities like lift, furniture, and other assets apart from rent of the building. The taxability of Composite rent depends upon the following.

1. Where is Composite rent is not separable i.e. rent is letting out of building and letting out of machinery and other assets, if two lettings is form part and parcel of same transaction. (i.e. letting of one is not acceptable if other is not let out). In this case Composite rent is taxable as business income or income from other sources as the case may be depending upon the circumstances of each Case
2. Where the Composite rent is separable i.e. when there is two separate agreements or rent is split up, in this case the rent portion will be chargeable under the head income from house property and services charges or hire charges will be assessable as a business income or income from other sources as the case may be

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House Property Situated in Foreign Country

Resident will be chargeable in respect of income from property situated in foreign country. A non-resident and not ordinarily resident will be chargeable to tax, if income of foreign property is received in India during the previous year. The annual value of such property shall be computed as such the property is situated in India.

Determination of Annual Value (an important concept in House property)

Before determine the annual value one should understand the meaning of the following terms

1. **Rent actually received or receivable** means Actual rent received or receivable from let out property but:
   (a) does not include unrealized rent subject to fulfillment of conditions under rule 4
   (b) does not include rent of vacancy period
2. **Municipal Valuation** means Annual value fixed for the property by the local government such as Municipal Corporation, or Municipality.
3. **Fair Rent means** rent earned by similar property situated in same or similar locality
4. **Standard Rent** means rent fixed or rent determined under Rent Control Act,

Steps in determine the Annual Value: Sec. 23

1. Compare Fair rent with municipal valuation. Take which ever is **higher** as fair rent
2. Compare the Fair rent of Step 1 with Standard rent (if rent control act applies) Take which ever is **less;** take it as reasonable expected rent.
3. Compare the reasonable expected rent of Step 2 with Actual rent received
(a) Actual rent is greater than reasonable expected rent in step 2 .**AR is annual value**
(b) Actual rent is less than reasonable expected rent:
(i) If Less is **because of vacancy** take A R as annual value
(ii) If less because any other reason RER is annual value:

(AR = Actual rent received, FR= Fair Rent, RER = Reasonable expected rent)

How to check Actual rent is less than reasonable expected rent because of vacancy

Consider the 2 examples as below:

Ex 1. A property was let out at a monthly rent of Rs. 8000 Vacancy period 3 months, Actual rent received (Rs. 8000x9)= Rs. 72000. let us assume RER Rs. 120000,(i.e. step 2 amount) i.e. Here Actual rent is less not because of Vacancy. Because the property was let out monthly @ Rs. 8000 which is less than monthly RER Rs, 10,000 Here We have to take RER i.e. Rs. 1,20,000 as Annual value

Ex 2. A property was let out at a monthly rent of Rs.7000 Vacancy period 4 months, Actual rent received (Rs. 7000x8)= Rs. 56000. Let us assume RER Rs.72,000(i.e. step 2 amount) i.e. Here Actual rent is less **because of Vacancy**. Because the property was let out monthly @ Rs. 7000 which is more than monthly RER Rs. 6,000 Here we have to take AR i.e. Rs. 56,000 is Annual value

Unrealized Rent

In Calculating the actual rent received or receivable an adjustment is to be made with respect to unrealized rent. Unrealized rent is to be excluded from actual rent received if the following conditions are fulfilled. (Rule 4)

1. The tenancy is bonafide
2. The defaulting tenant has vacated or steps have been taken to compel to vacate the property.
3. The defaulting tenant is not in occupation of any other property of assessee.
4. The assessee has taken all reasonable steps to institute the legal proceedings for the recovery of unrealized rent. Or satisfies the Assessing Officer that legal proceedings are useless.

Types of Properties and their treatment in Computation of Income

The properties can be divided in to three categories as below

1. Let-out Property Sec 23 (1)
2. Self occupied property or Unoccupied property Sec 23 (2)
3. Deemed let out Property Sec 23 (4)

Self Occupied Property or Unoccupied Property

1. Where the Property consists of one house in the occupation of the owner for his own residence, the annual value of such property shall be taken as **NIL. Sec 23 (2)(a)** subject to the following conditions:
   (a) The property either full or part is not let-out during part or whole of previous year
   (b) No other benefit derived there from
   The annual value of Self Occupied property will be treated as Nil. No other deductions will be allowable under Section 24 except Interest on borrowed Capital.
2. The terms Unoccupied Property refers to Property, which cannot be occupied by the owner by, reason his employment, business or employment at a different place and he resides in such other place in a building not belonging to him. Such Property will be treated as par with Self Occupied Property.

House Property where Portion is let out and Portion is Self Occupied

1. Any portion or part of property, which is let out to, compute separately and self-occupied portion should also be computed separately under self-occupied property category. In case of apartments, flats or units residence where one unit/flat is self occupied and other is let-out, whole unit will not be treated as one. Computation is made separately for self - occupied and let-out portions separately. Where municipal valuation or fair rent or property tax is not available separately for each unit, they have to apportion on the basis of plinth area or floor area or any other reasonable basis.
2. Where in a building first floor is let-out and ground floor is self occupied or vice versa, each floor is to be treated as a separate and Income is to be computed accordingly for let out and self occupied.

House Property which is let out part of the year and self occupied in that part of year

If the property that is let-out part of year and self occupied for the part of that year i.e. let out for few months in a year and self occupied for remaining months in a year. In this case it is treated a let-out property. The fair rent of whole year or Actual rent received which ever is higher is to be taken as Annual value.

Deemed let out Property (notional value taxation)

Where the person has occupied more than one house as self occupied, any house according to assessee choice will be treated as Self occupied property and all other Properties will be treated as deemed let-out Properties. The computation of deemed let-out property is computed similar to that of let-out property.

Computation of Annual value of Let out Property

Gross Annual value		xxxxxxxx
Less: Municipal or property taxes		xxxxxxxxx
Net Annual value		xxxxxxxx
Less: Deductions U/s 24		
30% of net annual value for repairs	xxxxxxxx	
Interest on borrowed capital	xxxxxxxx	xxxxxxxx
INCOME FROM HOUSE PROPERTY		**xxxxxxxx**

Deduction of Municipal Taxes

Deduction of Municipal taxes is allowed only
(a) It should be borne by the assessee
(b) It should be actually paid during the year
Arrears of taxes will also allowed as a deduction in the year of payment

Deductions U/s 24

Sec 24 contains only two deductions. Except the following the two no other deductions will be allowed. For example no deduction in respect of expenses like Electricity charges, ground rent, land revenue, collections charges, and insurance premium etc.

1. **30% flat deduction** on Net Annual value will be allowed as deduction. This deduction will be allowed irrespective of the quantum of expenditure incurred. Deduction will be allowed even no expenditure is incurred or tenant bear to undertake the repairs
2. **Interest on Borrowed Capital:** Interest is allowed on accrual basis, if the Capital is borrowed for the purpose of Purchase, Construction, repair, renewal and renovation of the house property. The following points are relevant in this regard
   (a) The deduction should be claimed on yearly basis even interest is not paid during the year
   (b) Interest on fresh loan to repay old loan is also eligible for deduction
   (c) Deduction is allowed even Interest or Principal is not charged to Property.
   (d) Interest on Unpaid interest is not deductible.
   (e) No deduction is allowed in respect of any brokerage or commission on arrangement of loan.
   (f) Interest payable out of India will not be allowed as a deduction unless tax has been paid or TDS has been deducted on the Interest (Sec 25)

(g) In case of self occupied property, The acquisition or Construction of property is to made from the end of 3 financial years on which Capital is borrowed if the loan borrowed on or after 1.4.99 to avail Rs. 1,50,000 as deduction
(h) In case of self occupied property ,For claiming deduction the assessee should furnish a certificate as proof of interest from financial institution where the Principal is borrowed on or after 1.4.99 to avail Rs. 1,50,000 as deduction

Amount of Deduction of Interest

1. If loan borrowed before 01.04.1999- Actual interest or Rs. 30,000 Whichever is less
2. If the loan borrowed on or after 01.04.2009- For repair, renewal or reconstruction of house - Actual interest or Rs. 30,000 Whichever is less
3. If the loan borrowed on or after 01.04.2009- For Construction of purchase of house property - Actual interest or Rs.1,50,000 Whichever is less subject to (g) (h) as above. In case of let out property/deemed let-out property no limit, entire interest deductible.
4. The amont of deduction include preconstruction period interest.

Interest on Pre Construction period

Interest Payable by the assessee for the period prior to Previous year in respect of which Property is acquired or construction will be allowed in 5 equal annual installments, commencing in the previous year in which house is acquired or constructed.
The term Pre Construction period means period commencing from the date of borrowing and ending March 31 immediately prior to the completion of Construction / date of acquisition or date of repayment of loan which ever is earlier.

Interest on Government house building advances - In the case of house building advance taken by the Central Government servants under the House Building Advance Rules of the Ministry of Works & Housing, deduction under section 24(1)(*vi*) would be on the basis of accrual of interest which would start running from the date of the drawl of the advance - **Circular: No. 363 [F. No. 168/4/82-IT(A-I)], dated 24-6-1983.**

Interest on second loan taken to repay first loan - Where a fresh loan has been raised to repay the original loan if the second borrowing has really been used merely to repay the original loan and this fact is proved to the satisfaction of the ITO, the interest paid on the second loan would also be allowed as a deduction under section 24(1)(*vi*) **- Circular: No. 28 [F. No. 8/8/69-IT (A-I)], dated 20-8-1969.**

Taxability of Unrealized Rent - Sec. 25(AA)

Where the deduction has been allowed in respect of unrealized rent from the annual value, and subsequently during the any accounting year, the assessee has realized any amount of in respect of such rent, will be treated as income of assessee under the head "Income from house property" with out making any deduction whether the assessee is owner or not of the property in that year.

Treatment of Arrears of Rent – Sec. 25 B

The arrears of rent received by assessee who
(1) Is the owner or any building or land appurtenant thereto which has let out to tenant and
(2) Has received any amount by way of arrears of rent from such property and

(3) Which has not been included as a income of any previous year, shall be deemed to be income of the previous year in which such arrears of rent is realized.
(4) The income will be charged in the hands of assessee whether he is owner or not of the property of that year.
(5) The only deduction will be available is 30% flat of such rent as repairs.

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Chapter 6 .

Profit and gains of Business or Profession

Meaning of Business

According to Sec. 2 (13) of the Act, "Business includes any trade, commerce or Manufacture or any adventure or concern in the nature of trade, commerce or manufacture".

Meaning of Profession

According to sec. 2(36) profession includes vocation. 'Vocation 'includes such activities, which are performed by a person on account of his natural ability for some particular work.
Any income or profit accrued to the assessee from the operation and exercise of any business or profession or vacation is chargeable under this head.

INCOMES CHARGEABLE UNDER THE HEAD PROFIT AND GAINS OF BUSINESS OR PROFESSION

S N	Sec 28	Nature of transaction
1	(i)	Profits and gains of any business or profession carried on by the assessee at any time previous year.
2	(ii	Any compensation due to or received by any person, in connection with the termination of a contract of managing agency
3	(iii)	Income derived by a trade, professional or similar association from specific services performed for its members.
4	(a to d)	Profit on sale of any export incentive, refunds of duty drawback etc
5	(iv)	The value of any benefit or perquisite, whether convertible into money or not, arising from business or in exercise of a profession.
6	(v)	Any interest, salary, bonus, commission or remuneration due to or received by a partner of a firm, from the firm to the extent it is allowed to be deducted from the firm's income
7	(va)	Any sum received or receivable in cash or in kind under an agreement for not carrying out activity in relation to any business, or not to share any know- how, patent, copyright, trade-mark, license franchise except any sum chargeable under capital gains
8	(vi)	Any sum (including bonus) received under a Key man insurance policy
9	(vii)	Sum received or receivable (in cash or kind) on account of any Capital Asset (other than Land or Goodwill or Financial instrument) allowed as deduction u/s 35AD, being demolished, destroyed, discarded or transferred.

NOTE:

1. Profit & gains from speculation business should be kept distinct from other Business as per Sec. 28 Explanation No. 2
2. Profit & Gains of a transaction not undertaken in a regular course of business or profession are taxable as casual income under the head "Income from Other Sources".

DEEMED INCOME

S N	Sec 41	Nature of transaction
1	(1)	Any allowance or deduction allowed in an earlier year/trading liability incurred by the assessee and subsequently received/remission or cessation of the liability. Chargeable to tax even received by successor
		Any liability, which is unilaterally written off in the accounts by the assessee or his successor in business, chargeable to tax.
2	(2)	In case power generating units sale of depreciable asset/ compensation received together with scrap value.-Balancing charge
3	(3)	Profits made on sale of a capital asset for scientific research in respect of which a deduction had been allowed u/s 35 in an earlier year.
4	(4)	Amount recovered on account of bad debts allowed u/s 36(1) (vii) in an earlier year.
5	(4A)	Any amount withdrawn from the special reserves created and maintained u/s 36(1) (viii) shall be chargeable as income in the previous year in which the amount is withdrawn.
6	43 D	Any amount withdrawn from the special reserves created and maintained u/s 36(1) (viii)

ADMISSIBLE DEDUCTIONS

S.No.	Section	Details of Expense/ loss	Quantum of Deduction
1	30	Rent, rates, taxes, repairs not including any expenditure of capital nature and insurance for premises	Full
2	31	Repairs not including any expenditure of capital nature and insurance of machinery, plant & furniture.	Full
3	32	Depreciation on buildings, machinery, plant and furniture and other intangible assets such as know- how, patents, copyrights, trademarks, licenses, franchises etc.	Refer discussion
4	35	Expenditure on scientific research	Refer discussion
5	35ABB	Expenditure for obtaining licence to operate telecommunication services.	Refer discussion
6	35AC	Expenditure on eligible projects or schemes. .	Refer discussion
7	35 AD	Eligible assessee- Specified business (cold storage/warehousing/hospital etc)	Refer discussion
8	35CCA	Payment to associations and institutions for carrying out rural development programmes	Refer discussion
9	35D	Amortisation of preliminary expenses.	Refer discussion
10	35DD	Expenditure incurred on amalgamation or demerger by an Indian company shall be deductible in each of five years	One fifth (1/5) of expenditure

			incurred.
	35DDA	Amount paid to an employee on his/ her voluntary retirement under a scheme of voluntary retirement, In case of succession of unlimited company or pvt Ltd company in to LLP, the deduction will also be available in the year of succession to the successor Company. No deduction to the predecessor company in the year succession.	One fifth (1/5) of the amount paid .
11.	35E	Amortisation of expenditure on prospecting etc. for minerals. .	Full
12.	36(1) (i)	Insurance premium for stock & stores	Full
13.	36(1) (ia)	Premium on lives of cattle.	Full
14.	36(1) (ib)	Premium on health insurance of employees paid by any mode other than cash ie (Cheque DD, pay order Insurance scheme approved by IRDA)	Full
15.	36(1) (ii)	Bonus or commission to employees subject to conditions.	Full
16	36(1) (iii)	Interest on borrowed capital	Full
	36(1) (iii)a	Discount on Zero coupon Bonds- for infrastructure companies/fund, Public sector banks/Schedule banks	Full
17.		Interest paid on borrowing for acquisition of new asset for extension of existing business or profession from the date of borrowing till the date on which such asset is first put to use, shall not be deductible.	
18.	36(1) (iv)	Employer's Contribution to RPF or Approved Superannuating Fund	Full
19.	36(1) (v)	Employer's contribution to approved gratuity fund.	Full
	36(1)(va)	Employee's contribution towards provident funs, & other funds of Staff welfare.	Full
20.	36(1) (vi)	Loss on animals in connection of Business	Full
21.	36(1) (vii)	Bad debts Actually written off, Condition: Debt have been taken in to a/c and written of during year	Full
22.	36(1) (viia)	Bad debts Provision of banks	Refer Explanation
23.	36(1) (viii)	Transfer to special reserve of financial corporations. This deduction will be available to co operative banks other than rural banks and rural agricultural credit banks deduction available only for specified entities with specified business	Full (Not Exceeding 20% of the Profits) Refer note
24.	36(1) (ix)	Family planning expenditure	Full –Capital Expenditure 5 installments
25	36(1)(x)	Contribution towards notified Exchange Risk administration fund. Set up by public financial institutions either jointly or separately.	No deduction from AY 08-09
26	36(1) (xii)	Revenue expenditure incurred by entities established under state central provincial Act, subject to condition that expenditure is incurred for objects and purpose as CG notify	Full
27.	36(1) (xiii)	Banking Cash Transaction tax- provided the transaction was a part of business.	Full
	(xiv)	Any sum paid by a public financial institution by way of contribution to such credit guarantee fund trust for small industries notified by the Central Government in the Official Gazette.	Full

Depreciation:

Depreciation is wear and tear on asset when it is used over a period of time. Depreciation is loss and it will allow as a deduction in computing profits as below:

Conditions for Claiming Depreciation

1	Depreciation will be allowed as a deduction on block of assets concept
2	Asset should be owned wholly or partly by the assessee, Depreciation will be also allowed in case of fractional ownership or co-ownership proportionally
3	Assets should be used for the purpose of the business.
4	Depreciation will be allowed on Written down value basis on the block of asset

Block of asset': According to Sec. 2(ii), 'block of asset' means a group of asset falling within a class of asset comprising

(a) Tangible assets. Being building, plant, Machinery and furniture and
(b) Intangible assets. Being Know-how, Patent, Copyright, Trademark, Licenses, Franchises and similar assets

in respect of which same rate of depreciation under WDV method as per income tax rules.

Written Down Value of Assets

As per Section 43(6) 'W.D. V.' is to be determined as under: -
(1) In Case of Asset Acquired in the Previous Year: The Actual Cost incurred by the assessee
(2) In Case of Asset Acquired before the Previous Year: [Actual Cost incurred by the assessee (-) Depreciation upto-date
(3) In Case of Any Block of Asset, the W.D. V. (as per Circular No. 469 Dt. 23-09-86 of CBDT) shall be calculated as below

1	W.D.V. of the block of assets on 1st April of the Previous Year	xxxxxx
2	*Add:* Acquired asset in the Previous Year	xxxxxx
3	Total (A) + (B) = (C)	xxxxxx
4	*Less:* Money receivable in respect of any asset falling within the block against sales and scrap-value	xxxxxx
5	W.D.V. Available for Depreciation	xxxxxx
6	Depreciation at the Prescribed %	xxxxxx

Notes: (i) -(4) cannot exceed (3), if it exceeds (3) than there should be short-term Capital Gains. (ii)-(5) shall not be in negative for changing depreciation.

Written-down Value under Various Conditions sec 43(6)

S No	Situation	Written down value
1	Succession in business or profession	WDV of predecessor will adopted as of WDV Successor
2	Transfer of block of assets by holding Company to subsidiary or vice-versa	Written-down value of the block of assets as in the case of the transferor company will be WDV to the transferee company
3	Transfer of block of assets on amalgamation	Written-down value of the block of assets as in the case of the amalgamating Company will be WDV to the amalgamated company
4	Transfer of block of assets on Demerger	**WDV for demerged Company**- written down value of the block of assets of the demerged company for the immediately preceding previous year shall be reduced by the written-down value of the assets transferred to the resulting company pursuant to the Demerger.

		Written-down value in case of a resulting company- written-down value of the transferred assets as appearing in the books of the demerged company immediately before the Demerger.

Deduction of Depreciation mandatory

With effect from Assessment Year 2002-2003, depreciation shall be allowed as deduction whether or not the assessee has claimed such deduction in computing his total income. Thus, deduction for depreciation has' now, become mandatory.

Actual Cost of Asset -Sec 43 and its explations

S No	Situation	Actual Cost
1	In Case of purchase	Actual Cost including non refundable taxes Transportation and installation charges
2	Asset used for Scientific research.	Actual cost as reduced by the amount of any deduction allowed under Scientific research ie Actual cost will be nil
3	Asset acquired by was of inheritance gift etc	Cost to the Previous owner (-) Depreciation up to date shall be cost to the present owner. Market value on date of gift not relevant.
4	Old assets purchased which was previously used by some other person (with a view to claiming depreciation at enhanced cost	Cost to be determined by Assessing Officer with the previous approval of J C (genuine cases not covered)
5	Sale and lease back	Written down Value (W.D.v) at the time of transfer from other person.
6	Re-acquired asset by the assessee	Actual cost which was original(-) Depreciation upto date, or (ii) actual price for which the asset is reacquired. Least of these two shall be the actual cost:
7	Assessee's building earlier used for other purpose now used for Business/Profession	Original Cost less Depreciation (rate applicable at the time of actual acquisition)].
8	Transfer of assets in between holding and 100% subsidiary company by each Other [being Indian Company)	Actual Cost will be. W.D. V. to the transferor company.
9	Assets transferred under a scheme of amalgamation [being Indian Co(s)].	Actual Cost i.e. W.D.V. to the amalgamating company.
10	Assets transferred by private Company/unlimited company to LLP and conditions specified in sec 47 are fulffiled	Actual cost will the WDV of the private Company/unlimited company on the date of coversion.

11	Assest acquired before previous in case of composite business ex (tea, coffee, rubber etc)	the total amount of depreciation shall be computed as if the entire composite income of the assessee is chargeable under the head "Profits and Gains of business or profession". The depreciation so computed shall be deemed to have been "actually allowed" to the assessee.
12	Asset acquired on partition of H.U.F.	W.D V. in the hands of coparceners which would have been if the partition would not taken place
13	Interest in connection with acquisition	Interest upto the date at which the asset is first put to use will be added
14	Asset acquired under refund condition under Customs Tariff Act, and Central Excise Rules	Actual Cost (-) Refund
15	Subsidy, grant or reimbursement of the cost by Government or others.	Actual Cost (-) such facility
16	Where acquired from outside India By money borrowed in foreign currency	Change in the rate of exchange during any previous year after the acquisition of such asset, there is an increase or reduction in the liability of the assessee as expressed in Indian currency such excess or reduction should be adjusted against the cost of asset
17	Any asset where actual cost is allowed as deduction u/s 35 AD of Specified business by assessee or previous owner in case of asset acquired from previous owner, where the transaction is exempt u/s 47	NIL

Instances Certain Expenses to be capitalized to the cost of Asset

1	Expenses on modification and repairs incurred before the actual use of asset.
2	Expenses on salaries, rent, lighting etc., relating to the period before production has commenced Can be added in actual cost
3	Interest paid in connection with purchase of asset and bank charges upto the date of installation Or commissioning of a depreciable asset.
4	Interest paid on deferred payment installments till the asset put to use
5	Amount of Interest Paid or Payable in Connection with the Acquisition of assets by Assessee
6	Expenses on site preparation of installation of plant
7	Others incidental expenses incurred in the acquisition of the relevant asset before the asset could be brought into use

Depreciation in case of Succession, Amalgamation Demerger Conversion of sole proprietor/partnership firm in to Company or Succession of a private company or unlisted public company by limited liability partnership,

- **D**epreciation to be calculated as no such succession, amalgamation conversion takes place The total depreciation calculated, shall be apportioned in the ratio of the number of days for which the assets were used by predecessor and successor,
- The amount of deduction of depreciation shall not exceed in any previous year the

deduction calculated at the prescribed rates as if the succession or the amalgamation or the Demerger, as if in the case that had not taken place

Depreciation of asset if used less than 180 days in a previous year:

- If the Asset in the Block being used for less than 180 Days in the Year of Acquisition the depreciation allowable in respect of such asset shall be restricted to 50% of the amount allowable as depreciation

- **Additional Depreciation *u/s* 32 (1) (iia)**

Applicable only in case of manufacturing Companies

- **A**vailable in case of any new machinery or plant acquired and installed after 31-03- 2005,
- Rate of depreciation equal to 20% of the actual cost
- If Asset was used les than 180 days only half the depreciation

No deduction for additional Depreciation in respect of—

- **A**ny machinery or plant, which is old, used in India or outside India
- Any machinery or plant installed in any office premises or any residential/Guest house accommodation,; or
- Any office appliances or road transport vehicles; or
- Any machinery or plant, the whole of the actual cost of which is allowed as a in any one previous year;
- Plant being Ships and aircrafts

Condition

- The assessee shall furnish the details of machinery or plant and increase in the installed capacity of production in the prescribed form, along with the return of income and the report of a Chartered Accountant in Form No. 3AA.

Depreciation In Case of assets of an Undertaking Engaged in Generation or Generation and Distribution of Power *u/s* 32 (l)(i)

- Depreciation of assets acquired shall be calculated at the percentage specified on straight-line basis the actual cost thereof to the assessee.
- The aggregate depreciation allowed in respect of any asset for different assessment year shall not exceed the actual cost of the said asset.
- The assessee, instead of claiming depreciation on SLM, at its option claim depreciation on basis of written down value method at the rate prescribed for each block of assets.
- Such option should be exercised before the due date of filing the return of income *uls* 139(1) Once the option is made it is final and applicable to all succeeding assessment years.

Where the power-generating unit claims depreciation on the straight-line basis, where the asset is sold discarded demolished, the treatment as taxation was as below.

Transfer of Asset	Chargeable amount	Chargeable under the Head
(i) When the consideration is less the actual cost but more than the WDV	Excess of consideration over WDV is treated as Balancing charge	Profits and Gains of Business or Profession
(ii) When consideration is more than the actual cost	Excess consideration over actual cost is treated as Short Term Capital gain	Capital gains
(iii) When consideration is less than the WDV	Shortfall/ Deficit is treated as terminal depreciation u/s 32 in the	Profit and Gains of Business or Profession

	year of transfer	

Depreciation in case of Imported Foreign Car:
Car acquired on or after 1.4.2001 depreciation available whether it is for For Running it on hire for tourists For the purpose of Business/Profession outside India For the purpose of Business/Profession outside India

Unabsorbed depreciation. If depreciation cannot be fully claimed in a particular year for want of profits the un-absorbed depreciation will be treated as below

	Previous year	**Succeeding Year**
Treatment of unabsorbed depreciation	First it is set off against the profit or gains and then against income under any other head, for that assessment year	The balance of unabsorbed depreciation, if any, shall be carried forward and set off against the income in subsequent years without any time limit till it finally set off.

Note: There is no condition of continuance of same business in order to carry forward and set off. There is no time limit for setoff.

Rates of Depreciation. Rule 5

I Buildings -Total 3 Blocks

Block 1.	Buildings (other than covered by sub-item 3 below) which are used mainly for residential purposes	5%
Block 2.	Buildings which are not used mainly for residential purposes and not covered by sub-items (1) above and	10%
Block 3.	Buildings acquired on or after the 1st September, 2002 For installing machinery and plant forming part of water supply project or water treatment system/ business of providing infrastructure facilities Purely temporary erections such as wooden structures	100%

II Furniture and Fittings- Only one block

Block 1.	Furniture and fittings including electrical fittings	10%

III Plant & Machinery- total 8 blocks

Block 1.	Plant & machinery (General rate)- Motor car other than running on hire /two wheelers/Office	15%
Block 2	ships/Vessels	20%
Block 31.	Motors buses, motor lorries, motor taxis used in a business of running them on hire	30%
Block 4	Aero planes, aero engines	40%
Block 5.	Energy Saving Devices	80%
Block 6	Computers including computer software/ Books, other than annual publications, owned by assessees	60%
Block 7.	Energy Saving Devices	80%

Block 8.	Books Annual Publications owned by assessees carrying on a profession/ Books owned by assessees carrying on business in running lending libraries/ Air, Water Pollution control equipments, Solid waste control equipment	100%

PART B **INTANGIBLE ASSETS Only one block**

Block 1	Know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature	25%

New commercial vehicles acquired on or after 1.1.2009 but before 1.10.2009 and put to use before 1.10.2009 for the purposes of business or profession" would be classified under the head MACHINERY AND PLANT and would be eligible for depreciation at the rate of 50%.

Increased rate of depreciation for certain assets - Rule 5(2) - Any new machinery or plant installed to manufacture or produce any article or thing by using any technology or other know-how developed in a laboratory owned or financed by the Government or a laboratory owned by a public sector company or a University or an institution recognized by the Secretary, Department of Scientific and Industrial Research, Government of India shall be treated as a part of the block of assets qualifying for depreciation@ 40%.

Deduction of expenditure on scientific research- Sec 35

Section	Nature of Expenditure	Purpose	Quantum of Deduction
35(1)(i)	Revenue Expenditure & 3 years preceding date of commencement of business Salary to research staff (excluding perquisites) Materials used in research	Scientific Research carried on by assessee related to business of assessee whether incurred himself or paid to other person for research during PY	100% In the year in which business is commenced
35(1)(ii)	Contribution to scientific research association, university, college, other institution	Scientific Research whether related or unrelated to business of assessee	175%
35(1)(iia	Contribution to Indian company		125% *
35(1)(iii)	Contribution to university, college, other institution or Indian company	Social/ Statistical Research whether related or unrelated to business of assessee	125%
35(1)(iv)	Capital expenditure Except land & Expenditure 3 years preceding date of commencement of business	Scientific Research carried on by assessee related to business of assessee	100%

35(2AA)	Contribution to IIT, National Laboratory, university or specified person	Scientific research related to business of assessee	175%
35(2AB)	Capital Expenditure except land and Revenue Expenditure	In house research by Assessee engaged in business of manufacturing any article or thing, not being article specified in 11th Schedule.	200% (approval by the prescribed authority.

*

Contribution to Indian company for scientific research purpose FA 2008 Effective AY 09-10

Weighted deduction of 125% will be allowed to all Assessee if any sum paid to a company to be used by it for scientific research:

Provided that such company—

(A) is registered in India,

(B) has as its main object the scientific research and development,

(C) is, for the purposes of this clause, for the time being approved by the prescribed authority in the prescribed manner, and

(D) fulfils such other conditions as may be prescribed;";

Payee company (Company received contribution) cannot avail weighted deduction on its payments. However it can avail deduction on revenue capital expenditure incurred by it for scientific research.".

Amortization of Preliminary Expenses Sec 35 D

Preliminary expenses include Expenditure in connection with:

•Preparation of feasibility report/project report;

•Conducting market survey or any other survey necessary for the business Engineering services relating to the business of the assessee

•.Legal charges for drafting any agreement for getting up or conduct of the business

•In case of company, the following expenditure is also included in preliminary expenses.

•Legal charges for drafting/Printing the MOA,AOA

• Fees paid for registering the company;

•Expenses regarding issue of shares /underwriting commission, brokerage/prospectus.

• Eligible Amount -Maximum: 5% of the Cost of Project or Capital employed or actual amount, whichever is lower.

•Period: 5 equal installment over 5 successive years for expenses

Cost of the Project 'means:

• Actual cost of the fixed assets, any additions in case of extension of business after commencement

Capital employed means:

• the aggregate of the issued share capital, debentures and long- term borrowings and additional borrowals in case of extension of business after commencement

• long – term borrowings' means borrowings from financial institutions /foreign borrowings for acquiring fixed Assets repayment term not less than seven years.

Bad Debts Provision of Banks u/s 36(1) a) (viii

Deduction will be as below

S N	Assessee	Deduction
1	Schedule Banks and non schedule Bank , including Cooperative banks other than banks engaged in rural agricultural credit, rural banks except foreign banks,	7.5% of total Income
2	Foreign Banks	5% of Total Income
3	Public financial institutes	5% of the Total Income.
4	Rural Banks	10% of total advances

Total Income= Income computed before this deduction and deduction u/s 80 C to 80 U

Deduction in respect of transfer to Special Reserve Sec 36 (1) (viii)

S No	**Specified entity**	**Eligible Business for providing long-term finance for**
1	Financial Corporation specified in section 4A of the Companies Act,1956 Financial corporation which is a public sector company	industrial or agricultural development or development of infrastructure facility in India
2	Banking company Co-operative bank (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank) India	Construction or purchase of houses in India for Residential purposes.
3	A housing finance company	Construction or purchase of houses in India for residential purposes.
4	Any other financial corporation including a public company	Development of infrastructure facility in India.

Deduction will be amount transfer to reserve or 20% of profits which ever is less
However, where the aggregate amount carried to such reserve account exceeds twice the amount of paid up share capital and general reserve, no deduction shall be allowed in respect of such excess.

Expenditure on eligible projects or schemes (Sec. 35AC)

Eligible project of scheme' means

• Such project or scheme for promoting the social and economic welfare of, or the uplift of, the public as notified by Central Government on the recommendation of the National Committee.

'National Committee' means

• The committee constituted by the Central Government, from amongst persons of eminence in public life.

• If an assessee pays any amount, to a public sector company or a local authority or to an association or institution approved by the National Committee, for carrying out any eligible project or scheme, he is entitled to deduction of the whole of such payment made during the previous year.

Quantum of Deduction

• Full

Condition

• A Certificate/receipt confirming the payment should enclosed to R OI

•

Payments to associations and institution for carrying out rural development programmes (Sec 35 CCA)

•Assessee pays any sum, to the association, institution
• Such Institution which has as its object the undertaking of any rural development programme/training of persons for implementing programmes of rural development;
•Association/Institution should be approved by the prescribed authority /notified by Central Government (National Urban Poverty Eradication Fund)
•The assessee should furnish a certificate from the above mentioned association or institution to the effect that of approval/training along with R O I
•**Quantum of Deduction** – full
•If any expenditure is allowed deduction under this section, such expenditure shall not be allowed as deduction under section 35-C, 35-CC or section 80-G or any other provision of the Act.

No denial of deduction
No denial of deduction after making the payment to associations under section 35 AC, 35 CCA and 35 2 A , if such institutes exemption was withdrawn by Commissioner of Income tax

Amortization of expenditure on prospective etc. for minerals (Sec. 35E)

Applicable to
•Residents Assessee (Indian Company and resident non Corporate)
Conditions
•Assessee incurs some expenditure, wholly and exclusively in prospecting of any mineral or on development of a mine or other natural deposit of any such mineral,
•Expenditure shall be allowed as deduction in 10 equal annual installments beginning with the previous year in which commercial production of mineral begins.
•The expenditure eligible for the deduction must be incurred during 5- year's period ending with the year of commercial production.
•Where any sale, salvage, compensation or insurance money is realized, net expenditure shall be the allowed as deduction (total expenditure incurred minus amount realized.
•In case of amalgamation, Demerger, the amalgamated Company and resulting company can avail deduction as such Demerger, amalgamation not takes place
The expenditure which qualifies for such deduction shall not include:-
•Any expenditure on the acquisition of the site of the mine or any right in or over it, Any expenditure on the acquisition of the deposits of such minerals or any right in or over such deposits: Any expenditure of a capital nature in respect of any building, machinery, plant of furniture for which allowance by way of depreciation is admissible.

Deductions in Respect of Admissible Allowance

Sl. No	Section	Detail / Items	Eligible Assessees
1	33AB	Tea Development Account	Assessee growing & Manufactures-ring Tea.
2	33ABA	Site Restoration Fund	All assesses engaged in the business of the prospecting for, or extraction or production of petroleum/ natural gas.
3	33AC	Reserve for shipping business	Government Company or Indian Public Company for the Assessment year 2001- 2002 to 2005-2006, the amount of deduction is 100% of the profits derived from the business of operation of ship.
4	42	Expenditure on prospecting etc. For mineral oil	Assessee engaged in such business

Tea/ Coffee/Rubber Development Account (Sec. 33 AB)

Applicable to an assessee carrying on business of growing and manufacturing Tea, Coffee and Rubber in India:-

•Deposits any amount in a special account with the (NABRD) or in 'The Deposit Account' scheme framed by Tea, Coffee and Rubber boards with previous approval by the Central Government;

• Such amount is deposited before the expiry of 6 Months from the end of previous year before filing of the return of income, whichever is earlier.

Amount of deduction:

• Amount so deposited or 40% of the profits which ever is less Profit means PGBP t before this deduction, and set off of losses u/s 72

Other Points

•If the assessee is a firm, or any association of persons or any body of individuals, this deduction shall not be allowed to any of its partners or members.

•Deduction shall be admissible to an assessee only when the assessee has got its accounts audited by a Chartered Accountant and furnish the audit report along with the return of income.

•Withdrawal of deposit:

•The accumulated balance to the credit of such special account or the Tea Deposit. Account may be withdrawn only for the purpose specified in the scheme.

•This may also be withdrawn under the following circumstances:-

•(a) Closure of business, (b) Death of the assessee,

•(c) Partition of Hindu undivided family; (d) Dissolution of firm, and

• (c) Liquidation of company

•If the assessee withdraws the amount on dissolution of firm or on closure of business, the amount so withdrawn will be treated as taxable profits of the previous year in which such amount is withdrawn.

•If the amount withdrawn from the special account or the Tea Deposit Account is to be utilized only for the purposes specified in the scheme

• If is not so utilized within that previous year, the amount not so utilized shall be deemed to be profits and gains of business of that previous year.

•**If any amount should not be utilized for the purchase of the following assets**

•Any machinery or plant to be installed in any office premises or residential accommodation or a guest house;

•Any office appliances excluding computer

•Any machinery or plant the whole of the actual cost of which is allowed as a deduction; and

•Any new machinery or plant to be installed in an industrial undertaking for the purpose of business of construction, manufacture or production of any low priority article or thing specified in the Eleventh schedule

•If the amount utilized for above 1,2 and 3 purposes, the amount so utilized is taxable in the year of utilization.

•If any asset acquired as per this scheme sold or otherwise transferred by the assessee to any person with in 8 years from the end of the previous year in which it was acquired, such part of the cost of the asset for which deduction under this section had been allowed, shall be deemed to be the taxable

•Business profits of the previous year in which the assets is sold or transferred. But such sale or transfers will not be taxable If the sale or transfer is made by the assessee to Government, a local authority, a corporation established by or under Central, State or Provincial Act or a Government

Company or If the sale or transfer is made by a firm to such company which has taken whole of the assets and liabilities of the firm either in succession or through purchase or transfer

Expenditure for obtaining license to operate telecommunication services Sec. 35(ABB)

Applicable

•Telecommunication Companies

Nature of Payment

•Any capital expenditure is incurred for acquiring a license to operate telecommunication services /expenditure incurred prior to three years before the commencement

Quantum of deduction

•Amount equal to appropriate fraction shall be allowed in every previous year during which the license shall be in force.

Appropriate fraction

•Actual payment made x 1 /Number of previous year for which the fee is paid.

• Actual payment has been made," means The actual payment of expenditure irrespective of the previous year in which liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee

Example 1

- Period of license 10 years- amount paid Rs. 50 lakhs in first year – Deduction available 5 lakhs each for 10 years

Example 2

- Period of license 10 years- amount paid Rs. 50 lakhs in Second year – Deduction available 50 lakhs/9 =5.55 lakhs for each for 9 years starting from 2^{nd} year

Consequences if license is sold

• In case the licence is sold and capital sum realised from transfer is less than the expenditure remaining unallowed the balance shall be fully allowed in the year in which it is sold. It is more the balance will be charged to income under PGBP

Site restoration fund Sec. 33 (ABA)

An assessee who is carrying on business of the prospecting for, for extraction or production of, petroleum or natural gas or both in India under an agreement with the Central Government.

Quantum of deduction

•20% of Profits or amount deposited in SBI or approved fund

•Rest of the points all are same as tea development a/c

Deduction in respect of expenditure on specified business [Section 35AD]

Specified Business	Eligible Assessee	Date of Commencement Business on or after
Setting up & operating a cold chain facility for agricultural produce, meat, poultry products, processed food, etc.	Any assessee	April 1, 2009
Setting up & operating a warehousing facility for storage of agricultural produce	Any asessee	April 1, 2009

Laying & operating a cross-country natural gas pipeline network for distribution including storage facilities	Indian company or consortium of such companies	April 1, 2007
Laying & operating a cross-country crude/petroleum oil pipeline network for distribution including storage facilities	Indian company or consortium of such companies	April 1, 2009
Building and operating anywhere in India, a new hotel of 2 Star or above category	Any assessee	April 1, 2010
New Hospital with atleast 100 beds	Any assessee	April 1, 2010
Developing and building a housing project under a scheme for slum redevelopment or rehabilitation	Any assessee	April 1, 2010

Where the pipeline is used as common carrier, of the total capacity 1/3rd will be made available for natural gas pipeline and 1/4th for petroleum product pipeline.
Quantum of Deduction
100% deduction of capital expenditure incurred during the previous year.
100% of capital expenditure incurred prior to commencement of business shall be allowed in year of commencement of business only if same has been capitalized on the date of commencement of business.
Capital expenditure shall not include land, goodwill & financial instrument.

Other Provisions
1. Business should be new business i.e. should not be formed by splitting/reconstruction of old business.
2. Business should not be set up by transfer of old plant & machinery. Old plant & machinery should not be more than 20% of total plant & machinery used for the business.
3. Deduction u/c VI-A shall not be allowed in respect of such business for any assessment year.
4. Actual cost of asset for which deduction has been allowed under section 35AD shall be taken as Nil.

Expenditure on prospecting etc. for mineral oils (Sec. 42)

•The assessee income consists of profits or gains of any business consisting of the prospecting for or extraction or production of mineral oils:
• Assessee should enter in to agreement with the Central Government or participation of the Central Government is required.

Nature of Expenditure

•Expenditure by way of infructuous or abortive exploration expenses in respect of any area surrendered prior to the beginning of commercial production by the assessee
•Expenditure for drilling or exploration activities or services or in respect of physical assets used in that connection, except assets on which allowance for deprecia-tion is admissible under sec 32 (This expenditure may be before or commencement)

Quantum of deduction

•Full

General deduction for Expenses sec 37

In addition expenditure deductible under sections 30 to 36 the following expenditure will be also allowed as deduction in computing income.
•Not being in the nature of capital expenditure

• Not being the Personal expenses of the assessee
•And if such expenditure incurred wholly and exclusively for the purposes of the business or profession

The following expenditure is not deemed to be to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.
•Any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law
•Any Expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party.

Section	**Non-deductible items**	**Type of Assessee**
37(2B)	Advertisement in souvenir, brochure, tract, pamphlet, etc., of political party	All assessees
40(*a*)(*i*)	Interest, rent royalty, fees for technical services or other chargeable sum payable outside India, or in India to a non-resident or foreign company, on which tax has not been deducted or paid during the previous year with in time allowed. Such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid	All assessees
40(*a*)(*ia*)	Interest, commission, brokerage, fees for professional services or fees for technical services payable to a resident, or amounts payable 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 paid with in time allowed. Such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid	All assessees
40(*a*)(*ib*)	Sum paid on account of securities transaction tax and fringe benefit tax	All assessees
40(*a*)(*ii*)	Rate or tax levied on the profits or gains of any business or profession (Indian Income as well as foreign income, relief claimed under 90 &91)	All assessees
40(*a*)(*iia*)	Wealth-tax paid	All assessees
40(*a*)(*iii*)	Salaries payable outside India, or in India to a non-resident, on which tax has not been paid/deducted at source	All assessees as employers
40(*a*)(*iv*)	Payments to provident fund/other funds for employees benefit for which no effective arrangements are made to secure that tax is deducted at source on payments made from such funds which are chargeable to tax as salaries	All assessees as employers
40(*a*)(*v*)	Tax actually paid by an employer referred to in section 10(*10CC*)	All assessees as employers
40(*b*)	Interest, salary, bonus, commission or remuneration paid to partners (subject to certain conditions and limits)	Firms
40(*ba*)	Interest, salary, bonus, commission or remuneration paid to members (subject to certain conditions and limits)	AOP/BOI (except a company or a co-operative society &, society
40A(2)	Expenditure involving payment to relative/director/	All assessees

	partner/substantially interested person, etc., which, in the opinion of the Assessing Officer, is excessive or unreasonable refer note below	
40A(3)	Payments exceeding Rs. 20,000 made otherwise than by crossed cheque/bank draft entire amount exceeding 20000 full amounts disallowed, wef Ay 09-10 limit of 20000 is to be considered for all the bills per day subject to certain exceptions. refer note below – In case of payment to transporter the limit is Rs.30,000/-	All assessees
40A(7)	Any provision for payment of gratuity to employees, other than a provision made for purposes of contribution to approved gratuity fund or for payment of gratuity that has become payable during the year (subject to specified conditions)	All assessees as employers
40A(9)	Any sum paid for setting up or formation of, or as contribution to, any fund, trust, company, AOP, BOI, Society or other institution, other than recognised provident fund/approved superannuating fund/approved gratuity fund	All assessees as employers

Deductibility of Expenditure where TDS not deducted/ not paid u/s 40 (a)

As per the amendment now tds deducted during the previous year (all 12 months) can be paid on or before of due date of filing of return of income to avail deduction. The provision with regard to deductions made from April to February to be paid during the previous year has been removed.

The persons where the payment under the section 40 A (2) will attract

SN	Type of Assessee	Person whom the payment made- cover
1	Individual	Any relative of the individual/Any person where such individual has substantial interest
2	HUF	Any member of HUF Any relative of the such member/Any person where HUF has substantial interest
3	Firm	Any partner/ Any relative of the partner/Any person where such firm has substantial interest
4	AOP/BOI	Any member/ Any relative of the member/Any person where such AOP BOI has substantial interest
5	Company	Any Director Any relative of the Director/Any person where such Company substantial interest

Any Assessee

- To an individual who has substantial interest in the business of assessee or relative of such individual

- To an Company which has substantial interest in the business of assessee or to director or relative of such Director
- To Firm/AOP/HUF which has substantial interest in the business of assessee or to partner, member of Firm/AOP/HUF or relative of such partner, member
- To an Company where any one director has substantial interest in the business of assessee or payment made to director or relative of such Director
- To Firm/AOP/HUF where any partner, member of Firm/AOP/HUF has substantial interest in the business of assessee or or payment made too partner, member or relative of such partner, member

Meaning of Substantial interest:

- a person shall be deemed to have a substantial interest in a business or profession if such person is beneficially owner
- (a) in case of Company at least 20% of equity capital at any time during the previous year
- (*b*) in any other case, at least 20% of Profits of the business in concern at any time during the previous year

Meaning of Relative

- In case of Individual spouse brother sister any lineal ascendant or descendant

Cases and circumstances in which payment in a sum exceeding Rs. 20000/- may be made otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft. 40 A(3) -Rule 6DD

S No	Persons to whom the Payment can be made
1	RBI/SBI and its Subsidiaries a or any banking company
2	Any co-operative bank or land mortgage bank/ primary agricultural credit society
3	Any public Financial institutions such as LIC, IDBI, UTI, SFC etc/Govt.
4	Payment made in pursuance in respect of any contract entered into by the assessee before the 1st day of April, 1969
5	Where the payment is made through Bank by outside India by LOC, TT, Bill of Exchange, and Account transfer
6	Where the payment is made for the purchase of agricultural or forest produce, the produce of animal husbandry (including hides and skins) or dairy or poultry farming, fish or fish products the products of horticulture or apiculture or to the cultivator, grower or producer of such articles, produce or products
7	Where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;
8	Where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;
9	Where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;
10	Where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;
11	Where the payment is made by an assessee by way of salary to his employee after deducting TDS, and when such employee—
	(*A*)Is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and

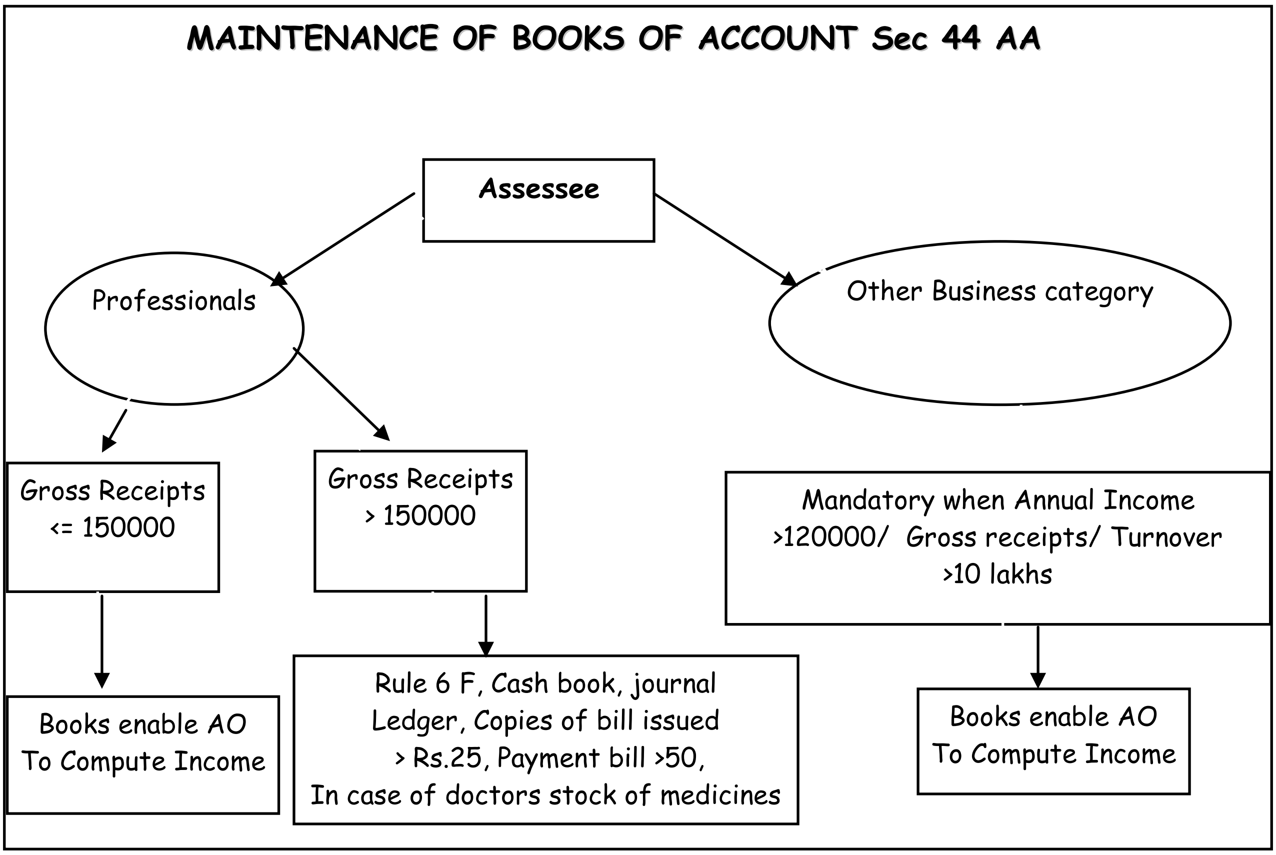
(*B*) Does not maintain any account in any bank at such place or ship;

12 Where the payment is made by an authorised dealer or a moneychanger against purchase of foreign currency or travelers' cheque in the normal course of his business.

