INCOME TAX

Normal Rates of Income Tax for A/Y 2012-13 (Finance Act 2011):

A)

1. In the case of every **Individual (except 2, 3, & 4 blow) or Hindu Undivided Family or *AOP/BOI*** (other than a co-operative society) whether incorporated or not, or every ***artificial judicial person***:

Total Income Range	**Tax rate**
Upto Rs. 1,80,000	Nil
Rs.1, 80,000 to Rs. 5,00,000	10%
Rs. 5,00,000 to Rs. 8,00,000	32,000 +20%
Above Rs. 8,00,000	92,000 +30%

2. In the case of every individual, being a ***woman resident in India***, and ***below the age of ~~65~~ 60*** years at any time during the previous year:

Total Income Range	**Tax rate**
Upto Rs. 1,90,000	Nil
Rs. 1,90,000 to Rs. 5,00,000	10%
Rs. 5,00,000 to Rs. 8,00,000	31,000 + 20%
Above Rs. 8,00,000	91,000 + 30%

3. In the case of every individual, being a ***resident*** in India, who is of the age of ***60 years or more*** at any time during the previous year. [**Senior Citizen**]

Total Income Range	**Tax rate**
Upto Rs. 2,50,000	Nil
Rs. 2,50,000 to Rs. 5,00,000	10%
Rs. 5,00,000 to Rs. 8,00,000	25000 + 20%
Above Rs. 8,00,000	85,000 + 30%

4. In the case of every **individual**, being a **resident in India**, who is of the **age of 80 years or more** at any time during the previous year. **[Very Senior Citizen]**

Total Income Range	**Tax rate**
Upto Rs. 5,00,000	Nil
Rs. 5,00,000 to Rs. 8,00,000	20%
Above Rs. 8,00,000	60,000 +30%

Note:-

- ‘Education Cess’ @ 2%, and ‘Secondary and Higher Education Cess (SHEC)’ @ 1% on **Income tax** shall be chargeable.
- No surcharge is payable by the above assessees.

Others	Tax amt. on Total Income @	SURCHARGE
firm (including limited liability partnership)	30%	Nil
Local authority	30%	Nil
In the case of every co-operative society	10% On 1^{st} 10,000 Rs 20% On next 10,000 Rs 30% for the balance Rs	Nil
Companies	Domestic *companies*.:@30%	@ ***5%*** (~~7.5~~%) of TAX if total income exceeds 1 crore rupees.
	Foreign *companies*.:@40%	@ ***2%*** (~~2.5~~%) of TAX if total income exceeds 1 crore rupees.
'*Education Cess' @ 2%, and 'Secondary and Higher Education Cess' @ 1% on income tax (inclusive of surcharge if applicable) shall be chargeable.*		

Marginal relief only in case of a company assessee only

In case of domestic company & foreign company, where the total income exceeds Rs. 1 crore, then the aggregate of income tax & surcharge shall be restricted to:

=Tax on 1 crore + (total income – Rs 1 crore)

Example 1

Total income(Rs.)	Income tax & surcharge in case *domestic company* = @30%+@ ***5***% (~~7.5~~%) of TAX if total income exceeds 1 crore rupees.
1,00,00,000	30,00,000
1,01,00,000	3030000+1,51,500 = 31,81,500 restricted to 31,00,000
1,02,00,000	3060000+1,53,000 = 3213000 restricted to 32,00,000
1,02,10,000	3063000+153150= 32,16,150 restricted to 32,10,000
1,03,00,000	3090000+154500 = 32,44,500 No restriction
1,04,00,000	3120000+156000 = 32,76,000 No restriction

Example 2

*Compute the tax liability of **X Ltd.**, assuming that the total income of X Ltd. is Rs. 1,01,00,000 and the total income does not include any income in the nature of capital gains.*

The tax payable on total income of Rs. 1,01,00,000 of X Ltd. computed @ 31.5% (including surcharge) is Rs. 31,81,500. However, the tax cannot exceed the tax of Rs. 30,00,000 payable on total income of Rs. 1 crore by more than the Rs. 1,00,000, being the amount of total income exceeding Rs. 1 crore. Therefore, the tax payable on Rs. 1,01,00,000 would be Rs. 31,00,000 (30,00,000 + 1,00,000). The marginal relief is Rs. 81,500 (i.e. Rs. 31,81,500 – Rs. 31,00,000).

Amendments relating to Definitions [Section 2(15)] [w.e.f. A.Y. 2012-13]

Meaning of Charitable Purpose Section 2(15)

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, &
- *advancement of any other object of general public utility*

provided that advancement of any other object of general public utility shall *not be a charitable purpose*, if it involves the carrying on of 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

Provided further that the 1st proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is *`25,00,000*, ~~10,00,000~~ or less in the previous year.

Example 1

A charitable trust has receipts of **100** lakh from activities of *charitable nature* . the trust also has a *business which is not incidental to attainment of main object of the trust* and total receipt from such business are :

Case1: receipt `25,00,000,

Case2: receipt `35,00,000,

Answer

Case1: the trust remains to be charitable trust& trust will claim exemption U/S 11 on receipts of 100 lakh. `25,00,000, *business income taxable at normal rate*

Case2: the trust ceases to be charitable trust since its receipt from commercial activities exceeds Rs. 25 lakh. Exemption *U/S 11 shall not be available*. Trust shall be taxable on its income at the rates applicable to AOP/BOI

Example 2

*An institution having its object as "advancement of general public utility" received Rs. 30 lakhs in aggregate during the P.Y. 2011-12 from an activity in the **nature of trade**. It applied 85% of its receipt from such activity during the same year for its main object i.e. advancement of general public utility.*

(i) What would be the tax consequence of such receipt and application thereof by the institution?