13 Where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person

14 Where the payment is made to an employee of the assessee or the heirs of any such employee towards termination/retirements/death benefits if the income chargeable under the head "Salaries" of the employee in the immediately preceding financial year did not exceed Rs. 7,500

MAINTENANCE OF BOOKS OF ACCOUNT SECTION 44 AA –



Profession include, legal, medical, engineering, architecture, accountancy or technical consultancy and film artists

Period which books should be retained
Books and documents –at least 6 years
Cash book and leder-at least 16 years

Certain deductions to be only on actual payment Sec 43 B.

The following payments will be allowed only if they paid in previous year or paid with in time allowed for filing of Return of Income

(*a*) tax, duty, cess or fee, by whatever name called, under any law

b) employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees,

©Any sum towards Bonus/Commission paid

(*d*) Any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State financial corporation or from scheduled bank. **If any sum payable by the assessee as interest on any loan or advance is converted into a loan or advance, the interest so converted, shall not be deemed as actual payment.**

(e) Leave salary

If the above payments or not paid in previous year or not paid with in time allowed for filing of Return of Income they will be allowed as deduction in the year of payment

Compulsory audit of accounts Sec 44 AB

Every person carrying on business shall, if his total sales, turnover or gross receipts in business exceed Rs. 60,00,000 and In the case of a person carrying on a profession if his gross receipts in profession exceed Rs. 150,00,000 in any previous year, get his accounts of such previous year audited by a Chartered Accountant before the specified date and furnish by that date the report of such audit in the prescribed form, duly signed and verified, by such accountant.

- Specified date is 30th September of the relevant assessment year

Report of the audit
The audit report required to be furnished under Section 44AB is to be sent as under:

- In the case of a person who carries on business and who is required by or under any other law to get his accounts audited, in Form No. 3CA.
- In the case of a person who carries on business, but not being a person referred to above, in Form No. 3CB.
- In the case of a person who carries on profession, is in Form No. 3CC.

The particulars, which are required to be furnished along with, the audit report, should be in the following format: -

- In the case of person carrying on business, be in Form No. 3CD.
- In the case of person carrying on profession, be in Form No. 3CE

Taxation of specific businesses –Presumptive tax basis

Sec 44 AD Income of assesse carrying business of Civil construction/any business other than running /plying of Vehicles under section 44 AE-

Conditions - The provisions of section 44AD will be applicable only if the following conditions are satisfied –

1. Eligible assessee- **individual, HUF, a partnership firm (not being a limited liability firm) who is a resident**
2. The assessee has not claimed any deduction under section 10A,10AA, 10B, 10BA, 80HH to 80RRB in the relevant assessment year.
3. Eligible business – The assessee should be engaged in any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE.
4. Turnover- Total turnover/ gross receipt in the previous year of the eligible business should not exceed 60 lakh.

Consequences if the above all conditions are satisfied - the income from the eligible business is estimated at 8 % f the gross receipt or total turnover.

Other points

1. The assessee can voluntarily declare a higher income in his return.
2. All deductions under sections 30 to 38, including depreciation and unabsorbed depreciation, are deemed to have been already allowed and no further deduction is allowed under these sections. However, in the case of a firm, the normal deduction in respect of salary and interest to partners under section 40(b) shall be allowed. The written down value is calculated, where necessary, as if depreciation as applicable has been allowed. Moreover, it will be assumed that disallowance, if any, under sections 40, 40A and 43B has been considered while calculating the estimated income @ 8 per cent.
3. An assessee opting for the above scheme shall be exempted from payment of advance tax related to such business.
4. An assessee opting for the above scheme shall be exempted from maintenance of books of account related to such business as required under section 44AA.

Declare Lower Income- A taxpayer can declare his income to be lower than the deemed profits and gains of 8% as stated above. The following consequences are applicable if the taxpayer declares his income which is lower than the deemed profits and gains as stated above-

1. The taxpayer will have to maintain the books of account as per section 44AA (irrespective of income or turnover) if his total income exceeds the exemption limit.
2. The taxpayer will have to get his books of account audited under section 44AB (irrespective of turnover) if his total income exceeds the exemption limit.

Sec 44 AE	**Income of assessee carrying business of , running, plying, hiring of Vehicles**

Section 44AE is applicable only if the following conditions are satisfied –

1. The taxpayer may be an individual, HUF, AOP, BOI, firm, company, co-operative society or any other person. He or it may be a resident or a non-resident.
2. Taxpayer is engaged in the business of plying, hiring or leasing goods carriages.
3. The taxpayer owns not more than 10 goods carriages at any time during the previous year. For this purpose, a taxpayer, who is in possession of a goods carriage, whether taken on hire purchase or on installments and for which the whole or part of the amount payable is still due, shall be deemed to be the owner of such goods carriage.

When all the above conditions are satisfied , income to be calculated on estimated basis as below

Type of goods carriage	Estimated Income
Heavy goods vehicle	Rs. 5,000 for every month (or part of a month) during which the goods carriage is owned by the taxpayer.
Other than heavy goods vehicle	Rs. 4,500 for every month (or part of a month) during which the goods

Deduction of Certain Expenses in case of Reorganization of Cooperative banks Sec 44DB

This section provides the manner in which the deduction under the following sections are to be allowed in a case where business reorganization of a cooperative bank has taken place during the financial year –
(1) Section 32 (Depreciation);
(2) Section 35D (Amortisation of certain preliminary expenses);
(3) Section 35DD (Amortisation of expenses in case of amalgamation or Demerger);
(4) Section 35DDA (Amortisation of expenditure incurred under voluntary retirement scheme).
For example

- Cooperative Bank A amalgamated with Cooperative Bank B as on 31.12.2007.
- Deduction allowable for the preliminary expenses will be Rs. 36600 in a previous year.
- The deduction available to Bank A = 36600 x 275/366 =27500
- The deduction available to Bank B = 36600 x 91/366 =9100

Business reorganisation means the reorganisation of business involving the amalgamation or Demerger of a co-operative bank with other Cooperative bank

Amount of deduction will be allowable for the above expenses will be based on the prorata of No of days during the previous year to Predecessor Bank and Successor Bank
For example
Cooperative Bank A amalgamated with Cooperative Bank B as on 31.12.2007.
Deduction allowable for the preliminary expenses will be Rs. 36600 in a previous year.
The deduction available to Bank A = 36000 x 275/366 =27500
The deduction available to Bank B = 36000 x 91/366 =9100
To consider it is an Amalgamation or Demerger the prescribed conditions that transactions not regarded as transfer under section 47 has to be complied.

Method of accounting Sec 145.

Applicable Only for heads of income of PGBP, IFOS

•Computation of Income as per Method of accounting regularly employed by the assessee and as per Accounting Standards notified by Assessee

•Accounts should be maintained either on mercantile basis or cash basis. Hybrid i.e. mixed system is not permitted. [In cash system, income or expenditure is considered only when it is actually received / paid. In mercantile system, income/expenditure is considered on accrual and payable basis. Actual receipt or payment may occur in subsequent financial year and may not happen in that particular year.

•Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting or accounting standards as notified have not been regularly followed by the assessee, the Assessing Officer may make best of judgment assessment**.**

Notified Accounting Standards for sec 145-

•Accounting Standard 1- Disclosure of Accounting policies

•Accounting standard 5- Prior period and extraordinary items

Heads of Income	Relevance of Method of Accounting
Salaries	1. Taxable on **due basis or on receipt basis,** whichever is earlier. 2. Method of accounting is **irrelevant.**
House Property	1. Income from house property is **taxable** only on **accrual basis.** 2. Method of accounting is **not relevant.**
Business Income	1. U/s 145 assessee may follow either **Cash or Mercantile system** of accounting **regularly employed** by the assessee. Subject to sec 43 B, where certain expenses are allowed only on payment.
Capital Gains	1. The method of accounting is not relevant for taxing the income under the head capital gains. 2. Income from capital gains shall be taxable during the previous year Capital Gains in which the Capital Asset is transferred and in certain cases taxability in the years receipt of consideration/year of stock sold
Other Sources	U/s 145 assessee may follow either on **Cash or Mercantile system** of accounting **regularly employed** by the assessee.

Method of accounting in certain cases. Sec 145 A

Applicable to Inventory of PGBP

Income should be arrived

•(a) In accordance with the method of accounting regularly employed by the assessee; and

•(b) Further cost to be adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation.

Computation of Business income from the Profit & Loss A/c/ Income and expenditure A/c

Detail	*Rs.*	*Rs.*
Balance as per profit and loss (P&L Ale) or income and expenditure account (I&E *Ale)*		xxx
Add:		
1 Expenses expressly disallowed/not allowed but debited	xxx	
2 Incomes or receipts taxable under this head but not credited	xxx	
3 Capital expenses/personal expenses debited	xxx	
4 Losses not allowed but debited	xxx	
5 Expenses not relating to the previous year but debited/	xxx	
6 Expenses relating other heads of income		
7 Under-valuation of closing stock or over-valuation of opening stock	xxx	xxx
		xxx
Less. :		
8. Expenses expressly allowed but not debited	xxx	
9 Expenses relating to the previous year but not debited	xxx	
10. Losses allowed but not debited	xxx	
11. Incomes or receipts not taxable under this head but credited		
12. Capital receipts credited .	xxx	

13. Incomes or receipts taxable under other head but credited	xxx	
Over-valuation of closing stock or under-valuation of opening stock	xxx	xxx
Profits/Income taxable under the head 'Profits and gains from business or profession'		xxx

Computation When Receipt & Payment Account is given or Cash A/C is given

1	Check the debit side and consider for only revenue receipts exclude capital receipt.
2	Check credit side and consider for only those revenue expenses, which are pertaining Business/profession and incurred exclude capital expenditure
3	Check the notes given and adjust the amount expenses and income
4	Net Business/ Professional Income = Adjusted income (-) Adjusted expenses

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Chapter 7 CAPITAL GAINS

Meaning of Capital Asset u/s 2 (14)

'Capital Asset' means property of any kind held by assessee i.e., movable, immovable, Tangible or intangible asset; whether or not connected with his business or profession. But does not include

1. Stock –in-trade, consumable stores or raw materials held for the purpose of business or profession.
2. Person effects of moveable nature (other than jewellery, archeological collections, Paintings. Drawing, sculptures and work or any art) viz. wearing apparel, furniture, motor vehicles etc. held for personal use of the assessee or his family. Jewellery archeological collections, Paintings. Drawing, sculptures and work or any art is a capital asset.
3. Agricultural land not situated in specified area. Specified area means area situated within the jurisdiction of a municipality or a cantonment board having population of 10,000 or more or land situated within 8 kilometers from the local limits of any municipality or cantonment board.
4. Special Bearer Bonds, 1991.
5. 6.5% Gold 1977 or 7% Gold Bonds, 1980 or National Defense Bonds, 1980.
6. Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999.

EXAMPLE for CAPITAL ASSETS.

Lease right, Controlling interest in a company, Foreign currency, Goodwill. License for manufacturing, Leasehold right in mines, Right to subscribe for shares – Right of Management, Right to obtain conveyance of immovable property, Right of tenancy, Right in managing agency, Route Permits, Share of a partner in an firm, Gold, silver coins and bars used for pooja etc

Meaning of Transfer As per Sec. 2 (47), transfer includes:
i) Sale or exchange or Relinquishment of the asset;
ii) Extinguishment of any right s in the assets;
iii) Compulsory acquisition under law;
iv) Conversion of capital asset into Stock – in – trade;
v) Handing over the possession of an immovable property (part performance of contract
vi) Transactions involving transfer of membership of a group housing society, company etc., which have the effect of transferring of membership of a group housing society, company etc., which have the effect of transferring enjoyment of any immovable property or any right therein;

Transfer also includes

(i) Distribution of asset on dissolution of a firm / BOI / AOP.

(ii) Transfer of a capital asset by a partner or member to the firm / AOP, by the way of capital contribution or otherwise.

(iii) Transfer under a gift or an irrevocable trust of shares, debentures or warrants allotted by a company directly or indirectly to its employees under the Employees Stock Option Plan or scheme of the Company as per Central Government Guidelines (Guidelines in this respect have been notified vide Notification No. 323 / 2001)

The following tabulation will provide clear picture about chargeability of capital gains . Sec 45

Sub Section	Transaction	Year of Chargeability	Consideration
(1)	Transfer of a capital asset	Previous year in which transfer takes place	Consideration for the transfer.
(1A)	Damage to or destruction of any capital asset	Previous year in which money or other asset is received from the insurance company	The value of money or the fair market value of other assets on the date of such receipt
2	Conversion of capital asset into stock –in- trade.	Previous year in which stock –in-trade is sold	Fair Market value as on the date of conversion
(2A)	Transfer of securities made by the depository who is deemed to be the registered owner under the Depositories Act, 1996.	Previous year in which transfer takes place on first –in first –out (FIFO) method.	Consideration for the transfer. Chargeable in the case of the beneficial owner and not in the case of the depository.
(3)	Transfer of capital asset by a partner to the firm or by a member to the AOP or BOI.	Previous year in which transfer takes place.	The value of the asset recorded in the books of the firm or AOP or BOI.
(4)	Transfer of a capital asset by way of distribution on dissolution or otherwise of a firm or AOP or BOI.	Previous year in which transfer takes place.	Fair market value as on date of transfer.
(5)	Transfer of a capital asset by way of compulsory acquisition under any law.	Previous year in which compensation is received	The initial compensation or enhanced compensation as the case may be
(6)	Repurchase of mutual fund units referred to in the Sec. 80CCB.	Previous year in which the repurchase takes place or the scheme terminates.	Repurchase price Difference between repurchase price and amount invested shall be deemed as capital gain.

Notes:

1. While computing Capital Gains in respect of enhanced compensation. Cost of acquisition and cost of improvement shall be taken as 'Nil' if the legal heir of the deceased person from whom the asset was acquired receives the compensation, the recipient shall be chargeable to tax.
2. Where the initial or additional compensation received was reduced by tribunal or Court or any other authority, such assessed capital gains of that year shall be recomputed taking the reduced compensation as full value consideration.

Distribution of assets by companies in liquidation (Sec 46)

(1) When assets are transferred by way of *distribution to the* ***shareholders*** of a company on account of liquidation, such distribution shall not be regarded as transfer in the case of the company.

(2) In the case of shareholders of the company, capital gains be chargeable to tax on such distribution For the purpose of computation of Capital gains, the Consideration shall be determined as follows:

(a) Distribution in Cash: Amount received less deemed dividend u/s.2 (22) (c) :

(b) Distribution in kind: Fair market value of the asset on the date of distribution less deemed dividend u/s 2(22) (c)

1.It is very important to note in the Section 46, the term Asset was used and not Capital Asset 2. Capital gains will not charge to tax in case of Company only distribution of assets to Shareholders only. Transfer of Capital assets to others on liquidation will attract Capital gains tax.

Sec. 46A- Capital Gains on purchase by company of its own shares or other specified securities (Buyback of Shares).

Chargeable in the hands of share holder

The difference between the cost of acquisition and the value of consideration received by the shareholder shall be deemed to be the capital gains arising to such other specified amenities.

TRANSACTION NOT REGARDED AS TRANSFER (SEC .47)

Transfer of Capital asset by a company; to its shareholders; on its liquidation. then such a distribution is not treated as a 'transfer" in the context of Company.

Any distribution of capital asset by a Hindu undivided family; on total or partial partition of the family is not treated as a "transfer"

If a capital asset is transferred in under gift under will; or under an irrevocable transfer it is not regarded as transfer.

EXCEPTION – The aforesaid rule is not applicable, if the following conditions are satisfied

a. Taxpayer is an employee and he has been allotted (directly or indirectly) shares/ debentures / warrants by the employee company under a notified Employees' Stock Option Plan / Scheme in accordance with the guideline issued by the Central Government ; and
b. the aforesaid shares/ debentures / warrants are gifted by the concerned – employee to any person.

Ie in the above two cases it is treated as transfer.

Transfer of Capital asset by holding company to wholly owned subsidiary and viceversa provided transferee Company is an Indian Company.

Capital asset is transferred in a scheme of amalgamation by the amalgamating company to the amalgamated company, provided Amalgamated Company is Indian Company

Transfer of Capital asset by demerged company to the resulting company provided resulting Company is an Indian Company

Transfer of capital asset being a shares in Indian Company, transferred by one foreign company to other foreign Company in the scheme of amalgamation, subject to condition that

Condition 1	Persons holding at least 25 per cent (in value) shares in the amalgamating foreign company should become shareholders in the amalgamated foreign company.
Condition 2	The above transaction does not attract tax on capital gains in the country in which the amalgamating company is incorporated.

Transfer of capital asset being a shares in Indian Company, transferred by one foreign company to other foreign Company in the scheme of Demerger subject to condition that

Condition 1	Persons holding at least 75 per cent (in value) shares in the amalgamating foreign company should become shareholders in the amalgamated foreign company.
Condition 2	The above transaction does not attract tax on capital gains in the country in which the amalgamating company is incorporated.

Issue of shares in case of Demerger, by resulting company to demerged company in the scheme of Demerger

In case of Amalgamation of two Companies, shares allotted by amalgamated Indian company to Shareholders of amalgamating company in consideration of surrender of shares

Transfer of Capital asset being foreign currency convertible bonds or Global Depository Receipts by one non resident to another non resident, when transfer made outside India

Capital being any work of art, archaeological, scientific or art collection, book, manuscript drawing, painting, photograph or print transferred to he Government or a University or the National Museum, National Art Gallery etc.,

Capital asset being is bonds or debentures or debenture stock or deposit certificate in any form of a company converting in to shares or debentures of that company (the company may be Indian company or foreign company)
It may be noted that conversion of preference shares into equity shares is treated as "transfer".

Transfer of land by sick industrial company managed by it workers when such transfer made as per scheme prepared by BIFR

Transfer of Capital Asset in case of Conversion of Capital asset in case of conversion of firm in to Company subject to following conditions

Condition 1	All the business assets and liabilities of the firm / AOP / BOI immediately before conversion are taken over by the company.
Condition 2	All the partners of the firm immediately before conversion become the shareholders of the company
Condition 3	The partners of firm become share holders in the company in the same proportion in which their capital accounts stood in the books of the firm on the date of the conversion
Condition 4	The aggregate of the shareholding in the company of the partners of the firm is not less than 50 per cent of the total voting power in the company and their shareholding continues to be as such for a period of five years from the date of the succession.

TRANSFER OF A CAPITAL ASSET, BEING A MEMBERSHIP RIGHT HELD BY A MEMBER OF A RECOGNISED STOCK EXCHANGE IN IND

Condition 1	Capital asset is membership right held by a member of a recognized stock exchange in India.
Condition 2	It is transferred for acquiring shares and trading / clearing right in the stock

	exchange in accordance with a scheme (approved by SEBI) for demutualisation or corporation of stock exchange.

Any transfer of a capital asset or intangible asset by a private company or unlisted public company to a LLP or any transfer of a share or shares held in a company by a shareholder on conversion of a company into a LLP in accordance with section 56 and section 57 of the Limited Liability Partnership Act, 2008, shall not be regarded as a transfer for the purposes of levy of capital gains tax under section 45, subject to fulfillment of certain conditions, namely:

(i) the total sales, turnover or gross receipts in business of the company should not exceed Rs.60 lakh in any of the three preceding previous years;

(ii)the shareholders of the company become partners of the LLP in the same proportion as their shareholding in the company;

(iii)no consideration other than share in profit and capital contribution in the LLP arises to the shareholders;

(iv) the erstwhile shareholders of the company continue to be entitled to receive at least 50% of the profits of the LLP for a period of 5 years from the date of conversion;

(v) all assets and liabilities of the company become the assets and liabilities of the LLP; and

(vi)no amount is paid, either directly or indirectly, to any partner out of the accumulated profit of the company for a period of 3 years from the date of conversion.

TRANSFER OF A CAPITAL ASSET IN THE CASE OF CONVERSION OF PROPRIETARY CONCERN INTO A COMPANY {SEC. 47 (ixv)} - Conditions to be fulfilled:

Condition 1	A sole proprietary concern is converted into a company
Condition 2	All the business assets and liabilities of the sole proprietary concern immediately before conversion is taken over by the company
Condition 3	The sole proprietor receives any consideration or benefit directly or indirectly, in any form or manner only by way of allotment of shares in the company.
Condition 4	The shareholding of the sole proprietor in the company is not less than 50 per cent of the total voting power in the company and shareholding shall continue to so remain for a period of five years from the date of the succession

Any transaction of transfer of capital asset on reverse mortgage as notified by Central government scheme. (WEF AY 09-10

Conversion of bonds referred in sec 115 AC(1)(a) in shares or bonds of that company WEF AY 09-10. Bonds referred in 115AC(1)(a) is bonds of Indian company or bonds issued by public sector company purchase in foreign currency

TRANSFER INVOLVED IN SCHEME OF LENDING OF SECURITIES

Any transfer involved in a scheme for lending of any securities under an agreement or arrangement subject to the guidelines issued by the SEBI or RBI in this regard, which the assessee has entered into with the borrower of such securities is not treated as "transfer"

CBDT Circular:

Lending of shares etc. under Securities Lending Scheme
Transaction of lending of shares or any other security under the Securities Lending Scheme would not result in 'transfer' – *Circular: No. 751, dated 10-2-1997.*

Sec. 47A – Withdrawal of exemption

1. In case of e transfer of a capital asset from the holding company to the subsidiary company or vice- versa was exempt from capital gains if any of the following events occur within a period of 8 years from the date of transfer, the capital gains so exempted would be **chargeable to tax in the year in which the transfer took place-**
   i) The holding company or its nominee ceases hold whole Share capital of Subsidiary company.
   ii) The transferee company converts or treats the capital asset into / as stock –in-trade

   In the case of a transaction between holding company and subsidiary company, the following additional points need to be borne in mind:
   a) If the provisions of section 47A are applicable to a transfer, then the assessment year relevant to the previous year in which original transfer took place u/s 155 (7B). To amend the order so as to charge the capital gains to tax.
   b) If the transferee company subsequently sells the asset without attracting the previsions of section 47A, then for computation of capital gains the cost to the transferor company shall be adopted as cost to the transferee company – sec. 49(1).
   c) If the asset is sold after attracting the provisions of section 47-A, then the cost of the transferee company shall be the actual cost incurred by that company to acquire the asset from the transferor company – sec. 49(3)

2. The capital gain arising on transfer of a capital asset in the nature of membership of recognized stock exchange exempted by virtue of sec. 47, shall be chargeable to tax if the shares allotted to the transferor in exchange thereof are transferred before the expiry of a period of 3 years. The capital gain shall be deemed, in such a case, as the income chargeable during the **previous year in which the shares are transferred.**

3. If the conditions stipulated regarding the succession of a proprietary concern or a firm by a company are not complied with, the benefits availed by the sole proprietor or the firm, as the case may be, shall be deemed to be profit and gains of the successor company chargeable to **tax in the year in which infringement takes place.**

4. If subsequent to the conversion of a company into an LLP, any of the conditions laid down in section 47 are not complied with, the capital gains not charged under section 45 would be deemed to be chargeable to tax in the previous year in which the conditions are not complied with, in the hands of the LLP or the shareholder of the predecessor company, as the case may be.

Long term Capital Asset and Short term Capital Asset

The Capital Asset will be treated as long term Asset or Short term Asset depending upon the period of holding as below

Types of Capital Assets	Period of Holding	Treated as
Shares of a Company, Units of Mutual fund, Listed Securities and Zero Coupon Bonds	12 months or less	Short term Capital Asset
	More than 12 months	Long term Capital Asset
Other Assets	12 months or less	Short term Capital Asset
	More than 12 months	Long term Capital Asset

Note

1. In case of Depreciable asset forming part of block of asset will shorterm capital asset irrespective of period of holding
2. In case of slump sale assets will be treated as shorterm or long-term depending upon the period of existence of undertaking and not on the basis of period of asset holding.

DETERMINATION OF PERIOD OF HOLDING

Sl. No.	Situation	Period of holding
1.	In case of a share Held in a Company in Liquidation	The period subsequent to the date of liquidation shall be excluded.
2	In case of a Capital Asset That Becomes the Property of the Assessee in the Circumstances U/s 49 (1)	The period for which the preceding owner held the asset shall be included.
3	In case of Shares Held in an Amalgamated Indian Company	The period for which the shares in amalgamating company were held, shall be included
4	In case of a share or any other Security, Subscribed to under a Right Issue	The period shall be reckoned from the date of its allotment
5	In case of Capital Asset, Being the Right to Subscribe to a Share or Any Other Security, which is Renounced in Favour of any other person	The period shall be reckoned from the date such right is offered by the issuing company
6	In case of sweat equity shares issued by employer to the employee at free or concessional rate (ESOPS)	The period shall be reckoned from the date of allotment of such shares.
7	In case of Bonus shares or other securities by way of Bonus	The period shall be reckoned from the date of allotment of such bonus or security.
8	In case of shares in a Resulting company Received under a Scheme of Demerger	The period for which the assessee held the shares in the demerged company shall also be included.
9	In case of trading or clearing rights of a recognized stock exchange in India acquired by a person under its demutualization or corporatisation	The period for which such person was a member of the exchange shall also be included
10	In case of equity shares in a company allotted under demutualization or corporatisation of a recognised stock exchange in India.	The period for which such person was a member of the exchange shall also be included.
11	Transfer of security by depository	The period of holding shall be determined on FIFO method
12	Securities Transacted through Stock Exchanges	Date of Broker note provided delivery of

		shares is made
13	Securities takes place directly between parties without Stock Exchanges	Date of Contract of sale provided delivery of shares is made.

CBDT Circular on *Securities transacted through stock exchanges*

Circular: No. 704, dated 28-4-1995.

1. When the securities are transacted through stock exchanges, the date of broker's note is to be considered.
2. In case the transactions take place directly between the parties and not through stock exchanges the date of contract of sale as declared by the parties shall be treated as the date of transfer provided it is followed up by actual delivery of shares and the transfer deeds.
3. Where securities are acquired in several lots at different points of time, the First-in-first-out (FIFO) method shall be adopted, in cases where the dates of purchase and sale could not be correlated through specific numbers of the scripts.

COST OF ACQUISITION OF AN ASSET

Cost of Acquisition in Different Cases (Sec 49, 50, 51 & 55)

Sl No.	**Section**	**Nature of Asset and Cost of Acquisition**
1	Sec. 49 (1)	*Assets Acquired without Paying Price* In case of asset is received by way of transfer under partition of HUF, under gift or will, under succession or inheritance, under revocable or irrevocable trust or by a parent company from subsidiary company- The Cost will be the Cost at which Assets were Acquired by Previous Owner (+) Cost of any Improvement
2	Sec. 49 (2)	*Shares of Amalgamated Company* The cost of shares of amalgamated company shall be the cost of acquisition of shares of amalgamating company. The same principle will apply in case of amalgamation of cooperative banks
3	Sec. 49 (2A)	Cost of acquisition of shares or debentures in a company, received on conversion of debentures, debenture- stock or deposit certificate. In that company, shall be the cost of acquisition, to the assessee of such debenture, debenture – stock or deposit certificate.
4	Sec 49 (2AAA)	If a shareholder of a company receives rights in a partnership firm as consideration for transfer of shares on conversion of a company into a LLP, then the cost of acquisition of the capital asset being rights of a partner shall be deemed to be the cost of acquisition to him of the shares in the predecessor company, immediately before its conversion
5.	Sec 49(2AB)	In case of ESOP securities transferred by employee The cost of acquisition shall be the fair market value which has been taken into account for the purpose of computing the value of fringe benefits in the hands of the employer.
6.	Sec 49(2AC)	In case of Demerger. The cost of acquisition will be 1.NBW of Assets Transferred x Original cost of share" NW of demerged company. The above set 1 amount will be cost of shares of resulting company. 2. Original cost of shares - step 1 amount = cost of shares in demegered company.

		The same principle will apply in case of Demerger of cooperative banks
7.	Sec. 50	**Depreciable Assets** The cost of acquisition will be opening WDV of block + actual cost of assets acquired during the year.
8.	Sec. 50(A)	In case of depreciable assets being power generating unit Cost of acquisition will be WDV of asset – Terminal depreciation + Balancing charge.
9	Sec. 50 (B)	In case of slump sale cost of acquisition will be net worth of the undertaking.
10	Sec. 51	**Forfeited Advance Money** It is to be deducted from cost of acquisition. **If cost is Unascertainable** Fair market value (FMV) as on date of acquisition is to be taken as cost of acquisition**.**
11	Sec .55	***Option of FMV as on 01-04-1981:*** *if Acquisition is Made Before 01-04-1981.* Cost of Asset or FMV as on 01-04-1981 at the option of assessee
12	Sec 55(2) (v)	*In case of conversion, recon version, division, sub-division of shares in to stock is vice versa. Cost of Shares.* The cost of acquisition will be the cost at which original shares were acquired.
13	Sec. 55 (2) (aa) (iii-a)	*Bonus Shares* cost of acquisition Nil
14	Sec, 55(2) (a)	*Goodwill* If purchased, its purchase price. If it is self generated then its cost of acquisition shall be Nil.
15	Sec. 55(2) (a)	*Right to Manufacture, produce or process any article or thing or right to carry on any Business. Tenancy Right Route Permits or Loom Hours* The amount of purchase price. In case of Sec. 49 (1) , the cost for which the previous owner had acquired such asset, otherwise Nil.
16	Sec. 55 (2) (a)	*Trade Mark or Brand Name Associated with a Business* its cost of acquisition shall be deemed to be nil where it is self generated, or the price paid for its acquisition where it is acquired from a previous Owner.
17	Sec. 55(2) (aa)	*Right Shares* For Original Owner Amount actually paid the assessee. For any other person in whose favour the right is renounced Amount paid for purchasing the right entitlement (+) The cost of Right shares or security**.**
18	Sec. (55 (2) (ab)	Shares Acquired under Demutualisation or Corporation of Stock Exchange Where the equity shares have been acquired under a scheme for Demutualisation or corporation of a recognized stock exchange in India, the cost of acquisition of such shares shall be the cost of acquisition of his original membership of the exchange. However, cost of any trading or clearing rights shall be deemed to be nil.

Sec. 48 : Mode of Computation

The mode of computation of capital gain is clear in the following chart.

Short – Term Capital Gains

Sl. No.	Details	Rs.	Rs.
1.	Full value of consideration i.e., sale or transfer price of short – term capital assets Less: (i) Expenses incurred wholly and exclusively for such transfer. (ii) Cost of Acquisition (iii) Cost of Improvement *Gross Capital gains* *Less: Exemptions u/s 54-B, 54-D and 54 G 54 G A, if any* *Taxable capital gains*	xxx Xxx Xxx	XXX xxxx xxx xxx Xxx
2 Tax	Short-term Capital gains is taxable at normal rate because it is a forming part of Gross total income		

Long – Term Capital Gains

Sl.No	Details	Rs.	Rs.
1.	Full value of consideration i.e., sale or transfer price of long – term capital assets Less: Expenses incurred wholly and exclusively for such transfer. Net Consideration Less: Index Cost of Acquisition Index Cost of Improvement *Gross Capital gains* *Less: Exemptions u/s 54, 54-B, 54-D and 54 EC , 54 F, 54-G 54 G A,* if any	Xxx Xxx	XXX XXX --------- XXX XXX
	Taxable capital gains		XXX
2 Tax	Long – term Capital gains will be separately Taxable @20% Deduction under sec. 80C to 80U and is not available in respect of L.T.C.G.,		

In Computing Capital gain No deduction will be available in respect of any sum paid on account of **Securities transaction tax**

Transfer Expenses

Transfer expenses include brokerage paid for arranging the deal, legal expenses incurred for preparing conveyance deed and other documents, cost of inserting advertisement in newspapers for sale for the asset and commission paid to auctioneer. However, it is necessary that the expenditure should have been incurred wholly and exclusively in connection with the transfer.

Formula to get Indexed Cost of Acquisition

Sl. No.	Detail
1.	*In the case where the assets is acquired before April 1, 1981* $$\text{Indexed cost inflation Cost of acquisition} = \frac{\text{Fair market value of asset on Apri; 1, 1981 or the cost of acquisition (which is more)}}{100} \times \text{index of the year of transfer}$$
2.	*In the case where the asset is acquired after April 1, 1981* $$\text{Indexed cost inflation Cost of acquisition} = \frac{\text{Cost of acquisition of the asset}}{\text{Cost inflation index of the year of acquisition}} \times \text{index of the year of transfer}$$
Explanation: Year of transfer - means the year in which the asset is transferred Year of acquisition – means the year in which the **asset is acquired, purchased of or constructed etc by assessee.**	

Formula to Get Indexed Cost of Improvement

Sl. No.	Detail
1.	*In the case where the asset is acquired before April 1, 1981* $$\text{Indexed cost inflation Cost of improvement} = \frac{\text{Cost of improvement on or after April 1, 1981}}{\text{Cost inflation index of the year of improvement}} \times \text{Index of the year of transfer}$$
2.	*In the case where the asset is acquired after April 1, 1981* $$\text{Indexed cost inflation of improvement} = \frac{\text{Cost of improvement after the date of acquisition}}{\text{Cost inflation index of the year of acquisition}} \times \text{Cost in Index of the year of transfer}$$
Explanation: Year of improvement - means the year in which improvements in the asset takes place. Year of transfer - means the year in which the asset is transferred. *Important Note:* Cost of improvement made before 01/04/81 is ignored totally.	

Capital Gain in case of Non – Resident Sec (48)

In case of assessee who is a non- resident, capital gain arising on transfer of capital asset being shares or debentures of an Indian Company acquired in foreign currency to be calculated as below.

Capital Gain is to be computed in foreign currency
The amount of capital gain so computed shall be reconverted in to Indian currency.
In computation:
a. For cost of acquisition, expenses on transfer and sale consideration the average telegraphic transfer of selling and buying rate on respective dates to be adopted.
b. For capital gain amount reconversion buying rate of telegraphic transfer as on the date of transfer to adopted.
No indexation benefit is available

CAPITAL GAIN IN CASE OF DEPRECIABLE ASSETS (SEC. 50) As per section 50, computation of capital gain/ loss can be made in the case of transfer of a depreciable asset only in the following two situations.

1.	On the last day of the previous year, written down value of the block of assets is Zero/there is no amount to provide depreciation	50(1)
2.	When the block of assets is empty on the last day of the previous year i.e., all assets in the block was sold during the previous year	50 (2)

COMPUTATION OF CAPITAL GAIN

Step 1	Consider full value of sale consideration of those depreciable assets which have been transferred during the previous year and which fall within the same block of assets.
Step 2	Find out the total of the following
	a. Expenditure incurred wholly or exclusively in connection with such transfer or transfers;
	b. The written down value of the block of assets at the beginning of the previous year, and
	c. The actual cost of any asset(s) failing within the block of assets acquired at any time during the previous year.

If Step 1 is more than Step 2, then the difference is taken as short – term capital gain. Conversely, if Step 1 is LESS than Step 2 it is short-term capital loss

Sec. 50A – Special provision for cost of acquisition in case of depreciable asset being

Assets of an undertaking engaged in generation and distribution of power for which straight line method of claiming depreciation has been opted.

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The following table summarizes the provisions of Sec. 50A

Transfer of Asset	Chargeable amount	Chargeable under the Head
(i) When the consideration is less the actual cost but more than the WDV	Excess of consideration over WDV is treated as Balancing charge	Profits and Gains of Business or Profession
(ii) When consideration is more than the actual cost	Excess consideration over actual cost is treated as Short Term Capital gain	Capital gains
(iii) When consideration is less than the WDV	Shortfall/ Deficit is treated as terminal depreciation u/s 32 in the year of transfer	Profit and Gains of Business or Profession

Special provision for computation of capital gains in case of Slump Sale - Sec. 50B

Slump Sale" means the transfer of one or more undertakings for a lump sum consideration without assigning values to the individual assets and liabilities the determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees, etc., shall not be regarded as assignment of values to individual assets and liabilities.

Calculation of Capital gain

Full value consideration will be the sale price and cost of acquisition will be net worth of undertaking sold

Period of holding

If the existence of undertaking is more than 36 months it is long term capital asset,other wise short term capital asset

However, indexation benefit shall not be allowed.

"Net worth"

Aggregate of value of total assets of the undertaking or division less the value of liabilities of as appearing in its books of account.

Any change in the value of assets on account of revaluation of assets shall be ignored for the purposes of computing the net worth.

The aggregate value of total assets, for this purpose, shall be –

a) In the case of depreciable assets, the written down value of the block of assets
b) In the case of other assets, the book value of such assets.

A report of a Chartered Accountant indicating the computation for the net worth and certifying the correctness of net worth is required to be enclosed along with the return of income.

Other Points

If the gain is long term it will suffer only 20% tax rate u/s 112.
It is possible to plan for exemption under the various applicable sections such as 54EC, 54F if the undertaking is a long-term capital asset.
No indexation benefit in respect of non- depreciable long-term capital assets. .

Full value of Consideration is case of Land or Building or both (Sec 50C)

When value declared by assessee is less than stamp value – stamp value will be full value consideration

If the stamp value is greater than fair market value and if assessee does not prefer for appeal before any court the Assessing Officer may refer the valuation of the Officer. The value determined by the valuation Officer or the value adopted for stamp duty purposes, whichever is less will be Full value Consideration.

Cost of Improvement u/s 55 (1) (b)

An expenditure of capital nature incurred by assessee after acquiring an asset shall be added in cost of acquisition.

If FMV as on 01/04/81 is as cost of acquisition, then while calculating L.T.C. cost of improvement before 01-04-81 will be ignored and shall not be indexed.

Where the capital asset was acquired prior to 1.4.81 either by the assessee or by the previous owner whose cost of acquisition is adopted for computation, the cost of improvement incurred after 1.4.81 only can be taken into account for computation. ***CBDT in Circular No.636 dated 31.8.92*.**

Cost of improvement in respect of: Goodwill of a business; Right to Manufacture, produce any article or thing; and Right to carryon any business shall be taken as nil.

In the following cases Capital gains will be exempt and no capital gains tax will arise. –

1. Transfer of units of UTI. - Sec 10(36)

Transfer of capital asset being Units under UTI 1964 if transfer takes place after 1.4.2002

2.Transfer of Listed BSE 500 Equity Shares - Sec 10 (33)

Capital gain on listed equity shares purchased after 1.3.2003 but before 1.3.2004, (BSE 500 index) if transaction purchase and sale entered through recognized stock exchange in India provided period of holding is more than 12 months.

3.Capital Gain on Transfer of urban Agricultural land - Sec 10 (37)

1. Applicable only to individual or a Hindu undivided family,

2. Any income chargeable under the head "Capital gains" arising from the transfer of agricultural land,(urban agriculture land) where such land is situate in any area situated in a place where population is 10000 or more or Situated in a place a distance of 8 Km from the local limits of municipality

(ii) Such land, during the period of two years immediately preceding the date of transfer, was being used for agricultural purposes by such Hindu undivided family or individual or a parent of his;

(iii) Such transfer is by way of compulsory acquisition under any law, or a transfer the consideration for which is determined or approved by the Central Government or the Reserve Bank of India;

(iv) Such income has arisen from the compensation or consideration for such transfer received by such assessee on or after the 1st day of April, 2004.

Explanation. - For the purposes of this clause, the expression "compensation or consideration" includes the compensation or consideration enhanced or further enhanced by any court, Tribunal or other authority;

4. Long term Capital gain of Equity share/Units - Sec. 10(38)

any income arising from the transfer of a long-term capital asset, being an equity share in a company or a unit of an equity oriented fund will be exempt from tax where—

(a) the transaction of sale of such equity share or unit is entered into on or after the date 1.10.2004

(b) Such transaction is chargeable to securities transaction tax .

Equity oriented fund" means a fund—

(i) where the investible funds are invested by way of equity shares in domestic companies to the extent of more than **65% o**f the total proceeds of such fund; and

(ii) which has been set up under a scheme of a Mutual Fund specified under clause (23D) :

CAPITAL GAINS EXEMPT FROM TAX

1. Capital Gains from Transfer of a Residential House (Sec. 54)

1.To whom this section is Applicable	Individual & HUF's
2. Nature of capital Assets	It is applicable to long term Capital Asset being Residential house property where Income shall be chargeable under the head Income from House property"
3. What to Invest to get exemption Capital	Capital Gains i.e. the amount of Long term

Gains:	
4. Mode of Investment:	1. Amount must be utilized to purchase of new house or Construction of new house
	2.Deposit in capital gain Scheme 1988
5. Time Limit for utilization	1. In case of purchase: One year back or two Years after the date of transfer
	2. In case of construction: with in 3 years from date of transfer)
6.Quantum of exemption	Amount utilised in Purchase or Construction (+) amount deposited in Capital Gains Amount scheme or capital gain which ever is less
7. Other Conditions:	1. No restriction on owning any house
	2. Restriction of 3 years on transfer of new asset or deposited amount (otherwise previously Exempted LTCG shall be taxable).

CAPITAL GAINS FROM TRANSFER OF AGRICULTURAL LAND (Sec. 54B)

1. Applicability:	Individual
2. Nature of capital Assets:	The Asset may be short-term or long-term being agricultural land
3. What to Invest to get exemption:	The amount of Capital Gain
4. Mode of Investment:	1. Purchase of new agricultural land
	2. Deposit in Account
5. Time Limit for Investment:	1. In case of purchase: Two years from the date of transfer
	2. In case of Deposit: Before due date of filing/furnishing the return
6. Quantum of exemption	: Amount utilized in purchasing of new agricultural land (+)amount deposited if any or capital gain which ever is less
7. Other conditions:	Restriction of 2 years on transfer of new agricultural land or utilization of deposit (otherwise taxable) The Agricultural should be used by assessee or his parent for agricultural purposes at least 2 years before the date of transfer

Capital Gains from Compulsory Acquisition of Industrial Undertaking (Sec. 54D)

1. Applicability	All Assessees
2. Nature of Capital Asset:	The Asset may be short-term or Long- term being land building
3. What to Invest to get exemption:	The amount of Capital Gains
4. Mode of Investment:	1. Purchase of any other land building
	2. Construction of any other building
	3. Deposit in Account.
5. Time limit for Investment	1. In case of Purchase: 3 Years from the date of transfer

	2. In case of construction: 3 years from the date of transfer
	3. In case of Deposit: Before due date of furnishing ROI
6. Quantum of exemption	: Amount utilized in purchase of land/building or construction of building (+) amount deposited if any or Amount of Capital Gain which ever is less
7. Other conditions:.	1. Newly acquired land/ building to be used for shifting old unit or setting – up new unit
	2. Restriction of 3 years on transfer of new asset or utilisation of deposit

Exemption Capital Gains for Rural Development and Development of Highways (sec. 54EC)

1. Applicability	All Assessees
2. Nature of capital Asset	The Asset should be **any** Long- term Capital Asset.
3. What to Invest	The amount of capital gain
4. Mode of Investment	Investment in 3 years bonds of National Highways Authority of India and Rural Electrification Corporation Ltd. Maximum ceiling in Investment Rs. 50 lakhs
5. Time Limit for Investment	Within 6 Months
6. Quantum of exemption	Amount of capital gains or investment which ever is less
7. Other Conditions	(i) Not to be transferred within 3 years (otherwise taxable)
	ii) The cost of specified assets which is considered for exemption u/s 54EC, No deduction under any other deduction,

Capital Gains from an Asset Other Than Residential House (Sec. 54F)

1. Applicable	Individuals & HUF's
2. Nature of capital Asset:	The Asset should be Long term Capital Asset other than Residential house
3. What to Invest to get exemption:	**The amount of Net Consideration**
4. Mode of Investment:	1. Purchase of Residential house
	2. Construction of a Residential house
	3. Deposit in A/c
5. Time Limit for Investment:	1. In case of Purchase: One-year back or Two year after.
	2. In case of Construction: Three years forward
	3. In case of Deposit: Before due date of furnishing of ROI
6. Concession to what extent :	**Full net consideration to be invested**, otherwise the exemption will be proportionate as under $\frac{\text{Capital Gains x Cost of New Asset}}{\text{Net consideration}}$.

7. Other Condition : The assessee does not owns more than one residential house, (other than the new asset), on the date of transfer of the original asset, or should not purchase any residential house, (other than the new asset), within one year from the date of such transfer, or constructs any residential house, (other than the new asset), within three years from the date of such transfer; and 2.3 year restriction on transfer of Asset / Utilization of A/c (otherwise taxable).

Capital Gains from Shifting of an Industrial Undertaking from Urban Area to Rural Area (Sec. 54G)

1	To whom it is applicable	All Assessees
2	Nature of capital Asset	The Asset should be Plant, Machinery, Land, building and right in land or Building

3	What to Invest to get exemption	The amount of capital gains
4.	Mode of Investment	Investment in P & M , L & B and expenses as per scheme and Deposit in Account
5	Time Limit for Investment	One year back or two year after Deposit : Before due date of furnishing return of income
6.	Quantum of Exemption	Cost of new asset (+) amount of deposit if any or amount of capital gain which ever is less
7	Other Conditions	Restriction of 3 years on transfer of new asset or Restriction on utilization of Deposit

Capital Gains from Shifting of an Industrial Undertaking from Urban Area to Special Economic Zone (Sec. 54GA)

1	Applicable	All Assessees
2	Nature of capital Asset	The Asset should be Plant, Machinery, Land, building and right in land or Building
3	What to Invest to get exemption	The amount of capital gains
4.	Mode of Investment	Investment in P & M , L & B and expenses as per scheme and Deposit in Account
5	Time Limit for Investment	One year back or two year after Deposit : Before due date of furnishing return of income
6.	Concession to what extent	Extent of Investment (+) amount of deposit if any or amount of capital gain which ever is less
7	. Other Conditions	Restriction of 3 years on transfer of new asset or Restriction on utilization of Deposit

Computation of Capital Gain in case of violation takes place by sale of asset with in a period of 3 years for the purpose of the sections 54, 54 B, 54 EC, 54 F, 54 G and 54 GA

Sale Consideration of new asset sold	*xxxxxxxxx*
Less Cost of Acquisition : Cost of acquisition of new asset minus Capital gain exempted earlier	*xxxxxxxxx*
Short tem capital gain	*xxxxxxxxx*

Extention of Time for Acquiring New Assets depositing or investing Amount of Capital Gains (Sec. 54H)

According to this section, the period for acquiring new asset by the assessee referred to in Sec. 54, 54B, 54D, 54EA, 54EB, 54F, or the period available for depositing or investing the amount of capital gain, shall be counted from the date of receipt of compensation on compulsory acquisition under any law.

Reference to the Valuation Officer u/ s 55A

The Assessing Officer may refer the valuation of any asset to a Valuation Officer for determining its fair market value in the following cases.

1. Where a registered valuer has estimated the value of the asset, if the Assessing Officer is of the opinion that the value so estimated is less than the fair market value of the concerned asset.

2. In any other case, if the Assessing Officer believes that the fair market value of the asset exceeds its estimated or declared value by more than 15% of the latter or exceeds by more than Rs. 25, 000

The value determined by Valuation officer will binding on the Assessing Officer.
Example:
(1) Declared Value Rs. 1, 00,000
Fair Market Value Rs. 1,20,000
Since FMV is exceeding by more than 15% of Declared value, hence Assessing Officer will refer matter to valuation officer.
(2) Declared value Rs. 5,00,000
Fair Market Value Rs. 5,50,000
Here criterion to refer the matter to valuation officer is F.M.V. is greater by Rs. 25,000 than Declared value.

Tax on short term capital gains in certain cases – Sec. 111 A

1. This Section Applicable to all Assesses.
2. STCG taxed flat rate of 15 % only in respect of *equity shares and units of equity oriented fund.*
3. Such equity shares and units of equity oriented fund. Are liable to Securities transaction tax.
4. In case of individuals and HUF no deduction will be available under Chapter VI
5. In case of resident individual and HUF, if the basic exemption is not exhausted by any other income, then short term capital gains will be reduced by unexhausted basic exemption limit and balance will be taxable only at 10%.

Tax on long term capital gains - Sec 112

1. This Section Applicable to all Assesses.
2. LTCG taxed flat rate of 20%
3. In case of individuals and HUF no deduction will be available under Chapter VI
4. In case of resident individual and HUF, if the basic exemption is not exhausted by any other income, then long term capital gains will be reduced by unexhausted basic exemption limit and balance will be taxable only at 20%.
5. In case of no other income to set off the loss, income from long term capital gains can be used to setoff the losses and balance can be taxed @ 20%
6. In case of listed securities tax will be 10% without out indexation or 20% with indexation at the option of assessee

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Chapter 8 INCOME FROM OTHER SOURCES

Conditions when Income is Taxable under Income from other sources Sec56 (1)

1. If there is income and such income is not exempt from tax
2. If the income does not fall under any of the four specific heads i.e. Salaries, House Property, Business/Profession income or Capital Gains.

Illustrations for Income chargeable under other sources u/s 56(1)

1. Agricultural Income from land situated outside India;
2. Any amount received by an employee from a person other than his employer i.e.
   (a) Examination remuneration,
3. Income from sub-letting of a house property; Ground rent;
4. Director's fee or salary to a director employee;
5. Income from services rendered as writer or examiner due to non-professional assessees such as examination remuneration to a teacher;
6. Royalty income; Income from fisheries;
7. Interest on securities of foreign authorities;
8. Causal Income;
9. All kinds of interest received except provided u/s 56(2);
10. Family Pension received by the legal heirs of employee, clubbed income etc.
11. Deemed Incomes.

Incomes Chargeable under the head Income from other sources u/s 56(2)

1 Dividends

2. Any Winning from:
   (a) Lottery,
   (b) Race including horse races,
   © Crossword puzzles,
   (d) Card games, (including television game shows and other entertainment Programmes in which people win prize).
   (e) Gambling and betting

3 Any sum received from Employees towards contribution to any Provident Fund (PF) and Employees State Insurance (ESI).

4 Interest on Securities if it is not charged under Income from business or Profession

5 Letting out of plant and machinery (if not chargeable under Income from business or Profession)

4. Income from letting or hire any building in which plant and machinery is situated and letting of building is inseparable from letting of plant and machinery

5. Sum received from Key man Insurance Policy including bonus if such some is not chargeable under head Salaries or business or Profession.

6 Sum of money in excess of Rs. 50000/- received without consideration.

Dividends

1. ***Meaning of Dividends:*** It is the amount paid by a company to its shareholder in proportion to their shareholding in the company.
2. ***Forms of Dividends:*** Dividends payable in form of shares is know as 'CAPITAL BONUS'

or 'CAPITAL DIVIDEND' and shares received as such are called 'BONUS SHARES'.

3. Definition u/s 2(22) of I.T.Act 1961.

The following are included in dividend:-

(i) *Any distribution of accumulated profits,* whether capitalized or not, by a company to its shareholders if it entails the release of all or any part of its assets;

(ii) *Any distribution of debentures, debenture stock or deposit certificate* in any form, whether with or without interest, made by a company to its shareholders to the extent of its accumulated profits (whether capitalized or not);

(iii) *Any distribution of bonus shares made by a company to its preference shareholders* to the extent of its accumulated profits (whether capitalized or not);

(iv) *Any distribution* made by a company to its shareholders on its liquidation to the extent to which the distribution is attributable to the accumulated profits (whether capitalized or not) of the company immediately before its liquidation;

(v) *Any distribution by a company to its shareholders on the reduction of its capital* to the extent to which the company possesses accumulated profits, whether capitalized or not;

(vi) *Any payment by way of loan or advance, made by a closely held company to a shareholder* who is the beneficial owner of at least 10% equity shares of the company, or to any concern (HUF, Firm, Company, AOP or BOI), in which such shareholder is a member or a partner or has substantial interest (beneficial owner of at least 20% profits of the concern), or any payment by any such company on behalf of or for the benefit of such shareholder, to the extent of the company's accumulated profits.

Types of Dividends and How and When it is Taxable

Annual Dividend	Interim Dividend	Deemed Dividend
It is declared at annual general Meeting and is deemed to be the income of the previous year of shareholder in which it is declared	It is deemed to be the income of the previous year in which the company unconditionally makes the amount of such dividend available to a shareholder.	1. It is treated as income of the previous year in which it is so distributed or paid.

Where a company declares dividend in shares, it will be taxable only in the year in which such shares were transferred to the shareholders be execution of instrument of transfer and not in the year in which it is declared. *CIT Vs. Rampur Distillery & Chemical Co. Ltd.*

Dividend declared or distributed after 31/3/2003

It is not taxable in the hands of shareholders. On such dividend the company declaring dividend will pay dividend tax u/s 115.0. And, no tax will be deducted at source.

Where a loan or advance is given after 31/3/2003, which is deemed as dividend u/s 2(22) (e), then such loan or advance is taxable u/s 56 as "dividend" in the hands of recipient Tax at source will be, deductible.

Taxation of Casual Income : Winning from Lotteries, Crossword Puzzles, Races, Horse Races, Card Games, Gambling an entertainment programme on television or electronic mode in which people compete to win prizes or any other similar game etc shall be charged to tax at flat rate 30% (Sec 115BB). No deductions from winnings

Interest on Securities

Sl. No.	**Particulars**
1.	Definition of Security 'Security' is a documentary evidence of a debt which is issued by a debtor in favour of his creditor in which the amount of loan, rate of interest, conditions for the repayment of loan and the time of repayment is specifically and clearly noted and which is signed by the debtor himself or any other person authorized in his behalf.
2.	**It is Chargeable under Two Heads as** (A) Under the head 'Profits and gains of business or profession' – If assessee is indulged in the purchase and sale of securities and securities are held by him as 'stock-in-trade', interest thereon shall be chargeable to tax under the head 'Profits and gains of business or profession'. (B) Under the head 'Income from other sources' – If an assessee as investment holds the securities, interest from such securities shall be chargeable to tax under the head 'Income from other sources'.
3.	***Interest on Securities Sec. 2(28B)*** (1) Interest on securities of the *Central Government* or a *State Government:* (2) Interest on debentures or other securities for money issued by or on behalf of: (a) *a local authority,(* such as Municipality, Municipal Corporation, District Board, Post Commissioner, Improvement Trust or Cantonment Board etc).; or (b) *a company,(*trading or non-trading, private or public or a Government company etc).; or © *a corporation* established by a Central, State or Provincial Act(such as debentures or securities issued by LIC, GIC and IFC etc.)
4.	**Securities not Included Under the head Securities But Chargeable Under IFOS** (1) Interest on securities issued by a *foreign government;* (2) Interest on securities issued by a *local authority of a foreign state;* (3) Interest on securities issued by an *individual, a firm or a HUF;* (4) Interest on *bank deposits* and *Other loans;* (5) Interest on debentures issued by a *Land Mortgage Bank or a co-operative society;* (6) Interest on *company deposits*;

Ascertaining the Amount of Gross Interest/Gross Amt. Of Casual Income

(a) In Case of Resident Individual & Non-Corporate Assessee

Sl.No	***Kinds of securities***	***Rates of TDS***	***When rate of interest and nominal value of security is given***	***When rate of interest is not given, rather interest received is given***
1.	Tax-free Government Securities	No TDS (Exempt)	% Interest	Interest received
2.	Less-tax Government Securities	No TDS	% Interest	Interest received
3.	Tax-free non-Government securities:			
	(a) Listed	10%	$\frac{\% \text{ Interest X } 100}{90}$	$\frac{\text{Interest received X } 100}{90}$
	(b) Unlisted	20%	$\frac{\% \text{ Interest X } 100}{80}$	$\frac{\text{Interest received X } 100}{80}$
4.	Less-tax non-Government securities:			

(a) Listed	10%	% Interest	$\frac{\text{Interest received X 100}}{90}$
(b) Unlised	20%	% Interest	$\frac{\text{Interest received X 100}}{80}$

(b) In Case of other than Resident Non-Corporate Assessees

Sl No	*Nature of Interest*	*Domestic Companies*
1.	Interest on securities	$\frac{\text{Net Interest X 100}}{90}$
2.	Other Interests	$\frac{\text{Net Interest X 100}}{90}$

(c) *Grossing up of Net Lottery Receipt*

$$\text{Gross Amount} = \frac{\text{(Net Amount of Winning)}}{100-30} \text{ X 100}$$

(d) *Grossing up of Race (Horse Race) Winning*

$$\text{Gross Amount} = \frac{\text{(Net Amount of Winning)}}{100-30} \text{ X 100}$$

Note: Wherever applicable surcharge should be included above.

Taxation of Gifts in cash or kind the hands of receiver:

Gifts received in cash/kind(immovable property and certain movable property) by an individual/Huf in Aggregate in excess of Rs.50000 is taxable as income under IFOS.

Provided that this *shall not apply* to any sum of money/ value of the property received—

(a) From any relative; or

(b) On the occasion of the marriage of the individual; or

(c) Under a will or by way of inheritance; or

(d) In contemplation of death of the payer.

(e) received from any local authority u/s 10(20)

(f) received from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution u/s 10(23C)

(g) received from any trust or institution registered under section 12AA.

Relative" means—

(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;

(viii) Spouse of the persons referred from (ii) to (vi)

Important Consideration with regard to Gifts:

1. Applicable to individual and Huf, including Nonresident individual and Huf
2. Gifts received from relatives irrespective of occasion are outside the tax purview.

3. Attracts gifts in in excess of Rs.50000/(Sum of money includes cheques, drafts, FD, Nss Certificates etc. the term property is also defined with effect from 01.06.2010). Gifts in kind.
4. Gifts on the occasion of marriage, will and in contemplation of death will not come under tax purview. But it appears gifts on occasion of festivals, birthday and on other family functions is taxable
5. The Section speak of aggregation in the provision, the Limit of Rs50,000 is applicable for receipt from all the person in a financial year
6. The words" Consideration" and" in contemplation of death" should be understood from Indian Contract Act and Indian Succession Act.
7. It is important to note gifts received in excess of Rs 50,000/ entire amount is taxable and not the excess amount of Rs. 50,000/

Summation of taxability of gift with effective from 01.10.2009

Nature of Property	**Mode of receipt**	**Amount liable to tax**
Sum of money	*Without consideration*	*Whole of the aggregate value of money received*
Immovable property	*Without consideration*	*Stamp duty value of immovable property*
Movable property	*Without consideration*	*Whole of the aggregate of fair market value (as per prescribed method) of movable property*
Movable property	*For a consideration less than fair market value (as per prescribed method) by Rs. 50,000*	*Aggregate fair market value (as per prescribed method) of movable property in excess of the consideration*

Taxability of immovable property for inadequate consideration was removed with

Meaning of property wef 01.10.2009
Immovable Property: Land, building or both
Movable Property: Share & Securities, 2. Jewellery, 3.. Archaeological Collection, 4. Drawings, . 5.Paintings, 6. Sculptures, 7. Any work of art, 8.Bullion (wef 1.6.2010).

Gift tax liability in case of shares of closely held company (wef 01.06.2010)

Where a firm including LLP or a closely held company, receives, any shares of a closely held company Without consideration, the aggregate fair market value of such shares exceeds Rs. 50,000/- will be treated as income of the assessee, ie (firm, LLP or closely held Company). In case of for inadequate consideration when compared to fair market value, the difference would be treated as income of the assessee
The clause shall not apply to any such shares are received by way of a transaction not regarded as transfer u/s 47.

Valuation of movable property for taxability

1. In case of Jewellery, Archaeological Collection, Drawings, . Paintings, Sculptures, 7. Any work of art,

	Circumstances	Value
1	Normal Circumstances	FMV as on the date of receipt
2	In case of purchased property received	Purchase price
3	Other cases	Value determined by Valuation officer

II. In case of Quoted Shares and Securities

if the quoted shares and securities are received by way of transaction carried out through any recognized stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange;

If the shares are not transacted through stock exchange lowest rate of stock exchange in the immediate preceding day of date of receipt of gift.

II In case of shares or securities not quoted value to be calculated on net assets basis.

Deductible Expenses from Other Sources Income U/S 57

The income chargeable under the head "Income from other sources" shall be computed after the following deductions, namely-

***(a)* In the case of dividend income and interest on securities:**

(i) any reasonable sum paid by way of remuneration or commission for the purpose of realizing, dividend not subject to additional income tax u/s 115 O or interest on securities, and collection charges paid, and

(ii) Interest on borrowed capital if required for investment in shares or securities.

(b) In the case of income from machinery, plant or furniture let on hire:

(i) Current repairs to building u/s Sec. 30(a) (ii);

(ii) Current repairs to machinery, plant of furniture and insurance premium u/s Sec. 31;

(iii) Depreciation on building, machinery, plant or furniture u/s Sec.32; and

(iv) Unabsorbed depreciation u/s Sec.32(3).

(v) Premium of the insurance against risk of damages and destruction of the premises.

(c) Any other expenditure (not being a personal or capital expenditure) expended wholly and exclusively for the purpose of earning such income. However, this deduction is not available to a foreign company in respect of dividend income.

(d) In case of income in the nature family pension**:** Rs.15,000 or 33.33% of such income whichever is less.

(e) In case of amount received from Employee's towards contribution to any fund deduction will be the amount credited by assessee to the employee account before the due date.

(f) Any other expenditure expended wholly and exclusively for making or earning such income.

(g) Any allowance or expense in connection with income from horse races, spent in the activity of owning and maintaining such horses.

SECTION 57 - DEDUCTIONS

Conditions to be fulfilled - Before section 57 can apply, the following conditions must be fulfilled:

- The expenditure must have been incurred solely and exclusively for the purpose of earning income or making profit.
- The expenditure should not be in the nature of a capital expenditure.
- The amount in question should not be in the nature of personal expenses of the assessee.
- The expenditure should be incurred in the accounting year.

- There must be a clear nexus between the expenditure incurred and the income sought to be earned.

CBDT Circulars:

Salary of M.P. –

Salary received by an M.P. will not be chargeable to income tax under the head 'Salaries' but as 'Income from other sources' *Letter : F. No. 40/29/67-IT(A-I), dated 22-5-1967.*

Interest on cumulative deposit schemes –

Interest on cumulative deposit schemes of Government undertakings/Pvt sector should be taxed on accrual basis annually. ***Circular: No. 371, dated 21-11-1983./ Circular:No.409[F.No. 178 / 2/85-IT(A-I)],dated12-2-85.***

Gross dividend is taxable –

The gross dividend (net dividend *plus* the tax deducted at source) receivable by the registered shareholder on behalf of the beneficial shareholder will be assessed in the hands of the latter as 'income from other sources' in the year in which it is declared, distributed or paid.	***Circular : No. 3 dated 30-3-1967.*** ***Circular : No. 648, dated 30-3-1993.***

Expenditure Not Deductible (Sec 58)

Sl No.	The following amounts are not deductible while computing income from other sources:
1.	Personal expenses of the assessee u/s 58 (1) (a) (1).
2.	Expenditure in connection with any income tax proceedings before any income tax authority, Tribunal or Court u/s 58(1) (a)(ia).
3.	Interest payable outside India on which tax has not been paid or deducted at source irrespective of whether there is a person in India who may be treated as an agent u/s 163 & 58(1)(a)(ii).
4.	Salary payable outside India on which no tax has been paid or deducted at source – u/s 59(1)(a)(iii).
5.	Any sum paid on account of wealth tax u/s 58(1A).
6.	Any amount allowable u/s 40A & u/s 58(2).
7.	Where an assessee has income from other sources no deduction of any expenditure or allowance in connection with such income shall be allowed under any other provisions of the Act in computing the income by way of any winnings from lotteries, crossword puzzles, races including horse races, and games Sec. 58(4). However, this prohibition will not apply to the owner of the horse maintained by the assessee in horse race in computing his income from the activity of swinging and maintaining such horses-[Proviso to Sec. 58(4).]

DEEMED INCOME CHARGEABLE TO TAX [SECTION 59]

The provisions of section 41(1) are made applicable, so far as may be, to the computation of income under this head. Accordingly, where a deduction has been made in respect of a loss, expenditure or liability and subsequently any amount is received or benefit is derived in respect of such expenditure incurred or loss or trading liability allowed as deduction, then it shall be deemed as income in the year in which the amount is received or the benefit is accrued.

Taxation of anonymous donations Sec 115 BBC

A new Section was introduced by finance act 2006 with effect from 01.04.2006, for taxation of anonymous donations. The provisions are explained below:

***Meaning of anonymous donation**: Any* voluntary contribution in respect of which, the recipient has not maintained a record of the identity of the contributory or donor indicating his name and address and other particulars as may be prescribed, to the extent it exceeds higher of 5% of total donation or Rs. 1 lac whichever is higher

Applicable:

1	University or other educational institution existing solely for education and not for profit, if the aggregate annual receipts do not exceed Rs. 1 crore
2	Hospital or other institution for treatment existing solely for philanthropic purposes and not for profit, if the aggregate annual receipts do not exceed Rs. 1 crore
3	Fund or institution established for charitable purposes as may be notified
4	Trust (including legal obligation) or institution only for public religious purposes or wholly for public religious and charitable purposes as may be notified
5	University or other educational institution existing solely for education and not for profit and approved by prescribed authority

Not Applicable: The provision is not applicable to:

- ☐ Research Association [section 10(*21*)]
- ☐University/ Hospital, etc., wholly financed by Government [section 10(*23C*)]

Trust created wholly or partly for charitable or religious purposes

***Anonymous donations not liable to tax* -** The provisions are not applicable to the following voluntary contributions:

Voluntary contributions received by any trust or institution created or established wholly for religious purposes;

Voluntary contributions received by any trust or institution created or established wholly for religious and charitable purposes, when such contributions are meant for religious purpose

The voluntary contribution can be considered as anonymous donation if and only if the recipient does not maintain a record relating to the identity of the donor and the other prescribed particulars. 'Record', in the context, can be construed to mean any documents or papers (whether a communication from the donor or a receipt issued by the trust or any resolution passed by the trust, etc.) or any memorandum register or record of donations received or books of account, etc.

No Exemption even applied for objects /Corpus Donations

If anonymous donation and utilised on the objects of the trust, it would not be eligible for exemption on the ground that it has applied the income

If the trust has received an anonymous donation with a specific direction that it should be credited to the corpus, it would not be eligible for the exemption, although, it is a corpus donation,

It appears that for the purposes of ascertaining whether 85% of the income derived by the trust is applied or not, in terms of section 11 or the other applicable provisions of the Act, the amount of anonymous donations ought to be excluded, since they are separately taxed and not eligible for the exemption.

Anonymous donations, which are taxed, can be accumulated without any limit, since the tax has already been paid and the provisions of section 11 or the other applicable provisions of the Act are not applicable to them. However, it appears that, they will have to be invested in the manner stipulated in sections 11 to 13 or the other applicable provisions of the Act, so that the trust is able to retain the exemption in respect of its other income.

Rate of tax - On the amount of voluntary contributions treated as anonymous donations included in the total income, the tax is payable at 30%, *plus EC*.

Tax Avoidance and its Prevention

Bond Washing Transactions & its Prevention [Sec.94 (1)]

A bond-washing transaction is merely a paper transaction by which a security is alleged to have been transferred whereas in fact it is not so. The high-income group (HIG Class) assessee sell their securities to their kith & keens few days before the due date and take back after the due date is over. This is merely a paper transaction. In fact, securities are neither given nor taken back. In this way the transferee becomes the owner of securities on the due date of interest and interest received on such securities becomes taxable in the hands of transferee. Generally, the transferee is a person of low-income group (LIG Class) whose income is below taxable limit. Thus, the transferee either does not pay income tax on the interest of such securities or pays income tax at a very low rate as compared to the transferor. The transferor may reimburse the tax payable by the transferee. Thus, the transferor without transferring the securities physically can shift his interest income to some other person and can escape from tax-liability. *The transaction, which aims at transferring the income, not the security is termed as bond-washing transaction.* Bond-washing transactions reduce the tax-liability of an assessee. This is termed as 'avoidance of tax'.

Section 94(1) of the Income-tax Act, 1961 provides a remedy against this malafide transaction. According to this section, where the owner of any security sells or transfers it an buys back or acquired it, if the result of transaction is that the interest payable on the security is received by the transferee, the income from such security will be deemed to be the income of the transferor and not to the income of the transferee.

Cum-interest Sale of Security & its Prevention Sec. 94(2)

Interest on securities does not accrue from day to day, but it accrues on certain fixed dates. When securities are purchased cum-interest, the price paid includes net accrued interest from the last due date of interest to the date of purchase. But the purchase is entitled to pay tax on the entire interest due to him on the next interest date, as he is the legal owner of such securities on such date. Thus, the seller of cum-interest securities is not chargeable to tax on the amount he receives from the purchaser as net accrued interest, and he escapes from his tax-liability on such interest.

Section 94(2) of the Act, provides a remedy against this. According to this section, where an assessee, having beneficial interest in securities during previous year, sells them in such a way that either no income is received by him or the income received by him is less than the sum he would have received if the interest had accrued from day to day, then, the income from such securities for such year (not income up to the date of transfer) shall be deemed to be the income of the transferor.

Zero Coupon Bonds:

The controversy regarding treatment of Deep Discount Bond has been partly resolved by introducing the concept of Zero Coupon Bonds (ZCB). This term is defined u/s.2(48) to mean Bonds in relation to which no payment or benefits are received or receivable before maturity or redemption and which are issued on or after 1-6-2005 by an infrastructure capital company, or infrastructure capital fund, or public sector company. The Government has to notify such ZCB.

It is provided that the amount received on maturity or redemption of such Bonds, if they are not held as stock-in-trade, will be treated as capital gains.

Further, if the Bonds are held for more than 12 months, they will be treated as long-term capital assets and capital gain on maturity or redemption will be liable to tax u/s.112 at 10% if the assessee does not claim benefit of indexation. If the benefit of indexation is claimed, the rate of tax will be 20%.

A provision has been made u/s.36 (1)(iiia) that deduction for discount will be allowed to the issuer on *pro-rata* basis during the life of the Bond on the basis of rules to be prescribed. No income tax will be deducted at source from the amount payable on the maturity of the Bond u/s.194A.

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Chapter 9 CLUBBING OF INCOME

Transfer of Income without Transfer of Asset u/s 60
In case of transfer of Income without transfer of Asset, the income shall be clubbed in the total income of transferor.
Transfer of Income by Revocable Transfer of Assets u/s 61
Income transferred by revocable transfer of Asset, shall be clubbed in the total income of transferor.
What are "Transfer" & "Revocable Transfer?"
●"Transfer": It includes any settlement, trust, covenant, agreement or arrangement
●"Revocable Transfer": means any provision contains whole or part re-transfer of income/asset or gives right to Resume Control of income/asset to the transferor
●A revocable transfer, does not include a transfer by way of trust, which is not revocable during the beneficiary's lifetime, and in case of any other transfer which is not revocable during the lifetime of transferee, unless and until the power to revoke the transfer arises.
Income taxable in the hands of transferee.
●When the transfer is made by way of trust, and the trust is not revocable during the life-time of the beneficiary; or
● In the case of any other transfer the transfer is not revocable during the life-time of the transferee; or
●Provided that the transferor does not derive direct-or indirect benefits from such transferred income in either case.
●It must be noted that as and when the power to revoke the transfer arises, all income arising to any person by virtue of such transfer shall be chargeable to tax in the hands of transferor and shall, then be included in his total income.

Income to Spouse by way of Salary Commission and Fees etc. from the concern sec 64(1) (ii)
Conditions:
If such receipt is made from the concern in which the individual assesses has substantial interest.
Meaning of substantial interest
A person is said to be having 'substantial interest' in a concern, if he along with his relatives, holds at least 20% voting power (in a company) or has at least 20% share in profits of the concern.
Who's Income to be included?
The spouse having greater income before such income
Exceptions (When not clubbed):
●When spouse possesses technical or professional qualification, and
●Income is attributable to qualifications and experiences.

Income from Asset Transferred Without Adequate Consideration by an Individual to Spouse Sec. 64(1)(iv)
●Any income arising to spouse out of assets (Other than house property) transferred for inadequate Consideration
●Any interest on the Capital funded by individual to spouse will also be clubbed
●If the asset is invested in business prorated interest/income out of spouse total income from the income will be clubbed (spouse income from business x investment of gifted assets/ total spouse investment in business)
●Clubbing will apply even the asset converted in to different form
Exception (No clubbing)

- Transfer in agreement to live apart
- Transfer with adequate consideration
- Pre marital transfers(NO relationship at the time of income accrual and at the time of transfer)
- Income earn out of income
- Any accretion to assets
- Transfer of asset by Karta of HUF his wife(coparcener)
- Income of wife out of her pin money (savings of house hold expenses)
- Bonafide loan/ advance given to spouse

Similar Clubbing Provisions will be Applicable when assets transferred for inadequate consideration

- to Son's wife
- To any other person or AOP for the benefit of Spouse or son wife

Clubbing of Minor's Income Sec 64(1A)

- Clubbed with the parent income whose income is higher before minor income
- Once it is clubbed with one of the parent subsequent years it will be clubbed with the same parent unless A O justifies clubbing with other parent.
- If marriage of the parents does not subsist, in the income of parent who maintains the minor child
- Clubbing of income includes clubbing of Loss

Exceptions (No Clubbing)

- Minor child who is totally blind, mentally retarded, physically handicapped,
- When it is derived through Minor's manual work skill, talent or specialized knowledge and experience.

Transfer of Individual Property to HUF Sec 64(2)

- Where any person has converted his own property into the joint family property, any income arising to the spouse of such person from such property when received on the partition of the HUF, shall be assessed in the hands of the person who originally converted such property into HUF property.

Liability of Person in Respect of Income Included in the Income of another Person Sec 65

- Where the clubbing of income provisions is attracted, i.e. income of other persons is included in the total income of the assessee. In such cases, by virtue of Section 65, the actual recipient of income is liable, on the service of notice of demand, to pay the tax assessed in respect of income included in the income of other person (where the Income Tax Officer so desires).

Cash credit

The following transactions will be treated as income of the assessee in the previous year in which they have occurred, when Assessee offers no explanation or offer explanation which is not satisfactory in the opinion of A O

- Cash Credits in the books- sec 68
- Unexplained investment which are not recorded in the books -sec 69
- Unexplained Money – Sec. 69A assessee is found to be the owner of any money, bullion, jewellery or other valu-able article and such money, bullion, jewellery or valuable article is not recorded in the books of account
- Amount of investments not fully disclosed in books of account – Sec. 69B (recording at less Value) – The difference between the value and amount recorded

●Unexplained Expenditure – Sec. 69C – (Such expenditure will not be allowed as deduction under any head of income)

Amount borrowed or repaid on hundi – Sec. 69D

●Where any amount is borrowed on a *hundi* from,/or repaid amount due on hundi otherwise than through an account payee cheque drawn on a bank, the borrowed amount repaid amount shall be deemed to be the income for the previous year in which the amount was borrowed or repaid

●The amount repaid shall include the amount of interest paid on the amount borrowed.

●Once it was treated as income at the time of borrowed again it will not be taxed at the time of repayment

CBDT Circular

Moneys brought into India by non-residents - Money brought into India by non-residents for investment or other purposes is not liable to Indian income-tax. Therefore, there is no question of a remittance into the country being subjected to income-tax in India. The question of assessment to tax arises only when there is no evidence to show that the amount, in question, in fact represents such remittance. *Circular:* No. 5 [F. No. 73A/2/69-IT(A-II)], dated 20-2-1969.

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Chapter 10 Set off and Carry forward of losses

Sr. No.	Section	Types of Loss	Set off Against Income In same Assessment Year	In subsequent Assessment Year	Can be carried forward for
1.	72	Business or Profession (Non-Speculation other than Depreciation)	Business Income head; or any other head except salaries [sec 71(2A)]	Business Income Head (Note 1)	8 years
2.	32	Unabsorbed Depreciation	As above	Business Income Head or any other head (Note 2)	Indefinitely
3.	73	Business (Speculation)	Speculation Profit	Speculation Profit	4 years
4	73 A	Business 35 AD	Specified Business (refer business income)	Specified Business (refer business income	Any number of years until it is fully set off.
5	70/74	Short-term capital loss	Capital gain (LTG or STG)	Capital gain (LTG or STG)	8 years
	70/74	Long-term capital loss	Long-term capital gain	Long-term capital gain only	8 years
6	74A	Running and Maintaining Race Horses	Same income only	Same income only	4 years
7	71	Other sources	Other sources or any other head	No carry forward	N. A.
8	71B	House Property:			
		a) Let out property	Income from House property head or any other head	Income from House property	8 years
		b) Self-occupied Property (On account of interest on borrowed capital)	Income from House property head or any other head	Income from House property	8 years

NOTES:

1. Unabsorbed business losses can be carried forward and set off against profits from any business there is no need to continue the same business in which the loss was incurred.
2. Depreciation can be carried forward and set off against the profits from any business in the succeeding assessment year. The business in which the loss was incurred need not be continued in that year.
3. The effect of depreciation, business loss and investment allowance should be given in the following order:
    - Current year's Depreciation
    - Unabsorbed Business loss

- o Unabsorbed Depreciation
- o Unabsorbed Investment Allowance.

4. A return of loss is required to be furnished for determining the carry forward of such losses, by the due date prescribed for different assessees' u/s. 139(1) of the Act. (S. 80).
5. Income by way of winning from lotteries, cross word puzzles, card games, betting, tv games etc shall not used to setoff any loss
6. Current year income under each is to be calculated first and then set off to be made after that.
7. When two possible set off available, set off can be done which is most beneficial to assessee,

Provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or Demerger	**– Sec. 72A**

Applicable for *any undertaking which is engaged in—*

- the manufacture or processing of goods or computer software; or
- the business of generation or distribution of electricity or any other form of power; or the business of providing telecommunication services
- mining; or the construction of ships, aircrafts or rail systems
- Hotel, Shipping Company
- Banking Companies

Benefit

- When there is an amalgamation the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or, as the case may be, allowance for depreciation of the amalgamated company for the previous year in which the amalgamation was effected.
- The carry forward of losses are subject to conditions as below

Conditions to be satisfied by the amalgamating company—

- the Company has been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for three or more years;
- has held continuously as on the date of the amalgamation at least three-fourths of the book value of fixed assets held by it two years prior to the date of amalgamation;

Conditions to be satisfied by the amalgamated company—

- holds continuously for a minimum period of five years from the date of amalgamation at least three-fourths of the book value of fixed assets of the amalgamating company acquired in a scheme *of amalgamation;*
- continues the business of the amalgamating company for a minimum period of five years from the date of amalgamation;
- *Fulfils such other conditions as per Rule 9C as may be prescribed to ensure the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose.*

Rule 9 C provides the Conditions as below:

- The amalgamated Company shall achieve the level of Production at least 50% of installed Capacity (as on the date of amalgamation) before 4 years from the date of amalgamation and maintain the minimum level of production for a period of 5 years.
- *A report from Chartered Accountant in form 62 shall be submitted to Assessing officer.*

Consequence for Non Compliance of Conditions

- The set off of loss or allowance of depreciation made in any previous year in the hands of the amalgamated company shall be deemed to be the income of the amalgamated company chargeable to tax ***for the year in*** **which such conditions are not complied with.**

Accumulated loss unabsorbed depreciation in case of Demerger

- Where such loss or unabsorbed depreciation is *directly relatable* to the undertakings transferred to the resulting company, be allowed to be carried forward and set off in the hands of the resulting company;
- Not directly relatable loss should be apportioned prorata on the basis of *in which the assets of the undertakings have been retained by the demerged company and transferred to the resulting company*

Set of and carry forward of losses in case of reorganisation of Cooperative Banks

The conditions and provisions relation to Set of and carry forward of losses is also applicable to cooperative Banks in case of their reorganisation.

Carry forward and set off of accumulated loss and unabsorbed depreciation allowance in case conversion of firm/ Proprietor ship in to Company

- Conditions as laid down in section 47 with regard to transaction not regard as transfer has to comply
- Violation of condition , the loss so setoff deemed to be income of company of **the year in which violation takes place**

Carry forward and set off of accumulated loss and unabsorbed depreciation allowance in case conversion of Unlimited/private limited Company in to Limited liability Partnership

The Loss or unabsorbed depreciation of the predecessor will be Loss or unabsorbed depreciation of successor Limited Liability Partnership in the year of conversion.

Carry forward and set off of losses in the case of closely held companies. Sec 79

- In order to set off the losses which are brought forward from earlier years the closely held companies should follow the condition namely
- Persons holding not less than fifty-one per cent of the voting power on the last day of the previous year which loss was incurred continue to hold the same voting power on the last day of previous year which losses were to be setoff.

This set off condition will be applicable only when the business losses to set off. In case of unabsorbed deprecation this condition will not apply

Exception

Change in the said voting power takes place in a previous year consequent upon

- 1. The death of a shareholder or
- 2. on account of transfer of shares by way of gift to any relative of the shareholder.
- 3. Change in the shareholding of an Indian company, which is a subsidiary of a foreign company as a result of amalgamation or Demerger of a foreign company subject to the condition that fifty-one per cent shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company

Dividend and Bonus stripping

<u>**SECTION 94(7)**</u>**:** <u>**DIVIDEND STRIPPING TRANSACTIONS**</u>**:**

(1.) If any person buys or acquires any *Security* or *Units* at any time within a period of ***Three months*** prior to the Record Date and Sells or Transfers such :-

Securities within ***Three months*** from such Record Date OR
Units within ***Nine months*** from such Record Date

and

(2.) Dividend or Income from such Securities or Units is exempt from Tax and and

(3.) There are no *Bonus Units* (only Bonus Units and not Bonus Securities) allotted to such person

In such cases

Loss arising from transfer of such Securities or Units shall be ignored to the extent of income there from claimed to be exempt.

SECTION 94(8): BONUS SRIPPING TRANSACTIONS:

(1.) If any person buys or acquires any *Units* (only Units and not Securities) at any time within a period of ***Three months*** prior to the Record Date and He is being allotted *Bonus Units* (whether Dividend is declared on the Record Date or not)

and

(2.) Such person sells or transfers all or any of the original units at any time within a period of ***nine months*** from the Record Date, while continuing to hold all or any of the *Bonus Units*.

In such cases

Loss arising on transfer of *Original Units* shall completely be ignored

The Loss so ignored shall be deemed to be the Cost of Acquisition (COA) of those *Bonus Units*, which are left out as on the date of transfer of *Original Units*.

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Chapter 11 Deductions from Gross total income

Section 80 C
Applicable: Individual and HUF

Qualifying Payments/Income	
1.	LIP; (restricted to 20% of capital sum assured) **Conditions**: LIP/PPF/ULIP of self, spouse, children (including minors) or members of HUF
2.	PF, (b) Superannuating Fund, (c) PPF; (d) RPF **Conditions** PF contribution not to exceed 1/5th of salary.
3.	Deposits in P.O. Savings Bank 2006-07) (CTD).
4.	ULIP of UTI or LIC Mutual Fund's Dhanraksha 1989
5.	Subscriptions to NSC VIII Issues.
6.	Deposits with National Housing Bank.
7.	Term Deposits in Scheduled Bank Lock in period of 5 years (inserted wef 1.4.2006)
8.	Housing Loan repayments **Conditions** Land cost for residential house is also qualified. House should not be transferred for 5 years
9.	Subscription to schemes of PSUs providing long-term finance for housing.
10.	Notified annuity plan of LIC or of any other approved insurer.
11.	Units of Mutual Fund or UTI referred to clause 10(23) D
12.	Notified Pension Fund or Mutual Fund.
13.	Tuition Fees (not donation or development fees) towards full time education of any 2 Children of an Individual paid to University, College, School, etc. in India.
14	Investments in shares or debentures of approved public company exclusively engaged in infrastructure facility or power sector. **Conditions** Shares and Debentures will have lock-in-period of three years. No exemption should be claimed in respect of same investment u/s. 54EA/54EB/54EC.
15.	Investments in units of notified mutual fund investing in approved public cos. as in 13 above.
16	Bonds issued by NABARD (wef 01.04.2007)

General: Sum paid/ invested need not be out of current years chargeable income
Qualifying amout – Rs 1,00,000
Quantum: 100% of the amount invested / paid or Rs. 1,00,000 whichever is less

Deduction in respect of Pension Plan: Section 80 CCC

Applicable:	**Individual**
Payment:.	Payment made out of taxable income to LIC or to any other approved insurer under approved Pension Plan
Qualifying amout	Rs 100000(increase to 1 lakh from 100000) wef 1.4.2006
Quantum of deduction	Amount deposited or Rs. 100000/- whichever is less
Other	Pension received or amount withdrawn by assessee or his nominee is taxable in the year of receipt

Deduction in respect of contribution pension plan for Govt. employee: Section 80 CCD

Applicable:	Individual who is Central Govt. Employee or any *other employee*
Payment:	Contribution made by the assessee and by the Central Government to the notified Pension scheme
Condition:	Amount contributed by the assessee and/or the Central Government should does not exceed 10% of his salary (including D.A. but excluding all other allowances and perks)
Other	Pension received or amount withdrawn by the assessee or his nominee is taxable in the year of receipt

Note: The aggregate deduction under section 80 C, 80CCC and 80CCD should not exceed Rs. 1,00,000/-

Deduction in respect of long tern infrastructure bond notified by C G (Sec 80 CC F)

Individual /HUF	Long term Infrastructure Bond notified by CG Tenure of the Bond • A minimum period of 10 years • The minimum lock in period for an investor shall be five years.	Up to ₹ 20,000

Deduction in respect of Medical insurance: Section 80 D

Applicable:	**Individual and HUF**
Payment:	Premia paid out of taxable income to approved scheme of GIC (Mediclaim, Bhavishya Arogya) or any other approved insurer
Condition	Insurance on the health of the assessee, spouse, dependent parents/children, members of HUF
	Payment should be made any mode other than Cash
Qualifying amount	– Rs. 15,000 /Rs. 20,000 (for senior citizen)
Quantum of deduction	100% of the premium paid or Rs. 15,000 (Rs. 20000 for senior citizen) whichever is less. Additional deduction WEF AY 09-10 Up toRs.15000 in case of amount paid for parents dependents or not) Up to Rs. 5000 in case of amount paid for senior citizen

Deduction in respect of medical treatment for disability: Section 80 DD

Applicable:	Tax payer is resident Individual/ Resident HUF
Payment	Expenses incurred for Medical Treatment (including Nursing), Training & Rehabilitation of a dependent with (severe/ordinary disability).
	Amount paid/deposited to any scheme framed by LIC/UTI approved insurer/administrator (now known as Specified Company), for payment of annuity or lump sum amount for the benefit of dependent person with disability
Qualifying amount	Rs. 75,000 for Ordinary disability Rs1,00,00 for severe disability
Quantum of deduction	A flat deduction of Rs. 75,000 for Ordinary disability A flat deduction of Rs.1,00,000 for severe disability

Conditions: A certificate in prescribed form and manner from medical authority stating the extent of disability and the validity of period is required to be submitted with the Return of Income. On expiry of the certificate a reassessment of the condition of disability is required to be done

If the disabled dependent predeceases the individual or the member of HUF in whose name subscription is made then the entire amount paid/deposited in scheme will be treated as taxable income in the year of receipt.

Deduction in respect of medical treatment for specific ailment Section 80 DDB

Applicable:	Tax payer is resident Individual/ Resident HUF
Payment	Amount actually paid for medical treatment of such disease or ailments, as may be specified.
Deduction available	For expenses on self, dependent or a member of HUF.
Quantum of deduction	Least of amount paid or Rs. 40,000 (Rs. 60,000 for senior citizens)
Condition	Assessee is required to furnish a certificate in prescribed form from specialist

Note: Amount received from an insurer of reimbursed by employer for the medical treatment is to be reduced.

Section 80 E -Repayment of interest on loan taken for pursuing higher education

Applicable	Individual
Loan from	The loan should be taken from an approved charitable institution notified u/s. 10(23C)/referred to in S. 80G(2)(a)/a banking co. for higher education of self, spouse and children.
Type of Education	Higher education means full time studies for any graduate/post-graduate course in engineering, medicine, management, architecture or for post-graduate course in applied sciences or pure sciences including mathematics and statistics
Deduction	The entire amount of interest is deductible without any limit Available for a maximum of 7 A.Ys after initial assessment year in which the loan is taken or interest is paid in full, whichever is earlier

Donation to Certain funds and institutions Section 80 G:

Applicable to- All Assessee

The donations paid to various institutions will be deductible as mentioned below.

S No	Funds/ institutions (Donee)	Maximum Limit	Deduction as % of net qualifying amount
1	The National Defence Fund set up by the Central Government; or	Not Applicable	100%
2	The Jawaharlal Nehru Memorial Fund	Not Applicable	50%
3	The Prime Minister's Drought Relief Fund;	Not Applicable	50%
4	The Prime Minister's National Relief Fund;	Not Applicable	100%
5	The Prime Minister's Armenia Earthquake Relief Fund;	Not Applicable	100%
6	The Africa (Public Contributions - India) Fund;	Not Applicable	100%
7	The National Children's Fund;	Not Applicable	50%
8	Indira Gandhi Memorial Trust,	Not Applicable	50%
9	The Rajiv Gandhi Foundation,	Not Applicable	50%
10	The National Foundation for Communal Harmony;	Not Applicable	100%
11	A University or any educational institution of national eminence as may be approved by the prescribed authority	Not Applicable	100%

12	The Maharashtra Chief Minister's Relief Fund or to the Chief Minister's Earthquake Relief Fund, Maharashtra; or]	Not Applicable	100%
13	Any fund set up by the State Government of Gujarat exclusively for providing relief to the victims of earthquake in Gujarat; or]	Not Applicable	100%
14	Any Zila Saksharta Samiti	Not Applicable	100%
15	The National Blood Transfusion Council or to any State Blood Transfusion Council.	Not Applicable	100%
16	Any fund set up by a State Government to provide medical relief to the poor; or	Not Applicable	100%
17	Central Welfare Fund Army Navy and Airforce	Not Applicable	100%
18	The Andhra Pradesh Chief Minister's Cyclone Relief Fund, 1996; or]	Not Applicable	100%
19	The National Illness Assistance Fund; or]	Not Applicable	100%
20	The Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund in respect of any State or Union territory, as the case may be :	Not Applicable	100%
21	The National Sports Fund, Cultural Fund and Fund for Technology to be set up by the Central Government; or	Not Applicable	100%
22	Any other fund or any institution recognized as a charitable institution sec 11 and 12	Refer note given Below	50%
23	The Government or any local authority, to be utilised for any charitable purpose other than the purpose of promoting family planning;	Refer note given Below	50%
24	An authority constituted in India 10 (20 A) by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both;]	Refer note given Below	50%
25	Any corporation referred to in clause (*26BB*) of section 10 for promoting interest of minority community	Refer note given below	50%
26	The Government or to any such local authority, institution or association as may be approved in this behalf by the Central Government, to be utilised for the purpose of promoting family planning;]	Refer note given below	100%
27	Donations for the renovation or repair of any such temple, mosque, gurudwara, church or other place as is notified by the Central Government	Refer note given Below	100%
28	Indian Olympic Association or to any other association or institution in India, as the Central Government may, the development of infrastructure for sports and games; or the sponsorship of sports and games, in India	Refer note given Below	100%
29	any sums paid by the assessee, during the period beginning on the 26-1-2001 and ending on the 30-09-2001, to any trust, institution or fund to which	Not Applicable	100%

	this section applies for providing relief to the victims of earthquake in Gujarat.]		
30	The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities	Not Applicable	100%

Step 1 Gross Qualifying amount: Gross Qualifying amount is aggregate of the amount of donations made to funds/ institutions as mentioned above in column 2

Step 2 Net Qualifying amount: Net Qualifying amount limited to 10% of adjusted gross total income of assessee

Adjusted gross total income means – Gross total income as reduced by

1. Amounts deductible under section 80 C to 80 V (except 80 G)
2. Any sum which tax is not payable (Income of members of AOP/BOI subject to condtions)
3. Long term Capital gains and short term capital gains chargeable under sec 111A
4. Income referred under 115A, 115AB, 115AC, 115AD and 115D

The above net qualifying will be applicable only for the S No 22to 28

Note: when the maximum amount for contributions made to S No 22 to 28 exceeds the 10% of Adjusted gross total income , the excess shall be ignored.

Other points:
Donations should not be in kind.
If paid out of another year's income or out of income not includible in the assessment of the current year the deduction still available (Lt. F. No. 45/313/66-ITJ(61) dt. 2-12-1966.

Deduction in respect of Rent paid -Section 80GG

Applicable	Individual other than person receiving House Rent Allowance
Deduction	Expenditure incurred towards payment of rent in respect of furnished or unfurnished accommodation occupied for his own residence.
Conditions to claim deduction	Residential accommodation should not be owned by assessee, his spouse, minor child or by HUF at a place where assessee ordinarily resides or carries on business or profession
	Assessee should not owns residential accommodation at any other place which is in occupation of the assessee
	Assessee to submit a declaration in Form No. 10BA with the Return of Income.
Quantum of deduction Least of	Rs. 2000/- per month
	25% of total income
	Rent paid minus 10% of total income

Note: **total income** means Gross total income excluding long-term capital gains and Short-term Capital gains chargeable under section 111 A, income under sec 115 A and before allowing deduction sec 80 C to Sec 80 V (except 80 GG)

**Deduction in respect of donation to scientific research or rural development-
Section 80 GGA**

Applicable	Any Assessee other than persons whose GTI includes income from profits and gains of business and profession
Eligible contributions	Donations for Scientific Research or research in social sciences or Rural Development or Conservation of Natural Resources or to National Urban Poverty Eradication Fund or for eligible project/scheme
Condition	Donee should be approved u/s. 35 or 35CCA or 35AC.

Amount of Donations	Full -100%

If the association approval cancelled after the donation is paid , deduction cannot be denied.

Deduction in respect of Contributions political parties by Companies- Section80GGB

Applicable	Indian Company
Payment	Any sum contributed to any political party
Amount of Donations	100%

Deduction in respect of Contributions political parties by Other Persons- Section80GGC

Applicable	Any assessee [Except local authority and artificial juridical person wholly or partly funded by the Government
Payment	Any sum contributed to any political party
Amount of Donations	100%

Condition for Claiming Deduction: Sec 80 AC (introduced with effect from 1.4.2006)

Deduction under section 80-IA section 80-IAB section 80-IB section 80-IC 80 ID and 80 I E shall be allowed only when the Assessee furnishes a return of his income on or before the due date specified 139(1).

Deduction in respect of profits of undertakings -Section 80 I A

	Eligible undertaking/enterprise	Date of Commencement	Amount of Deduction
1	Infrastructure enterprise: business of (i) developing, (ii) maintaining and operating, or (iii) developing, maintaining and operating new infrastructure facility — i.e., road, bridge, airport, port, waterways, rail systems, highway project, water treatment/water supply/irrigation/ sanitation/ sewerage/solid waste management systems.	After 1.4.1995	100% for 10 consecutive A.Ys. out of 15 A.Ys In case of road, highway project water supply project, port, etc. 100% for 10 consecutive A.Ys. out of 20 A.Ys.
2	Telecommunication undertakings: basic or cellular, radio paging, domestic satellite service or network of trunking and electronic data interchange services, broadband network & internet services.	1.4.1995 to 31.3.2005	100% for first 5 A.Ys. 30% for next 5 years Any 10 consecutive A.Ys. out of first 15 years.
3	Industrial parks including special economic zone : undertakings that a. develops; b. develops and operates; or c. maintains and operates a notified industrial park.	1.4.1997 to 31.3.2009	100% for 10 consecutive A.Ys. out of 15 years
4	Power undertakings:		

	-	undertakings engaged in a. generation; or b. generation and distribution of power	1.4.1993 to 31.3.2010	100% for 10 consecutive A.Ys. out of 15 years.
	-	undertakings engaged in transmission or distribution (only profits derived from laying of such network of new lines)	1.4.1999 to 31.3.2010	
		undertakes substantial renovation and modernization (i.e., increase in book value of plant & machinery by 50% as compared to book value as on 1-4-2004) of existing transmission or distribution lines as defined in Explanation to sec. 80-1A(4)(iv)(c)	1.4.2004 to 31.3.2010	100% for 10 consecutive A.Ys. out of 15 years.
5		Undertaking being Company or formed under state central provincial Act which lays and begins to operate a cross country natural gas distribution network, including pipelines and storage facilities being an integral part of such network Undertaking registered with board.	01.04.2007	100% for 10 consecutive A.Ys

Note:

All the assessees claiming benefit under 80-IA is required (including companies & co-operative societies) to furnish separate Audit Report in Form No. 10CCB u/s 80-IA .

The assessee needs to comply with the conditions stipulated in sub-sections (3), (4) and (7) of section 80-1A.

No deduction under section 80-IA in respect of any SEZ notified on or after 1.4.2005

Sub-section (13) has been inserted to provide that the deduction under section 80-IA would not be available in respect of any SEZ notified on or after 1.4.2005 referred to in section 80-IA(4)(c)(iii) of the Income-tax Act.

No deduction under 80 IA

The transfer of benefit of deduction under section 80-IA to the amalgamated/resulting company by virtue of sub-section (12) of section 80-IA would not be available in respect of any enterprise or undertaking which is transferred in a scheme of amalgamation or demerger effected on or after 1.4.2007. *(Effective from A.Y.2008-09)*

The benefit provided under section 80-IA to an undertaking engaged in development of infrastructure facility like highways and ports, industrial parks etc. would not be available to a person who merely executes a works contract entered into with the undertaking or enterprise referred to in that section. *(Effective retrospectively from A.Y.2000-01)*

Deduction in respect of profits of undertakings -Section 80 I B

1	Industrial Undertakings:	Date of Commence	% of Deductoin	Period

	a	Other than (b), (c) & (d)	1.4.1991 to 31.3.1995	25% (30% for Cos.)	First 10 A.Ys.	[12 A.Ys. if assessee is a co-op. society]
	b	SSI U/Cold Storage other than (c) & (d) below	1.4.1995 to 31.3.2002	25% (30% for Cos.)	First 10 A.Ys.	[12 A.Ys. if assessee is a co-op. society]
	c	i. Backward State (Eighth Schedule) (In the case of State of Jammu & Kashmir, the date of commencement has been extended to 31-3-2012)	1.4.1993 to 31.3.2012	100% 25% (30% for Cos.)	First 5 A.Ys. Next 5 A.Ys.	[12 A.Ys. if assessee is a co-op. society]
		ii. Notified Industries in N.E. Region	1.4.1993 to 31.3.2004	100%	First 10 A.Ys.	
	d	Backward District				
		— Category 'A'	1.10.1994 to 31.3.2004	100% 25% (30% for Cos.)	First 5 A.Ys. Next 5 A.Ys.	[12 A.Ys. if assessee is a co-op. society]
		— Category 'B'	1.10.1994 to 31.3.2004	100% 25% (30% for Cos.)	First 3 A.Ys. Next 5 A.Ys.	[12 A.Ys. if assessee is a co-op. society]
2	Ships:		1.4.1991 to 31.3.1995	30%	First 10 A.Ys.	
3	Hotels (approved by prescribed authority) :					
	—	Hilly Area/Rural Area/Place of Pilgrimage/other notified areas	1.4.1990 to 31.3.1994 or 1.4.1997 to 31.3.2001	50%	First 10 A.Ys.	
	—	Other place	1.4.1991 to 31.3.1995 or 1.4.1997 to 31.3.2001	30%	First 10 A.Ys.	
4	Company carrying on Scientific Research & Development		a) If approved by prescribed authority before 1.4.1999	100%	First 5 A.Ys.	

		b) If approved by prescribed authority after 31.3.2000 but before 1.4.2005	100%	First 10 A.Ys.	
5	Undertaking engaged in commercial production or refining of mineral oil				
	— North Eastern Region	Before 1.4.1997	100%	First 7 A.Ys.	
	— Other Region	On or after 1.4.1997	100%	First 7 A.Ys.	
6	Undertaking developing & building housing projects Conditions : 1.minimum plot area : one acre 2.residential unit has maximum built up area of 1,000 sq. ft. in Delhi/Mumbai; 1,500 sq. ft. in other areas built up area of shops / other commercial establishments not to exceed 5% of agreegate built up area or 2000 sq. ft., whichever is less 3. Construction should be completed within 4 years from the end of F.Y. in which the project is approved or by 31.3.2008 where project is approved before 1-4-2004	If approved by Local Authority before 31.03.2007	100%	Project wise	1. The assessee has to comply with the conditions stipulated in sub-section (10). 2. Also refer to the definitions of relevant terms given in sub-section (10)
7	Undertaking engaged in integrated business of handling, storage and transportation of foodgrains. or the business of processing, preservation of packaging of fruits and vegetables	On or after 1.4.2001	100%, 25% (30% for Cos.)	First 5. A.Ys. Next 5 A.Ys.	
8	Business of building, owning and operating a multiplex theatre other than in Mumbai, Delhi, Kolkata or Chennai.	01.04.2002 to 31.03.2005	50%	First 5 A.Ys.	

9	Business of building owning and operating a convention centre.	01.04.2002 to 31.03.2005	50%	First 5 A.Ys.	
10	Undertaking engaged in setting up and operating a cold storage facility for agricultural produce	01.04.1999 to 31.03.2004	100% 25% (30% for Cos.)	First 5 A.Ys. Next 5 A.Ys.	[12 A.Ys. in case of co-op. society]
11	Undertaking engaged in operating and maintaining a hospital with at least 100 beds in a rural area. **Note 1:** Deduction u/s 80-IB shall not be allowed w.e.f. AY 2004-05 to those undertaking covered u/s 80-IC **Note 2 :** No deduction u/s 80-IB (4) will be available to an industrial undertaking set up in the State of Jammu & Kashmir, which is engaged in the manufacture or production of any item listed in Part C of the Thirteenth Schedule ("the Negative list")	Hospital constructed between 1.10.2004 and 31.3.2008	100%	First 5 A.Ys.	The assessee has to comply with conditions stipulated in sub-section(11 B)

Deduction in respect of profits of undertakings Northeastern States- Section 80 I C

			Eligible undertaking/enterprise	**Date of Commencement**	**Amount of Deduction**	**Period**
1		Undertaking which begins to manufacture or manufactures and undertakes substantial expansion of article or things not being article or thing specified in Thirteenth Schedule in Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Park or Software Technology Park, or Industrial Area or Theme Park as notified by board and Central Govt. in :			
	a)	State of Sikkim	23.12.2002 - 01.04.2012	100%	First 10 A.Ys.
	b)	States of Himachal Pradesh & Uttaranchal	07.01.2003 - 01.04.2012	100% 25% (30% for Cos.)	First 5 A.Ys. Next 5 A.Ys.
	c)	North-Eastern States	24.12.1997 - 01.04.2007	100%	First 10 A.Ys.
2		Undertaking which begins to manufacture or commences operation or manufactures and undertakes substantial expansion article or things mentioned in Fourteenth Schedule:			
	a)	State of Sikkim	23.12.2002 - 01.04.2012	100%	First 10 A.Ys.

b)	States of Himachal Pradesh & Uttaranchal	07.01.2003 - 01.04.2012	100% 25% (30% for Cos.)	First 5 A.Ys. Next 5 A.Ys.
c)	North-Eastern States	24.12.1997 - 01.04.2007	100%	First 10 A.Ys.
Note :				
i)	The Assessee must fulfil other conditions prescribed u/s 80-IA, like Audit Report, etc.			
ii)	No deduction under any other section in Chapter VIA or 10A or 10B.			
iii)	Period of 10 A.Ys. shall include period deduction availed u/s 80-IB/10C			

	Eligible undertaking/enterprise			**Date of Commencement**	**Amount of Deduction**	**Period**
80 ID NEW SECTION	New hotels & convention centre		Deduction under sub-section (1) shall be available only if			
		(i)	not formed by splitting up or reconstruction of business already in existence	Started functioning between 1-4-2007 and 31-3-2010 in the National Capital Territory of Delhi and Districts of Faridabad, Gurgaon Gautambudh Nagar and Ghaziabad	100%	For First 5 years
		(ii)	not formed by transfer of new business of building previously used as hotel or convention centre			
		(iii)	transfer of new business of machinery or plant previously used for any purpose			
		(iv)	report of audit containing such particulars as may be prescribed (2) no deduction shall be allowed u/s. 10AA & Chapter VIA			

Condition for Claiming Deduction: Sec 80 AC (introduced with effect from 1.4.2006/2007) Deduction under section 80-IA section 80-IAB section 80-IB section 80-IC 80 ID and 80 I E shall be allowed only when the assessee furnishes a return of his income on or before the due date specified 139(1).

Deduction of profits from business of collecting and processing or treating of bio-degradable waste- Section 80 JJA

Applicable:	All Assessee
Qualifying income:	Profits and gains derived from business of collecting and processing or treating of bio-degradable waste for generating power or producing bio-fertilizers, bio-pesticides or other biological agents or for producing bio-gas making pellets or briquettes for fuel or organic manure
Quantum of Deduction	Whole of such profits and gains for first 5 consecutive A.Ys.

Deduction in respect of employment of new workman -Section 80 JJAA

Applicable:	Indian Company
Qualifying payment:	Additional wages paid to new regular workmen employed during the previous year.
Conditions	Total income includes profits & gains derived from any industrial undertaking engaged in production of article or thing
	The industrial undertaking is not formed by reconstruction or splitting up of an existing one or amalgamation with another industrial undertaking
	Auditors' report in Form 10DA to be furnished
Quantum of deduction	30% of additional wages for first 3 A.Ys. Including the year in which such employment is provided

Additional wages" means the wages paid to the new regular workmen in excess of one hundred workmen employed during the previous year
Regular workman", does not include—

(a) a casual workman; or

(b) a workman employed through contract labour; or

(c) Employee employed under managerial and administrative capacity

(d) Employee employed under supervisory capacity drawing salary exceeding Rs. 1600 p.m

(e) Any other workman employed for a period of less than three hundred days during the previous year;

Deduction in respect of Profits of Offshore Banking units and International finance service centers 80 L A

Applicable:	1. Schedule bank/foreign bank having Offshore unit in Special Economic Zone
	2. Unit of International Financial Service center
Qualifying income:	Income from Offshore unit in Special Economic Zone
	From the business, referred to in sub-section (1) of section 6 of the Banking Regulation Act, 1949 with an undertaking located in a special economic zone or any other undertaking which develops, develops and operates or operates and maintains a special economic zone;
	Income from unit International Financial Service center approved and setup in Special Economic Zone.
Conditions	Report from Chartered Accountant in the prescribed form 10 CCF
	A copy of letter of permission under Banking Regulation Act should be submitted
Quantum of Deduction	Whole of such profits and gains for first 5 consecutive A.Ys, and 50% such profits and gains for next 5 Assessment years.

Deduction in respect of Profits of Co-operative societies- Section 80 P

	Profits/Income	Amount of Exemption
1	Profits arising out of banking; cottage industries; marketing, processing, purchase related to agriculture; fishing and allied activities	100%
2	Primary Co-operative Society engaged in supplying milk, oil seeds, fruits or vegetables grown by its member to specified bodies	100%

3	Consumer Co-operative Society	Maximum Rs. 1,00,000
4	Other Cooperative societies	Maximum Rs. 50,000
5	Income by way of interest or dividends derived from investments and other Co-operative Societies	100%
6	Income derived from letting godowns and warehouses for storage, processing or marketing of commodities	100%

No deduction will be allowed in respect of Co-operative Bank which carrying the banking and non banking business with effect from AY 07-8. However Co-operative bank of a primary agricultural credit society or a primary co-operative agricultural and rural development bank will get the deduction

Deduction in respect of Royalty income of authors Section: 80QQB

Applicable	Resident Individual who is author or Co-author
Qualifying income:	Royalty or copyright fees and non refundable advance
	Lump sum consideration for transfer of interest in the copy right of book
Conditions	Income earned outside India should be brought into India within 6 months of the end of the P.Y or the time extended by RBI.
	Certificate in Form 10CCD should be furnished
	In respect of income earned from source outside India, Certificate in Form No. 10H should be furnished
Quantum of exemption	100% of such consideration or Rs. 3 lakhs whichever is less.

Deduction in respect of Royalty income of Patents Section; 80RRB

Applicable;	Resident Individual & Patentee
Qualifying Income	Income by way of Royalty in respect of patents
Conditions;	Patents should have been registered on or after 01.04.2003 under Patent's Act, 1970
	Income earned outside India should be brought into India within 6 months of the end of the P.Y or the time extended by RBI
	Certificate in prescribed form should be furnished. Form 10CCE - if in India, Form 10H - outside India
	Amount shall not exceed the amount of royalty under terms & conditions of a licence settled by controller under the Act
Amount of Exemption:	Whole of such income or Rs. 3 lakhs whichever is less

Deduction in respect of person with disability- Section 80 U

Applicable;	Resident Individual
Qualifying income;	Income of a person, with disability such as blindness, low vision, leprosy, hearing impairment and mental illness etc.,
Condition;	Certificate from Medical Authority in the form and manner prescribed)
Amount of Exemption;	Rs. 50,000 and Rs. 75,000 for higher disability

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Chapter 12 Taxation of Non residents

1. **TEST OF RESIDENCE**

A. **INDIVIDUALS**

a. **An individual is regarded as 'Resident' of India if:**

1. He stays in India for 182 days or more during a previous year; OR
2. He stays in India for 60 days or more during a previous year, and 365 days or more during the 4 years preceding that previous year.

b. **A resident is regarded as "Resident and Ordinarily Resident" if:**

- He is a -Resident in India at least 2 years out of 10 previous years preceding the previous year; **and**
- He has stayed in India for 730 days or less during 7 years preceding the previous year.

c. **An individual is regarded as "Non-Resident" if:**

- He does not satisfy any of the two conditions specified in (a) above.

B. **HUF/FIRM/AOP**

i. **Resident** : They are regarded as residents, even if some control and management is in India.

[Note: An HUF will be "Resident but Not Ordinarily Resident" if it is a Resident and its manager fulfils anyone of the conditions as mentioned in A(b) above]

ii. **Non-resident**: They will be regarded as non-residents, if control and management is wholly outside India.

C. **COMPANY**

An Indian company is always treated as resident. Any other company would be a resident if the control and management of its affairs is situated wholly in India.

2. **TAX INCIDENCE**

A. Resident & ordinarily Resident – world income taxable.

B. Resident but not ordinarily Resident – Income earned/received in India or income deemed to accrue in India or income arising abroad out of business controlled in India is taxable.

C. Non-Resident – only income earned/received in India and income deemed to accrue or arise in India is taxable.

3. **INVESTMENT INCOME OF A NON-RESIDENT**

Interest income received by a non-resident from Government or from any other person in India is taxable in India.

A. **Exempt Investment Income**

Following types of interest incomes are exempted:

1. Interest on NRE/FCNR account paid or credited to individual non-residents Indians who are permitted by Reserve Bank to maintain such accounts. Sec. 10(4)(ii) (including persons who may be "resident" in India as per Income-tax law, but are resident outside India under section 2(q) of FEMA.)
2. Interest on notified saving certificates (like NSC VI & VII) subscribed in foreign exchange before 1-6-2002, by a NR who is an Indian citizen or a person of Indian origin. sec. 10(4B)

3. Interest, premium on redemption or any other payment on NRNR deposit and other securities, bonds, savings certificates, notified under section 10(15)(i). NRNR deposit interest is exempt in the hands of non-resident while he remains non-resident as per Income-tax Act.
4. Interest on "NRI Bonds 1988" and "NRI Bonds (Second series)" issued by SBI purchased in foreign exchange, exemption continues even after person becomes resident. (S. 10(15)(iid). However, no exemption will be available in the year of premature encashment.
5. Interest paid up to 31st March, 2005 by a scheduled bank on RBI approved foreign currency deposits, FCNR & RFC A/c, to a NR or NOR [S. 10(15)(iv)(fa)]. [Exemption withdrawn for interest payable on or after 1st April, 2005 by the Finance (No. 2) Act, 2004]
6. Interest payable by Government or local authorities on moneys borrowed from sources outside India prior to 1-6-2001. [Sec. 10(15)(iv)(a)].
7. Interest on moneys borrowed by industrial undertaking prior to 1-6-2001 in a foreign country in respect of purchase of raw materials, components or plant and machinery and approved by Central Government prior to 1-6-2001 [Sec. 10(15)(iv)(c)].
8. Lease income from leasing of aircraft or aircraft engine received from an Indian company under an agreement is exempt from tax. However incomes under an agreement entered into between 1st April, 1997 and 31st March, 1999, and agreements entered into after 31st March, 2006, are not entitled to exemption.
9. Any income by way of dividends referred to in S. 115-O received by a non-resident is exempt u/s 10(34). Any income received in respect of units of a Mutual Fund specified u/s 10(23D), or the specified company or an Administrator of the specified undertaking as defined in Sec. 10(35) is exempt u/s 10(35).
10. Any income arising from the transfer of a long-term capital asset, being an eligible equity share in a company purchased on or after 1st day of March, 2003 and before 1st March, 2004 and held for a period of twelve months or more is exempt u/s 10(36). Eligible equity share means: –

i. Any equity share in a company which is a constituent of BSE 500 Index of the Stock Exchange, Mumbai as on the 1st day of March, 2003 and the transaction of purchase and sale of such equity share are entered into on a recognised stock exchange in India;

ii. Any equity share in a company allotted through a public issue on or after the 1st day of March, 2003 and listed in a recognised stock exchange in India before 1st March, 2004.

11. Any interest received by a non-resident or a person who is NOR, in India on a deposit made after 1st April, 2005 in an Offshore Banking Unit as is referred to in section 2(u) of the Special Economic Zones Act, 2005. Taxation of Capital Gains from sale of listed securities is treated differently. See the relevant Income Tax Section for details.

B. Special Tax Rate and Surcharge applicable on Investment Income of Non-resident Tax Rates

Sections 115A to 115AD prescribes tax rates for various types of investment income of different non-resident entities. However, if the non-resident is covered by a particular DTAA, then the rates prescribed under that DTAA would be applicable without any surcharge (which includes education cess).

In case of non-resident companies, a surcharge of 2.5% if the income exceeds Rs. 1 Crore and and education cess of 3 % of tax plus surcharge if is applicable.

i. Income of non-residents in respect of interest received from Government or any Indian concern for money borrowed in foreign currency or , dividend received by non resident or foreign company is taxed @ 20% subject to applicable surcharge and education cess. [Sec. 115A]

ii. Tax on overseas financial organisation (approved by SEBI) in respect of income by way of long-term capital gain arising on sale/repurchase of units of Mutual Funds/UTI purchased in foreign currency is 10% subject to applicable surcharge and education cess. [Sec. 115AB]

iii. Tax on non-resident in respect of interest on bonds of Indian companies issued as per Government notification, on bonds of PSU sold by Government and purchased in foreign currency, and on LTCG on sale of such bonds/GDRs/ADRs is 10% subject to applicable surcharge and education cess. [Sec. 115AC].

iv. Income from GDR- Dividend or capital gains on GDR- 10%- 115 ACA

v. Tax on approved Foreign Institutional Investor (FII) is as follows: 115 AD

i. Income by way of interest on securities – 20%

ii. Short-term capital gains on sale of other securities – 30% / sale of listed shares-U/S 111 A - 15%

iii. Long-term capital gains on sale of other securities – 10% . on sale of listed shares, units 10(38)– Nil

VI. Profit and gains of life insurance business- 12.5%

C. Special Tax Rates for income of a non-resident sportsmen or Sports Associations

Income of non-resident sportsmen or sport associations by way of i) participation in India in any game or sport or ii) advertisement or iii) contribution of article in newspapers, magazines etc. is chargeable at 10% subject to applicable surcharge and education cess (without allowing any deductions) [Sec. 115BBA]

4. BUSINESS INCOME OF NON-RESIDENTS

A. Income from business of operation of ships is taxable at 7.5% of the gross receipts from such business. [Section 44B]

B. Income from business of providing services or facilities in connection with plant and machinery on hire used or to be used in prospecting for or extraction or production of mineral petroleum & natural gas is taxable at 10% of gross receipts from such business, unless the assessee claims lower profits and gains by fulfilling the required conditions. If the non-resident claims that he has earned lower profits than that prescribed, he can keep proper accounts, get the same audited and file the audit report with the income tax return. The Income Tax Officer will then conduct a scrutiny assessment. [Sec. 44BB]

C. Income from business of operation of aircraft is chargeable at 5% of gross receipts from such business. [Sec. 44BBA]

D. Income of foreign companies from business of civil construction or the business of erection of plant or machinery or testing or commissioning thereof, in respect of turnkey power project approved by the Central Government and financed under any international aid programme is chargeable at 10% of gross receipts from such business, unless the assessee claims lower profits and gains by fulfilling the required conditions. If the foreign company claims that it has earned lower profits than that prescribed, it can keep proper accounts, get the same audited and file the audit report with the income tax return. The Income Tax Officer will then conduct a scrutiny assessment. [Sec. 44BBB]

E. In any other case, for computing the business income of non-resident, expenditure in nature of head office expenditure is allowable up to 5% of the adjusted income as specified. [Sec. 44C]

F. For any other business, the present rate of tax for foreign companies is 40% plus a surcharge of 2.5% and education cess of 2% thereon. (i.e., 41.82%)

5. TAXATION OF ROYALTIES & FEES FOR TECHNICAL SERVICES RECEIVED BY NON-RESIDENTS

A. Royalties and Fees for technical services received by non-residents from an Indian concern or the Government are taxed as under:

i. *Agreements entered into after 31st March, 1976 and before 1st June, 1977 – [Section 115A(1)(b)]

A. Foreign Companies:

a. If agreement approved by Central Government, or is under Industrial Policy, Tax = 30% on <u>Gross income</u>

b. For other agreements, Tax = 40% on <u>Gross income</u>

B. Persons other than foreign companies – Tax is at applicable rates on <u>Gross income</u>.

ii. *Agreements entered into after 31st May, 1997 and before 1st April, 2003 – [Section 115A(1)(b)]

A. Foreign Companies:

a. If agreement is approved by Central Government, or is under Industrial Policy, Tax = 20% on <u>Gross income</u>.

b. For other agreements, Tax = 40% on <u>Gross income</u>.

B. Persons other than foreign companies – Tax is at applicable rates on <u>Gross income</u>.

iii. *Agreements entered into after 31st March, 2003 – [Sections 44DA & 115A(1)(b)]

For <u>all non-residents</u>; i.e., Foreign companies and other persons:

A. If the non-resident does not have a Permanent Establishment in India –

a. If the agreement is approved by the Central Government or is under Industrial Policy, Tax = 20% on <u>Gross income</u>.

b. If the agreement is not approved as mentioned in clause (a), Tax is at applicable rate on <u>Net income</u>.

B. If the non-resident has a PE, Tax is at applicable rates on <u>Net income</u>.

iv. *Agreements entered into on or after 1st June, 2005 – [Section 115A(1)(b)]

A. Foreign companies

a. If the agreement is approved by Central Government, or is under Industrial Policy, Tax = 10% on <u>Gross income.</u>

b. For other agreement, Tax – 40% on <u>Gross income.</u>

B. Persons other than foreign companies. Tax is at applicable rates on <u>Gross income.</u>

B. Any income by way of royalty or fees for technical services arising to any foreign company (as may be notified by the Central Government from time to time) under an agreement entered into with the

Central Government for provision of services in connection with security of India is exempt. (Section 10(6C))

6. **TDS BORNE BY THE PAYER**

TDS borne by the payer in case of all payments to non-residents would be taxable in hands of the non-residents except in following cases:

A. royalty or technical service fees payment in respect of agreements with foreign company after 1-4-1976 and before 1-6-2002.

B. payment other than salary, royalty or technical services in respect of agreement made before 1-6-2002 between Central Government and international organisation or foreign government.

C. tax on perquisites borne by the employer u/s 192(1A).

D. payment of lease rent for aircraft or aircraft engine under an agreement entered into after 31st March, 1997 but before 1st April, 1999, or entered into after 31st March, 2006.

7. **ACTUAL COST OF AN ASSET BROUGHT INTO INDIA BY A NON-RESIDENT**

A. For the purpose of computation of business income, 'Actual Cost' of any asset brought into India by a non-resident would be computed as Actual cost of acquisition to the non-resident as reduced by notional depreciation as provided in the Income-tax Act, 1961, from the date of acquisition as if the asset had been used in India. (Sec. 43 Expl. 11)

B. Where an imported capital asset is acquired on deferred payment terms or out of the foreign loan the actual cost would be after taking into account the fluctuation in exchange rate. For this purpose, actual payment will be considered. (Sec. 43A).

8. **DOUBLE TAXATION RELIEF**

All provisions discussed above are subject to Double Tax Avoidance Agreements (also known as "Tax Treaties") entered into with various countries. The provision of the relevant tax treaty or domestic law provision whichever is beneficial to the tax-payer would be applicable. [Sec. 90] By insertion of section 90A by the Finance Act, 2006, provision has been made for India entering into agreement for double tax relief with any specified association in the specified territory outside India, to be notified.

9. **SPECIAL PROVISIONS FOR CAPITAL GAINS ON SHARES & DEBENTURES IN INDIAN COMPANIES EARNED BY NON-RESIDENT**

First proviso to Sec. 48 provides that where investments in shares or debentures are made by a non-resident in a foreign currency then in order to compute the capital gains/loss that may arise on sale of such securities, sale proceeds must be converted in the same currency in which the original investments were made. Resultant capital gains/loss may again be reconverted into rupees to arrive at taxable capital gains/loss. The benefit of indexation will not be available in such cases.

10. **SPECIAL PROVISIONS FOR NRIs – Chapter XIIA**

A. S. 115C

1. **NRI** means an individual, being a citizen of India or a person of Indian origin, who is not a 'resident'.
2. **Investment income:** Income derived from a foreign exchange asset (except dividend referred to in S. 115-O).
3. **Foreign exchange assets:** Specified asset acquired by NRI out of convertible foreign exchange.
4. **Specified assets are**

i. Shares of an Indian company.

ii. Debentures or deposits with an Indian company, not being a private company.

iii. Any security of the Central Government.

iv. Other notified assets (no such asset has yet been notified.)

B. Ss. 115D and E : Computation of income

	Particulars	*Investment Income*	*L.T.C.G.*
1.	Deduction for Expenses	Not allowed	As per normal provision
2.	Chapter VI-A Deductions	Not allowed	Not allowed
3.	Tax Rate (excluding surcharge)	20% plus surcharge	10% plus surcharge*
4.	Exchange rate fluctuation provision – whether applicable?	Not applicable	No

C. Sec. 115 F: Exemptions of long-term capital gains

Capital gains arising on transfer of a specified assets, is exempt from levy of any tax on fulfilment of the following conditions:

i. The asset transferred must be a long-term capital asset.

ii. Net consideration must be invested in certain specified assets. (<u>Refer para 10A (4) above – Section 115C</u>)

iii. Investment to be made within 6 months of transfer.

iv. If only a portion of the net consideration is reinvested, then proportionate exemption is allowed.

v. New asset must be held for at least three years.

D. Sec. 115 G: Option not to file income-tax return

NRI need not file an income-tax return , if –

i. His total income consists only of investment income or income by way of long-term capital gains or both and

ii. TDS has been deducted from such income.

E. Sec. 115 H : Continuation of benefits after NRI becomes resident

Chapter XIIA shall continue to apply to investment income even after NRI becomes a resident, if he furnishes a declaration along with Return of Income to that effect. This benefit does not apply to dividend income from shares. However, as dividends are now exempt from tax in shareholders' hands, it does not make any difference.

F. Sec. 115 I: NRI may opt out of Chapter XIIA

An NRI may elect not to be governed by the provisions of Chapter XIIA for any A.Y. by furnishing a written declaration to the A.O. with his return of income. If he does so, his total income for that A.Y. shall be computed and tax on such total income shall be charged in accordance with the other provisions of the Act.

AUTHORITY FOR ADVANCE RULINGS

The Provisions for authority for Advance ruling is applicable to

(i) a non-resident in relation to transaction which he is proposed to under take or

(ii) is a resident in relation to transaction which he is proposed to under with non resident resulting tax liability to non resident.

(iii) a resident falling within any such class or category of persons as the Central Government may, by notification in the Official Gazette, specify in this behalf; and

Notified Persons by Central Government are:

(a) Public Sector Company as defined u/s 2 (36A) of Income tax Act

(b) Persons in relation to transaction, which he is proposed to under with non-resident resulting, tax liability to non-resident.

Advance ruling means—

(i) a determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken by a non-resident applicant; or

(ii) a determination by the Authority in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with such non-resident, and such determination shall include the determination of any question of law or of fact specified in the application;

(iii) a determination or decision by the Authority in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal and such determination or decision shall include the determination or decision of any question of law or of fact relating to such computation of total income specified in the application

Application for advance ruling – Sec. 245Q

(1) An applicant desirous of obtaining an advance ruling may make an application in prescribed form and manner, stating the question on which the advance ruling is sought.

(2) The application shall be made in quadruplicate and be accompanied by a fee of two thousand five hundred rupees.

(3) An applicant may withdraw an application within thirty days from the date of the application.

Procedure on receipt of application – Sec. 245R

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the Commissioner.

(2) The Authority may, after examining the application and the records called for, by order, either allow or reject the application:

The Authority shall not allow the application where the question raised in the application,

(i) is already pending before any income-tax authority or Appellate Tribunal

(ii) Involves determination of fair market value of any property;

(iii) relates to a transaction or issue which is designed *prima facie* for the avoidance of income-tax:

Provided further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

Provided also that where the application is rejected, reasons for such rejection shall be given in the order.

(3) A copy of every order for allowing or rejecting application made shall be sent to the applicant and to the Commissioner.

(4) Where an application is allowed the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.

(5) On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorized representative.

(6) The Authority shall pronounce its advance ruling in writing within six months of the receipt of application.

(7) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner, as soon as may be, after such pronouncement.

Appellate authority not to proceed in certain cases – Sec. 245RR

No income-tax authority or the Appellate Tribunal shall proceed to decide any issue in respect to which an application has been made by an applicant, being a resident.

Applicability of advance ruling – Sec. 245S

(1) The advance ruling pronounced by the Authority under section 245R shall be binding only—

(*a*) on the applicant who had sought it;

(*b*) in respect of the transaction in relation to which the ruling had been sought; and

(*c*) on the Commissioner, and the income-tax authorities subordinate to him, in respect of the applicant and the said transaction.

(2) The advance ruling shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced

Advance ruling to be void in certain circumstances – Sec. 245T

(1) Where the Authority finds, , that an advance ruling pronounced by it has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio* and thereupon all the provisions of this Act shall apply to the applicant, as if such advance ruling had never been made.

(2) A copy of the order made above shall be sent to the applicant and the Commissioner.

Powers of the Authority – Sec. 245U

The Authority shall, for the purpose of exercising its powers, have all the powers of a civil court under the Code of Civil Procedure, . The Authority shall be deemed to be a civil court and. every proceeding before the Authority shall be deemed to be a judicial proceeding

Procedure of Authority – Sec. 245 V

The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.

Authority for Advance Rulings – Sec. 245O

(1) The Central Government shall constitute an Authority for giving advance rulings, to be known as "Authority for Advance Rulings".

(2) The Authority shall consist of the following Members appointed by the Central Government, namely :—

(*a*) a Chairman, who is a retired Judge of the Supreme Court;

(*b*) an officer of the Indian Revenue Service who is qualified to be a member of the Central Board of Direct Taxes;

(*c*) an officer of the Indian Legal Service who is, or is qualified to be, an Additional Secretary to the Government of India.

(3) The salaries and allowances payable to, and the terms and conditions of service of, the Members shall be such as may be prescribed.

(4) The Central Government shall provide the Authority with such officers and staff as may be necessary for the efficient exercise of the powers of the Authority under this Act.

(5) The office of the Authority shall be located in Delhi.

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Chapter 13 Minimum Alternative tax

The provisions of this chapter are applicable all types of companies, whether an Indian Company or a Foreign Company or a Public Company or a Private Company or a Limited Company or an Unlimited Company

In respect of a Company where the taxable income as per I T Provisions is less than 18 % of its book profit, Book profit shall be deemed to be the total income of the Company. Income tax shall be payable on Book profit @ 18% and surcharge 7.5% applicable to when Book profit exceeds 1 crore

In Other words
Tax payable under IT Provisions or tax on Book profit which ever is higher is payable

For this purpose of every company shall prepare its profit and loss account for the previous year as per Schedule VI to the Companies Act,
Profit and loss account shall be prepared considering the accounting policies and the accounting standards the method and rates adopted for calculating the depreciation as per accounts laying before AGM

Book profit" means the net profit as per the profit and loss account with specified adjustments as below

Adjustments to Book Profit
Additions if they debited in P & L account

◆Income tax paid payable/provision
◆Transfer to reserves except shipping business reserve
◆Provisions for unascertained liabilities
◆Provisions for loss of subsidiaries
◆Dividend paid/provision
◆Addl. Depreciation on Revaluation of assets
◆Expenditure relating to income u/s 10, 11,12, , 10 C except 10 (38)
◆Loss of tonnage tax scheme
◆Deferred tax/deferred tax provision
◆Dividend distribution tax/provision.
◆Interest on Income tax 234 A, B, C
◆

Adjustments to Book Profit
Deductions if they credited in P & L account

◆Income relating to income u/s 10, 11,12, 10 C except 10 (38)
◆Income 80 HHC, HHE ,HHf,
◆Amount withdrawn from reserves
◆B/F loss or depreciation as per books which ever is less
◆Revaluation reserve not exceeding depreciation.
◆Profits of sick companies
◆Profit on tonnage schme

Non Applicability of Mat to sec 10 AA companies

◆Minimum Alternate Tax (MAT) provisions not to apply to units in or developers of SEZs Units (sec 10 AA)

Additional Points
Only Specified and required adjustments to be done to arrive book profit.
For example the following are not be adjusted
◆penalties debited in P & L account

◆fringe benefit tax
◆Inadmissible other than those what is specified in 115 JB
◆Profit under section 80 IA and 80 IB ,
◆Income and expenses of other heads of income

Items not to be added as per decided cases

Debenture redemption reserve to redeem debentures- IOL Ltd
Provision for wealth tax- Usha Martin industries
Share of loss from firm debited to P & L Account-Metro express Ltd.,
Provision for gratuity and warranty are ascertained liabilities.

Tax credit in respect MAT - Sec. 115JAA

◆Where the tax paid under Mat Provisions Credit can be taken for mat tax
◆Credit means Tax paid under mat minus tax under normal provisions
◆Credit for Mat paid u/s 115 JB will be available only from AY 06-07
◆Mat Credit can carry forward maximum for 10 AYs
◆Set off credit available when tax payable under normal Provisions.
◆Mat credit is restricted to the extent of Mat payable

Tax credit in respect MAT - Sec. 115JAA

Other Points

◆Assessing Officer must accept authenticity of accounts certified by statutory auditors. Cannot question the book profits computed under 115 J B
◆Mat Applicable for Foreign Companies also
◆The Provisions of advance tax, Interest u/s 234 B, 234 C will applicable for Mat -Circular : No. 13/2001, dated 9-11-2001.

Case Laws:

***Assessing Officer must accept authenticity of accounts certified by statutory auditors* -** The Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Act.

While so looking into the accounts of the company, an Assessing Officer under the Income-tax Act has to accept the authenticity of the accounts with reference to the provisions of the Companies Act and the same to be scrutinized and certified by the statutory auditors to be placed in its general meeting for approval and thereafter to be filed before the Registrar of Companies. The assessing officer cannot enquiry upon a fresh entries made in the books of accounts of the company. The Assessing officer cannot recompute the Profits by excluding the provisions made in the arrears of Deprecation. Adjustments can be made only to the extent permitted U/s 115 JB - *Apollo Tyres Ltd.* v. *CIT* [2002] 255 ITR 273/[2002] 122 Taxman 562 (SC).

Carry forward of unabsorbed deductions - Where an assessee has been made liable to pay 30 per cent of book profits in terms of section 115 J, deductions which are permissible under provisions of Act should be considered to have been actually allowed and therefore, assessee should be allowed to carry forward only balance of unabsorbed deductions and not full value of deductions - *Karnataka Small Scale Industries Development Corpn. Ltd.* v. *CIT* [2003] 126 Taxman 121 (SC).

Applicability of MAT for Foreign Companies

The authority of advance ruling of 1997, 234 ITR 335 the Provisions of MAT will be applicable to foreign companies also with regard to their permanent establishment and place of business in India. The foreign Company has to furnish Profit and loss account and Balance sheet of its Indian Business and calculate Indian business profits separately In Computing book profits No deduction will be allowed other than what is specified in 115 JB

Liability to pay advance tax - All companies are liable for payment of advance tax having regard to the provisions contained in new section 115JB. Consequently, the provisions of sections 234B and 234C for interest on defaults in payment of advance tax and deferment of advance tax would also be applicable where facts of the case warrant. - *Circular : No. 13/2001, dated 9-11-2001.*

Tax on distributed profits of domestic companies (Sec 115 O)

- Applicable to Domestic Company which paid dividend in India
- Declaration, distribution or payment (whether interim or otherwise) after 1-4-2003,
- Whether out of current or accumulated profits
- Additional income-tax at the rate of 15% and surcharge
- This tax is payable even company has no tax liability on its total income
- The liability is on the principal officer
- Time limit for payment within 14 days from the date of—
- declaration of any dividend; or
- distribution of any dividend; or
- Payment of any dividend, whichever is earliest
- No Credit and No Deduction

Provision Not Applicable for SEZ units (10 AA)

- Interest for delay 1% per month or part thereof
- Default in payment principal officer /Company is deemed to be Assessee in default.

Tax on distributed income to unit holders Sec. 115R.

Applicable to Specified Company/Mutual Fund amount paid to unit holders

- Additional income-tax is payable at the rate of 12 ½ per cent and surcharge in case of distribution to indl/ HUF 20% in case of distribution to others
- Income distributed by money market mutual funds or liquid fund has to pay tax at rate 25%
- This tax is payable even company has no tax liability on its total income

Time limit for payment -- within 14 days from the date of—

- Declaration/distribution of amount; or
- Payment of amount, whichever is earliest
- Interest for delay 1% per month or part thereof
- Default in payment principal officer /Company is deemed to be Assessee in default.
- Return of payment to be filed with Income tax before 15th September each year
- Provision not Applicable to Mutual funds of Equity Oriented funds (both opened ended and closed ended)

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Chapter 14 Income authorities

Income tax authorities (hierarchy) Sec 116

Central Board of Direct Taxes

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Director General of Income Tax/Chief Commissioner of Income Tax

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Director of Income Tax/Commissioner of Income Tax/Commissioner I.T. (Appeal)

↓

Additional Director of Income Tax/Additional Commissioner of Income Tax

↓

Joint Director of Income Tax/Joint Commissioner of Income Tax

↓

Deputy Director Of Income Tax/Deputy Commissioner of Income Tax

↓

Assistant Director of Income Tax/Assistant Commissioner of Income Tax

↓

Income Tax Officer Tax Recovery Officer

↓

Income Tax Inspector

CBDT(Central Board of Direct taxes)

CBDT was constituted under Central Board Revenue Act, 1963. And It functions under the Ministry of Finance

Powers of CBDT

◆To make rules under Sec.295.

◆To issue instructions orders and directions to persons employed in the execution of Income Tax Act. However, it cannot issue instructions to the Deputy Commissioner (Appeals) and Commissioner of Income tax (Appeals). It cannot issue a direction to Income tax Officers to dispose of a case in a particular manner.

◆To declare an organization as a company

◆To entertain objections in respect of search and seizure under the Act.

◆To accord sanction for issue of a notice for re-assessment in certain cases.
◆To approve waiver or reduction of penalty in excess of specified amount.
Powers of Director General or Director

Powers of Chief Commissioners of Income tax

They are appointed by Central Government.
Functions
◆To perform those functions which are assigned by CBDT.
Powers
◆1. To enquire or investigate into concealment u/s 131(1-A).
◆2. To give instructions to Income tax Officers u/s 119(2).
◆3. To search and seizure u/s 132.
◆4. To requisite books of accounts, etc. u/s 132-A.
◆5. To survey u/s 133-A.
◆6. To make an enquiry u/s 135.

Powers of Commissioners of Income tax

◆They are appointed by Central Government.
Functions and Powers
◆Registration of a charitable trust or institution u/s 12A(a).
◆Approval of an annuity contract.
◆Appointment of Income tax Officers (Class II) and Inspectors of Income tax u/s 117(2)
◆Assigning jurisdiction of Inspecting Assistant Commissioners and Income tax Officers u/s 123 & 124.
◆Transfer of cases u/s 127.
◆Assignment of functions to Inspectors of Income tax u/s 128.
◆Discover and production of evidence u/s 131.
◆Search land seizure u/s 132.
◆To requisite books of account u/s 132-A.
◆Disclosure of information relating to assessee u/s 138.
◆Granting sanction for issue of notice to re-open assessment after the expiry of 4 years u/s 151(2).
◆Withholding of refunds in certain cases u/s 243.
◆Set-off of refunds against tax not paid u/s 245.
◆ Directing the Income tax Officer to prefer an appeal to Appellate Tribunal against the order of Commissioner (Appeal)
◆ Reference to High Court u/s 256.
◆Revision of orders passed by Income tax Officer which are prejudicial to the revenue u/s 263.
◆Reduction or waiver of interest in certain cases u/s 273A.
◆To award and withdraw recognition to provident funds.

Powers of Commissioners (Appeals)

◆They are appointed by the Central Government.
◆Functions and Powers
◆ Power regarding discovery, production of evidence etc u/s 131.
◆To call for information u/s 133.
◆To inspect registers of companies' u/s 134.
◆To set-off refunds against tax remaining payable u/s 245

◆ To dispose of appeals.
◆To impose penalty u/s 271 and 272A.
Powers of Deputy/Asst. Commissioners
◆To instruct the Income tax Officers u/s 119(3).
◆To exercise powers of Income tax Officers u/s 125A.
◆ Powers in relation to discovery, production of evidence u/s 131.
◆To search and seizure u/s 132
◆To call for information u/s 133.
◆To survey u/s 133-A.
◆To inspect registers of companies u/s 134.
◆To make an enquiry u/s 135.
◆Cancellation of registration u/s 186(1).
◆Granting approval to concerned ITO to impose penalty for concealment of income in excess of Rs. 25,000 u/s 271(1) (iii).
◆ To impose penalty for failure to answer questions, sign statements etc. u/s 272A
Powers of Income tax Officers (ITO)
◆Discovery and production of evidence u/s 131.
◆Power regarding search and seizure u/s 132.
◆Registration of books of account u/s 132A.
◆To call for information u/s 133.
◆To survey u/s 133A.
◆To inspect register of companies u/s 134.
◆To allot of permanent account numbers (PAN) u/s 139A.
◆To make assessments u/s143 & 144.
◆To impose penalties.
◆To issue direction for getting accounts audited u/s 142.
◆Rectification of mistakes u/s 154.
◆Registration of firms u/s 185(4).
◆Cancellation of registration u/s186.
◆To grant approval for deduction of tax at source at lower rates of tax u/s 195 & 197.
◆To demand advance payment of tax u/s 210.
◆To grant refund to tax u/s 237 & 240.

Jurisdiction of Income Tax Authorities Sec.120

◆Income-tax authorities shall exercise powers and perform as per directions issued by the as the Board
◆The Board may authorize any other income-tax authority to issue orders/powers performed by are subor-dinates.
◆Criteria for issue directions by Board/ I T authority
◆(*a) Territorial* area; eg. Pin Code
◆(*b*)Persons or classes of persons; eg. Companies, Trusts etc
◆(*c*)Incomes or classes of income; eg. Salary Class
◆(*d)*Cases or classes of cases. Eg. Professionals/Media,
◆The Board may, by general or special order
◆(*a) Authorize* any Director General or Director to perform such functions of any other income-tax authority

◆(*b*)Empower the Director General or Chief Commissioner or Commissioner, such Joint Commissioner/Joint Director Additional Commissioner or Additional director to perform such functions and to issue orders to the Assessing Officer.

◆ The directions and orders referred above if require two or more Assessing Officers (whether or not of the same class) .Lower authority should perform. higher authority should direct

Jurisdiction of Assessing Officers – Sec. 124

The Assessing Officer has been vested with jurisdiction

‒ Business or profession Persons, the place his business or profession/in case of more places than one, if the Princi-pal place of his business or profession

‒Other persons - residing area.

Other Points

‒Where any question arises regarding jurisdiction, power of determination vest with DG or C C IT or CIT.

‒A person shall be entitled to question the jurisdic-tion of an Assessing Officer with in the time allowed specified below:

‒Return of Income filed U/139 (1)

‒With in one month from the date of service of Notice u/s 142(1)/143(2) or

‒Before Completion of Assessment which ever is earlier

‒No return of Income filed

‒With in time allowed in notice u/s 142(1)/148 for filing of ROI

‒Time allowed showing cause for notice u/s 144 which ever is earlier.

‒If Assessing Officer shall, if not satisfied with the correctness of the claim, he can refer the matter to Director General/Chief Commissioner before the assessment is made

Power to Transfer cases	**Sec. 127**

◆The DG or CCIT or CIT may, after giving the assessee a reasonable opportu-nity of being heard and after recording his reasons for doing so, transfer any case from one or more subordinate Assessing Officers

◆Where the Assessing Officer from whom and to whom case is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner,—

◆(*a*) Where the Both DG/CCIT/CIT to whom such Assessing Officers are subordinate are in agreement, then the DG/CCIT/CIT from whose jurisdiction the case is to be trans-ferred pass orders after giving reasonable opportunity to the assessee and recording the reasons

◆(*b*)Where the Both DG/CCIT/CIT to whom such Assessing Officers are subordinate are in not in agreement, the order transferring the case may, similarly, be passed by the Board or any such DG/CCIT?CIT as the Board may, by notification in the Official Gazette,.

◆ No opportunity to be given to assessee where the case is transferred within in the same city, locality or place.

◆The transfer of a case may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued.

Power to call for Information – Sec. 133

◆The Assessing Officer,/JCIT/ Commissioner (Appeals) may, for the purposes of this Act

◆Require any firm/HUF to furnish him with a return of the names and addresses of the partners of the firm/members of HUF and their respec-tive shares;
◆Require any person whom he has reason to believe to be a trustee, guardian or agent, to furnish him with a return of the names of the persons for or of whom he is trustee, guardian or agent, and of their addresses;
◆Require any assessee to furnish particulars in a statement of the names and addresses of all persons to whom he has paid in any previous year rent, interest, commission, royalty or brokerage, or any annuity, amounting to more than Rs. 1000, or such higher amount
◆Require any dealer, broker or agent or any person engaged stock or commodity exchange to furnish a statement of the names and addresses of all persons to whom he has paid/received any sum in connection with the transfer/sale, exchange of assets etc
◆Require any person, including a banking company/officer to furnish information useful for, or relevant to, any enquiry or proceeding under this Act:

Power of Survey – Sec. 133A

Places where income-tax authority may enter
◆Place of Business and Profession (principal place or not) where he has jurisdiction or authorized/assigned place for him
◆Other place as if any stated by person, that books of account/documents/stock/valuables are kept
When he can enter
◆enter any place of business or profession) only during the hours at which such place is open for the conduct of business or pro-fession and, in the case of any other place, only after sunrise and before sunset. Entering is only time exit no time.
Powers of Survey I T Authority
◆to inspect such books of account or other documents available at such place
◆Verify, cash, Stock and other valuables found at that place
◆To gather such information as he may require as to any matter which may be useful for, or relevant to, any pro-ceeding
◆ place marks of identification on the books of account or other documents
◆Take extracts and Copies of books
◆Make an inventory of any cash, stock or other valuable article or thing checked
◆Record the statement of any person, which may be useful for, or relevant to, any proceeding
◆proprietor, employee or any other person who may at that time and place be attending help him in exercising above powers
Power to Impound/retain of Books of Accounts/Documents
◆only for a Maximum period of 10 days if he think fit, after recording the reasons for doing so
◆More than 10 days (excluding holidays) approval of DG/CCIT
What he cannot do
◆Remove from the place wherein he has entered, any cash, stock or other valuable article or thing.
Other Powers

◆Ask the Assessee to furnish any information useful for the purpose of act in respect of expenditure incurred for any, function, ceremony, event etc

Non Co-operation by Assessee:

◆Refusal or evasion by assessee in performing the functions by IT authority it may result search u/s 132(1)

Power to Collect Certain Information – Sec. 133B

Places where income-tax authority may enter

◆Place of Business and Profession (principal place or not) where he has jurisdiction or authorized/assigned place for him

When he can enter

◆enter any place of business or profession) only during the hours at which such place is open for the conduct of business or pro-fession

Powers

◆To obtain/gather such information as may be required.

◆proprietor, employee or any other person who may at that time and place be attending help him in furnishing the information

What he cannot do

◆Remove from the place wherein he has entered, any cash, stock or other valuable article or thing.

Search and Seizure sec 132

Circumstances result in Search

◆Failure to produce any books of account or documents as required by such summons or notice, U/s 131(1)/142(1)

◆Produced, any books of account or other documents which will be not useful for, or relevant to, any proceeding under the Act.

◆Any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed

◆Non Cooperation by assessee in Survey u/s 133 A,. For example. Evasive reply refuses to inspect books documents etc.

Persons has power to Authorize	Authorized persons
Director General or Director/ Chief Commissioner or Commissioner	Joint Director, Joint Commissioner, Assistant Director or Deputy Director Assistant Commissioner or Deputy Commissioner or Income-tax Officer
Joint Director, or Joint Commissioner	Assistant Director or Deputy Director Assistant Commissioner or Deputy Commissioner or Income-tax Officer

Powers of Authorized person

◆Enter any place where the to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

◆Break open the lock of any door, box, locker, safe, almirah where the keys thereof are not available;

◆search any person who has got out of, or is about to get into,

◆Seize any such books of account/ money, bullion, jewellery or other valuable article or thing found as a result of such search:

◆place marks of identification marks/ made extracts or copies there from;

◆make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing :

◆Where any building, place, vessel, vehicle or aircraft is within the area falls outside the jurisdiction of authorized Commissioner, the powers can be exercised in that area also, if delay in getting authorization and interest of revenue

◆Where any Chief Commissioner or Commissioner has reason to sus-pect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorization such Chief Commissioner or Commissioner may, authorize the said officer to take action in respect of such building, place, vessel, vehicle or aircraft.

Order not to remove or not to part

◆Where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorized officer may serve an order not remove, not to part with or otherwise deal with it, except with the previous permission of such authorized officer 132(3)

What cannot be seized/order not to pass to remove

◆bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search

Presumptions with regard to search 132(4A)

◆Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed

◆that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person ;

◆That the contents of such books of account and other documents are true; and

◆That the signature and handwriting which may reasonably be assumed to have been signed by, that person.

Other Points

◆The authorized officer may take the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes search

◆The authorized officer may, during the course of the search or seizure, examine on oath any person any statement made by such person during such examination may there-after be used in evidence sec 132(4)

Period of retentions of books and documents 132(5)

◆30 days from the date of the order of assessment under sec 153 A

◆CC/DG/C can extend another max 30 days

Period of force of order not to part

◆60 days from the date of the order 132(5A)

Right of an assessee to take copies

◆Make copies thereof, or take extracts there from, in the presence of the authorized officer or any other person empowered by him in this behalf, at such place and time as the authorized officer may appoint in this behalf.

Handover of books and documents of person to other authorized officer 132(6A)

◆Where the authorized officer has no jurisdiction over the person in which search was initiated, the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized shall be handed over by the authorized officer to the Assessing Officer having jurisdiction over such person within a period of sixty days from the date on which the last of the authorizations for search was executed and thereupon the powers exercisable by the authorized officer shall be exercisable by such Assessing Officer.

Application by Other person when his books was seized:132(7)

◆If a person legally entitled to the books of account or other documents seized under search, objects for any reason to the approval given by person who approved search, he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents and the Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit

Powers to requisition books of account etc. – Sec. 132A

Circumstances result in

◆Similar to search

Authorization

◆Similar to search except person who gives authorization is known as Requisition authority and to the person whom authorization is give is known as Requisition officer

Procedure

◆ Where such books of accounts, other documents and money bullion jewellery and other valuable articles have been taken in to the custody of the any Officer or Authority under any other law (for example Excise, Customs and, Fema)for time being in force ,then Requisition authority authorize the requisitioning Officer

◆ On a requisition being made above, the offi-cer or authority of the other law (for example Commissioner of customs, Directorate of Enforce) shall deliver the books of account, other documents or assets to the requisi-tioning officer either forthwith or when such officer or authori-ty is of the opinion that it is no longer necessary to retain the same in his or its custody.

◆ Where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions search and seizure from sec 132 (4A) to (14) and 132 B will applicable.

Application of seized or requisitioned assets – Sec. 132B

The assets seized under Sec 132 or requisitioned under Sec 132 A may be dealt with in the following manner, namely:

◆the amount of any existing liability Income tax Act

◆the Wealth-tax Act, 1957

◆the Expenditure-tax Act, 1987

◆the Gift-tax Act, 1958

◆Interest-tax Act, 1974

◆ and the amount of the liability search Assessment

◆as the case may be (including any penalty levied or interest payable in connection with such assessment may be recovered out of such assets

Assessee Application to release assets

◆Assessee can makes an application to the Assessing Officer within 30 days from the end of the month in which the asset was seized, for release of asset and explaining the nature and source of acquisition of any such asset to the satisfaction of the Assessing Officer,

◆Assessing Officer, the amount of any existing liability may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the Chief Commissioner or Commissioner, with in 120 days from the from the date on which the last of the authorizations for search under sec 132/132 A for requisition, as the case may be, was executed;

◆assets consist solely of money will be used to discharge the liability

◆Assets in kind may be sold and recover the liability

◆Any assets or proceeds thereof, which remain after the liabilities are discharged, shall be forthwith made over or paid to the persons from whose custody the assets were seized.

◆Simple interest @ 6% from the expiry of 120 days from the last authorization of search till the date of completion of assessment u/s 153 A

Assessment of Search Cases 153 A to 153 C

Assessment 153 A

◆A O should give notice to assessee to file R O I with in the time specified in the notice for a period of 6 days immediately preceding the ay which search was conducted or requisition was made

◆The return is treated as return filed u/s 139 and provisions of the act will apply.

◆Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years :

◆That assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate.

◆an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

Time limit

◆within a period of two years from the end of the financial year in which the last of the authorizations for search under section 132 or for requisition under section 132A was executed;

Period of limitation- exclusion of period similar to sec 153

◆authorization means conclusion of search as recorded in the last panchnama

◆Requisition means the actual receipt of the books of account or other documents or assets by the Authorized Officer.

Assessment of income of any other person.Sec 153 C

◆where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

Assessment of Search cases by Joint Commissioner Sec 153 D

With effect from 01.06.2007, any order of assessment u/s 153 A or 153 B shall be made by assessing officer below the rank of Joint Commissioner can be made only with the approval of joint Commissioner

Settlement Commission Sec 245

Constitution of Settlement Commission

Settlement Commission consists of Chairman, Vice Chairmen and members, functioning under Department of Revenue, Ministry of Finance. The Chairman, Vice-Chairmen and other members of the Settlement Commission shall be appointed from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, administration of tax laws.

The powers and authority of the Settlement Commission will be exercised by a principal Bench sitting at Delhi and such additional Benches established by the Central Government at the places as it considers necessary. Settlement Commission deals with tax matters. The purpose of constitution of settlement commission is for speedy completion of assessments and settlement of pending cases at the earliest.

Conditions to be fulfilled for making an application

- Assessee can make an application to settlement commission only when the case **is** pending before the Assessing Officer as on the date of application. It can only be approached when original Assessment is pending.
- The additional amount of tax accepted by the applicant in his application exceeds Rs. 3 lakhs.
- The applicant shall deposit the additional amount of tax accepted by him along with interest due at the time of **filing** of applications
- The assessee should also intimate to the Assessing Officer in the prescribed manner that he has made an application to the Settlement Commission. Such intimation should be made on the same date when he makes an application to the Settlement Commission
- In respect of an application filed before 1st June, 2007, but pending issuance of an order by the Commission, the applicant shall pay the accepted tax by 30th June, 2007, failing which the application shall be rejected.
- Once application is made to SC it cannot be withdrawn.

Application to Settlement Commission cannot be made

- Settlement Commission **cannot be** approached when the assessment is under section 147 and notice was issued to file a return u/s 148,

- It can also not be approached when search has been initiated under section 132 or requisition has been made under section 132A followed by assessments under section 153A (b)/153B(1)(b)..
- Application for settlement cannot be made fresh assessment has been directed on account of the original assessment being set aside by the Commissioner (Appeals)/Appellate Tribunal under sections 263/264/254.

Determination of additional tax

- If Return of Income not filed, tax on the income disclosed in that year
- If Return of Income is filed, Tax on total income as reduced by amount of tax calculated in that year.

Procedure of Settlement Commission

- Assessee should make application giving full disclosures along with all relevant documents should be submitted in quintuplicate in prescribed application along with prescribed fees.
- After receipt of application Settlement Commission shall issue a notice to the applicant within 7 days from the date of receipt of the application, asking the reason why application should be allowed
- Settlement commission will take into consideration the explanation provided by the applicant.
- Settlement Commission shall, within a period of 14 days from the date of the notice to assessee shall pass an order for allowing or rejecting the application.
- Where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed.
- In case of rejection of application, the proceedings before the Settlement Commission shall abate on the date of rejection.
- A copy of accepting /rejecting order shall be sent by settlement Commission to the applicant and to the Commissioner of Income tax having jurisdiction.
- Settlement Commission shall, within 7 days from the date of acceptance order shall, call for a report along with the relevant records from the Commissioner of Income tax having jurisdiction.
- The Commissioner shall furnish the report within a period of 30 days from the date of the receipt of communication from the Settlement Commission.
- The settlement commission shall also pass order rejecting the application based on the report of Commissioner
- Where the Commissioner does not furnish the report within the aforesaid period of 90 days, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.
- The Settlement Commission may pass such order as it thinks fit on the matters covered by the application and on the matters not covered by application as per report of commissioner.
- An opportunity of being heard either in person or through a representative duly authorised in this behalf shall be given to the applicant and to the Commissioner of Central Excise having jurisdiction before passing of such order

Time Limit for passing order for Settlement commission

- In respect of application received before 01.06.2007 order should be passed by 31.7.2007
- In respect of application received on or after 01.06.2007, with in 12 months from the last day of the month which application was made.

Consequences if SC not passed order with in Time limit

- The proceedings of SC shall abate.
- The Assessing Officer under which the case is pending shall proceed, as if no application is made to SC.

Order of Settlement Commissions

- The amount of settlement ordered by the Settlement Commission shall not be less than amount of tax admitted by the applicant
- In case of rejection of application, the order shall contain the reasons therefore.
- The order shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.
- Where the order of Settlement is void, The Central Excise Officer complete such proceedings at any time before the expiry of 2 years from the date of the receipt of communication that the settlement became void

Assesse should pay the amount

- The duty, interest, fine and penalty payable as per SC order shall be paid by the assessee within 35 days of receipt of a copy of the order by him.
- If the assessee fails to pay the amount with in time interest is payable @1.25% per month or part there of.
- If amount remains unpaid it shall be recovered along with interest due thereon.

Powers of Settlement Commission

- Settlement Commission has all powers of Assessing Officer.
- It can attach property of applicant during pendency of proceedings, in the interest of revenue.
- It can regulate its own procedure and decide places where the bench will sit.
- The proceedings before the Commission are judicial proceedings.
- Every order of settlement is conclusive as to the matters covered by the order.
- Sc has powers to grant immunity from prosecution penalty for an offence under Income tax and Wealth tax Act
- SC has power to withdraw the immunity granted, if the payment is not made as per order,
- SC has power to send back case to Assessing Officer if assessee not cooperated during proceedings,

Settlement Commission has no power

- To grant immunity from prosecution or offence under Indian Penal Code any other Central Act
- To grant immunity from payment of interest under Income Tax Act and Wealth Tax Act.
- To reopen completed Proceeding of Assessment in respect of cases where application made on or after 01.06.2007.
- To grant extension of time to pay the final sum specified in the settlement order.

Application for settlement permissible more than on or after 01.06.2007

In respect of application made before 01.06.2007, Assessee cannot make subsequent application when

- Where the settlement commission imposed penalty in the order for concealment of duty liability
- After the Order Assessee convicted an offence under the Excise and customs Act
- When case referred back to Assessing Officer due to non co-operation of assessee

In respect of application made **on or after 01.06.2007** and if application was allowed. Assessee make subsequent application

Appeal against order of Settlement Commission

There is no specific provision for appeal against order of Settlement Commission; however writ can be filed in High Court.

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Chapter 15 Return of income

Return of Income is a document to be filed by assessee to the Income tax department, normally yearly once, giving about his total income and tax paid

Voluntary Return of Income Sec 139 (1)

Nature of Assessee	When Return of income to be filed
Company/Firm	After completion of incorporation/Formation Irrespective of Income it is Mandatory to file R O I. Even no business/No Transactions/Even incur Loss
Individual/HUF A O P/BOI/Artificial judicial person	When income exceeds basic exemption limit before applying deduction u/s 10 A, 10 B and 10BA and Chapter VI A
All other persons	When income exceeds basic exemption limit

Due date for filing Return of income

Return of Income should be filed with in due date. The due dates are

Nature of Assessee	Due date
Company, Persons whose accounts are subject to audit under Income tax or any other law	30^{th} September of Assessment year
Working partner of a firm where firm accounts are subject to audit	30^{th} September of Assessment year
All other persons	31^{st} July of Assessment year

The above due dates can be extended by CBDT By notification
If the due date is holiday ROI can be filed in next working day (Applicable for paper return**)**
Consequences for not filing Voluntary return in due date

- 1. Penal interest under section 234 A,
- 2 penalty of Rs. 5,000 may be imposed under section 271F.
- 3.Business Loss/CG Loss/owning and maintaining horse race loss cannot be carry forward
- 4.Deduction under sections 10A, 10B, 80-IA, 80-IAB, 80-IB, 80-IC, 80- ID and 80-IE is not be available
- 5.Best judgment assessment u/s 144

Bulk Filing of Returns of the Employees by the Employer on Computer Readable Media Sec. 139 (1A)

▪Option available to individual who is in receipt of income chargeable under the head "Salaries" residing in Selected Cities.
▪He can furnish a return of his income for any previous year to his employer, in accordance specified scheme
▪Employer Should Possess TAN NO and who has a minimum 50 Employees having income exceeding basic Exemption limit.
▪Such employer shall furnish all returns of income received by him on or before the due date, in magnetic form.

▪Any employee who has filed a return of his income to his employer shall be deemed to have furnished a return of income u/s 139(1) and the provisions of this Act shall apply accordingly.
Bulk Filing of Returns of the Employees by the Employer on Computer Readable Media Sec. 139 (1A)
The following types of returns cannot be submitted under the above Scheme
▪a return of income other than Current year
▪Return without PAN
▪Return of employee who has more than one employer
▪Revised return.

Furnishing the Return of Income Through Intermediary Sec 139 (1B)

This is an Optional scheme available to all assesses who does not have business income.
▪This Scheme is currently available in Metros, Hyderabad and Ban galore and Ahmadabad
▪ The tax Payer can furnish his return of income to the intermediary authorized for this purpose (notified by CBDT for these purpose)
▪ The intermediary furnishes return of income to Income tax department online, by transmitting the data.
▪IT department send provision receipt online to intermediary.
▪The intermediary will submit paper return to department along with provisional receipt.
▪The Intermediary will also provide facility for preparing return of Income

Return of Loss [Sec. 139(3) & Sec. 80

▪A Person who has suffered a loss in any previous year in PGBP/ or under the head "Capital gains" or Loss from owning and maintaining horse races
▪And claims that the loss be carried forward and set-off against the profit under the same head for the subsequent assessment year,
▪ Should file a return of loss within the time allowed under Sec. 139(1)
▪Delayed in filing Return of loss may be condoned in certain cases Circular No. 8/2001 dated 16/5/2001 failing which the would forfeit his right to the carry forward of the loss to succeeding years.
The condition enumerated in sec. 80 does not apply to following losses:
a)loss under the head 'House Property' – Sec. 71B
b)loss due to 'Unabsorbed Depreciation' – Sec. 32(2)
c)loss due to 'Capital Expenditure on Scientific Research'
d)loss due to 'Capital Expenditure on promotion of Family Planning amongst employees'.
The above-mentioned losses can be carried forward without filing ROI in time.
The condition stipulated / enumerated in sec. 80 applies only for the year in which the loss was sustained / incurred. It does not apply to the ROI of the year in which carried forward is claimed.

Belated Return [Sec. 139(4)] or Late Filing of Return of Income

▪If an assessee has not furnished a return of income under Sec. 139(1) or in response to notice under Sec. 142(1),
▪ He may file return of Income
▪ With in one year from the end of the relevant assessment year. Or
▪ Before the completion of assessment which ever is earlier
▪Example Return for AY 09-10 can be filed before Completion of Assessment or on or before 31.03.11

Consequences for filing Belated return

- 1. Penal interest under section 234 A,
- 2 penalty of Rs. 5,000 may be imposed under section 271F.
- 3.Business Loss/CG Loss/owning and maintaining horse race loss cannot be carry forward

- 4.Deduction under sections 10A, 10B, 80-IA, 80-IAB, 80-IB, 80-IC, 80- ID and 80-IE is not be available

Revised Return	Sec. 139 (5)

▪Where any person, having furnished a return under Sec. 139(1) or In pursuance of a notice issued under Sec. 142(1),

▪ Discovers any omission or any wrong statement therein,

▪He may furnish a revised return within one year from the end of the relevant assessment year or before the assessment is made, whichever is earlier.

▪Example Return for AY 09-10 can be filed before Completion of Assessment or on or before 31.03.2011.

▪ ROI filed belatedly u/s. 139(4) cannot be considered as a return filed u/s. 139(1).

▪ Revised return replaces the original return in all aspects, except to the date of filing of ROI. As far as the date of filing the ROI is concerned, the date of filing of original ROI only will be taken into account.

▪ There are no restrictions on the number of times assessee can file revised return, therefore, assessee can file as many number of revised returns as he wants to. But all such revised returns must be filed within the overall time limit allowed u/s 139(5) as given above.

▪ What can be revised is a ROI filed u/s. 139(1) or ROI filed in response to a notice u/s. 142(1). Therefore, a belated return filed u/s. 139(4) cannot be revised, as ROI filed u/s. 139(4) is not considered as ROI filed u/s.139(1).

▪ A return can be revised even after receiving refund u/s. 143(1) as sec. 143(1) is not completion of assessment.

▪ Revising the original return can be done only by way of filing a revised return u/s 139(5) and not by way of filing a plain letter for the same. Goetze (India)Ltd. v/s CIT (SC)(2006):

Return of charitable trust and Institution	Sec. 139(4A)

oEvery person who is in receipt of income from property held under trust or Income by way of voluntary contribution on behalf of such trust or institution

oIf such income before allowing any exemption u/s 11 and 12 exceeds the maximum amount not chargeable to tax,

oMust file Return of Income (ROI).

Due date of filing Return of Income (ROI)

o If the trust wish to take exemption u/s 11 to 12 30th Septemberof the Assessment Year

o If the trust does not wish to take exemption u/s 11 to 12 31st July of Assessment Year

oNote: Where the income of the trust, before claiming exemption u/s 11 to 12 exceeds Rs. Basic exemption limit its accounts are required to be audited.

Return of Political Party	Sec. 139(4B)

oIf a Total Income of a Political Party before allowing any exemption u/s 13 A exceeds the maximum amount not chargeable to tax,

oMust file Return of Income (ROI).

Due date of filing Return of Income (ROI)

o(i) If the Political wish to take exemption u/s 13 A 31st October of the Assessment Year

o(ii) If the trust does not wish to take exemption u/s 13 A 31st July of Assessment Year

oNote: Where the income of the political party before claiming exemption u/s 13 A exceeds basic exemption limit its accounts are required to be audited.

Return of certain association and institution - Sec.139 (4C)

▪The following institutions whose total income, before claiming exemption U/s 10, exceeds basic exemption limit are required to file Return of Income (ROI):

▪ A scientific research association 10(21).

▪ A news agency 10(22B).

▪ Professional association or institution 10(23A)

▪Khadi Village Industries 10(23B).

▪Hospital/Educational Institutes/trusts u/s 10 23(c) including 10 23(C) Institutions whose gross receipts is less than Rs. 1 crore

▪Trade union section 10. (24)

▪All the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under 139(1)

Prescribed forms for Filing of ROI

Forms	Applicability
ITR - 1	Return of Income for Individuals having salary and interest income and no other Income
ITR-2	Return of income for Individuals and HUFs having income from any source except from business or profession
ITR-3	Return of income for Individuals and HUFs being partners in Firms and not having Proprietary business or profession
ITR -4	Return of Income for Individuals and HUFs having Proprietary business or profession
ITR-5	Combined form of Return of Income and Fringe Benefits for Firms/AOP/BOI.
ITR-6	Combined Form for Return of Income and FrlnCie Benefits for Companies
ITR-7	Combined Form For Return of Income and Fringe Benefits For Charitable/Religious Trusts, Political parties and other Non-Profit Oraanlsations
ITR-8	Stand alone form for Return of Fringe Benefits for persons who are not liable to file Return of income but are liable to file Return of FrinCie-Benefits
ITR-V	Return of Income/Frinae Benefits transmitted electronically without digital signatures

PARTICULARS REQUIRED TO BE FURNISHED WITH THE RETURN [SEC 139(6)]

The prescribed form of the return shall, in certain specified cases, require the assessee to furnish the particulars of -

(i)income exempt from tax

(ii)assets of the prescribed nature and value and belonging to him

(iii) his bank account and credit card held by him

(iv) expenditure exceeding the prescribed limits incurred by him under prescribed heads

(v)such other outgoings as may be prescribed.

PARTICULARS TO BE FURNISHED WITH RETURN OF INCOME IN THE CASE OF AN ASSESSEE ENGAGED IN BUSINESS OR PROFESSION [SECTION 139(6A)]

The prescribed form of the return shall, in the case of an assessee engaged in any business or profession also require him to furnish -

(i)the report of any audit referred to in section 44AB.

(ii)the particulars of the location and style of the principal place where he carries on the business or profession and all the branches thereof.

(iii) the names and addresses of his partners, if any, in such business or profession. (iv) if he is a member of an association or body of individuals,

(a) the names of the other members of the association or the body of individuals;

and

(b) the extent of the share of the assessee and the shares of all such partners or members, as the case may be, in the profits of the business or profession.

Defective Return 139(9)

In the following cases Return of Income (ROI) shall be regarded as defective:

▪The annexure, statement and columns in the Return of Income (ROI) are wrongly filed in.

▪ Return of income is not accompanied by computation of income and tax/Audit Report.

▪ Return of income is not accompanied by proof of tax paid, Proof of TDS before 1.04.2008.

▪ T.D.S/TCS certificate may be filed up to 2 years from the end of relevant assessment year

If the books of account maintained by the assessee

▪Return of income is not accompanied by copies of Statement of accounts / audit report

▪ If regular books of accounts are not maintained by the assessee, the Return of Income (ROI) is not accompanied by a statement indicating the amount of Turnover/Gross receipt, gross profit, expenses, net profit, total sundry debtors, total sundry creditors, stock in hand and cash in hand at the end of relevant previous year

▪CBDT to dispense with any of the above conditions in respect of a class or classes of persons. The Board shall have the power to include any of the above condition in the forms of return of income section 139 (1) & (6)

Time limit for rectification of Defective Return

▪AO has to give notice .Assessee has to correct the defect with in 15 days

▪ If not rectified the defect with the 15 days, the return is treated as invalid/not filed return of income.

▪Assessing officer can condone the delay in rectification, if the rectification has been done before completion of assessment.

▪

Permanent Account Number (PAN) – Sec. 139A and Rule 114

The department is issuing multi-purpose laminated PAN Cards containing the Permanent Account Number of the Assessee.

Who shall apply for PAN

▪All existing assessee who have not been allotted the new 10-digit alphanumeric series

▪*If Assessee income exceeds exemption limit or turnover exceeds Rs. 5,00,000*

▪*Charitable trust C* haritable trust is required to obtain permanent account number before the end of the accounting year.

▪ Every employer, who is required to furnish a return of fringe benefits under section 115WD (Now this provison not applicable)

▪The assessing Officer may also allot a PAN suomoto make to any other person by whom tax is payable

▪The Assessing Officer may, having regard to the nature of transactions as may be prescribed, also allot a permanent account number to any other person

▪Any other person may also apply for a PAN.(Persons wants to claim refund, persons whose receipts are subject to TDs)

Categories of persons who are compulsorily required to obtain PAN

SNo	Category of person	Time limit to apply
1	Importers and exporter	Before making import or export
2	Central excise assessee. Central excise dealers, service tax assessee, Vat or CST dealer	Before with respective registration authorities

▪As per new sub-section (1B) C G will notify the persons for the purpose of collecting any useful information who should apply for PAN .Such persons shall within the prescribed time apply to the Assessing Officer for allotment of a permanent account number.

Intimation of PAN to the persons deducting TDS/TCS- Sec 139A (5A)/5C: The persons whose income/receipts are subject to TDS or whose purchase are subject to TCS, shall intimate his PAN to deductor/Seller. The person who does not taxable income can furnish form 15 G or 15 H as per sec 197 A

Quoting P A N

▪All documents pertaining to income tax i.e. all challan, returns and correspondences.
▪Sale and purchase of immovable property valued at Rs.5,00,000,
▪ Sale and purchase of motor vehicles (excluding two-wheelers), which requires registration under Motor Vehicles Act, 1988.
▪Time deposits exceeding Rs.50,000 in a bank or banking institution,
▪Deposits exceeding Rs.50,000 in post office savings banks,
▪ Contract for sale or purchase of securities exceeding Rs.10,00,000,
▪Opening an account (not being a time deposit) in a bank or a banking institution
▪Application for installation of a telephone connection including cellular telephone,
▪Payment to hotels and restaurants exceeding Rs.25,000 at any time.
▪Payment in cash for purchase of Bank draft/pay orders/ banker's cheque of Rs.50,000 or more.
▪ Cash deposit of Rs.50,000 in a bank in one day
▪Payment in cash in connection with travel to a foreign country (Except SAARC Countries, haj, or Kailash Mansarovar) of an amount exceeding Rs.25,000 at any one time.
▪If a person does not have PAN/GIR and who have entered into any of the above transactions shall make a declaration in Form No.60
▪A person having agricultural income is not subject to the above provisions if has submitted Form No.61.
▪Every person shall intimate the Assessing Officer any change in his address or in the name and nature of Business/Profession
▪Failure to apply for PAN or quoting wrong pan penalty Rs. 10000

Tax Return Preparers Scheme Sec 139 B

Salient features of the Tax return preparer's scheme'
▪ Applicable from 01.06.2006
▪The scheme is organized by Income tax department in association with NIIT (for coaching) and Taxman publication (for material)
▪A graduate in commerce, mathematics, law, business administration, Economics , statistics in the age of 21 and 35 are eligible to apply the scheme
▪An authorized representative under IT (CA CWA, CS. Advocate etc) or any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings. Act is not eligible to apply for TRS Scheme
▪ Eligible graduates to apply for the scheme, enroll for the scheme,
▪ training will be offered at NIIT centers. After successful Completion of training, candidates to qualify the test.
▪TRP can prepare the return of assessee except tax audit assessee and non resident assessee.
▪TRP has to attest the return and paid remuneration on the basis of percentage of tax collected.
▪TRP has to maintain records for the assessee for whom he furnished returns.
▪TRP certificate is withdrawn if repeatedly commit mistakes in preparing scheme , not hander the copies to assessee and not affixing his signature etc.,

Power of CBDT to dispense with furnishing documents etc. with the return and Filing of return in electronic form Sec 139 C

- CBDT may make rules providing for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificate, reports of audit or any other documents, which are required to be furnished along with the return under any other provisions of this Act.
- However, on demand, the said documents, statements, receipts, certificate, reports of audit or any other documents have to be produced before the Assessing Officer.
- In case of sec 44 AB, The audit report is to be obtained by specified date ie 30^{th} of September and should be retained by assessee, and it should be produced before IT authorities as and when demanded.

Electronic filing of Return of Income Section 139D

- CBDT Power to make rules for providing the class or classes of persons who shall be required to furnish the return of Income in electronic form;
- the form and the manner in which the return of income in electronic form may be furnished;
- the documents, statements, receipts, certificates or audited reports which may not be furnished along with the return of income in electronic form but have to be produced before the Assessing Officer on demand;
- The computer resource or the electronic record to which the return of income in electronic form may be transmitted.

Date of Filing Return of Income:

Using Digital Signature: Date on which filed using Digital Signature

Without using Digital Signature:

(a) Date on which return submitted online, if—

• Paper return is submitted within 15 days of online submission, and

• Paper return tallies with the re-return.

(b) In case of paper return: Date of furnishing of Paper Return.

Return of income whom should sign Sec 140

In the case of an individual*:*

▪ By the individual himself; or

▪ If he is absent from India, by a person duly authorized by him; or

▪ If he is mentally in-capacitated, by his guardian or any valid power of attorney holder

In the case of a company,

▪by the managing director.

▪Where there is no managing director or MD is unable to sign, by any director.

▪Where the company is taken over by Government, by the principal officer

In the case of a firm

▪ by the managing partner

▪If for any unavoidable reason he is unable to sign or where there is no managing partner by any partner who is not a minor.

I**n case of LLP**

▪by the Designated partner

If for any unavoidable reason he is unable to sign or where there is no designated partner by any partner

In Case of HUF

▪By the Karta.

▪ If he is absent from India or is *mentally incapacitated,* by the member
▪In the case of a local authority By its principal officer.
▪In the case of political party its chief executive officer.
▪In the case of any other association By any member or principal officer thereof.
▪In the case of any other person by that person or by some person competent to act on his behalf.

Return of Annual Financial Information Sec 285 BA

▪Any person, who is responsible for registering, or maintaining books of account or other documents containing a record of any specified financial transaction, under any law being—
▪An assessee; or
▪The prescribed person in the case of an office of Government; or
▪A local authority or other public body or association; or
▪The Registrar or Sub-Registrar under the Registration Act, 1908; or
▪The registering authority under Motor Vehicles Act, 1988; or
▪The Post Master General under the Indian Post Office Act, 1898; or
Return of Annual Financial Information Sec 285 BA
▪The Collector under the Land Acquisition Act, 1894; or
▪The recognized stock exchange under Securities Contracts (Regulation) Act, 1956; or
▪An officer of the Reserve Bank of India, under Reserve Bank of India Act, 1934; or
▪A depository under Depositories Act, 1996
▪Shall furnish an annual information return, in respect of such specified financial transaction to the prescribed income-tax authority on or before 31st August following Financial year
▪The return should be filed in form 61 A, part A in paper, Part B in Computer media
Return of Annual Financial Information Sec 285 BA
Specified financial Transactions
▪Transaction of purchase, sale or exchange of goods or property or right or interest in a property;
▪Transaction for rendering any service/works Contract;
▪Transaction by way of an investment made or an expendi-ture incurred;
▪Transaction for taking or accepting any loan or depos-it,
▪The Board may prescribe different values for dif-ferent transactions in respect of different persons. The value should not less than Rs. 50000
▪If a person filed defective AFI return, A O can issue notice to rectify the defect
▪Person has rectify the defect with in one month or extended time
▪If defect not rectified it deemed return is invalid/not filed
Notified Limits

Class of Persons	**Notified Specified financial transaction**
Banking Company	Cash Deposits in S B A/c Aggregate Rs. 10 lakhs or more in a year/Credit card payments aggregates Rs. 2 lakhs or more in a year
Trustee of M F	Receipt towards mutual fund contribution Rs. 2 lakhs or more
Company/Institution issuing Bonds/ debentures	Receipt towards subscription for bonds/debentures Rs. 1 lakhs or more
Sub Registrar	Purchase or sale of Immovable property value Rs. 30 lakhs or more
Officer of R B I	Receipts from a person in respect of bonds issued by R B I for Rs. 5 lakhs or more in aggregate in a year

Case Laws:

Voluntary Return

Fixing of different dates for companies for filing returns is constitutionally valid - *N. Vinodkumar & Co. vs. Union of India [1999] 237 ITR 502 (Kar.)*

Any return filed before receipt of notice is a return filed under section 139(4) - *CIT vs. S. Raman Chettiar* *[1965] 55 ITR 630 (SC).*
Voluntary return cannot be filed after assessment is over - *Balchand vs. ITO* *[1969] 72 ITR 197 (SC).*
Return can be filed even after issue of notice for reassessment - *CIT vs. B.V.R. Glucose Products Ltd.* *[2001] 250 ITR 512 (AP).*

Revised Return

Belated revised return cannot debar ITO from commencing reassessment proceedings - *Esthuri Aswathiah vs. ITO* *[1961] 41 ITR 539 (SC).*

Set-off & carry forward of Depreciation is governed by Section 32(2). So, Depreciation can be carried forward even if Return of Income (ROI) is filed after due date - *East Asiatic Co. (India) Pvt. Ltd. Vs. C.I.T. (1986) 161 ITR 135 (Mad.)s*

Cases of concealments and false statements are not covered under section 139(5) - *CIT vs. J.K.A. Subramania Chettiar* *[1977] 110 ITR 602 (Mad.)*; *Addl. CIT vs. Radhey Shyam* *[1980] 123 ITR 125 (All.)*

Prior permission is not necessary to file a revised return - *Waman Padmanabh Dande vs. CIT* *[1952] 22 ITR 339 (Nag.)*

Revised return cannot be filed for withdrawing claims in original return correctly made - *CIT vs. Andhra Cotton Mills Ltd.* *[1996] 219 ITR 404/[1996] 88 Taxman 176 (AP).*

Mere application to ITO would not amount to a revised return - *Gopaldas Parshottamdas vs. CIT* *[1941] 9 ITR 130 (All.)*

Only return filed u/s 139(1) or 142(1) can be revised and return filed u/s 139(4) cannot be revised. - *Kumar Jagdish Chandra Sinha Vs. CIT (1996) 220 ITR 67 (SC) / Dr. (Mrs.) Satyabhama Thakur vs. CIT* *[1997] 223 ITR 791 (Pat.)*

Revised Return steps into the shoes of original return and is deemed to be filed on the date the original return was filed. *Dhampur Sugar Mills Ltd. Vs. CIT (1973) 90 ITR 236 (All):*
A return can be revised any number of times provided it is filed within time under Section 139(5). *CIT Vs. Dr. N. Srivatsava (1988) 170 ITR 556(M.P.)*

An application or letter to the Assessing Officer cannot constitute revised return. *Waman Padmanabh Dande Vs. CIT (1952) 22 ITR 339 (Nag.)*

Revised Return can be filed even for loss return : A loss return filed u/s139(3) shall be treated return filed u/s 139(1) and hence it can be revised for example claiming higher loss - Periar District Co-opearive milk Producers 266 ITR705 (MAD)

Status or method of accounting cannot be changed - *Deepnarain Nagu & Co. vs. CIT* *[1986] 157 ITR 37 (MP).*

Valid/Invalid Return

Return showing income below taxable limit is valid - *CIT vs. Ranchhoddas Karsondas* *[1959] 36 ITR 569 (SC).*
Return in an inapplicable Form is not invalid - *Dhampur Sugar Mills Ltd. vs. CIT* *[1973] 90 ITR 236 (All.)*

Unsigned or unverified return is invalid - *Khialdas and Sons vs. CIT [1997] 225 ITR 960/[1997] 94 Taxman 394 (MP) [See also CIT vs. Dr. Krishan Lal Goyal [1984] 148 ITR 283 (Punj. & Har.)]*
Return can be treated as invalid only after assessment for relevant year is completed or time-limit for assessment has expired - *Kerala State Bamboo Corporation Ltd. vs. CIT [1998] 101 Taxman 296 (Ker.)*

Defective Return

Specified defects are only illustrative and not exhaustive - *CIT vs. Rai Bahadur Bissesswarlal Motilal Malwasie Trust [1992] 195 ITR 825 (Cal.)*
Non-removal of defects within time allowed will invalidate return - *National Insurance Co. Ltd. vs. CIT [1994] 72 Taxman 161 (Cal.)*
Return will not be defective if computation of income does not tally with profit disclosed - *Flotech Welding & Cutting Systems Ltd. vs. Chandersingh [2004] 137 Taxman 521 (Bom.)*

Signing of the return of income	Section 140

Signing and verification of return as per requirement of section 140 is mandatory and therefore, if a return is filed without signature and verification, it will have to be treated as an invalid return - *Khialdas & Sons vs. CIT [1997] 225 ITR 960/[1997] 94 Taxman 394 (MP).*

Return of HUF can be signed by junior member - *Narendrakumar J. Modi vs. CIT [1976] 105 ITR 109 (SC).*
Liquidator is competent to sign return - *United Provinces Electric Supply Co. Ltd. vs. CIT [1991] 54 Taxman 487 (Cal.)*
Issue of notice under section 143(2) will not validate unsigned return - *Electrical Instrument Co. vs. CIT [2001] 250 ITR 734 (Delhi).*

CBDT Circulars

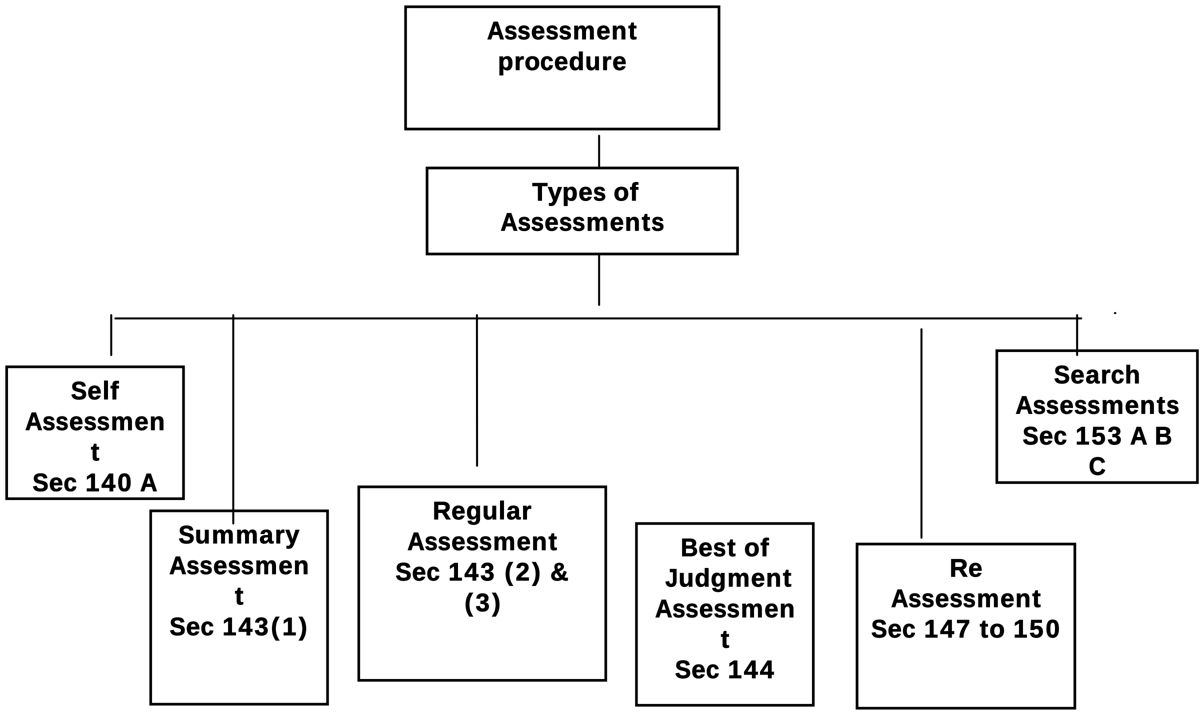
Filing of return by political parties

If the total income of a political party computed without giving effect to the provisions of section 13A exceeds the maximum amount which is not chargeable to tax, the liability of the political party to file the return of income voluntarily arises. As regards filing of returns by the units of a political party at State or District levels is concerned, it will depend upon whether these units are only branches of the national party and their receipts and expenditure form part of the account of the national party. If so, the units need not file separate returns of income. In the case where units are separately registered as political parties with the Election Commission of India, the requirement of filing of return by these units will apply as in the case of the parent unit —*Circular : No. 412[F.No. 200/84/79-IT(A-I)], dated 2-3-1985.*

When office remains closed on due date

Where the last day for filing return of income/loss is a day on which the office is closed, the assessee can file the return on the next day afterwards on which the office is open and, in such cases, the return will be considered to have been filed within the specified time limit. —*Circular : No. 639, dated 13-11-1992.*

Chapter 16 Assessment procedure



Self Assessment Sec 140 A

- When Assessee computing the income for the purpose of filing Return of Income u/s 139. 142(1) 148, 153A, 115 WD or 115 WH shall pay tax if any payable on the basis of return filed.

Steps in self Assessments

- Compute the total Income under the provisions of Income tax
- Deduct rebate, relief u/s 89/90/91
- Determine the total tax payable
- Deduct the Prepaid taxes (advance tax, TDS)
- Pay the balance tax along with interest u/s 234 A, 234 B and 234 C.,115 W K
- The resultant figure is self Assessment tax and Interest Payable.
- Interest u/s 234 A is payable on the basis on returned income.
- The amount is payable before filing of Return of Income
- The ROI is to be accompanied by proof of payment of self-assessment tax and interest (now it is not required, only details regarding payment to be filled in ROI)
- Short fall in the in the amount, the amount paid will be first adjusted towards interest due

Consequences for non payment of Self Assessment tax and Interest payable Sec 140 A(1)

- The is deemed to be assessee in default u/s 220 and interest is also payable
- The assessee is liable to pay interest u/s 220 @ 1 % per month or part of the month on the tax from the day immediately following expiry of 30 days of filing of the return till the date of payment.
- The above interest is in addition to any other interest charged u/s. 234A, 234B, and 234C
- No interest shall be levied If the assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons.
- Penalty u/s. 221: The assessee is liable to pay a maximum penalty equal to the tax arrears.

Inquiry before Assessment

The Inquiry before Assessment consists the following

- ❖Giving notice to Assessee to file return of Income/asking documents/accounts- Sec 142(1)
- ❖Making enquiry and giving, opportunity to the Assessee Sec 142(2)(3)
- ❖Giving directions to Assessee to get accounts audited Sec 142(2A)
- ❖ Reference to a Valuation Officer142 A

Giving Notice to Assessee to file R O I 142(1) (i)

For the purpose of making an assessment, the Assessing Officer may serve notice on any person to file return of income

- ➢ If such person not filing return of income within due date u/s 139(1) or
- ➢ If such person has not furnished Return of income before the end of relevant assessment year.

Notice can be issued at any time after due date of filing return or before end of relevant assessment year or after end of assessment year. Notice should be given specifying the date on which ROI is to be filed.

Asking for Documents and Statement of Assets and Liabilities: etc Sec 142(1) (ii) (iii)

Assessing Officer may serve notice on any person to produce, or cause to be produced, such accounts or documents as the Assessing Officer may require, or to furnish in writing the information in such form and on such points or matters including a statement of all assets and liabilities of the assessee, whether included in the accounts or not up to a period of 3 years prior to the previous year.

❖Previous Approval of J CIT for asking books more than 3 years prior to PY or Assets and Liabilities not included in books

❖When the AO issues a notice for a period more than the limit of years, entire notice is not a invalid, only a portion which is above the limit is only invalid.-Sivaswami chettiar Vs CIT

Making inquiry and giving opportunity-Sec142(2)(3)

- For the purpose of obtaining full information in respect of the income or loss of any person, the Assessing Officer may make such inquiry, as he considers necessary.
- The Assessee should be given opportunity on the basis of information obtained through inquiry.

Reference to Valuation Officer 142 A

- A O for the purposes of making an assessment or reassessment the Assessing Officer may require the Valuation Officer to make an estimate of such value and report the same to him.
- Applicable to determine estimated value for unexplained, undisclosed investment or the value of any bullion, jewellery or other valuable
- Applicable only for the assessment made on or after 30-09-2004,
- Valuation Officer shall issue a notice to the assessee, giving him reasonable opportunity of being heard.
- After hearing the assessee and evidence furnished by him, Valuation Officer shall value these assets by way of passing his valuation report and furnish one copy of his valuation report to the concerned Assessing Officer and another copy to the assessee.
- Assessing Officer shall be bound to adopt the report of Valuation Officer while making such assessment or re-assessment.
- Assessing Officer is concerned; he has no power to challenge the validity of Valuation Officer Report.
- Assessee also cannot challenge it directly, but he may do so by way of filing an appeal against the Assessment order of Assessing Officer, which will be based on report of Valuation Officer.

Special Audit Sec 142 (2A):

•If, at any stage of the proceedings ,if it is necessary to do so, the A O can order for Special Audit with Prior Approval of CCIT or CIT

Circumstances to order for audit

•Nature and complexity of the accounts of the assessee

•interest of the revenue,

Other Points

•Audit is to be done by C A nominated by C or CC
•Scope is to be determined by A O
•Special Audit will be required even that the accounts of the assessee have been audited under any other law
•Assessee has to furnish report with in time limit prescribed by AO
•AO can extend time either on his own or on the application made by assessee for a s maximum period of 180 days from the date of order including original fixed. The total time allowed to the assessee does not exceed - 180 days
•Assessee should be given opportunity being heard before order for special audit
•Opportunity not be given when assessment is made u/s 144
• The fess, expenses of shall be determined by the CC as per guidelines and payable by Central Government.
• CC shall maintain panel of CAS. The fees will paid based on number of hours spend on audit work.
•The fees will paid in the range of Rs. 3750 per hour to Rs 7500 per hour
•CA should maintain time sheet for carryout the work and should submit along with the bill to Chief Commissioner.

Special Audit could be directed only if the Books of accounts are found to be 'complex'. Now, what is "complex" has not been clarified anywhere under the Act. What may seem to be complex to someone, may not necessarily seem to be complex to others.-- *Rajesh kumar and others v/s Deputy CIT (2006) (SC).*

The direction for special audit is to be given only when the assessment or reassessment is pending. Kumar Films Pvt ltd. (Patna). It cannot be given to decide to open or reopen the assessment. Special audit can also be ordered in case of search assessments.

No appeal is possible against order of special audit. Only writ petition can be filed.

Consequences of non compliance of special audit

•Best judgment assessment u/s 144
•Penalty of Rs. 10,000/- u/s. 271(1)(B).

Intimation/Summary Assessment sec 143(1)

This assessment is made without presence of assessee. The assessing officer will check the return for arithmetical, calculation and clerical errors.

Total income of an assessee shall be computed under section 143(1) after making the following adjustments to the total income in the return
a) any arithmetical error in the return; or
b) an incorrect claim, if such incorrect claim is apparent from any information in the return

Incorrect claim means: Item which is inconsistent with another entry of the same or some other item in return or Item on which information is required to furnished, but not furnished or Item of deduction which exceeds the statutory limit

❖Where if any tax or interest is found due on the basis of return filed under section 139 or 142(1)
❖ Such due is after adjustment of any TDS, advance tax paid, & self-assessment tax
❖an intimation shall be sent to the assessee specifying the sum so payable,
❖ such intimation shall be deemed to be a notice of demand issued under section 156

❖If any refund is due on the basis of such return, it shall be granted to the assessee.
❖The acknowledgement of the return shall be deemed to be the intimation (deemed intimation) where either no sum is payable or no refund is due.
❖Time limit for Intimation ---one year from the end of the financial year in which the return is filed..
❖Even though Section 143(1) is called as "Summary Assessment", it is not an assessment in real sense. Therefore, assessee can file a revised return u/s. 139(5), even after receiving a refund u/s. 143(1), provided the other time limit(one year from the end of relevant assessment year) given in sec. 139(5) has not yet expired

Regular Assessment/Scrutiny 143(2)(3)

Where the AO considers it is necessary or expedient to ensure that Assessee

- Has not understated the income
- Has not computed excessive loss or
- Has not under-paid the tax in any manner

Serve on the assessee a notice requiring him, on a date to be specified therein,

- either to attend his office or
- to produce, any evidence on which the assessee may rely in support of the return:

Time-limit for serving notice under section 143(2):
Six months from the end of the financial year iin which return is furnished.
Examples time limit on notice to be issued u/s 143(2)

Date of filing of return	Time limit to issue notice
May 20, 2009	September 30, 2010
July 21, 2009	September 30, 2010
Sep 20, 2009	September 30, 2010
October 27, 2009	September 30, 2010
December 5, 2009	September 30, 2010
January 10, 2009	September 30, 2010
March 27, 2009	September 30, 2010
April 10, 2009	September 30, 2010

Procedure

- The Assessing Officer after hearing such evidence and after taking into account all relevant material which he has gathered,
- The Assessing Officer shall, by an order in writing, make an assessment
- Determine total income or loss of the assessee, sum payable or refundable
- If refund was granted to the assessee u/s. 143(1), later on as a result of completion of regular assessment u/s. 143(3), if it is found that either there is no refund due to the assessee or the amount refunded to the assessee exceeds the amount of refund due to him, Sec 143(4)
- The excess amount so refunded shall be deemed to be the tax payable by the assessee along with interest u/s. 234D

Notice u/s 143(2) can be issued to the assessee even after issuing an intimation u/s. 143(1). However, issue of an intimation u/s. 143(1) after issue of notice u/s 143(2) for scrutiny was held to be invalid in law.
Issue of notice for scrutiny u/s 143(2) is not completion of assessment; it is just the beginning of the assessment. Therefore, assessee can still file a Revised Return u/s 139(5), even after receiving a notice u/s 143(2), provided the other time limit given in section 139(5) has not yet expired.
Notice u/s 143(2) can't be issued, if return is not filed. If notice not issued, assessment u/s 143(2) cannot be made.
Procedure for assessment of notified trust, etc

In case of specified institutions whose income is exempted based on prescribed conditions& which are required to file RO I u/s 139(4C) namely
•A scientific research association 10(21).
• A news agency 10(22B).
• Professional association or institution 10(23A)
• Khadi Village Industries 10(23B).
•Hospital/Educational Institutes/trusts u/s 10 23(c)
•Trade union section 10. (24)
If A O During the course of Assessment notices any violation of prescribed conditions
•He must first intimate the details of such contravention to the Government or the prescribed authority, and then await the orders rescinding the notification or approval.
•Assessment should be completed only after receiving the rescinding order
•Time limit for Completion of assessment will be extended time lag between the intimation sent by the Assessing Officer and the receipt of the rescinding order

Difference between notice u/s. 142(1) & u/s. 143(2):

	Notice U/s 142(1)	Notice U/s 143(2)
1	There is no time limit for issue or service of this notice.	This notice has to be served within a period of 6 months from the end of the financial year in which ROI was filed.
2	This notice can be issued irrespective of whether ROI was filed by assessee or not.	This notice can be issued only if ROI was filed by assessee.
3	Assessee will be required to furnish those information or documents, as are specifically demanded in the notice u/s. 142(1)	Assessee can furnish any information or documents or evidences, which he finds necessary in response to notice u/s. 143(2) as per his own choice.
4	Notice can be served only when the return is not filed.	Notice can be served only when the return is filed.
5	Books of accounts etc can be asked for period of 3 years, or more than period, approval of Joint Commissioner is required	No such provision exists
6	Can be issued, even after completion of the Assessment.	Cannot be issued after completion of Assessment.
7	Non compliance is an offence and prosecution can be launched u/s 276CC/D	Non compliance is Not an offence No prosecution

Best of Judgment Assessment/ Ex-Parte Assessment- Sec 144

Circumstances under which B O J Assessment will be made

❖Failure on the part of Assessee to furnish return of income u/s 139(1),139(4),139(5), 142(1)
❖Failure to submit documents/records/books for notice u/s 142(1) & 143(2)
❖Failure to get accounts audited u/s 142 2A(Special Audit)
❖Failure to comply notified Accounting standards and incorrect method of valuation of Stock-. Sec 145
❖When books of accounts of assessee is incomplete/incorrect

Procedure

•AO before completing the Assessment, SCN to be issued to Assessee specifying the a date and time to be on which assessment is to be completed

•However such notice is not necessary in case failure on the part of assessee for compliance of 142(1)(failure to file ROI and Produce books of account)

• No refund can be issued by A.O. u/s.144.

•According to section 2(40), Best Judgment Assessment u/s. 144 is also a Regular Assessment

•Since, assessment u/s. 144 takes place without co-operation of the assessee, it is called a s "Ex-Parte Assessment", which means excluding the party concerned

•The AO, after taking into account all relevant material make the assessment to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment: .
Note failure to file return u/s 148 /153A does not attract 144 assessment can be done only under 147/153 A

Protective Assessment

Income of one person can be assessed to tax in the hands of that person only, unless there are specific provisions under the Income Tax Act (for example 'Clubbing Provisions'

However, under no circumstances the same income can be assessed in the hands of both such person. But when the ownership of the income is in dispute or is a matter of doubt, then A.O. can assess such income in the hands of the person who is liable to tax, as well as include the same income, in the hands of some other person also on protective basis

Such assessment in the hands of such other person is called as "Protective Assessment"

The assessment in the hands of first mentioned person would be called as "Substantive Assessment".

The objective of Protective Assessment is to protect the interest of Revenue.
When the dispute regarding the ownership of the income is resolved, the assessment of such income should not get time barred.
When the dispute is finally settled in an appeal or otherwise, any one of the assessment will stand and the other assessment will be cancelled accordingly. It would be worth to note here that I.T. dept. cannot recover tax from both the persons as a result of protective assessment. Similarly, the Protective Assessment cannot be the reason for levy of penalty.

Powers of JCIT to issue directions to A.O- Sec 144A

JCIT may on his own motion or on an application made by assessee or on reference being made by A.O., can call for and examine the records of any proceedings, in which assessment is pending and having regard to the nature of the case and the amount involved and for any other reason,

JCIT may issue such directions to A.O. as he deems fit. Such directions are issued by JCIT as guidance for the A.O. to enable him to complete the assessment. Such directions are binding on A.O., A.O. cannot challenge such directions.

The assessee also cannot challenge such directions, but assessee can challenge the assessment order, which would be based on such directions of JCIT.

No such directions, which are pre-judicial to the interest of the assessee, can be issued by JCIT, unless an opportunity of being heard was given to the assessee

However, if a direction is issued by JCIT on the lines of investigation to be made by A.O., then such directions cannot be considered as pre-judicial to the interest of the assessee and can be issued by JCIT without hearing the assessee

For Example.: If JCIT issues a direction requiring the A.O. to reject the claim of the assessee, then such direction is pre-judicial to interest of assessee and cannot be issued without hearing the assessee. However, if JCIT issues a direction requiring the A.O. to investigate into the genuineness of the claim made by assessee, then such directions are on the lines of investigation to be made by AO and cannot be considered as prejudicial to the interest of assessee and such directions can be issued without hearing the assessee.

Method of Accounting Sec 145

1. Income under head profits gains of business and profession and Income from Other sources, the assessee should follow – Either Cash or Mercantile system of Accounting at the option of the assessee. Such method of accounting should be followed regularly. Assessee cannot change arbitrarily
2. For Income under other heads such as Salary, House property and Capital gains – Method of accounting not appliable.These incomes are taxable as per specific provisos and rules.

Income Tax Accounting Standards -Section 145(2): **:**

CBDT has notified following Accounting Standards to be followed by those assessee, who are following Mercantile system of accounting.

a) ITAS -I – Disclosure of Accounting Policies (same as AS-1)

b) ITAS -II – Prior Period Items, Extraordinary Items and Changes in Accounting Policies. (same as AS-5)

A O discretionary powers to do BOJ sec 145(2)

Under the following circumstances A.O. **may** take up the case and complete the assessment in the manner provided in Sec. 144(BOJ_

a) A.O. is not satisfied about the completeness or correctness of the Books of accounts and documents of the assessee.

b) Correct Method of Accounting, was not regularly followed by the assessee.

c) Notified Accounting Standards have not been regularly followed by assessee.

In all the above-mentioned circumstances, AO may (or may not) take up the case in and complete it in the manner provided in section 144.

Power of A.O. to reject the Books of accounts: Section 145(3):

If A.O. is not satisfied about the correctness or completeness of the Books of accounts of the assessee, then he has a power to reject the Books of accounts and estimate the profits.

Once, such profit is estimated by A.O., then thereafter no further disallowances can be made by A.O. to this estimated profits, as such estimated profit encompasses all the disallowances within itself.

For example: If AO rejects the Books of accounts and estimates the profit at 20% of the turnover, then he cannot make further addition to the income by way of disallowing cash payment made in excess of Rs. 20,000/- u/s 40A(**3**)/ Payments to relatives u/s 40 A(2)

Method of Accounting in certain cases: Section 145A

Applicable to Inventory of PGBP

Income should be arrived

(a) In accordance with the method of accounting regularly employed by the assessee; and

(b) Further cost to be adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation

Re Assessment/Income Escaping Assessment

- Whenever A.O. has a reason to believe that the income chargeable to tax has escaped assessment for any Assessment Year Sec 147
- then he may assess, reassess or recompute the income, loss, depreciation or any other allowances etc. for that Assessment Year,
- by issuing a notice to the assessee u/s. 148
- within the time allowed u/s.149 and
- With the prior approval of authorities as required u/s. 151.

❖ **Circumstances Resulting Re assessment sec 147**

Condition 1	A O has reason to believe that income escaped from Assessment
Condition 2	Such escape was due to omission or failure on the part of Assessee to disclose true and full particulars of material facts or failure to furnish return of income u/s 139, 142(1) and 148-(Proviso to 147)

❖ The A O should Assess or reassess such income

❖ He should also assess any other escaped income come to the notice during the course of re assessment proceedings

Mere production of books of accounts or documents, from which material facts or evidence could have been discovered by A.O. by due diligence, will not necessarily amount to disclosure on the part assessee Explanation 1 to Sec 147.

Scope of Reassessment

❖ Once the case is taken up u/s 147 for a particular income, any other income which has escaped assessment and which comes to the knowledge of A.O. subsequently, can also be included within the same proceeding, without reissuing any notice already issued to the assessee

❖ However, w.e.f. A.Y. 2009-2010, AO can take up a case u/s 147, only in respect of those matters, which have not been considered and decided in an Appeal, Revision or Reference

Meaning of Income escaping Assessment –Explanation 2 to sec 147

i. Where assessee has income chargeable to tax , but he not filed return of income

ii. Where the assessee has furnished a return of income, but no assessment has been made and it is noticed by the Assessing Officer , that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

iii. Where an assessment has been made, but—

a) Income under assessed or assessed at low rate

b) Excessive loss was computed

c) Excessive allowance, depreciation has been granted

Notice to Assessee Sec 148

Before making the assessment, reassessment or recomputation ,AO shall serve on the assessee a notice requiring him to furnish return within in a period specified in the notice,

The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so. The assessee can demand for a copy of reasons for the same, GKN Driveshafts (India) Ltd. (SC)

Such notice has to be issued within the time limit given is sec. 149 and with the prior approval of authorities as required u/s. 151.

A single notice can be issued for more than one Assessment Year.
Assessee is required to furnish a fresh ROI in response to such notice, even if the ROI was already furnished earlier.
Failure on the part of the assessee to furnish a fresh ROI in response to notice u/s148, within the time limit allowed, can lead to Best Judgment Assessment u/s147, in the manner provided in section 144.

Time limit for issue of notice

i. up to Four years from the end of relevant A Y what ever the income escaped. No limit for income

ii. beyond 4 years and up to Six years from the end of relevant A Y if income escaped should be minimum Rs. 1 lakh for that year or Such escape was due to omission or failure on the part of Assessee to disclose true and full particulars of material facts or failure to furnish return of income u/s 139, 142(1) and 148-(Proviso to 147)

iii. When the earlier assessment was made u/s 143(3) or 147,For issue of notice to reopen assessment up to 6 years in additions to Rs. 1 lakh requirement both the Conditions to be satisfied

iv. Where the notice is issued to agent of Non resident and assessment is to be made on agent Max two years from the end of relevant A Y

Non applicability of time Limit sec 150

•Assessment is made consequent to give effect of the order passed by authority by appeal, revision rectification , or by order of Court etc

Approval /Sanction for notice sec 151

Time limit	When Assessment was made under 143(3)/147	When assessment was made under Other cases
Up to Four Years	If notice is issued by ITO(who is the Below rank of AC/DC) Approval of JICT required. If AO is AC/DC no Approval is required	Any A O can issue Notice. No approval is required
Beyond 4 years Up to 6 years	Any A O who is issuing Notice Approval of C C is required	Any A O who is issuing Notice Approval of JCIT is required

Other points -Sec 152

I. The Escaped income will be chargeable to tax at the rates specified in those, respective Assessment years

II. Proceedings once initiated u/s. 147, may be dropped by A.O., if assessee satisfies him that:-

a) there will be no impact or no effect on his tax liability, even after taking into account the income escaping assessment and

b) He has not gone in an Appeal, Revision or Reference, against any part of the original Assessment order.

Time limit for Completion of Assessment Sec 153

S N	Sec 153	Nature of Assessment	Time Limit
1	(1)	143(1),143(3) 144,115W E, 115 WF	21 months from the end of relevant A Y
2	(2)	147,115 G, 115 H	Nine months from the end of Financial Year which notice u/s 148 was served
3	(2A)	Fresh Assessment consequent to order u/s 250, 254, 263 &264 for set aside/cancel	Nine months from the end of Financial Year on which order was received
4	3	Recomputation or Reassessment Consequent to give effect on the direction or order u/s 250, 254, 263 &264 Or order of court	No Time Limit

Calculation of Period of Limitation

While calculating the time limit for completion of Assessment, the following shall be excluded

i. The time taken in reopening the whole or any part of the proceeding
ii. Time taken in giving an opportunity to the assessee to be re-heard under the proviso to section 129,
iii. The period during which the assessment proceeding is stayed by an order or injunction of any court
iv. Time taken for on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, for the Assessment under 143(3)
Time taken by assessee to complete Special Audits u/s142 (2A)
v. Time taken by settlement Commission/Authority for Advance ruling to allow or to reject the application.

Rectification of Mistakes Apparent on the record Sec 154

At the time of making assessment the AO can do any mistakes or errors. Such errors or mistakes can be rectified by AO either on his own or by application by assessee

What mistakes can be rectified

i. Any mistake apparent from the record

The persons who can rectify mistakes

The following income-tax authorities can rectify mistakes

ii. CBDT
iii. Directors-General/Chief Commissioners
iv. Directors/Commissioners/Commissioners (Appeals)
v. Additional Director/Additional Commissioner
vi. Joint Directors/Joint Commissioners
vii. Deputy Directors/Deputy Commissioner
viii. Assistant Directors/Assistant Commissioners
ix. Income-tax Officers /Tax Recovery Officers/ Inspectors

Orders that can be rectified

i. Any order passed by the concerned income-tax authority under the provisions of the Act

ii. Any intimation or deemed intimation under section 143(1)

Procedure for rectifying mistake

i. The concerned income-tax authority can rectify the mistake of its own motion by passing an order in writing
ii. The assessee may also apply (there is no prescribed form for the application) to the concerned income-tax authority for rectification of the mistake
iii. The Assessing Officer may apply for rectification where the income-tax authority concerned is the Commissioner (Appeals)
iv. Rectification resulting increasing the liability of the assessee, reducing refund concerned income-tax authority must give an opportunity of hearing to the assessee before passing the rectification order

Time limit for passing rectification order

i. When order rectified by Income tax Authority on his own: Four years from the end of the financial year in which the order sought to be amended was passed.
ii. When order rectified by Income tax Authority on application made by Assessee: The order making the amendment or refusing to allow the claim shall be passed within 6 months from the end of the month in which the application is received.

Amendment of other orders Sec 155

S No	Sec 155	Nature of Oder	Time Limit
1	(1) &(2)	Amending the order of AOP/BOI for Correct share of member	With in 4 years from the end of financial Year where Final order of Aop /BOI passed
2	(4)	Recomputation of Total Income of Succeeding years in respect of Loss or Depreciation	With in 4 years from the end of financial Year on which order 147 is passed
3	(7B)	Recomputation of Deemed Capital Gains u/s 47 A	With in 4 years from the end of financial Year which violation takes place
4	(11)	Amending the order of assessment So as to exclude un adjust amount of Capital gain not chargeable to tax by virtue of 54 H	With in 4 years from the end of financial Year compensation was received by assessee
5	14	Amending the assessment order so as to give tax Credit in respect of TDS	With in 4 years from the end of financial Year Which order sought to amended
6	(15)	Amending the order so as to compute capital gains by taking FVC revised in appeal, revision u/s 50 C	With in 4 years from the end of financial Year of order of court

7	(16)	Amending the order to recomputation of as per order of Tribunal court	With in 4 years from the end of financial Year of order of court/tribunal
8	(17)	Amending the order so as to recalculate the amount deductible u/s 80RRB when the name of assessee has been excluded from patent register	With in 4 years from the end of financial Year order of court/Controller
9		if an assessee has not been granted deduction u/s.10A, u/s.10B or u/s.10BA on the ground that the convertible foreign exchange for exports has not been brought into India within the prescribed time, and Subsequently brought to india	Within 4 years when the convertible foreign exchange is brought in India.

Notice of Demand : Section 156

i) Whenever, any Tax, Interest, penalty or any other sum is found payable by assessee as a result of any order passed, and then AO shall be required to serve a notice to the assessee in this regard in a prescribed form, which shall be called as 'Demand Notice'.

ii) There is no time limit being prescribed anywhere in the Act for issue or service of demand notice. Therefore, demand notice can be issued at anytime, even after expiry of time limit to pass Assessment or Reassessment Order given in section 153.

iii) Demand notice can only specify the sum payable, but cannot determine the amount payable. Determination of sum payable shall be by way of an Assessment or Reassessment Order only

iv) A demand notice cannot determine the amount payable by assessee.

v) A demand notice u/s 156 cannot contain an amount, which was not specified in an order. For e.g.: If Assessment order is silent about levy of Interest u/s 234A for late filing of ROI, then demand notice u/s 156 cannot talk about such Interest. In simple words, Interest cannot be levied by way of specifying it in demand notice, unless Assessment Order has determined such levy. *– CIT v/s Ranchi Club Ltd. (2001)(SC)*

Intimation of Loss: Section 157

During the course of assessment of total income of the assessee, if it is established that he is eligible to carry forward a Loss, then AO shall intimate such loss to the assessee, by an order in writing.

Revision of order by Commissioner	**Sec 263**

Revision means

"A re-examination or careful review for correctness or improvement

looking back to what is already done and correct the same on review

Pre-requisite for exercise of power

There should be a proceeding under the Act.

In such proceeding the Assessing Officer must have passed an order.

Commissioner should consider that the said order is erroneous and prejudicial to the interest of the Revenue.

Prejudicial:

Means Tending to injure; harmful

Erroneous:

"Involving error; deviating from the law"

Order which are the subject-matter of appeal

Can revise the orders in relation to such matters as had not been considered and decided in such appeal

Procedure

The Commissioner may call for and examine the record of any proceeding under the Act

If the Commissioner finds any order passed by the Assessing Officer to be prejudicial to the interests of the revenue, he must give an opportunity to the assessee of being heard

He must also make or cause to be made such enquiry as he deems necessary

Thereafter he may pass such revision order as the circumstances of the case justify (including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment)

Record

Record: means "All records relating to any proceeding under this Act available at the time of examination. Clause (b) of the explanation

Time limit for passing revision order

Two years from the end of the financial year in which the order sought to be revised was passed

No time limit order of the ITAT, the High Court or the Supreme Court for passing an order to give effect to, or in consequence of

Revision of order by Commissioner	Sec 264

Orders which may be revised

•Orders other than orders to which section 263 applies passed by an authority subordinate to the Commissioner

On whose motion

•Order can be revised either on the Commissioners own motion or on an application by the assessee for revision

•Where revision has been initiated by assessee, the application must be made within one year from the date order communicated. Commissioner can admit a belated application if the assessee was prevented by sufficient cause

Procedure to be followed

•Commissioner may call for and examine the record of any proceeding under the Act in which the order to be revised has been passed

•He must then make or cause to be made such enquiry as he deems necessary

•He may pass such revision order as the circumstances of the case justify.

• The order passed should not be prejudicial to the assessee.

Cases where orders cannot be revised

Where an appeal lies to the First or Second appellate authority but has not been made and the time within which the appeal may be made has not expired, or in the case of an appeal to the Commissioner (Appeals) or the ITAT, the assessee has not waived his right of appeal; ☐

Where the order is pending on an appeal before the Deputy Commissioner (Appeals); or

Where the order is in appeal before the Commissioner (Appeals) or the ITAT

Fee

Rs. 500 where the application for revision is made by the assessee

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxx

Chapter 17 Liability in Special cases

Legal Representatives – Sec. 159

■Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died,

For the purpose of making an assessment, reassessment of

■Any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal repre-sentative and may be continued against the legal representative;

■Any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

Legal Representatives – Sec. 159

All the provisions of this Act shall apply accordingly.

■The legal representative of the deceased shall, be deemed to be an assessee.

■ Every legal representative shall be personally liable if he creates a charge on or disposes of or parts with any assets of the estate of the deceased, into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

■The liability of a legal representative is limited to the extent to which the estate is capable of meeting the liability.

Case studies L R

Liability of legal representative

■ Liability is restricted to previous year in which death occurred - CIT vs. Amarchand N. Shroff [1963] 48 ITR 59 (SC); CIT vs. James Anderson [1964] 51 ITR 345 (SC); Estate of Late Rangalal Jajodia vs. CIT [1971] 79 ITR 505 (SC); CIT vs. Hukumchand Mohanlal [1971] 82 ITR 624 (SC).

■n Liability will subsist even if inherited estate is converted to different form - M. Abdul Khalick & Co. vs. ITO [1975] 101 ITR 43 (Mad.)

■n Personal properties of legal representative cannot be preceded against - Union of India vs. Mrs. Sarojini Rajah [1974] 97 ITR 37 (Mad.)

■Any Refund due to individual cannot be adjusted against tax dues of his father by relying on section 159(4) of the Act - Hasmukhlal vs. ITO [2001] 251 ITR 511 (MP).

■Issue of notice

■n Where notice was served on assessee before his death fresh no-tice to legal representative is not necessary - K. Ashok Kumar vs. CIT [1986] 162 ITR 543 (Kar.)

■An Order will not be null and void for lack of notice, if assessee died after conclusion of hearing - Md. Zafrulla, L/R of Md. Rafiulla vs. CIT [1994] 72 Taxman 231 (Gau-.

Representative assessee – Sec. 160

■The following persons are representative Assessee

Person	Representative Assessee
Non Resident	Agent of Non Resident
Minor, lunatic, idiot	Guardian or Manager who is entitle to receive income on behalf of Minor etc
Any person Whom Court of Wards, the Administrator-General, the Official Trustee	Such Official trustee. Court of Wards, the Administrator- General
Trust/Oral Trust	Trustee

Liability of representative assessee Sec. 161

▪Every representative assessee, as regards the income in respect of which he is a representative assessee, shall be sub-ject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially

▪He shall be liable to assessment in his own name in respect of that income; but any such assessment shall be deemed to be made upon him in his representative capacity only,

▪ The tax shall, be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represent-ed by him.

▪Where any person is, in respect of any income, assessable in the capacity of a representative assessee, he shall not, in respect of that income, be assessed under any other provision of this Act.

▪**Right of representative assessee to recover tax paid - Sec 162**
▪Retain the money to the extent equal to tax liability in his possession/payable to ay other person to the
▪In the event of any disagreement between such other person such representative assessee, may secure from the Assessing Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount.
▪The amount recoverable from such representative assessee or person at the time of final settlement shall not exceed the amount specified in such certificate.

Agent of Non Resident

Agent”, in relation to a non-resident, includes any person in India—
▪who is employed by or on behalf of the non-resident; or
▪who has any business connection with the non-resident; or
▪from or through whom the non-resident is in receipt of any income, whether directly or indirectly; or
▪who is the trustee of the non-resident; and includes also any other person who, whether a resident or non-resident, has acquired by means of a transfer, a capital asset in India :
▪A broker in India who, who does not deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker shall not be deemed to be an agent under, When—
▪the transactions are carried on in the ordinary course of business through the first-mentioned broker; and
▪The non-resident broker is carrying on such transactions in the ordinary course of his business and not as a principal.
▪No person shall be treated as the agent of a non-resident unless he has had an opportunity of being heard by the Assessing Officer

Succession to business or profession – Sec. 170

Where a person carrying on any business or profession (predecessor) has been succeeded therein by any other person (successor) who continues to carry on that business or profession
▪Two Assessments one up to date of succession on predecessor and other up to end of previous year on successor
▪If predecessor cannot found, both assessment will be made on successor
▪Successor is liable to pay sum due and has right to recover from predecessor
Case studies in succession
▪Succession’ means change of ownership transfer *inter vivo* or as a result of operation of law - Mettur Sandalwood Oil Co. vs. CIT [1963] 47 ITR 781 (Mad.)
▪Taking over a part of the business will not amount to ‘succe-ssion’ Premji Khimraj Shah vs. ITO [1979] 118 ITR 216 (Guj.)
▪Mere agreement for transfer is not ‘succession’

▪'cannot be found' in section 170(2) means that the predecessor is dead or had disappeared. This provision cannot be applied where the person succeeded is alive and his whereabouts are known or can be ascertained - CIT vs. National Cycle Importing Co. [1941] 9 ITR 502 (Mad.)

Assessment of persons leaving India – Sec. 174

▪When it appears to the AO that any individual may leave India during the current year or shortly after its expiry and that he has no present intention of returning to India,
▪The total income of such individual for the period from the expiry of the previous year up to the probable date of his departure from India shall be chargeable to tax in that assessment year.
▪The total income in such period shall be chargeable to tax at the rate or rates in force in that assessment year,
▪Separate assessments shall be made in respect of each such completed previous year or part of any previous year.
▪The Assessing Officer may estimate the income where it cannot be readily determined
▪For making an assessment, the A O may serve a notice u/s 142(1)/148 requiring him to furnish within such time, not being less than seven days, ROI

AOP/BOI/AJP formed for a particular event or purpose Sec 174A

Where it appears to the Assessing Officer that any Aop or a boi or ajp formed or established for a particular event or purpose

▪When such it is likely to be dissolved in the assessment year in which it was formed or immediately after such assessment year

▪The total income for the period from the expiry of the previous year for that assessment year up to the date of its dissolution shall be chargeable to tax in that assessment year
,

Persons trying to alienate their assets/Assessment of persons likely to transfer property to avoid tax – Sec. 175

▪If it appears to the AO during any current assess-ment year that any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets
▪Such act was with a view to avoiding payment of any sum liable under IT Act,
▪ The total income of such person for the period from the expiry of the previous year for that assessment year to the date when the AO commences proceedings under this section shall be chargeable to tax in that assessment year,
▪The provisions of Sec 174 regarding persons leaving India will apply.

Discontinued business – Sec. 176

▪Where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year for that assessment year up to the date of such discontinu-ance may, at the discretion of the Assessing Officer, be charged to tax in that assessment year at the rates forces in that year.

▪Any person discontinuing any business or profession shall give to the Assessing Officer notice of such discontinuance within fifteen days thereof.

▪Any sum received after the discontinuance/ cessation of the profession by, or the retirement or death shall be deemed to be the income of the recipient and charged to tax in the year of receipt

■Where an assessment is to be made under the provisions of this section, the Assessing Officer may serve notice on the person whom AO deem think fit/partner/principal officer u/s 142(1)/148 within such period, not being less than seven days require the furnishing of the return

Association dissolved or business discontinued	**Sec 177**

■The AO shall make an assessment of the total income of the AOP as if no such discontinuance/Dissolve had taken place, All the provisions of Act shall apply, so far as may be, to such assessment.
■The Assessing Officer or the Commissioner (Appeals) in the course of any proceeding under this Act he may impose or direct the imposition of a penalty
■ Member or L R personally liable
■Where such discontinuance/ dissolution takes place after any proceedings commenced, the proceedings may be continued against the persons /legal representatives

Company in liquidation - Sec 178.

■A liquidator or receiver of assets of any company which is being wound up ; shall, within thirty days give notice of his appointment as such to the concerned Assessing Officer
■ The Assessing Officer shall, after making inquiries/ calling for such information , notify to the liquidator within 3 months the amount to provide for any tax payable by the company.
■ **The liquidator—**
■Shall not part with any of the assets of the company or the properties in his hands without the permission of Commissioner or by the Assessing Officer
■on being so notified, shall set aside an amount, equal to the amount notified
■Liquidator can part the assets or properties for the payment of the tax/secured
■Creditors/Liquidation expenses which are in the opinion of the Chief Commissioner or Commissioner reasonable.
■If the liquidator fails to give the notice or fails to set aside the amount or parts with any of the assets or the properties of Company his hands in contravention of the provisions, he shall be personally liable for the payment of the tax which the company would be liable to pay to the extent of notified amount.
■Where there is more than one liquidator, all the liquidators are jointly and severally liable
■Income-tax depart-ment is treated as a secured creditor Imperial Chit Funds (P.) Ltd. vs. ITO [1996] 85 Taxman 513 (SC).

Liability of directors of private company in liquidation - Sec 179

Where any tax due from a private compa-ny in respect of any income of any year cannot be recovered,
■Every person who was a director of the private company at any time during that year the shall be jointly and severally liable for the payment of such tax
■The director is not liable he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.
■The provisions will also apply where a private company is converted into a public company

Liability of Designated partners in case of LLP in liquidation - Sec 167 C

Where any tax due from a Limited liability partnership in respect of any income of any year cannot be recovered,
■Every person who was a partner of the LLP at any time during that year the shall be jointly and severally liable for the payment of such tax
■The Partner is not liable he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of LLP.

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Chapter 18 Assessment of firms/LLP

Conditions to Assess firm as firm/LLP sec 184

▪The partnership is evidenced by an instrument; and
▪The individual shares of the partners are specified in that instrument.
▪A certified copy of the instrument of partnership shall accompany the return of income of the firm first A Y.
▪The copy of the instrument of partnership shall be certified in writing by all the partners (not being minors) /designated partner in case of LLP
▪Where the return is made after the dissolution of the firm/LLP, by all persons (not being minors) who were partners in the firm immediately before its dissolution and by the legal representative of any such partner who is deceased
▪Where a firm is assessed as such for any assessment year, it shall be assessed in the same capacity for every subsequent year
▪Where any such change in Constitution had taken place in the previous year, the firm/LLP shall furnish a certified copy of the revised instrument of partnership along with the return of income
▪Where, in respect of any assessment year, if there is failure of Section 144, the firm shall be assessed as a firm and no deduction in respect of any payment of interest, salary, bonus, commission or remuneration
▪Such interest, salary, bonus, commission or remuneration shall not be chargeable to income - tax in the hands of Partners

Succession of one firm by another firm – Sec. 188

▪Separate assessments shall be made on the predeces-sor firm and the successor firm.

Assessment when Section 184 not complied with – Sec. 185

▪Firm/LLP will continue to assess as a firm/LLP
▪No deduction on account of any bonus salary, Remuneration,commssion etc
▪Such disallowed portion will not be taxed in hands of partners

Change in constitution of a firm/LLP – Sec. 187

▪Where at the time of making an assessment under Section 143 or Section 144 it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making the assessment.

Change in the constitution of the firm means

▪one or more of the partners cease to be partners or one or more new partners are admitted, one or more partners continue as partner or partners after the change ; or

Joint and several liabilities of partners for tax payable by firm/LLP – Sec. 188A

▪Every person who was, during the previous year, a partner of a firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable along with the firm for the amount of tax, penalty or other sum payable by the firm for the assessment year to which such previous year is relevant

Firm dissolved or business discontinued – Sec. 189

▪Assessment as if no dissolve or discontinuation made
▪Proceedings shall continue
▪ Liability of partner/Legal representative for tax due

Salary, Remuneration to Working Partner: sec 40(b)
Deduction in computing the business income of firm /LLP if the following conditions are fulfilled
▪Payment only to working partner
▪Authorization through partnership deed
▪Payment only after the date of partnership deed
▪Payment should not exceed as per limits
▪In case of Interest on Capital, it will allowed at simple rate of interest @ 12%
▪Deduction under section 40(*b*)(*v*) will be admissible only the partnership deed either specifies the amount of remu-neration payable to each individual working partner or lays down the manner of quantifying such remuneration—Circular no 739 dt 25.3.96

Working partner means
▪an individual who is actively engaged in conducting the affairs of the business or profession of the firm /LLP of which he is a partner
▪No whole time concept

▪**Limits of remuneration payable to working partners of firm / or Partners of LLP**

	in the case of Professional firm—	**Maximum Amount of Remuneration.**
(*a*)	on the first Rs. 3,00,000 of the book-profit or in case of a loss	Rs. 1,50,000 or at the rate of 90 per cent of the book-profit, whichever is more;
(*b*)	on Balance of the book-profit	At the rate of 60 per cent;

In case of Interest paid to Partner in representative capacity:

Explanation to 40 (b)

In case of Interest paid to Partner in representative capacity:

- Where an individual is a partner in a firm on behalf, or for the benefit of any other person interest paid by the firm to such individual as partner who is in in a representative capacity and individual capacity shall be disallowed

Interest charged to partner on debit balance as well as allowed on credit balance - Whether gross or net interest should be added back

- The gross amount of interest paid to the partner will have to be added back to the income of the firm.

Book Profit means Income under head Profit and gains of Business and Profession as increased remuneration if such amount has been deducted while computing the net profit.
Ignore other heads of income.
Consider unabsorbed depreciation.
Ignore set off business losses./Deductions from Gross Total Income

Computation of Book Profits

- Step One Find out the Net Profit as per Profit & Loss Account
- Step Two Make necessary adjustments as provided from Section 28 to Section 44D
- Step Three Add remuneration to partners if debited in Profit & Loss Account
- Step four, Add interest to the partners in excess of 12% on capitals if debited in P & L Account.

In case of Interest paid to Partner in representative capacity:

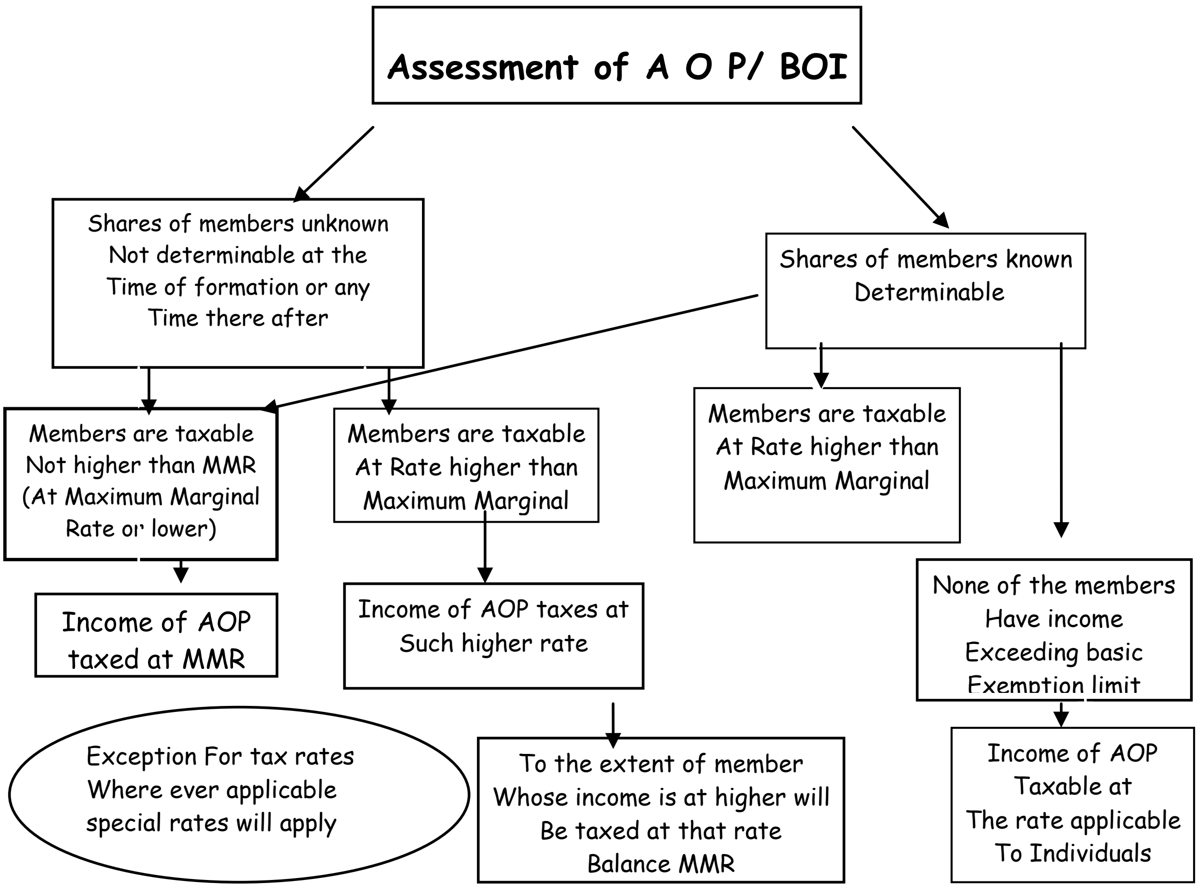
- Where an individual is a partner in a firm on behalf, or for the benefit of any other person interest paid by the firm to such individual as partner who is in a representative capacity and individual capacity shall be disallowed

Interest charged to partner on debit balance as well as allowed on credit balance - Whether gross or net interest should be added back

- he gross amount of interest paid to the partner will have to be added back to the income of the firm.

Assessment of AOP/BOI

- A O P means two or more persons join together for a common purpose to earn income CIT VS indira Balakrishna (SC)
- AOp consist of individual or non individual. BOI should consist of individuals only.
- AOp created voluntarily, where BOI created by virtue of operation of law
- Business run by widow on behalf of her children will be assessed as BOI Meera & Co Vs CIT(SC)
- Either in case of AOP/BOI no restriction on the numbers of members
- The share of each member need not definite or ascertainable



▪**Computation income of AOP/BOI**

▪No Deduction for Interest/Salary Bonus. Remuneration, commission paid by AOP/BOI to its members

▪When interest paid on capital and charged on drawing net interest paid will be disallowed

▪Where an assessee is a member in a AOP/BOI on behalf, or for the benefit of any other person interest paid by the AOP?BOI to such individual as partner who is in a representative capacity and individual capacity shall be allowed

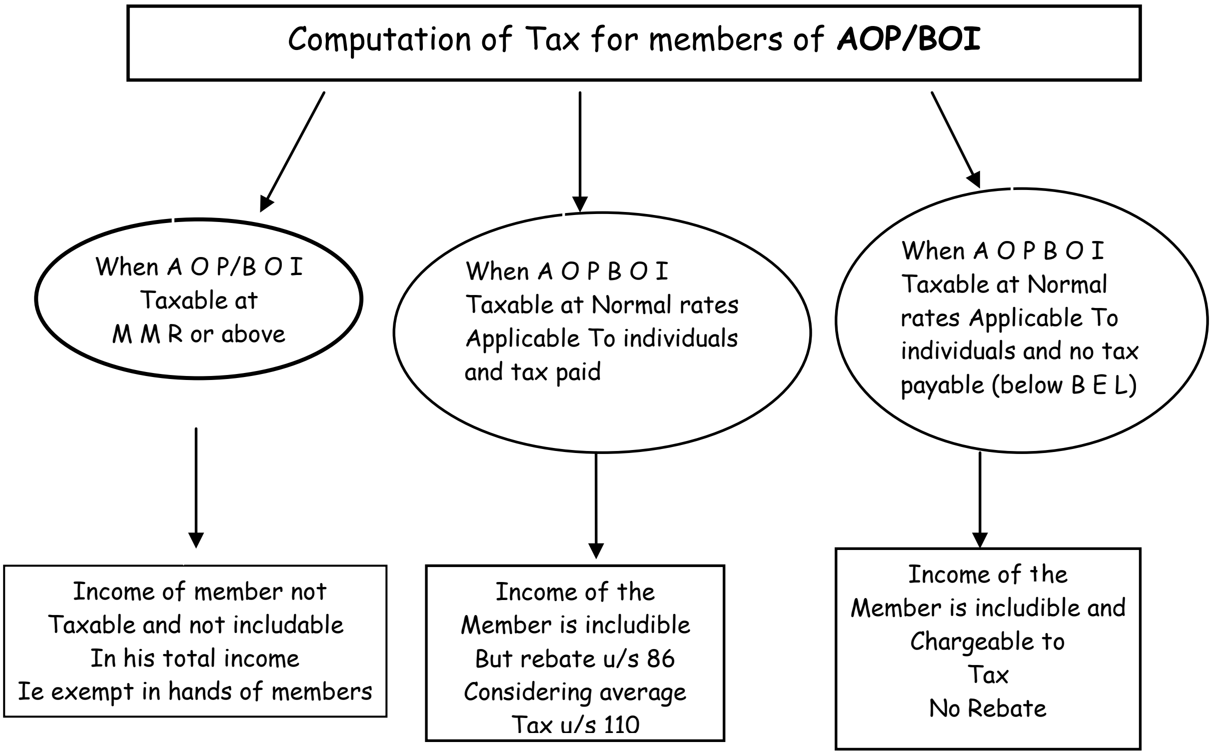
Computation income of member of AOP/BOI sec 67 A

▪Computation Apportion able income of member of AOP/BOI

Total income of AOP/BOI	xxxxxxx
Less interest salary commission remuneration paid to member	xxxxxxx
Apportion able income of the member	xxxxxxx

Computation of income of member

Apportion able income of the member	xxxxxxx
Add : interest salary commission remuneration received from AOP/ BOI	xxxxxxx
	xxxxxxx
Less: Interest paid for any loan taken for investing in AOP	xxxxxxx
Income of the member of AOP	xxxxxxx



Calculation of Rebate for the member of AOP
Applicable only when the AOP is charged to tax at the rates applicable to Individuals and tax payable

- Determine the total income of Member including his share income
- Determine the tax payable
- Find out the average rate of tax Average rate tax = tax/ total income
- Rebate = amount of share income x A R T
- Tax payable= total tax payable minus rebate

Other Points with regard to taxation of members of AOP/BOI

- When AOP is eligible for deductions under chapter VI A, member cannot avail those deductions in his share income from AOP 80 A (3)
- For the purpose of Assessment share income of member of AOP/ BOI is to be apportioned under various heads of income in the same manner as income/loss computed for AOP/BOI

Assessment of HUF

- HUf is defined in Hindu law as a family consists of all persons lineally descendant to common ancestors including their wives and unmarried daughters.
- The head of HUF is known as karta and all the members of HUF are known as coparcener
- HUF two Schools –one Mitakshara and other is Dayabhaga

Mitakshara :

- Applicable all India except West Bengal

▪Son gets right in ancestral property by birth
▪Son can ask partition after reaching adulthood.

Dayabhaga

▪Applicable to West Bengal
▪Son gets right in ancestral property only after father death.
▪HUF treated in par with individuals.
▪Computation of Gross total income of HUF will be similar to that of other assessee
▪The deductions from G T I available to HUF are 80 C, 80 D,80 DD, 80DDB,80 G, 80 GGA, 80 GGC, 80 IA, 80 IAB, 80 IB, 80 IC, 80 JJA
▪Aggregation of Agricultural income for tax purpose will be applicable to HUF also
▪Tax rebate 88 E applicable
▪Rebate u/s 90 & 91 will also apply
▪

Partition of HUF sec 171

▪Where at the time of making assessment u/s 143/144 where it is claimed by any member that total partition has taken place, the A O should send notice to all the members and enquire, record the reasons
▪Where the total partition taken place during the previous year assessment will be made on HUF up to the date of partition
▪Balance period income will be assessed in the hands of members as individuals
▪All the members are personally liable for the tax dues of HUF during the period they are members
▪Where the total partition taken place after the previous year assessment will be made on HUF for the previous as if no partition taken place
▪Total Partition: Total property divided among the members and HUF cease to exist.
▪Partial Partition : one or more members claims partition , property divided for those members and remaining members continue as HUF
▪Partial Partition not recognized under Income tax Act. No enquiry and no recording of findings required. Sec 171(9)

Taxation of Private Trusts

▪Private Trust means Trust created for the benefit of ascertained individuals or families

Beneficiary share defined, income has NO PGBP

▪Income will be assessable at the rates applicable to each beneficiary on the hands of trustee as a representative assessee u/s 161
▪Separate Assessments has to be made for each beneficiary
▪A O has option to assess income in the hands of each beneficiary u/s 166

Beneficiary share defined, income having PGBP

▪Whole income will be assessed at the rates at maximum marginal rate

Exceptions

▪Trust declared by any person by will
▪Trust is created expressly for the benefit of relative dependents and for the maintenance of spouse
▪It is only the trust declared by him
▪In the above cases No MMR. only at the rates applicable to beneficiary

Beneficiary share not defined, income has NO PGBP

Income will be assessed as AO P if the following conditions are fulfilled

▪None of beneficiary should has income exceeding basic exemption limit and Beneficiary should not be Beneficiary for any other trust
▪Trust created before 01.03.70 exclusively for the benefit of dependents of settlor
▪Income received by trust from the superannuation, gratuity, provident funds created for the benefit of employees by employer
▪If the above conditions are not fulfilled income will be chargeable at MMR

Beneficiary share not defined, income has PGBP

▪When exceptions applicable income will be taxable at the rates applicable to beneficiary
▪When the exceptions not applicable income will be taxable at MMR

Assessment of Co operative society's sec 80 P

▪**Tax Rates**

▪Rate of income-tax

Net income range	rate
▪Up to Rs. 10,000	10%
▪Rs. 10,000 - Rs. 20,000	20%
▪Rs. 20,000 and above	30 %

▪No surcharge, E C payable.

Income exempt for Co-operative societies

S N	Nature of income	Exemption
1	Profits arising out of cottage industries; marketing, processing, purchase related to agriculture; fishing and allied activities	100%
2	Primary Co-operative Society engaged in supplying milk, oil seeds, fruits or vegetables grown by its member to specified bodies	100%
3	Consumer Co-operative Society	Max 1,00,000
4	Other Cooperative societies	Max 50,000
5	Income by way of interest or dividends derived from investments and from other Co-operative Societies	100%
6	Income derived from letting godown and warehouses for storage, processing or marketing of commodities	100%

No deduction with effective from AY 07-08 to any Co-operative Bank which carrying the banking and non banking business
.However Co-operative bank of a primary agricultural credit society or a primary co-operative agricultural and rural development bank will get the deduction

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Chapter 19

DEDUCTION OF TAX AT SOURCE

Why TDS

- Ensure regular flow of income for the Revenue
- Collect tax in advance
- Minimizes cases of tax evasion or avoidance
- Minimizes incidence of interest costs for the recipient
- Place responsibility on the persons other than payees

Overview

- Pay as you earn scheme
- Deduction at the time of payment or credit whichever earlier
- Deposit within prescribed time
- Issue certificate

Default attracts

- Disallowance of expenses
- Penal Interest
- Penalty
- Prosecution

DEDUCTION OF TAX AT SOURCE FROM SALARY – SECTION 192

Applicability	All Assesses (including individuals) who are Employers
Category of Payee	Employees Who has income exceeds amount chargeable to tax including Non Residents.
Rate of deduction	At rates applicable to payee (average rate of tax) on the financial year on the estimated income under head salary
Limit for deduction	No deduction if the income under salary is below taxable limit.
Time of Deduction	At the time of making payment.

Employer Option to pay tax on the perquisites of Employee: sec 192(1A)

- The employer has paid only part and recovered part from employee it is treated as tds deducted

Where an employee is In employment of any other employer also - Section 192 (2)

- TDS by one of such employers, if the employee so chooses provided the said employee furnished required details in Form No. 12B.

When employee is having income from sources other than 'salary income' - Section 192 (2B)–

- he can furnish details of such positive income under all the heads, and / or loss under head 'income from house property' only along with details of tds on such incomes

When adjustments of excess / deficiency are required - Section 192 (3)

- The employer may at the time adjusting any excess or deficiency arising out of any previous deduction or failure to deduct

Deduction from provident fund /super annuation fund payment - Section 192 (4) / (5)

- TDS to be made on excess exemption limit (the amounts included in salary).

Employer has no authority to investigate into source of investments –

Investigation into the source from which the investment falls within the domain of the assessing authority, and no power in this regard is vested in the employer

Except in cases where loss from house property is taken into consideration, the tax deductible at source by the employer should not be less than the tax deductible at source on salary income only. – Circular No. 781, dated 5-11-1991

Refund of TDS from non-resident employees (Circular No.707, dated 11.07.1995)

- An employer is entitled to get refund excess tax /TDS subject to following Conditions:
- Salary is paid to Non Resident who is deputed on work to India.
- Tax on Salaries is borne by the employer
- Refund is due to Non-resident employee who is already left India.
- There is no bank account to Non- resident at the time of passing of Assessment Order.
- The Non-resident has given due authorization in this regard.

DEDUCTION OF TAX AT SOURCE FROM INTEREST ON SECURITES
SECTION 193

Applicability	Person responsible for paying any income by way of Interest on Securities (Govt., Local Authority, Company or Corporation.)
Category of Payee	Resident.
Rate of deduction	10%
Limit for deduction/No Deduction.	1.No deduction if Securities are exempt from tax (Government Securities). However 8% tax bonds tds to be deducted. If amount exceeds Rs. 10000 2. No deduction based on declaration in Form G 3.Interest on debentures issued by Company in which public are substantially interested, interest paid through cheque during financial year does not exceed Rs. 2500/--
Time of Deduction	At the time of making payment/Credit which ever is earlier.

No TDS When payment is made Government, as below.

- State Government, Central Government
- RBI, UTI
- LIC, GIC and its subsidiaries, and any other insurer, in respect of any securities owned by them or in which they have full beneficial interest.
- Corporation established under Central Acts, whose income is exempt from tax.
- Mutual Funds as specified in section 10 (23D).

Declaration under section 197A (1A)

- No deduction of tax is to be made in the case of a payee (other than a company or firm), if he furnishes a declaration in writing in duplicate in the prescribed from Form No. 15G to the effect that tax on his estimated income of the relevant previous year will be nil.

RELAXATION TO SENIOR CITIZENS section 197A(1C) provides that no tax is to be deducted at source where the following conditions are fulfilled :

- The payee is an individual resident in India;
- The age of the payee is 65 years or more at any time during the previous year and he is entitled to senior citizens rebate under section 88B;

◆ The payee furnishes to the person responsible for paying the income a declaration in writing in duplicate in **Form No. 15H** the effect that the tax on his estimated total income of the previous year in which such income is to be included will be *Nil*.

TAX DEDUCTED AT SOURCE ON DIVIDENDS - SECTION 194	
Applicability	Principal officer of Indian Company and Company who made prescribed arrangement for payment of dividend India.
Category of Payee	Persons who entitled to received dividend other than dividend U/s 115 O i.e. Sec 2(22)e dividend.
Rate of deduction	-10%
Limit for deduction	Deduction if payment is likely to exceed Rs. 2500/- during the financial year. NO deduction if Dividend paid to LIC, GIC and its subsidiaries and any other insurer
Time of Deduction	At the time of making payment in cash or issuing warrant

DEDUCTION OF TAX AT SOURCE FROM INTEREST OTHER THAN INTEREST ON SECURITES - SECTION 194A

Applicability	Any Person, and In case of Individual and HUF whose accounts are subject to tax Audit u/s 44AB during the preceding financial year
Category of Payee	Resident.
Rate of deduction	– 10%
Limit for deduction/No Deduction.	Deduction if amount of interest credited or paid or likely to credit or paid, if the amount for financial year exceed Rs.10000/- in case of interest on deposit from banks ,post offices, cooperative society., & other cases exceeding Rs.5000/-
Time of Deduction	At the time of making payment or at the time of credit whichever is earlier
Deduction at lower rate or no deduction.	Assessee can make an application in Form 13 to Assessing Officer. The Assessing Officer shall issue a certificate.

Interest payments not covered under section 194A (TDS Not Applicable)

– **interest income credited or paid to –**

◆any banking company or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank);

◆any financial corporation established by or under a Central, State or Provincial Act;

◆the life Insurance Corporation of India;the Unit Trust of India;

◆any company or co-operative society carrying on the business of insurance

– Interest income credited or paid by a firm to a partner of the firm;

– Interest income credited or paid by a co-operative society to a member thereof or to any other co-operative society;

– Interest income credited or paid in respect of deposits under any notified scheme framed by the Central Government; (deposits in post office, Indira vikas patra, kisan vikas patra N S Certificates)

– Interest paid by government on excess tax paid under any of the direct tax Acts.

– Interest paid or credited on compensation awarded by the Motor Accidents Claims

The following payments are liable to tds under 194A

INTEREST PAID BY CONSIGNOR TO COMMISSION TO COMMISSION AGENT Letter F. No. 12 / 12 / 68 – IT (A-II) dated 23-9-1968.

- INTEREST PAID UNDER LAND ACQUISITION ACT Circular No. 526, dated 5-12-1988.
- INCASE OF DEPOSITS IN JOINT NAMES -in the absence of any information to the contrary, they may aggregate the interest on a joint account
- of the deposit / debenture / bond – Circular : No. 643, dated 22-1-1993.
- Guarantee monthly payment by financier to investor TDS will be applicable under section 194A – Viswapriya Securities Ltd., Vs. CIT (Mad.)
- Deduction of taxes to be made on the gross interest and not on net interest after set off – C.K.Sundarama Iyer & Sons Vs. CIT 240 I.T.R. 740 (Mad.)
- Interest paid by buyer to supplier by retiring a HUNDI the provisions of Sec. 194 A will apply and TDS has to be deduced. - Circular No. 48 dated 07-11-1970.
- In respect of cumulative deposits / debentures / bonds tax is required to be deducted at source every time the interest is credited in the account books of the payer and is not to be postponed till the maturity of the deposit / debenture / bond – Circular : No. 643, dated 22-1-1993.

DEDUCTION OF TAX AT SOURCE FROM WINNINGS FROM LOTTERY OR CROSSWORD PUZZLE - SECTION 194B

Applicability	Any Person paying by way of winning from lotteries, Cross word puzzles and games of any sort.
Category of Payee	Any person
Rate of deduction	30% .
Limit for deduction/No Deduction.	Deduction if amount of winnings is paid exceed Rs.5000/-
Time of Deduction	At the time of making payment/Money in kind, before releasing the prize assurance that tax has paid on such money.

Note:

Payment here refers to a single payment and not payments made in the whole financial year. Thus, if an assessee has received two lottery payments of Rs. 3,000 each at different times, no tax shall be deducted at source.

PAYMENT IS WHOLLY IN KIND, OR PARTLY IN CASH AND PARTLY IN KIND -SECTION 194B, PROVISO

Where the payment is wholly in kind, the payer shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings. This means that the payer must recover the tax from the winner and then release the winnings, or himself bear the tax liability, and then pay the tax due to the credit of Government. Where the payment is partly in cash and partly in kind, tax can be deducted on the total value of cash and kind from the cash portion and remitted to Government. If the cash portion is found insufficient to meet the tax due, the payer must either recover the deficit in tax from the winner before releasing the winnings, or himself bear such deficit, and then pay the tax due to the credit of Government.

Other points

- Winning from motor rally is not a lottery income.
- Lucky dip draw are lotteries within the meaning of section 194B as they are dependent wholly on the chance draw of a lucky ticket. **Circular No. 264 [F. No. 275 / 58 / 79- IT (B)], dated 11-2-1980**.
- Unclaimed / undisbursed prize money – Unclaimed and / or disturbed prize money is not winning from lottery **Director of State Lotteries vs. CIT [1999] 238 ITR 1 (Gauhauti**).
- No tax deduction from bonus or commission payable to lottery agents –
- Payments in kind, payments partly in cash and partly in kind will also attract tds.
- prize won by lottery agent on unsold ticket is not subject to deduction of tax U/s 194 B and flat rate of 30% will also not applicable. Director of State lotteries Vs CIT (Gauhati)

P*AYMENTS IS MADE IN INSTALMENTS* deduction will be made at the time of actual payment of each installment. ***– Circular No. 303, dated 12-5-1981***

DEDUCTION OF TAX AT SOURCE FROM WINNINGS FROM HORSE RACES SECTION 194BB

Applicability	Book Makers, license holders of wagering and betting
Category of Payee	Any person
Rate of deduction	30%.
Limit for deduction/No Deduction.	Deduction if amount of winning paid, if the amount exceed Rs.5000 wef 01.07.2010 earlier Rs. 2500/-
Time of Deduction	At the time of making payment

DEDUCTION OF TAX AT SOURCE FROM PAYMENTS TO CONTRACTORS / SUB- CONTRACTORS - SECTION 194C

Applicability	1.All & Individual and HUF Covered by 44 AB during previous financial year.
Category of Payee	All categories of Resident. Contractors and Sub Contractors
Rate of deduction	Wef 01.10.2009 1%for Payments to Individuals or HUF 2% in case of payment to other than individuals and HUF
Limit for deduction/No Deduction.	TDS if the sum credited or paid exceed Rs30,000/-in a single contract./ if aggregate payments/credits exceeds Rs.75,000/ during Financial Year wef 01.07.2010. Before the limits are Rs.20,000/ Rs.50,000/
Time of Deduction	At the time of making Payment. or Credit which ever is earlier

- ☐ Expression 'work' shall also include –

(a) Advertising;
(b) Broadcasting and telecasting including production of programmes for such broadcasting or telecasting.
(c) Carriage of goods and passengers by any mode of transport other than railways;
(d) Catering.

No deductions for payments made to transporters, if they provided PAN to deductor wef 01.10.2009

Applicable of TDS under sec 194 C --CBDT Circular No 715

The following Payments will attract TDS

- When a client makes payment to an advertising agency
- If the advertising agencies give a consolidated bill including charges for art work and other related jobs as well as payments made by them to media – full bill TDS @ 2%
- Payments made directly to the print media
- Payments for hoarding Contracts: The contract for putting up a hoarding is in the nature of advertising contract and provisions of section 194C would be applicable.
- However if a person has taken a particular space on rent for putting up a hoarding, he would be liable to TDS under section 194-I (Rent) and not under section 194C of the Act
- Payments to travel agents/other than when the plane/bus engaged on charter trip
- Payments made to clearing and forwarding agents for carriage of goods,
- Payments made to couriers for carrying documents, letters etc.
- Payments to transporters, for several GRS are made under one bill each GR will not be a separate contract and all GRs relating to that period or quantity will be aggregated for the purpose of the TDS..
- TDS is applicable even goods are received Freight to pay basis
- Supply of printed material as per prescribed specifications
- Advertisement contracts when payment of commission to the person who arranges release of advertisement, etc., or deduction is to be made on the gross amount including bill of media (1%)
- Payments for sponsorship of debates, seminars and other functions held in colleges
- schools and associations with a view to earn publicity through display of banners, etc., put up by the organizers
- Services of a regular electrician
- Routine normal Maintenance contract including supply of spares
- Payments made to all types of contracts for carrying out any work including transport contracts, service contracts, advertisement contracts, broadcasting contracts, telecasting contracts, labour contracts, materials contracts and works contracts. Circular No. 681,
- Reimbursement of expenses under section 194C and 194J Sections 194C and 194J refer to any sum paid. Hence Reimbursement of payments will attract TDS

Non Applicability of TDS under 194 C

- When an advertising agency makes payment to the media,.
- Payments made directly Doordarshan for release of advertisements

- Payment for serving food in restaurant
- Payment to a recruitment agency 194 c not apply, however 194 J will apply
- Payments made by a company to a share registrar 194 c not apply, however 194 J will apply
- Payments made to banks for discounting bills, collecting/receiving payments through cheque/drafts, opening and negotiating letters of credit and transactions in negotiable instruments.
- Payments made for hiring or renting of equipments, however it will cover by 194 I

DEDUCTION OF TAX AT SOURCE FROM INSURANCE COMMISSION SECTION 194D

WHAT IS INSURANCE COMMISSION – The insurance commission contemplated under section 194D is any remuneration or reward for soliciting or procuring insurance business, and remuneration or reward (whether by way of commission or otherwise) payable for the continuance, renewal or revival of policies of insurance.

Applicability	Insurance Companies
Category of Payee	Resident
Rate of deduction	10%
Limit for deduction/No Deduction.	No deduction if the aggregate amount during financial year does not exceed Rs. 20,000/-wef 01.07.2010, before Rs.5000/-
Time of Deduction	At the time of making payment or at the time of credit which ever is earlier

Reinsurance commission does not cover u/s 194 D. GIC of India Vs.Cit 2009 (mum)
However it amy cover u/s 194 H

Deduction of Tax at source in respect of payment s to Non Resident Sportsmen Sports Associations - SECTION 194E

Applicability	Any Person for payment of income referred u/s 115 BA
Category of Payee	Non - Resident Sport Persons/Athlete.
Rate of deduction	10%
Limit for deduction/No Deduction/Lower rate	No such Provision Exist.
Time of Deduction	At the time of making payment or at the time of credit which ever is earlier

Payments referred to in section 115BBA, subjected to TDS are as follows:

- income by way of participation in India in any game (other than a game the winnings wherefrom are taxable under section 115BB) or sport;
- income by way of advertisements ; and income by way contribution of articles relating to any game or sport in India in newspapers, magazines or journals.

DEDUCTION FROM PAYMENTS OF DEPOSITS UNDER NSS SECTION 194EE

Applicability	Indian Postal Service (Post Office)
Category of Payee	Individuals
Rate of deduction	20%
Limit for deduction/No Deduction.	No deduction The aggregate amount of such payment in a financial year exceeds Rs. 2,500 in aggregate. No deduction if Payment is not made to legal heirs to deceased assessee No deduction if declaration is made by resident individual (see below)
Time of Deduction	At the time of making payment

Declaration for Non Deduction

No deduction of tax shall be made in the case of an individual, who is resident in India, if such individual furnishes to the person responsible for paying above income, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be *nil*.

DEDUCTION OF TAX AT SOURCE FROM PAYMENTS ON ACCOUNTS OF REPURCHASE OF UNITS BY MUTUAL FUNDS OR UNITS BY UTI SECTION 194F

Applicability	Mutual funds and UTI
Category of Payee	Any person who invested in UTI/MF u/s 80 CCB
Rate of deduction	20%
Limit for deduction/No Deduction.	No limit entire amount paid is subject to TDS
Time of Deduction	At the time of making payment/return of such investment.

DEDUCTION OF TAX AT SOURCE FROM COMMISSION ON SALE OF LOTTERYTICKETS - SECTION 194G

Applicability	Stockiest and distributor/seller of lottery tickets
Category of Payee	Any person (Resident/Non Resident)
Rate of deduction	10%
Limit for deduction/No Deduction.	Deduction if commission for sale of lottery tickets, provided the quantum of commission exceeds Rs. 1,000.
Time of Deduction	At the time of credit / making payment, Whichever is earlier.

DEDUCTION OF TAX AT SOURCE FROM PAYMENTS COMMISSION OR BROKERAGE PAYMENTS - SECTION 194H

Applicability	Any Person, and In case of Individual and HUF whose accounts are subject to tax Audit u/s 44AB during the preceding financial year
Category of Payee	Resident.
Rate of deduction	10% .

Limit for deduction/No Deduction.	Deduction if amount brokerage/Commission is paid /credited, in a financial year exceedsRs.5000/- wef 01.07.2010, before Rs.2500/-
Time of Deduction	At the time of making payment/at the time of credit which ever is earlier
Deduction at lower rate or no deduction.	Assessee can make an application in Form 13 to Assessing Officer. The Assessing Officer shall issue a certificate

MEANING OF 'COMMISSION OR BROKERAGE'

- any payment received or receivable,
- directly or indirectly by a person acting on behalf of another person
- for services rendered *(not being professional services)* or
- for any service in the course of buying or selling of goods or
- in relation to any transaction relating to any asset, valuable article or thing, *other than securities*.

Other Points

- Tax not required to be deducted by RBI on the amount of Turnover Commission paid by it to its Agency Banks - *Circular No.6/2003 dated 03.09.2003.*
- When the licensed Stamp Vendors on payment of full price less discount and selling them to retail customers, neither of the two activities ie buying from Government and selling to retail customers was not a service in respect of goods. Hence tds is not applicable. *Ahmedabad Stamp Vendor Association VS UOI 2002 124 Taxman628 (Guj)*

DEDUCTION OF TAX AT SOURCE FROM RENT PAYMENTS
SECTION 194 – I

Applicability	Any Person, and In case of Individual and HUF whose accounts are subject to tax Audit u/s 44AB during the preceding financial year
Category of Payee	Resident
Rate of deduction	Wef 01.10.2009 In respect of Rent for Building, furniture All Persons - 10% In respect of Rent for plant machinery/ equipment All persons- 2%
Limit for deduction/No Deduction.	Deduction if amount of rent credited or paid or likely to credit or paid, interest for financial year exceed Rs. 1,80,000/ wef 01.07.2010., before Rs.1, 20,000/- in the financial year No Deduction if payee is Govt./Local authority
Time of Deduction	At the time of payment/at the time of credit Which ever is earlier

Section 194–I, Provides for deducted of tax at source from payments in the nature of 'income by way of rent'. *This section applies only to payments to residents. Where payment is made to non-residents, tax will be deducted at source under section 195, if found necessary.*

MEANING OF RENT

'Rent' means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or any building (including factory building), **together or Separately** with furniture, fittings, Machinery, Equipment and Appliances and the land appurtenant thereto, whether or not such buildings is owned by the payee".

WHEN PAYMENTS EXCEED THE LIMIT DURING THE COURSE OF THE YEAR – In case where, at the time when the credit / payment is made, it is expected that the total payment during the financial year would not exceed Rs. 1,20,000(Rs. 1,80,000/- wef 01.07.2010) but later on it is found that the credit / payment exceeds that amount, then, deduction should be made in respect of earlier payments as well, since the liability to deduct tax is attached to the aggregate payments made during the financial year.

Co- owner of a property

- If there are a number of payees,
- each having a definite and ascertainable share in the property,
- the limit of Rs. 180,000 will apply to each of the payees/co-owners separately.
- If there is no definite share TDS applicable for aggregate payment

Circular No. 699, dated 30th January 1995.

There is no requirement to deduct income - tax at source on income by way of "rent" if the payee is the Government. In the case of the local authorities and statutory authorities referred there will be no requirement to deduct income-tax at source from income by way of rent if the person responsible for paying it is satisfied about their tax-exempt status under clause (20) or (20A) of section 10 on the basis of a certificate to this effect given by the said authorities.

Payments which attract 194 I

- Payments made to a hotel for rooms hired during the year on regular basis
- Payments by company taking premises on rent but styling the agreement as a business center agreement
- In a case of composite arrangement for user of premises and provision of manpower for which consideration is paid as a specified percentage of turnover,
- Non-refundable deposit made by tenant-- such deposit represents the consideration for the use of the land or the building, etc., and, therefore, partakes of the nature of rent as defined in sec. 194-I.
- Ware - Housing charges
- Any hire charges paid for hiring Motor Cars

Non Applicable of TDS

- Notional income in respect of deposit given to land lord Since TDS is on actual payment
- Municipal taxes, ground rent, etc; are borne by the tenant, no tax will be deducted on such sum.
-

DEDUCTION OF TAX AT SOURCE FROM FEES FOR PROFESSIONAL OR TECHNICAL SERVICES Royalty/payment 28(va) -Section 194 J

Applicability	Any Person, and in case of Individual and HUF whose accounts are subject to tax Audit u/s 44AB during the preceding financial year

Category of Payee	Any person resident in INDIA
Rate of deduction	10%
Limit for deduction/No Deduction.	Deduction if amount of t credited or paid or likely to credit or paid, if the amount for financial year exceed Rs.20,000/-
Time of Deduction	At the time of making payment or at the time of credit Which ever is earlier
Deduction at lower rate or no deduction.	Assessee can make an application in Form 13 to Assessing Officer. The Assessing Officer shall issue a certificate.

Payments for personal purposes:
No tax need be deducted on payments made by individuals and HUF, if the payments are exclusively for personal purposes of such individual or any member of HUF.

Meaning of Professional Fees

- *services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or accountancy or*
- *technical consultancy or interior decoration or advertising, Authorized representative,*
- *Film artist, Profession of Company Secretary and Profession of Information technology*

Meaning of Technical Services

- any consideration (including any lump sum consideration) for the rendering of
- any managerial, technical or consultancy services (including the provisions of services of technical or other personnel),
- but does not include consideration for any construction, assembly, mining or
- like product undertaken by the recipient or
- consideration which would be income of the recipient chargeable under the head 'salaries

Meaning of Royalty

- As per Explanation 2 of clause vi sec 9(1)

Transaction sec 28(va)

- Any sum received or receivable in cash or in kind under an agreement
- for not carrying out activity in relation to any business, or
- not to share any know- how, patent, copyright, trade-mark, licence franchise or
- any other business or commercial right of, similar nature of information or
- technique likely to assist in the manufacture or processing of goods or
- provision for services except when such sum is taxable under the head 'Capital Gains

PAYMENTS BY NON – RESIDENTS TO RESIDENTS

- Any fees paid through regular banking channels to any chartered accountant, lawyer, advocate or solicitor who is resident in India by the non – residents who do not have any agent or business connection or permanent establishment in India may not be subjected to the provisions of tax deduction at source under section 194J ***– Circular No. 726 dated 18-10-1995.***

- However, foreign companies or foreign law and accountancy firms are required to send a quarterly statement, indicating the name and address of the person to whom the payments are made, to the Deputy Secretary, Foreign Tax Division, Central Board of Direct Taxes, Department of Revenue, M/o Finance, New Delhi

Other Points

- When an advertising agency makes payments to their models, artistes, photographers, etc., the tax shall be deducted 194 J will apply.
- Cellular mobile, telephone facility services is not a technical services u/s 194J and hence no tax is required to be deducted – ***Skycell Cellular Services Ltd. Vs. DCIT 251 ITR 53 (Mad.)***

PAYMENT OF COMPENSATION ON ACQUISITION OF CERTAIN IMMOVABLE PROPERTY - SECTION 194LA.

Applicability	Any person / Government
Category of Payee	Resident
Nature of Payment:	Compensation or the enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land)
Rate of Deduction	10%
Limit for deduction/No Deduction.	Deduction if Compensation/aggregate of Compensation paid during the financial year is exceeding Rs. 1,00,000/-
Time of Deduction	At the time of making payment by cheque/Cash/draft/other mode which ever is earlier.

DEDUCTION OF TAX AT SOURCE INCOME FROM UNITS OF OFF – SHORE FUNDS - SECTION 196B

Applicability	Person responsible for paying any income including Capital gains for units U/s 115 AB (UTI/Specified Mutual Funds)
Category of Payee	Offshore Fund
Rate of deduction	10% .
Limit for deduction/No Deduction.	No deduction if Securities are exempt from tax No deduction based on declaration
Time of Deduction	At the time of making payment.

DEDUCTION OF TAX AT SOURCE INCOME FROM INCOME FROM FOREIGN CURRENCY BOND OR GLOBAL DEPOSITORY RECEIPTS OF INDIAN COMPANY Sec 196 C

Section 196C is applicable if income is payable in respect of bonds / global depositors receipts referred to in section 115AC to non-resident.

Applicability	Person responsible for paying any income by way of income from foreign currency bond or global depository receipts of

	Indian company Y
Category of Payee	Non - Resident
Rate of deduction	10%
Limit for deduction/No Deduction.	No deduction if respect of dividends other than dividend u/s 115 O
Time of Deduction	At the time of making payment (not at the time of credit)

DEDUCTION OF TAX AT SOURCE INCOME FROM INCOME OF FOREIGN INSTITUTIONAL INVESTORS FROM SECURITIES

Section 196D is applicable if income is payable to a Foreign Institutional Investor in respect of securities referred to in section 115AD.

Applicability	Person responsible for paying any income by way of Interest on Securities
Category of Payee	Foreign Institutional Investor
Rate of deduction	20%
Limit for deduction/No Deduction.	No deduction if Securities are exempt from tax. No deduction based on declaration
Time of Deduction	At the time of making payment or at the time of credit which ever is earlier

Common points for all TDS payments

Time limit for deposit	In case of deduction by or on behalf of Government on the same day Other Cases within one week from the end of month which deduction is made. In case of amount credited on the last day of the accounting year within two months from the end of month, which it is credited
Certificate of TDS	In case of Salaries form 16 and for other payments Form 16 A
Quarterly Return	For Salary form 24 Q, other payments Form 26 Q for Non- resident payments form 27 should be filed
Deduction at lower rate or no deduction.	1. Deductee can make an application in Form 13 to Assessing Officer. The Assessing Officer shall issue a certificate for lower rate of deduction or no deduction. 2. In case of payments such as, Winnings, payments to nonresident sports persons, payments for repurchase of MF, income from units of offshore fund, and income from foreign currency bonds , the provision for lower rate or no deduction not apply.
Surcharge and EC	Surcharge -Companies where the payment exceeds Rs. 1 Crore- 7.5% on the whole amount. No EC on tds payments
Rate of TDs when No PAN	20% wef 01.04.2010

Payments to Non residents Sec 195

Nature of payment	**Responsibility to deduct tax**	**Rate of TDS**
All payments chargeable under	Any person	Rates in force as per Fact It means rate under the Act or

Act except salary & Dividend referred u/s 115 O		DTA, whichever is more beneficial to the assessee to be applied

Points for consideration

Application by person making deduction sec 195 (2)

- If the payer making payment to N R considers that the whole of such sum would not be chargeable to tax(a portion is only chargeable) , an application can be made to the AO for his general or special order to determine the proportionate amount so chargeable and deduct tax only on the portion chargeable to tax. *(sub-section 2)*

Application by Recipient 195(3)

- Recipient receiving interest or other sum may make an application in Form 13 and obtain certificate for receiving payment of income without deduction of tax *(sub-section 3)*

Validity of certificate

- the certificate shall remain in force till the expiry of the period specified therein or on cancellation, whichever earlier *(sub-section 4)*
- The payment to non resident also permitted by obtaining CA certificate *circular No 759/ circular No 10/2002 dated 9-10-2002*

Conditions for Non-resident (Recipient) making an application u/s 195 by recipient

- Person has been regularly assessed to income tax in India and furnished all returns which became due
- He is not in default in respect of any tax, interest, penalty, fine or other sum payable under the Act
- He has not been subject to penalty under section 271
- Person other than a banking company has carried on business in India for a period for not less than 5 years and the value of assets as on the previous year for which accounts were last drawn exceeds 50 lakhs

Income Payable "Net of Tax" Section 195A

Section 195A - Agreements for payment of income – Net of Tax

- Tax to be deducted after grossing up of the net payment to be made

Points for consideration

- Payer is under legal obligation to furnish certificate for the tax deducted at source within time prescribed to the payee
- Tax withheld and deposited shall be income in the hands of recipient as per section 198

Section 191

Where no provision for TDS or where TDS has not been deducted. Obligation to pay directly by the assessee.

Section 205

- Where TDS applicable and deducted then assessee cannot be called upon to pay tax himself.

Tax deducted is income received – Sec. 198

All sums deducted as TDS for the purpose of computing the income of an assessee, be deemed to be income received:

However the sum being the tax paid, on non monetary perquisites Sec 192 (!A) purpose of computing the income of an assessee, shall not be deemed to be income received.

Consequences of Failure to Deduct or Pay

Liability u/s 201

(1) Penalty – assessee in default u/s 221 equal to the amount of tax in arrears.

(1A) Interest @ 1% per month

Both the above are consequences of

- Not deducting or
- Deducted and not paying to the Central Government.

(2) After deducting not paying also leads to a charge being credited on the assets of the payer.

Tax Collection at source

Profits and gains from the business of trading in alcoholic liquor forest produce forest produce – Sec. 206C

Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer whichever is earlier, collect from the buyer of any goods of the nature of goods at specified percentages below:

Sl. No.	*Nature of goods*	*Percentage*
(1)	*(2)*	*(3)*
(*i*)	Alcoholic Liquor for human consumption/Indian made foreign liquor	1
(*ii*)	Tendu leaves	5
(*iii*)	Timber obtained under a forest lease	2.5
(*iv*)	Timber obtained by any mode other than under a forest lease	2.5
(*v*)	Any other forest produce not being timber or tendu leaves	2.5
(*vi*)	Scrap from Manufacture/mechanical working material which is not usable.	1

However no collection of tax shall be made in the case of a buyer, who is resident in India, if such buyer furnishes to the person responsible for collecting tax, a declaration in writing to the effect that the goods referred to in column (2) above are to be utilized for the purposes of manufacturing, processing or producing articles or things and not for trading purposes.

(1C) Every person, who grants a lease or a license or enters into a contract or otherwise transfers any right or interest either in whole or in part in any parking lot or toll plaza or mine or quarry, to another person, other than a public sector company for the use for the purpose of business shall, at the time of debiting of the amount payable to the account of the licensee or lessee or at the time of receipt of such amount, whichever is earlier, collect tax as mentioned below

Sl. No.	Nature of contract or license or lease, etc.	Percentage
(1)	(2)	(3)
(i)	*Parking lot*	2%
(ii)	*Toll plaza*	2%
(iii)	*Mining and quarrying*	2%

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Chapter 20 Advance tax Interest Refunds

Advance tax Sec 207 to 219

Conditions of liability to pay advance tax – Sec. 208

•Tax shall be payable in advance during the financial year, as per provisions of sections 208 to 219 (both inclusive), (Sec 207

•Payable by assessee when tax payable by the assessee during that year is Rs. 10000 or more

•Assessee has to estimate his total income during the current year determine the tax and has to pay advance tax at the rates force in that year Sec 209

•Tax payable by assessee for advance tax is Estimated Total tax payable minus rebates and reliefs minus mat credit minus Tds or Tcs and then add SC where ever applicable and EC.

•A person who pays any installment of advance tax under, may increase or reduce the amount of advance tax payable in the remaining installment to accord with his estimate

Calculations by Assessing Officer

•In case of assessee who is assessed to regular assessment in any previous year, and AO opines that advance tax payable AO can determine advance tax payable and can send demand

•A O can consider income of latest previous year where regular assessment made or subsequent years income which ever is higher

•Demand can be set at any time before 1st March of Financial year.

•A O can revise the demand for advance tax

•After receipt of demand from A O , If assessee estimate is higher , he has to pay tax as per his estimate. If lower he has intimate the AO and then only he has to pay

Due date of installment	Amount payable By Corporate Assessee	Amount payable By Non Corporate assessee
On or before the 15th June	Not less than 15% of such advance tax.	Not Applicable
On or before the 15th sep	Not less than 45% of such advance tax, minus amount, if any, paid in the earlier installment	Not less than 30% of such advance tax.
On or before the 15th Dec	Not less than 75% of such advance tax, minus amount, if any, paid in the earlier installments	Not less than 60% of such advance tax, minus amount, if any, paid in the earlier installment
On or before the 15th March	Not less than100% of such advance tax, minus amount, if any, paid in the earlier installments	Not less than 100% of such advance tax, minus amount, if any, paid in the earlier installments

Any tax paid before 31st march will be treated as advance tax
Where A O send demand whole of such advance tax payable as per dates

Assessee deemed to be in default – Sec. 218

If any assessee does not pay on the date any installment of the advance tax that he is required to pay

•By an order of the Assessing Officer or

•Fails to send an intimation to the Assessing Officer (lower estimate) or

•Does not pay advance tax on the basis of his estimate

•He shall be deemed to be an assessee in default in respect of such installment or installments

Credit for Advance tax Sec 219

•Any sum, other than a penalty or interest, paid by or recov-ered from an assessee as advance tax shall be treated as a payment of tax and credit there for shall be given to the assessee

Collection and recovery of tax sec 220 to 226

Assessee in default Sec 220

•Any amount, other than advance tax, as per notice of demand u/s 156 shall be paid within thirty days of the service of the notice

•Delay (exceeding 30 days) simple interest@1% p.m or part there of from the end of month specified in notice till the date of payment

•The amount of interest may be increased or decreased by order of revision/ Appeal etc.,

The C or CC may reduce or waive the interest provided

•Payment of such amount cause genuine hardship to the assessee;

•Default in the payment was due to circumstances beyond the control of the assessee and

•The assessee has co-operated in any inquiry relat-ing to the assessment or any proceeding for the recovery of any amount due from him.

Extension of time/ Installments

•On an application made by the assessee before the expiry of the due date, the AO can extend the time for payment or allow payment by installments, subject to such conditions

•Failure to pay any installment in due date, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other installments shall be due on that date

•If the amount is not paid within the time limited or extended time as the case may be mentioned in the said notice the assessee shall be deemed to be in default.

When the Assessee treated not in default

•Where an assessee has gone on appeal the assessee as not being in default in respect of the amount in dispute in the appeal, till such appeal disposed of.

• Where an assessee has been assessed in respect of income arising outside India in a country the laws of which prohibit or restrict the remittance of money to India, the Assessing Officer shall not treat the assessee as in default in respect of that part of the tax on such income t until the prohibition or restriction is removed.

Penalty payable when tax in default – Sec. 221

•When the asessee was in default , he has to pay penalty up to equal to tax in arrears, in addition to tax and interest

•Opportunity should be given to assessee before levy of penalty

•No penalty, if there is sufficient and good reason for default of payment and assessee prove it to the satisfaction of A O

Tax Recovery

Certificate to Tax Recovery Officer – Sec. 222

•When an assessee is in default in making a payment of tax, the TRO Prepare a certificate in form No 57 for the amount of arrears due and sign and recover from such by one or more of the modes as below,as per Sch II and III

• (a) Attachment and sale of the assessee's movable /immovable property;

• (b)Arrest of the assessee and his detention in prison;

• (c)Appointing a receiver for the management of the asses-see's movable and immovable properties

Tax Recovery

•The assessee's movable or immovable property shall include any property which has been transferred, directly or indirectly by the assessee to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration

•As far as minor child is concerned, it shall, even after the date of attainment of majority, continue to be included in the asses-see's movable or immovable property

• The Tax Recovery Officer may take action for recovery of the arrears irrespective proceedings by any other mode have been taken.

Tax Recovery Officer by whom recovery is to be effected (jurisdiction of TRO – Sec. 223

- TRO having jurisdiction of Assessee place of business or reside or
- TRO having jurisdiction of Assessee having movable or immovable property
- Where an assessee has property within the jurisdiction of more than one Tax Recovery
- TRO if he not able to recover the entire amount he may send certificate to other TRo to recover

Validity of certificate and cancellation or amendment thereof – Sec. 224

•It not be open to the assessee to dispute the correct-ness of any certificate drawn up by TRO on any ground whatsoever,

•It shall be lawful for the TRO to cancel the certificate if, for any reason, he thinks it necessary so to do, or to correct any clerical or arithmetical mistake therein.

<u>Stay of proceedings in pursuance of certificate Sec. 225</u>

•The TRO stays the proceedings for the recovery of such tax until the expiry of the time if any granted for payment of tax.

•Where the order for the demand is reduced but the order is the subject-matter of further proceeding under this Act, the TRO shall stay the recovery of such part of the amount pertains to the said reduction, for the period for which the appeal or other proceeding remains pending.

• Where a certificate amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the TRO amend the certificate, or cancel it, as the case may be

<u>Other modes of recovery Sec 226</u>

Where no certificate has been drawn up Assessing Officer may recover the tax by any one or more of the modes provided in this section.

·Direction to employer to Recover from Salary and pay to government

· Direction to Recovery from the money payable by debtor to assesse

·Direction to any person who holds money on behalf of assessee

·Direction to any Joint share holder of the asessee

·Copy of notice shall be forwarded to assessee

·Every person whom notice is issued should comply the notice.

·A O/ TRO can amend the notice and give time for payment of money etc.

·The person who paid money is deemed to discharged his liability to the assessee

·If the person to whom a notice is sent fails to make payment , he is deemed to assessee in default.

• The Assessing Officer or Tax Recovery Officer may apply to the court in whose custody there is money belonging to the assessee for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax.

Interest

INTEREST FOR DEFAULTS/DELAY IN FURNISHING RETURN OF INCOME. – SEC. 234A

On what amount

Incase of return u/s 139(1) 139(4)

•Tax determined u/s 143(1)/regular Assessment less TDS/TCS and advance tax paid

In case of Notice issued u/s 148, or 153 A to file ROI after Completion of Assessment u/s 143(1)/ 143(3)/147

•Tax determined on Reassessment less tax determined on earlier assessments

At what rate?

•1% per month or part there of

S N	Circumstances	Period
1	Return u/s 139 (1)/139(4) 142(1)	From the immediately after expire of due date
	When return filed	till the date of filing of ROI
	When return not filed	Till the completion of Assessment
2	Return u/s 148/153A, after Completion of assessment u/s 143(1) (3), 147	From the date immediately after expire of notice
	When return filed	till the date of filing of ROI
	When return not filed	Till the completion of Assessment

Other Points

•Interest payable above will be reduced on interest paid if any of self assessment u/s 140 A

•Where, in relation to an assessment year, an assessment is made for the first time under 147 or 153 A the assessment so made shall be regarded as a regular assessment

•Interest can be increase or decreased by order u/s 154, 155,254,263,264. Increase demand to be issued decreased to be refunded.

Interest u/s 234 B

Circumstances to levy interest

•Failure to pay advance tax

•Advance tax paid is less than 90% of Assessed tax

Assessed tax means

•Tax determined under regular Assessment less TDS/TCS

At what rate

•1% per month or part there of

What Period

•From the first day of April of relevant Assessment year till the date of determination of total income u/s 143

Adjustment where the tax paid on Self Assessment before completion of regular assessment

Interest on Assessed tax from 1st day of relevant A Y till date of payment of Self Assessment tax	xxxxxx
Add: interest on assessed tax minus advance tax paid on Self Assessment from the date of of payment of Self Assessment tax till the date of Completion of Assessment u/s 143(1)/(3)	xxxxxx
	xxxxxx
Less Interest paid at the time of Self Assement tax	xxxxxx
Interest payable	xxxxxxx

•

• **<u>Adjustment at the time of Reassessment/Recompilation u/s 147/153 A</u>**

Interest on Assessed tax from 1st day of relevant A Y till date of payment of Self Assessment tax	xxxxxx
Add: interest on assessed tax minus advance tax paid on Self Assessment from the date of of payment of Self Assessment tax till the date of Completion of Assessment u/s 143(1)/(3)	xxxxxx
Add: interest on increased tax by way of reassessment/ recomputation from the day of regular assessment to the date of recomputation	xxxxxx
	xxxxxx
Less Interest paid at the time of Self Assement tax	xxxxxx
Interest payable	xxxxxxx

- Interest can be increase or decreased by order u/s 154, 155,254,263,264. Increase demand to be issued decreased to be refunded.

INTEREST *FOR DEFERMENT OF /FALURE TO PAY ADVANCE TAX – SEC. 234C*

• **<u>The interest will be payable as follows</u>**. By **Non Corporate Assessee**

Due date	Adv tax Payable	Cumulative adv tax paid	Difference (2) Less (3)	Computation of Interest u/s 234C
1	2	3	4	5
Sep 15	30%	xxxxxxxxx	xxxxxxxxx	Col. (4) X 3 Months X 1 % p.m.
Dec 15	60%	xxxxxxxxx	xxxxxxxxx	Col. (4) X 3 Months X 1 % p.m.
March 15	100%	xxxxxxxxx	xxxxxxxxx	Col. (4) X 3 Months X 1 % p.m.

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•**The interest will be payable as follows by** **Corporate Assessee**

Due date	Adv tax Payable	Cumulative adv tax paid	Difference (2) Less (3)	Computation of Interest u/s 234C
1	2	3	4	5
June 15	15%	xxxxxxxxx	xxxxxxxxx	Col. (4) X 3 Months X 1 % p.m.
Sep 15	45%	xxxxxxxxx	xxxxxxxxx	Col. (4) X 3 Months X 1 % p.m.
Dec 15	75%	xxxxxxxxx	xxxxxxxxx	Col. (4) X 3 Months X 1 % p.m.
March 15	100%	xxxxxxxxx	xxxxxxxxx	Col. (4) X 3 Months X 1 % p.m.

No interest u/s 234 C if the Company pays at least 12% , 36% respectively if the first and second installments

Interest u/s 234 C other points

No interest under 234 C to any shortfall in the payment of the tax due under-estimate or failure to estimate due to

- capital gains; or
- Winning from lotteries, card games, puzzles, betting and horse racings
- the assessee has paid the whole of the amount of tax payable in respect of income referred above in the next installment if is due or if not due before the end of financial year

234 C interest is payable on tax due on current income

- Tax due on current income means tax due on the income returned by Assessee less tds and advance tax
- It should be noted that the words assessed tax , reassessment recomputation has not used in 234 C. Hence 234 C liable only on the basis on advance tax payable in the declared income in the return

Waiver of Interest u/s 234 A 234 B, 234 C

Interest u/s 234 A, 234 B is mandatory. No appeal lies against levy of interest

Only on by writ petition filed by assessee the CC can waive interest only under the following circumstances

•Where during the course of a search & seizure operation the books of accounts and other documents of the assessee are seized and for reasons beyond the control of the assessee he is unable to furnish the return of income for that year within the specified time;

•Where during the course of a search & seizure operations, cash is seized and it is not allowed to be utilized for payment of the advance tax installment which falls due after the date of the seizure and as a result the assessee is unable to pay the advance tax;

•Where any taxable income other than 'capital gain' is received or accrued after due date of payment of the first or subsequent installment of advance tax which was not anticipated by the assessee and the advance tax on such income is paid in the remaining installment

•Where any income which was not chargeable to income tax, now chargeable to tax consequence of any retrospective amendment of law or a Supreme court decision which has taken place after the end of such previous year,

•Where the assessee due to unavoidable circumstances could not file return of income and the assessee or his legal heirs file such return of income and paid tax, voluntarily without detection by the assessing officer.

Refunds sec 237 to 240

Person eligible for refund sec 237

•If any person satisfies the Assessing Officer that the amount of tax paid any assessment year exceeds the amount with which he is properly chargeable under this Act for that year, he shall be entitled to a refund of the excess.

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When other persons eligible for refund sec 238

•The assessee, whose total income includes income of another person under any provisions of the Act, shall be entitled to refund in respect of such income.

• If a person is unable to claim refund due to death, incapacity, insolvency, liquidation or other cause, then his legal representative or trustee or guardian or receiver shall be entitled to claim such refund
Refunds sec 237 to 240

FORM OF CLAIM FOR REFUND AND LIMITATION – SEC. 239

•The claim of refund should be made within 1 year from the last day of the assessment year. The claim has to be made in Form.30.

Belated Claim of Refund CBDT circular

<u>The Assessing Officers can admit the following belated refund claims:</u>

- Refund not exceeding Rs. 1,00,000 with the prior approval of Commissioner
- Refund exceeding Rs. 1,00,000 but not exceeding Rs. 5,00,000, with the prior approval of the Chief Commissioner or Director-General of the Income tax.
- Refund exceeding Rs. 5,00,000 will continue to be processed by CBDT. CBDT order u/s. 119

Belated Claim of Refund CBDT circular

<u>Conditions</u>

•The refund arises as a result of tax deducted / collected at source and advance tax and the refund does not exceed Rs. 5,00,000 for any assessment year.
•The income of the Assessee is not assessable in the hands of any other person under any other provisions of the Act.
•No interest will be admissible on the belated refund claims.
•When the refund is claimed for the first time, the CCIT is empowered to direct the Assessing Officer to make regular assessment u/s. 143(3).
•No claim under this provision will be entertained where a period of more than six assessment years prior to the current assessment year has elapsed.

<u>Refund on Appeal etc. sec 240</u>

•Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the Assessing Officer shall, refund the amount to the assessee without his having to make any claim in that behalf subject to provisions of the act
•an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment;
•the assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee.

Interest on refunds

INTEREST ON EXCESS REFUND – SECTION 234D

•Where any refund is granted to the asses-see under sec 143(1) or

•no refund is due on regular assessment; or

• the amount refunded under sec 143(1) exceeds the amount refundable on regular assessment,

•Assessee liable to pay simple interest @ 1 ½ per cent per month or on the amount refund for the period from the date of refund till the date of regular assessment.

•Interest can be increase or decreased by order u/s 154, 155,254,263,264.

•**Interest on Refunds Sec 244 A**

•Where refund of any amount becomes due to the assessee he shall, subject to the provisions of this section, be entitled to receive, simple interest @ ½ % per month or part there or as below

Situation	**Period**
Refund is due to Advance tax/ TDS/TCs	From the 1st day of A Y till the date of refund
Other cases	From the date of payment of tax till the date of refund

Other Points

•No Interest if the amount of refund is less than ten per cent of the tax as determined under -section 143

•If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, delay period will be excluded

•If the amount on which interest was payable is increased or reduced by Assessing Officer's order then the interest shall also be increased or reduced accordingly.

•The interest on refund will be treated as income of the previous year in which it is granted

Refunds Miscellaneous

SET OFF OF REFUNDS AGAINST TAX REMAINING PAYABLE – SEC. 245

Where under any of the provisions of this Act, a refund is found to be due to any person, the Assessing Officer, Commissioner (Appeals), Chief Commissioner or Commissioner may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the if any tax demand remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the proposed adjustment.

Excess TDS Be refunded by the tax deducting authority

•Specific procedure laid down for refund of payments made by the tax deducting authority in excess of taxes deducted at source, vide CBDT Circular No. 285 dated 21.10.1980.

<u>Refunds to Employers in case of non residents</u>

Where non-residents are deputed to work in India and Taxes are borne by the employer, if any refund becomes due to the employee after he has already left India and has no bank account in India by the time the assessment orders are passed, refund can be issued to the employer when Specific procedure laid down for refund of payments made by the tax deducting authority in excess of taxes deducted at source, vide CBDT Circular No. 285 dated 21.10.1980 C.B.D.T. Circular No.707 dated 11.7.1995..

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Chapter 21 Appeals & Penalties/Offences

Appeal Hierarchy

Authority	To whom it should file	Appeal on which order it can prefer	Who can prefer
First Appeal	Commissioner (appeals)	Assessing Officer	Tax payer
Second Appeal	ITAT	Commissioner	Com/taxpayer
Third Appeal	High Court	ITAT on Question of Law	Com/taxpayer
Fourth Appeal	Supreme Court	High Court	Com/taxpayer

Appeals to Commissioner 246A to 251

- **With 30 days from the date of receipt of the order.**
  Delay condone
- **Documents to be enclosed**
  - Form No. 35 with Court fee stamp of 50 paisa
  - A Statement of facts of the case
  - Grounds of Appeal
  - Copy of the assessment order or the penalty order, as the case be may be
  - Original notice of the demand.
  - Challan for payment of fees

Fees payable

S No	Income Limit	C I T Appeal	ITAY
1	Assessed total income Rs. 1 lakh or less	250	500
2	Assessed total income more than Rs. 1 lakh or less 2 lakhs	500	1500
3	Assessed total income more than Rs. 2 lakhs	1000	1% of the assessed income subject to a max of Rs.10000
6	Appeals under other Direct taxes	250	1000
5	Stay petitions	nil	500
6	Miscellaneous applications under Sec. 254(2) apparent mistake on the order of ITAT	nil	50

Commissioner Appeals Procedure sec 250

- Fixing dates, place & notice to Assessee and A O
- Assessse/AO can represent to A R
- Power to adjourn the hearing of the appeal from time to time.
- Allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if he is satisfied that the omission of that ground from the form of appeal was not willful or unreasonable.
- Order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

- where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him

- Shall communicate the order passed by him to the assessee and to the Chief Commissioner or Commissioner.

Powers of the Commissioner (Appeals). Sec 251

•in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment

•in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

•in any other case, he may pass such orders in the appeal as he thinks fit.

•Enhance an assessment or a penalty or reduce the amount of refund - Opportunity to the Appellant

Appeals to the Appellate Tribunal sec 252 to 255

Orders that can be appealable

Any assessee aggrieved by any of the following orders can appeal to the Tribunal

•an order passed by Commissioner (Appeals)] under section 154/250/271/271 A/272 A

•an order passed by a Commissioner under sec 12AA/253/271272 A/ 154 or an order passed by a Chief Commissioner 272 A

•an order passed by an Assessing Officer section 115VZC(1)

•**60 days from the date of receipt of the order of the CIT(A) u/s 250. Delay condone**

•**Documents to be enclosed in triplicate**

•Form No. 36

•Grounds of Appeal

•Copy of the relevant order of CIT(A) (attest by assessee or A R)

•Form No. 35 filed before CIT(A)

•Statement of facts filed before CIT(A)

•Grounds of Appeal filed before CIT(A)

•Copy of the assessment order or the penalty order, as the case may be.

•If the appeal relates to penalty copy of assessment order is also received to be filed.

•**Other Points**

•Tribunal was constituted by C G Consist of as many as Judicial and accountant members

•C G will Appoint members, vice president, senior vice president

•Powers will be delegated to exercise

<u>Memorandum of Cross Objections under sec 253(4)</u>

•Where one party preferred an appeal against order of the Commissioner, has to file memorandum of cross objections in form No 36 A

• It is to be filed with 30 days from the notice of tribunal that Appeal was filed. Tribunal condone delay if there is a sufficient reasons

•No fees is payable

<u>Orders of the Tribunal sec 254</u>

•Tribunal may, after giving both the par-ties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

• Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it .

•The rectification may be at the if it is brought to notice by assessee or A O

•Amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, Opportunity to be heard to be given to assessee

• *the Appellate Tribunal, where it is possi-ble, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed*
•The Appellate Tribunal shall send a copy of any orders passed under this section to the assessee and to the Commis-sioner.
•**Procedure of Tribunal Sec 255**
•The powers and functions of the Tribunal may be exercised by constituting from among the members f.
•A Bench shall consist of one judicial member and one accountant member.
•The President or any other member authorized in this behalf by the Central Government may, sitting singly, dispose of any case which pertains to an assessee whose total income as does not exceed five lakh rupees
• President may, for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessari-ly be a judicial member and one an accountant member.
•

Procedure of Tribunal Sec 255
If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the major-ity,
•If there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, to the President of the Appellate Tribunal. One or more of the other members hear the case and shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.
•The Appellate Tribu-nal shall have power to regulate its own procedure and the proce-dure of Benches thereof, includ-ing the places at which the Benches shall hold their sittings.
• The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the in-come-tax authorities referred to in Sec 131, and any proceed-ing before the Appellate Tribunal shall be deemed to be a judi-cial proceeding as per IPC

Appeal to High Court (H.C.) [Sec 260A /260B]

1) Appeal to H.C. can be filed against the order of ITAT only if it involves a 'Substantial Question of Law'. (within 120 days from the date of receipt of copy of order sought to be appealed against)
2) Appeal filing form & fees will be governed by the "Code of Civil Procedure, 1908."
3) Appeal to HC can be filed by assessee, as well as by Depatment.
4) Question of Law means something, which is debatable, not previously settled by any Law of Land or any Binding Precedent, and affects the decision of the case if answered otherwise. In order to be called a 'Substantial Question of Law', it should be some thing, which sounds worth, real, important, considerable. -- ***Santosh Hazari v/s Purshottam Tiwari (SC)***
5) Upon receipt of appeal H.C. shall formulate the questions of law and shall decide the appeal.
6) HC has a power to award cost, in cases of frivolous appeals or those appeals, which do not stand the test of judicial sustainability.

Appeal to Supreme Court [Sec 261/262]

1.) An appeal shall lie to Supreme Court against every order passed by High Court, provided High Court has certified it to be a fit case to be appealed against at Supreme Court.
2.) Appeal filing form & fees will be governed by the "Code of Civil Procedure, 1908."
3.) No further Appeal is possible against an order of Supreme Court, as Supreme Court is the highest forum in entire appellate hierarchy.
4.) SC also has the power to award cost to parties.

<u>Section 158A</u>: <u>Special provisions for avoiding Repetitive Appeals</u>: In case of an assessee, for an earlier assessment year, if appeal is pending before:-

- High Court or
- before Supreme Court,

on a particular matter and for an identical point in the case of the same assessee, but for some other assessment year, if the same/similar matter is pending before:-

- an Income Tax Authority, *or*
- Commissioner of Income Tax (Appeals) – [CIT(A)], *or*
- Income Tax Appellate Tribunal (ITAT),

Then assessee, rather than repeating the same time consuming procedure of filing the appeal once again, may decide to make an application to such Income Tax Authority or CIT (A) or ITAT under this section (i.e. U/S 158A), requesting them that if they agree to apply the decision of HC/SC of that earlier year, to the question raised for subsequent year, then after verification, such authorities may decide to entertain the request of the assessee and assessee shall drop the case against departmental authorities for such subsequent year. The decision taken in case of earlier year by HC/SC will be applied in such subsequent Assessment Year also. This is known as special provision for avoiding repetitive appeal.

Penalties

<u>Section 274</u> : <u>Notice for Penalty</u> (<u>Show Cause Notice</u>):

Before levying any Penalty, AO is expected to give an opportunity of being heard to the concerned assessee, by way of issuing him a show cause notice under this section, asking him to show a cause, as to why Penalty shall not be levied against him. There is no time limit prescribed anywhere to issue or serve this notice. (Date of issue of this notice is to considered as date of initiation of Penalty proceeding)

Sec	Nature of default	Quantum of Penalty
271(1)(b)	Non-compliance with notice u/s. 142(1) or sec. 115WD(2) to file return of income or return of fringe benefits or to produce documents required by assessing officer u/s. 143(2) or 115WE(2) or to produce evidence on which assessee relies or u/s. 142(2A) to get accounts audited.	Rs. 10,000 for each failure in addition to tax, if any, payable
271(1)(c), 271(1)(d)	Concealment of particulars of income or, or furnishing inaccurate particulars thereof. (See below for detail notes) particulars of fringe benefits/Inaccurate particulars of FBT- Not relevant- now	Minimum – Amount of tax sought to be evaded maximum – 3 times the minimum - in addition to tax, if any, payable
271(4)	Distribution of profits not as per Partnership, which resulting partner returned income is below the real income	Up to 150% on the difference between tads on income returned and tax on assessed income
271A	Failure to keep, maintain or retain books or documents u/s. 44AA.	Rs. 25000
271 AA	Failure to keep and maintain information and documents u/s. 92D.	2% of value of each International transaction
271AAA	In case of a person in whose case a search is initiated U/S 132, on or after 01/06/2007, (Refer Detailed notes below)	10% of the “undisclosed income” of the “specified previous year”
271B	Failure to get accounts audited or furnish Tax Audit Report as required u/s. 44AB.	0.5% of total sales, turnover or gross receipts or Rs. 1,00,000, whichever is less
271 BB	Failure to subscribe for any units issued under the scheme referred u/s 88 A(1)	20% of Such amount.
271BA	Failure to furnish a report as required u/s. 92E.	Rs. 100000
271C	Failure to deduct the whole or part of the tax (Ss. 192 to 196D) or failure to pay the whole or part of tax u/s. 115-O, or second proviso to sec. 194B	Equal to the amount failed to be deducted/paid
271D	Contravention of the provisions of S. 269SS; i.e., by taking or accepting any loan or deposit otherwise than by modes specified therein.	Equal to the amount of loan or deposit so taken or accepted
271 E	Contravention of S. 269T; i.e., repayment of any loan or deposit otherwise than by modes specified therein.	Equal to the amount of loan or deposit so repaid
271 F	Failure to furnish Return of Income u/s 139(1) and proviso to S. 139(1) before the end of the relevant Assessment Year.	Rs. 5,000

271 FA	Failure to furnish annual information return under section 285BA(1)	Rs.100 for every day during which the failure continues
271 FB	Failure to furnish return of fringe benefits under section 115WD(1)	Rs.100 for every day during which the failure continues
Sec	**Nature of default**	**Quantum of Penalty**
271 G	Failure to furnish information or document u/s. 92D(3)	2% of value of International transaction for each such default
272A(1)	Failure to answer questions, sign statements, attends summons u/s. 131(1).	Rs. 10,000 for each failure
272AA	Failure to furnish the prescribed information required u/s. 133B.	Up to Rs. 10000
27 2 B	Failure to obtain PAN or quote PAN or intimate false PAN	Rs. 10000
272 BB	Failure to apply for Tax Deduction Account Number (TAN or quote TAN) (S. 203A)	Rs. 10000
272 BB	Failure to comply with tax collection account Number provisions u/s. 206CA	Rs. 10000

Other Points

- No penalty is imposable for any failure all the above sections except in case of sec 271 (1)(C)/ 271 (1)(d) if the person or assessee proves that there was a reasonable cause for such failure (S. 273B).
- Penalty u/s. 271 can also be levied by Commissioner.
- Penalty u/s. 271(1) can be levied even if no tax is payable on the income assessed.

Penalty for concealment of income or furnishing inaccurate particulars of income Sec 271(1c)
Explanations to Section 271 (1)

Explanation 1: With regards to any facts, which are material to the computation of total income, if assessee –

a) offers no explanation, *or*

b) offers an explanation, which is found to be false, *or*

c) offers an explanation which he is not able to substantiate and not able to prove that the explanation offered by him is bonafide.

then with regards to any amount added or disallowed while computing his total income, such person will be deemed to have concealed his income.

Explanation 2: If an intangible addition had been made by AO in case of any person for any earlier A.Y. and no penalty was levied in that A.Y. and now in any subsequent A.Y., such intangible additions are claimed by assessee to be the source of any Receipt, Deposit, Outgoing or any Investment, then the concealment now gets established and penalty can now be levied. (But penalty amount will be calculated according to the rate of tax prevailing in that earlier A.Y.)

Explanation 3: If a person who is mandatorily required to furnish his ROI as per Sec. 139, fails to furnish his ROI within a period of 2 years from the end of the relevant A.Y. and no notice was issued to him for the same, then he will be deemed to have concealed particulars of his income. (However, if there was a reasonable cause for such failure, then no penalty will be levied.)

Explanation 4: "Tax sought be evaded" means:-
a)In a case where ROI has been filed declaring a 'loss' and the concealed income now has the effect of reducing such loss or converting such loss into a positive income, then tax sought to be evaded means - tax on entire concealed income as if such concealed income was the only income of the assessee.
For Example

Particulars	Alternative I Rs	Alternative II Rs.
Income returned	(10,00,000)	(10,00,000)
Add: Concealed income	9,00,000	12,00,000
Net income	(1,00,000)	2,00,000

In case of Alternative I , Loss of Rs. 10, lakhs reduced to Rs. 1,00,000 and in case of alternative II, the loss Rs. 10 lakhs converted in to income of Rs. 2,00,000. In these situations tax sought to be evaded does not mean tax on balance income left, but in such situations where the ROI was filed declaring a loss, the tax sought to be evaded means tax on total concealed income, as if the concealed income was the only total income of the assessee. Therefore, for alternative I the tax sought to be evaded means tax on Rs. 9,00,000/- and for alternative II it will be to tax on Rs. 12,00,000/-.

b)In case where no ROI has been filed, then tax sought to be evaded means tax on 'total income assessed', reduced by the amount of TDS / TCS, Advance Tax and Self-Assessment Tax.
c)In any other case, tax sought to be evaded means,

Tax on total assessed income including concealed income	XXX
LESS: Tax on total assessed income excluding concealed income	(XXX)
Tax sought to be evaded	XXX

Explanation 5: searches before 01.06.2007- Not relevant
Explanation 5A: In case of searches U/S 132, initiated on or after 01/06/2007, if assessee is found to be the owner of –
a) any money, bullion, jewellery or any other valuable article or a thing which assessee claims to have been acquired out of his income for:-

or

b)any entry in the Books of Accounts or documents or any transaction, which represents undisclosed income for any Previous Year, which has already ended before the date of search and the time limit to furnish ROI for such year has already expired and no ROI was filed for that P.Y., then assessee will be deemed to have concealed such income.

Explanation 6:
In case of a person who has entered into an International Transaction, with regards to an amount added or disallowed while computing the income of such person U/S 92C [Calculation of 'Arm's Length Price'], such person shall be deemed to have concealed particulars of his income.

Section 271AAA (w.e.f. A.Y. 2008-2009): In case of a person in whose case a search is initiated U/S 132, on or after 01/06/2007, a penalty under this section is leviable @ 10% of the "undisclosed income" of the "specified previous year".
"Undisclosed Income" means –

a)any income of a specified P.Y. represented by any Money, Bullion, Jewellery or any other valuable article or a thing which is not recorded in the Books of Accounts or documents on or before the date of search relating to the specified P.Y.
b)any income of the assessee for any specified P.Y., represented by an entry in the Books of Accounts or documents or any transaction, which is found to be false.
"Specified Previous Year" means – any Previous Year,
a)which has already ended before the date of search but the time limit to furnish ROI for such year has not yet expired and ROI has not been furnished for such year.
b)the year in which the search is conducted.

However, in the following two cases penalty U/S 271AAA shall not be levied:–
a) In a case, where such income was already disclosed by assessee to CCIT or CIT before the date of search.
b)In a case where upon conclusion of the search in a statement recorded U/S 132(4) if assessee –

- ❑ Admits the concealment,
- ❑ also discloses the manner of deriving such income and
- ❑ pays the tax + interest if any on such undisclosed income.

Other Penalties

Failure to:

- Comply with notice u/s. s94(6) - furnishing information regarding securities
- Give notice of discontinuance of business — S. 176(3)
- Furnish in due time returns, statements, or particulars u/s. 133, 206 or 285B
- Allow inspection of any register(s) — S. 134
- Furnish returns u/s. 139(4A) or 139 (4C
- Deliver in due time a declaration mentioned in S. 197A
- Furnish a certificate u/s. 203.Deduct and pay tax u/s. 226(2)
- Furnish returns / statements / certificate u/s. 206C
- Furnish a statement of particulars of perquisites and profits in lieu of salary u/s. 192(2C)
- Deliver in due time a declaration referred to in section 206C(1A)
- Deliver in due time, quarterly statement specified in section 200(3) or the proviso to section 206C(3) in respect of tax deducted or collected at source
- Deliver in due time, quarterly return specified in section 206A(1).

Penalty

- Rs. 100 for every day during which the failure continues. However, amount of penalty for point Nos. 3, 6, 7 and 9 shall not exceed amount of tax deductible or collectible

Powers of CIT to Reduce / Waive off Penalty

I. Reduction/Waiver of penalty u/s 271 (1)(C)-Concealment of income and furnishing inaccurate particulars of income. Sec 273 A

CIT may on his own motion or on an application made by assessee reduce or waive off penalty levied / leviable U/S. 271(1)(c) / 271(1)(d), if he is satisfied that:-
a.Before the detection of concealment by A.O. assessee has voluntarily and in good faith made true and full disclosure of his income,
b.Assessee has co-operated in any inquiry or for assessment of his income,
c.Assessee has paid or has made satisfactory arrangement for the payment of tax + interest if any.
If the amount of 'Concealed income' or incomes exceed Rs. 5 Lacs then CIT shall require a prior approval of CCIT before passing an order U/S 273A(1)

This is once in a life time opportunity. Assessee cannot approach CIT under this section for the 2nd time in his whole life, once an order is passed under this section in his favour.

II Reduction/Waiver of Other penalty –Sec 273 AA

CIT may on an application made by assessee reduce / waive of any penalty or may compound any recovery proceedings, if he is satisfied that:-
a)to do otherwise, would cause genuine hardship to the assessee.
b)assessee has co-operated in any inquiry relating to assessment of his income or for any recovery of the amount of tax due from him.
If the amount of penalty or penalties for which an application is made by assessee exceed/s Rs. 1 lacs, then CIT shall require a prior approval of CCIT before passing an order under this section.

The order passed by commissioner u/s 273 A is final and conclusive and not appleable

Section 275: Time limit to pass Penalty Order:

[1] In a case where the Assessment Order or any other order is a subject matter of an appeal to CIT(A) or ITAT, then no penalty order can be passed:-

(i) after the expiry of the F.Y. in which the proceedings (which gave rise to penalty proceedings) are completed,

or

(ii) after the expiry of 6 months from the end of the month in which the order of CIT(A) or ITAT is received by CIT or CCIT.

(i.) or (ii.) whichever, is later.

[2] In a case where Assessment Order or any other order was a subject matter of appeal to CIT(A) and CIT(A) passes an order disposing off the appeal, on or after 01/06/2003, then no penalty order can be passed:-
(i) after the expiry of the F.Y. in which the proceedings (which gave rise to penalty proceedings) are completed,

or

(ii.) after the expiry of 1 year from the end of the F.Y. in which the copy of order of CIT(A) is received by CIT or CCIT .

(i.) or (ii.) whichever, is later.

[3] In a case where the Assessment Order or any other order is subject matter of Revision U/S 263 or 264: then no Penalty Order can be passed after the expiry of 6 months from the end of the month in which the Revisional Order of CIT was passed U/S 263 or 264.

[4] In any other case, no penalty order can be passed:

(i) after the expiry of F.Y. in which the proceedings (which gave rise to Penalty proceedings) are completed,

or

(ii) after the expiry of 6 months from the end of the month, in which the Penalty proceedings are initiated (i.e. the date on which **notice U/S 274** issued.)

(i.) or (ii.) whichever is later. . However there is no time limit to issue notice u/s 274 ie order for penalty.

Offences and Prosecutions

Section	*Nature of default*	*Punishment*

		(rigorous imprisonment)
(1)	*(2)*	*(3)*
275A	Contravention of order made under section 132(1) (Second Proviso) or 132(3) in case of search and seizure	Up to 2 years
275B	Failure to afford necessary facility to authorised officer to inspect books of account or other documents as required under section 132(1)(*iib*)	Up to 2 years
276	Removal, concealment, transfer or delivery of property to thwart tax recovery	Up to 2 years
276A	Failure to comply with provisions of section 178(1) and (3) re : company in liquidation	6 months to 2 years
276AB	Failure to comply with provisions of sections 269UC [1], 269UE and 269UL re : purchase of properties by Government	6 months to 2 years
276B	Failure to pay to credit of Central Government (*i*) tax deducted at source under Chapter XVII-B (non-cognizable offence under section 279A), or (*ii*) tax payable u/s 115-O(2) or second proviso to section 194B	3 months to 7 years
276BB	Failure to pay the tax collected under the provisions of section 206C	3 months to 7 years
276C(1)	Wilful attempt to evade tax, penalty or interest (non-cognizable offence under section 279A)—	
	(*a*) where tax sought to be evaded exceeds Rs. 1 lakh	6 months to 7 years
	(*b*) in other cases	3 months to 3 years
276C(2)	Wilful attempt to evade payment of any tax, penalty or interest (non-cognizable offence under section 279A)	3 months to 3 years
276CC	Wilful failure to furnish returns of fringe benefits under section 115WD/115WH or return of income under section 139(1) or in response to notice under section 142(1)(*i*) or section 148 or section 153A (non-cognizable offence under section 279A)—	
	(*a*) where tax sought to be evaded exceeds Rs. 1 lakh	6 months to 7 years
	(*b*) in other cases	3 months to 3 years
276CCC	Wilful failure to furnish in due time return of total income required to be furnished by notice u/s 158BC(*a*)	3 months to 3 years
276D	Wilful failure to produce accounts and documents under section 142(1) or to comply with a notice under section 142(2A) Fine Rs. 4 to Rs. 10 for every day of default.	Up to 1 year
277	False statement in verification or delivery of false account, etc. (non-cognizable offence under section 279A)	
	(*a*) where tax sought to be evaded exceeds Rs. 1 lakh	6 months to 7 years
	(*b*) in other cases	3 months to 3 years

277A	Falsification of books of account or document, etc., to enable any other person to evade any tax, penalty or interest chargeable/leviable under the Act	3 months to 3 years
278	Abetment of false return, account, statement or declaration relating to any income or fringe benefits chargeable to tax (non-cognizable offence under section 279A)	
	(*a*) where tax, penalty or interest sought to be evaded exceeds Rs. 1 lakh	6 months to 7 years
	(*b*) in other cases	3 months to 3 years
278A	Second and subsequent offences under section 276B, 276C(1), 276CC, 277 or 278	6 months to 7 years
280(1)	Disclosure of particulars by public servants in contravention of section 138(2) [Prosecution to be instituted with previous sanction of Central Government under section 280(2)]	Up to 6 months (simple/rigorous)

Notes :

1.No person is punishable for any failure under section 276A, 276AB or 276B if he proves that there was reasonable cause for such failure (*vide* section 278AA).

2.(*a*) Prosecution for offences under section 275A, section 275B, section 276, section 276A, section 276B, section 276BB, section 276C, section 276CC, section 276D, section 277, section 277A and section 278 to be instituted with previous sanction of Director General/Chief Commissioner/Commissioner, except where prosecution is at the instance of the Commissioner (Appeals) or the appropriate authority (*vide* section 279).

(*b*)The offences under Chapter XXII can be compounded (either before or after the institution of proceedings) by Director General or Chief Commissioner.

3.Where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, such company shall be punished with fine and every person, referred to in sub-section (1) of section 278B, or the director, manager, secretary or other officer of the company referred to in sub-section (2) of section 278B shall be liable to be proceeded against and punished in accordance with the provisions of this Act.

4.With effect from 1-4-2008 under section 278AB a person may apply to the Commissioner for granting immunity from prosecution, if he has applied for settlement under section 245C and the proceedings have abated under section 245HA. The application shall not be made after institution of prosecution proceedings after abatement.

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Chapter 22 Miscellaneous

Securities Transaction tax

- ➢Securities Transactions Tax is a new tax to replace long term capital gains tax on securities
- ➢It extends to whole India, with effective from 01.10.2004.
- ➢Levied on all transactions of purchase of specified securities
- ➢Stock Exchanges and Mutual Funds to collect, administer and pay Securities Transaction Tax
- ➢There are three rates of STT - 0.25%, 0.025% & 0.017%
- ➢STT applicable on Equity shares, derivatives & units of equity oriented mutual fund

Important Definitions:

Derivative –

•1 Security derived from debt instrument, share, and loan whether secured or unsecured, risk instrument are contract for differences or any other form of security.

•2. A contract, which derives its values from prices or index of prices of underlying securities.

Mutual Fund :

•Mutual fund means fund as specified u/s 10 (23)D

Equity Oriented Fund

• Equity Oriented Fund means a fund that has invested more than 65 % of its proceeds in equity shares of domestic companies

•The percentage of equity share holding of a fund will be computed with reference to annual average of the monthly averages of the opening and closing figures.

• It means tax levied on the value of securities taking place in securities market.
Taxable transactions and Value

Transactions Taxable

(a) Purchase or sale of equity shares in a recognized stock exchange.
•(b) Purchase or sale of a derivative on a recognized stock exchange.
•(c) Purchase or sale of a unit of equity oriented fund on recognized stock exchange.
•(d) Sale of a unit or equity oriented fund to mutual fund.

Taxable Value of Securities

•Options in securities ---Aggregate of strike price and option premium
•Futures----Price at which the futures are traded
•Other transaction----Price at which the securities are purchased

Instrument	Rate of STT	Payable by	Set off to Intermediary
Delivery Based Equity	0.25%	50% each by seller And Buyer (each0.125%)	Available
Non Delivery Based Equity	0.025%	Seller	Available
Futures and options	0.017	Seller	Available
Units of Equity Oriented Mutual funds	0.25%	Seller	N/A

Bonds/Debt oriented Mutual Funds	NIL	N/A	N/A

Assessments and Times limit

Nature of Compliance	Time Limit
Payment of STT to the Credit of Government	7th day of the month immediately following the calendar month.
Signing of Return	In Case of Mutual Funds- Trustee or Person Managing the affairs of the Company In Case of Stock Exchange- Managing Director, Director or Principal Officer.
Filing of Return (by Stock exchanges and Mutual funds)	30th June of the following Financial Year.
Filing of Revised Return	Any time before Assessment is completed.
Assessment (By IT Dept.)	Two years from the end of relevant financial year
Amendment of Order	With in one year from the end of relevant Financial year, Which order to amend, was passed.
Appeals to Commissioner Appeal	With in 30 days from the date of receipt of order
Appellate Tribunal	With in 60 days from the date of receipt of order
Appeal to High Court	With in 120 days from the date of receipt of order

Interest and Penalty

Nature of Compliance	Penalty
Failure of STT to the Credit of Government with in time	1% of such tax for every month.
Failure Collect STT	Sum equal to STT Payable
Having collected STT and Failure to the Credit of Government	1% of such tax for every month. Plus Penalty @1000/-for every day of default.
Failure to file Return	Rs. 100/ per every day during the failure Continues.
Failure to Comply notice for production of documents/accounts.	Rs. 10000/-
False Statements/Accounts	Imprisonment for 3 months and fine

Tonnage tax

•Tonnage tax scheme applicable only for qualifying Company.
•Qualifying Company is an Indian Company whose effective management is in India.
•Main business of the Company should be the operating of ships
•Company shall own at least one qualifying ship.
•Qualifying ship means a sea going ship or vessel of 15 net tonnages or more.
•The Company shall file an application to the JCIT in the prescribed form within 3 months of its incorporation/or from 1.10.2004 or with in 3 months of the date on which it became a qualifying Company.
•The JCIT shall pass an order of approval or refusal

•The order of the JCIT shall be valid for a period of 10 years.
•Review or order for further period of 10 years

Conditions for opting the scheme

•The Company shall create at least 20% of the book profit as a reserve called Tonnage Tax Reserve.
•Book profit means profit as defined u/s 115JB.
•The Reserve shall be utilized with in a period of 8 years either for acquiring new ship or for the purpose of the business of the Company other than declaration of dividend or the distribution of the profit.
•Non- utilization/wrong utilization of Reserve within 8 years shall be treated as the income of the previous year immediately
•The newly acquired ship should not be transferred for a period of 3 years from the end of the previous year in which it is acquired and transfer of such ship within that period shall be treated as the income of the previous year in which such sale takes place.
,
•The Company shall comply with minimum training requirements in respect of its trainee officers and its compliance certificate from Director General of shipping (DGS) shall be furnished along with return of income.
•Non compliance of the minimum training requirements for five consecutive previous years, then the option for the scheme shall cease to have effect from the sixth year.
•Maintenance of separate books of accounts in respect of business of operating qualifying ship is mandatory and the Chartered Accountant report in the prescribed form shall be enclosed along with the return of income.
•The tonnage income shall be deemed to be the income under the head “Profits and gains of business or profession”
•No deduction shall be allowed in computing Tonnage income.

Computation of tonnage income

Qualifying Company having Net Tonnage	**Daily tonnage income**
Up to 1,000 tones	Rs 46 per each 100 tons
1001 tons to 10000 tones	Rs. 460 + Rs. 35 per each ton exceeding 1000 tons
10001 tons to 25000 tones	Rs. 3610 + Rs. 28 per each ton exceeding 10000 tons
Exceeding 25000 tons	Rs. 7810 + Rs. 19 per each ton exceeding 25000 tons

The above income is per ship and per day
Total income is to be arrived by considering the total no of ships and no of days operated.
Income shall be taxed at the rate applicable to the Company

Consequences on opting tonnage scheme

•All deductions under section 30 to 43B including depreciation shall be deemed to be allowed.
•No question of unabsorbed depreciation of the operating qualifying ship.
•No benefit for carry forward of looses.
•No chapter VI A deduction on the Tonnage income.
•Tonnage tax is payable even if there is a loss
•Book profit or loss of the tonnage tax Company shall be excluded in computation of book profit u/s 115 JB.

Withdrawal from Scheme

The qualifying Company ceases to be the qualifying Company if,

- It fails to create a Tonnage Tax Reserve for a period of two consecutive previous years
- It fails to comply with the minimum training requirements for 5 consecutive previous years
- It operates more than 49% of the net tonnage during the previous year as chartered in.
- It abuse the provisions of Tonnage scheme to avoid tax.
- It voluntarily files a declaration in writing to the A.O that the provisions of this scheme may not be made applicable to it. Once opted out reentry not permitted for 10 years

Banking Cash Transaction Tax

No BCCT –abolished

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Direct Taxes Wealth Tax

Wealth Tax

Assessees Liable to Wealth Tax (Section 3)

Wealth Tax is charged for every assessment year in the hands of individuals, HUFs and all companies (private as well as public) on the net wealth as on 31st March.

The following assessees are specifically excluded from the levy of Wealth Tax:

a. Company registered u/s. 25 of the Companies Act, 1956
b. Co-operative society
c. Social club
d. Political party
e. Mutual fund specified u/s. 10(23D) of the Income-tax Act.

Charge of Wealth Tax

Wealth tax is levied only on the value of those assets (including deemed assets but excluding exempt assets) as defined u/s. 2(ea) after deduction there from of the debts which are incurred in relation to such assets (Liability towards Wealth Tax is not an allowable debt (Circular No. 663 dt. 28.9.93).

Rates

Wealth Tax is charged in respect of Net Wealth of every Individual, HUF and Company @ 1% of the amount by which the Net Wealth exceeds Rs. 30 lakhs. No EC on Wealth tax

Assets shall mean Sec 2(ea)

	Description of Assets	Exclusions
a.	Any building or land appurtenant thereto, residential or commercial (including a farmhouse within twenty-five kilometers of municipal limits and a guest house)	1. In case of a Company, a house a. meant exclusively for residential purpose; and b. allotted to an employee, officer or a wholetime Director whose gross annual salary is less than Rs. five lakhs. 2. House (residential or commercial) held as stock-in-trade. 3. House occupied for purpose of business/profession carried on by the assessee. 4. Residential property let out for at least 300 days in the previous year. 5. Commercial establishments or complexes.
b.	Motor Cars	Used for the business of running them on hire or as stock-in-trade.

c.	Jewellery, bullion and furniture, utensils or any other article made of gold, silver, etc.	1. When used by the assessee as stock-in-trade. 2. Gold Deposit Bonds issued under Gold Deposit Scheme, 1999
d.	Yachts, boats and aircrafts	When used by the assessor for commercial purposes.
e.	Urban Land being land situated i. In any area within the jurisdiction of a municipality (by whatever name called) or a Cantonment Board with a population of 10000 or more as per last preceding Census; or ii. In an area within a distance with in 8 k.m from local limits of municipality or Cantonment Board as above and as may be notified by the Central Government in Official Gazette.	a. Land on which construction is not permissible, b. Land occupied by any building constructed with the approval of the appropriate authority, c. Unused land held for industrial purpose for a period of 2 years from the date of acquisition, d. Land held as stock-in-trade for a period of 10 years from the date of acquisition.
f.	Cash in hand i. In case of individuals/HUFs: in excess of Rs. 50,000. ii. In other cases: an amount not recorded in the books of account.	– –

Deemed Assets: Sec. 4

a)	The value of assets mentioned below shall be clubbed as provided hereinunder :				
	Description of Assets		**Exclusion from clubbing**		**Clubbed with**
	i)	Assets transferred by individual to spouse for inadequate consideration.	i)	Assets transferred in connection with an agreement to live apart	Net Wealth of Individual
			ii)	No husband-wife relationship at time of transfer as well as on valuation date	
	ii)	Assets transferred by individual for immediate or deferred benefits of individual or spouse to other persons or Association of person for inadequate consideration.		No husband-wife relationship at time of transfer as well as on valuation date	Net Wealth of Individual
	iii)	Assets held by minor child	i)	Assets held by Minor Married Daughter	Net Wealth of parent whose net wealth is

			ii)	Assets acquired out of Minor's Income as referred to in proviso to S. 64(1A)	higher, if marriage subsists or else in hands of the parent who maintains minor child.
			iii)	Minor attains majority on valuation date	
			iv)	Assets held by a physically or mentally handicapped minor child	
	iv)	Assets transferred by Individual under Revocable Transfer to other persons or A.O.Ps	Assets transferred under Irrevocable Transfer		Net Wealth of Individual
	v)	Assets transferred by Individual to son's wife for inadequate consideration.	i)	No father-in-law / mother-in-law / daughter-in-law relationship at time of transfer as well as on valuation date	Net Wealth of Individual
			ii)	Assets transferred prior to 1-6-1973	
	vi)	Assets transferred by Individual for immediate or deferred benefits of individual or son's wife or both to other persons or A.O.Ps for inadequate consideration.	i)	No father-in-law / mother-in-law / daughter-in- law relationship at time of transfer as well as on valuation date	Net Wealth of Individual
			ii)	Assets transferred prior to 1-6-1973	
	Note : Any accretion to the transferred assets or accumulated income of the transferred assets will not attract the clubbing provisions.				
b)	Assets transferred/converted by individual into joint family property.		i)	Assets transferred for adequate consideration	i) Net Wealth of Individual
			ii)	Conversion or gifts effected prior to 31.12.69	ii) On Subsequent Partition of HUF — Share of spouse in converted property to be included in net wealth of individual.
c)	Gifts by book entries		Money actually delivered at time of entry.		Net Wealth of Individual
d)	Value of House/part thereof leased/allotted to Individual by Co-op. Society net of outstanding Installment payable to Society.		None		Net Wealth of Individual
e)	Possession of building taken/retained		None		Net Wealth of

	in part performance of contract (S. 53A of the Transfer of Property Act) or right with respect to building acquired by transaction u/s. 269UA(f) of I.T. Act.		Individual
f)	Holders of Impartial Asset Estate	None	Net Wealth of Individual

Specific Exemptions — Section 5

a. Any assets held by public charitable/religious trusts. Exemption however lost and trusts property liable to tax in case of diversion of income/property of trust to specified persons or in case of investment in unapproved securities.
b. Interest of a member in a HUF property,
c. Any one building used for the residence by a former ruler,
d. Any heirloom jewellery in the possession of a Ruler,
e. Assets brought within 1 year prior to return/at any time after return into India by a returning NRI for 7 successive A.Ys. after return to India. Balance in N.R.E. a/c on date of return and assets purchased there from also exempt.
f. One house or part of a house or a plot of land not exceeding 500 square metres , belonging to an individual or a HUF.

Scope (Sec 6)

Status	Assets Includible	Debts Deductible
Resident and Ordinarily Resident		
Citizen, HUF/Resident Company	All assets in or outside India	All Permissible Debts in or outside India
Non-Citizen	All assets in India	All Permissible Debts in India
Resident but not Ordinarily Resident		
Citizen/Non-Citizen	All assets in India	All Permissible Debts in India
Non-Resident		
Firm/Company/Any other person	All assets in India	All Permissible Debts in India

VALUATION

Valuation of Assets — Section 7

Valuation of assets specified in S. 2(ea) other than cash are governed by provisions of S. 7(1). Value as on valuation date will be determined as per Schedule III of the W.T. Act.

Immovable Property — (Rules 3 to 8, Sch. III, Part B)

Step I	Calculation of Gross Maintainable Rent (GMR) as follows:

1.If property is let out: Higher of: Annual rent received/receivable by the owner or Annual value as assessed by local authority.

Annual rent received/receivable means- full annual rent, even if the property was vacant for the part of year- full annual rent is to be considered.

For example if the property was let out for a period of 8 ½ months in a previous year and rent received for the period of 8 ½ months, is Rs. 1,02,000- Annual rent is 102000 x 12/8 ½

=Rs, 144000

2. If property is not let out:

Situated within jurisdiction of a local authority	Situated outside jurisdiction of a local authority
Annual rent assessed by the local authority	Amount owner can reasonably be expected to receive as annual rent had the property been let out.

From the Annual rent calculated above the following additions to be made.

1	Amount of municipal taxes borne by the tenant,
2	Expenditure on repairs in respect of the property is borne by the tenant, - one-ninth of the actual rent;
3	Where the owner has accepted any amount as deposit (not being advance payment towards rent for a period of three months or less), Interest @ 15% per annum reduced by actual interest if any paid by land lord in the previous year
4	Where the owner has received any amount by way of premium the amount obtained by dividing the premium by the number of years of the period of the lease;
5	Where the owner derives any benefit or perquisite, whether convertible into money or not, the value of such benefit or perquisite

Rent received or receivable" shall include all payments for the use of the property, by whatever name called, the value of all benefits or perquisites whether convertible into money or not, obtained from a tenant or occupier of the property and any sum paid by a tenant or occupier of the property in respect of any obligation which, but for such payment, would have been payable by the owner

Step II	–Calculation of net maintainable rent (NMR)

From the GMR: **Deduct the following from**

1	Taxes levied by any local authority in respect of property (deductible on accrual basis). This deduction is available even if taxes are to be borne by the tenant; and
2	15% of GMR.

Capitalise NMR as follows:

Property situated on		Multiply NMR by
(a)	Freehold Land	12.5
(b)	Leasehold Land (Unexpired period of lease is 50 years or more)	10
(c)	Leasehold Land (Unexpired period of lease is less than 50 years)	8

The NMR is to be arrived as below:

	Value	Exception
Property acquired/ constructed after 31.03.74	Capitalised NMR as provided herein after or Actual Cost (including cost of improvement) whichever is higher.	For one house used wholly for residential purposes and cost thereof up to Rs. 50 lakhs (in Delhi, Kolkata, Mumbai & Chennai) or Rs. 25 lakhs (in other cities), the value is Capitalised N.M.R.
Property acquired/ constructed on or prior to 31.03.74	Capitalised N.M.R.	None

Step 4	Addition of Premium to NMR as below

Where the unbuilt area of the plot of land on which the property is constructed exceeds the specified area, premium to be added below

	Excess of Unbuilt area over specified Area	Premium to be added
1	<= 5 % of Aggregate area	Nil
2	> 5 % <= 10% of Aggregate area	20% of Capitalised Value
3	>10% <=15 % of Aggregate area	30% of Capitalised Value
4	>15% <=20 % of Aggregate area	40% of Capitalised Value
5	>20 % of Aggregate area	Schedule III Valuation not applicable, Valuation will be made by AO or Valuation officer

(a)"Aggregate area", in relation to the plot of land on which the property is constructed, means the aggregate of the area on which the property is constructed and the unbuilt area;

(b)"specified area", in relation to the plot of land on which the property is constructed, means—

(i) Where the property is situate at Bombay, Calcutta, Delhi or Madras, 60% of the aggregate area ;

(ii) Where the property is situate at Agra, Ahmedabad, Allahabad, Amritsar, Bangalore, Bhopal, Cochin, Hyderabad, Indore, Jabalpur, Jamshedpur, Kanpur, Lucknow, Ludhiana, Madurai, Nagpur, Patna, Pune, Salem, Sholapur, Srinagar, Surat, Tiruchirapalli, Trivandrum, Vadodara (Baroda) or Varanasi (Benaras), , 65% of the aggregate area; and

(iii)Where the property is situating at any other place, 70% of the aggregate area:

© "Unbuilt area", in relation to the aggregate area of the plot of land on which the property is Constructed, means that part of such aggregate area on which no building has been erected

Step 5	**Adjustment of Unearned Increase**

The Value arrived under step 4 will be decreased by unearned increase as below

Where the property is constructed on lease hold land obtained from the Government, a local authority where the unearned increase in the value of the land at the time of the transfer of the property payable to Government at the time of transfer of property reduced by the amount so liable to be so paid or by an amount equal to fifty per cent of the value of the property as so determined, whichever is less,

Explanation. —For the purpose of this rule, "unearned increase" means the difference between the value of such land on the valuation date as determined by the Government or such authority for the purpose of calculating such increase and the amount of the premium paid or payable to the Government or such authority for the lease of the land.

<u>Value arrived under Step 5 – will be Valuation of immovable property.</u>

Rule 3 not to apply in certain cases- Rule 8.
The above step 5 valuations will not be applicable in the following cases

(*a*) Where, having regard to the facts and circumstances of the case, the Assessing Officer, with the previous approval of the Deputy Commissioner, is of opinion that it is not practicable to apply the provisions of the said rule to such a case; or

(*b*) Where the difference between the unbuilt area and the specified area exceeds twenty per cent of the aggregate area; or

(*c*) Where the property is constructed on leasehold land and the lease expires within a period not exceeding fifteen years from the relevant valuation date and the deed of lease does not give an option to the lessee for the renewal of the lease,

and in any case referred to in clause (*a*) or clause (*b*) or clause (*c*), the value of the property shall be determined by Assessing Officer or Valuation Officer,

Valuation of assets of business (Rule 14, Part D, Schedule 3)

In case accounts of the business are maintained regularly, value of assets as disclosed in the balance sheet shall be taken as follows:

ASSETS		VALUE TO BE TAKEN
a)	Depreciable assets	Written down value
b)	Non-depreciable assets	Book Value
c)	Closing Stock	Value adopted for the purpose of income tax

If value of any asset determined as per provisions of Schedule III exceeds value as per above table by more than 20%, then higher value shall be taken as value of the asset.

Value of assets not disclosed in balance sheet to be determined as per provisions of Schedule III.

Value of following assets disclosed in balance sheet not to be taken into account.

Advance tax paid under Income-tax Act.

Bad debts allowed as deduction u/s. 36(1)(vii) of Income-tax Act.

Asset in respect of which Wealth Tax is not payable.

Debit balance in profit & loss account, or any other amount, which does not represent value of any asset.

Asset not really pertaining to the business.

Value of following liabilities disclosed in balance sheet not to be taken into account:

Capital employed in the business other than attributable to borrowed money.

Reserves by whatever name called.

Any provision made for meeting any failure or contingent liability.

Liability not really pertaining to the business.

Debt utilised for acquiring asset in respect of which Wealth Tax is not payable.

Valuation of interest in firm or association of persons. Rule 15 & 16

Determine net wealth of the firm or AOP. Under Rule 14 as above

Allocation amongst partners/members as below

Portion of net wealth of firm / AOP	Allocation to partners / members
a) That portion which is equal to the amount of capital of firm/AOP.	Proportion in which they contribute capital.
b) the Balance (Residue)	Ratio in which assets will be distributed in the event of dissolution of firm/AOP as per agreement of partnership/AOP. (If no agreement, use profit sharing ratio.)

The sum total of amounts so allocated to a partner or member under clause (*i*) and clause (*ii*) shall be treated as the value of the interest of that partner or member in the firm or association: in determining the net wealth of the firm or association for the purposes of this rule, no deduction will be given for exempted Assets under section 5

Jewellery: (Rule 18, Part G, Schedule III)

For first Assessment Year:

Find out Fair Market Value (FMV) as on the valuation date and declare in Return.

FMV = Price fetched if sold in open market.

If FMV does not exceed Rs. 5 lakhs, support Return by Statement in prescribed form. **(O-8A)**

If FMV exceeds Rs. 5 lakhs, support Return by Registered Valuer's Report, in prescribed form. **(O-8)**

For subsequent four assessment years :

Substitute price of gold, silver or its alloy obtaining on the respective valuation date.

Add/Deduct value of new Purchases/Sales.

Value of life interest (Rule 17, Part F, Schedule III)

Determine average net annual income (ANAI) derived from the life interest during three years ending on the valuation date. Expenses incurred on the collection of such income (subject to a maximum of 5% of average of annual gross income) shall be deducted.

Value of life interest = ANAI x [1/(Ptd) – 1]Where,

P = Annual premium for a whole life insurance without profit on the life of the life tenant for unit sum assured as specified in the Appendix to Schedule III.

Penalities

Default	Minimum Rs.	Maximum Rs.	Section
Failure to comply with Notices u/ss. 16(2) and (4)	1,000	25,000	18(1)(b)

Concealment of the particulars of assets or furnishing inaccurate			
particulars of assets or debts	Tax sought to be evaded	Five times of such tax	18(1)(c)
Refusal to answer any question	500	10,000	18A(1)(a)
Refusal to sign any statement made in course of any proceedings	500	10,000	18A(1)(b)
Omission to attend to give evidence or to produce books of account or documents [summons u/s. 37(1)]	500	10,000	18A(1)(c)
Failure to furnish statement or information on points specified in notice u/s. 38	100 per day of default	200 per day of default	18A(2)
Committing default in payment of tax, interest or penalty	Nil	Amount in arrears	

Partition of HUF — Sections 20 and 20A

In case of HUF, if ***total partition*** takes place on valuation date itself, then for that assessment year, it will be assessed as if no such partition has taken place. Likewise, a partial partition in the H.U.F. effected after 31.12.78 will not be recognised and H.U.F. will continue to be assessed to as if no partition has taken place.

Interest for default in furnishing return — S. 17B

Mandatory interest is payable @ 1% for every month/part of a month from due date till date of furnishing of return or, as the case may be, date of completion of best-judgment assessment u/s. 16(5), on tax payable on net wealth determined on regular assessment. Levy of interest is not dependent upon reasonable cause for such a default. The mandatory interest is payable along with self-assessment tax before filing of the return of wealth.

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COMPARITIVE ANALYSIS OF ASSESSMENT

Comparison of Procedures under Income tax and wealth tax

Particulars of provision	Income tax	Wealth tax
Voluntary return n of income /Due dates	139 (1)	14(1)
Return in response of notice	142(1)(i)	16(4)(i)
Belated and revised return 139(4) and (5)		15
Signing of return (Except Indl/huf/Company Others Not subject to wealth tax	140	15A
Summary Assessment	143(1)	16(1)
Regular/Scrutiny assessment r	143(3)	16(3)
Notice of scrutiny assessment	143(2)	16(2)
Inquiry and power of the officer /Assessee shall produce or cause to be produced such accounts, records or other documents as the Assessing Officer may require.	142 (2)	16(4)
Best judgment assessment	144	16(5)
Income escaping assessment Limit of Rs. 1 lakh for IT/ For WT 10 lakhs	147	17
Rectification of mistake	154	35
Revisionary Power of Commissioner to pass the order	263	25 (2)
Revisionary Power of Commissioner to pass the order	264	25 (1)
Appeals to CIT	246 to 251	23, 23A
Appeals to ITAT	252 to 255	24
Tax Of Deceased Person Payable By Legal Representative Penalty can not be levied on Legal Representative under wealth tax)	159	19
Assessment In The Case Of Executors	168	19A
Assessment When Assets Are Held By Courts Of Wards, Administrators-general, Etc.. Assessment Of Persons Residing Outside India (Agent of Non Resident)	160 to 163	21, 22
Transfers To Defraud Revenue To Be Void	281	34B
Provisional Attachment To Protect Revenue In Certain Cases	281B	34C