(ii) Would your answer be different if the institution had received Rs. 23 lakhs (instead of Rs. 30 lakhs) in aggregate during the P.Y. 2011-12 from an activity in the nature of trade?

*(iii) What would be your answer if the main object of the institution is "relief of the poor" and the institution receives Rs. **30 lakhs** from a **trading activity** and applies 85% of the said receipts for its main object?*

Answer:

(i) As the main object of the institution is "advancement of object of general public utility", the institution will loss its "charitable" status for the P.Y. 2011-12, since it has received Rs. 30 lakhs from an activity in the nature of trade. The application of 85% of such receipt for its main object during the year would not help in retaining its "charitable" status for that year.

(ii) If the institution receives only Rs. 23 lakhs in aggregate from an activity in the nature of trade during the P.Y. 2011-12, then it will not loss its "charitable" status since receipt of upto Rs. 25 lakhs in a year from such activity is permissible as per the amendment by the Finance Act, 2011. The institution can claim exemption subject to fulfillment of other conditions under sections 11 to 13.

(iii) The restriction regarding carrying on of a trading activity for a cess, fee or other consideration will not apply if the main object of the institution is "relief of the poor". Therefore, receipt of Rs. 30 lakhs from a trading activity by such an institution will not affect its "chartable" status. The institution can claim exemption subject to fulfillment of other conditions under section 11 to 13.

Amendments regarding Incomes which do not form part of Total Income

Exemption of certain perquisites and allowance of *Chairman and Members of UPSC (Union Public Service Commission)* <u>[Section 10(45)]</u> [w.r.e.f. A.Y. 2008-09]

The existing provisions of the Income Tax Act provide for the taxation of any perquisites or allowance received by an employee under the head "Salaries" unless it is specifically exempt under the Act.

Currently, specified perquisites of the Chief Election Commissioner or Election Commissioner and the judges of the Supreme Court are exempt from taxation consequent to the enabling provisions in the respective Acts governing their service conditions. It is proposed to amend section 10 to extend similar benefit of exemption in respect of specific perquisites and allowance, which will be notified by the Central Government, received by ***both serving as well as retired*** Chairman and Members of the Union Public Service Commission.

In other words

***As per section 10(45)**, **any allowance and perquisite** which will be notified by the Central Government received by both **serving as well as retired** Chairman and Members of the Union Public Service Commission is exempt from Income Tax. (Earlier it was taxable under the head Salary)*

1. Accordingly, the following allowances and perquisites shall be exempt in case of <u>serving</u> chairman and member.

*(i) the value of rent free accommodation (**RFA**),*

*(ii) the value of **conveyance facilities** including transport allowance,*

*(iii) the **Entertainment allowance** and*

*(iv) the value of leave travel concession (**LTA**).*

2. In case of <u>retired</u> chairman and members, exemption shall be as given below:

*(i) a sum of maximum `14,000 per month for **defraying the service** of an orderly and for meeting expenses incurred towards secretarial assistance on contract basis.*

*(ii) the value of a **residential telephone free of cost** and the number of free calls to the extent of `1,500 p.m. (over and above free calls per month allowed by the telephone authorities)*

Exemption of specified income of notified body or authority or trust or board or commission <u>[Section 10(46)]</u> [w.e.f. 1.6.2011]

It is inserted a new clause in section 10 of the Income Tax Act to provide exemption from income tax to any specified income of a body, authority, board, trust or commission (by whatever name called) which is –

(a) set up or constituted by a Central, State or Provincial Act or

(b) constituted by the Central Government or a State Government
with the object of regulating or administering an activity for the benefit of the general public, provided –
(i) it is not engaged in any commercial activity, and
(ii) is notified by the Central Government in this behalf.

The nature and extent of income to be exempted will also be specified by the Central Government while notifying such entity.

A consequential amendment is proposed in section ***139(4C)*** of the Act to provide that such notified entity shall be required to file return of income with in the time specified in section 139(1).

Exemption of income of an Infrastructure Debt Fund Section 10(47) [inserted w.e.f. 1.6.2011]

In order to augment long-term low cost funds from abroad for the infrastructure sector, it is proposed to facilitate setting up of dedicated debt funds.

Section 10 of the Income Tax Act excludes certain income from the ambit of total income. It is proposed to amend section 10 of the Income Tax Act so as to provide enabling power to the Central Government to notify any infrastructure debt fund which is set up in accordance with the prescribed guidelines. Once notified, the income of such debt fund would be exempt from tax. It will, however, be required to file a return of income under section 139(4C).

It is also proposed to amend section 115A of the Income Tax Act to provide that any interest received by a non-resident not being a company or a foreign company from such notified infrastructure debt fund shall be taxable at the special rate of 5% on the gross amount of such interest income.

It is further proposed to insert a new section 194LB to provide that tax shall be deducted at the rate of 5% by such notified infrastructure debt fund on any interest paid by it to a non-resident not being a company or a foreign company.

It may be noted that the non-resident not being a company or a foreign company shall not be required to file return of income if his/its total income consists only of such interest income and tax on the same has been deducted at source.

IN OTHER WORDS

*Any **income of an infrastructure debt fund**, set up in accordance with the guidelines, which is notified by the Central Government in the Official Gazette is exempt from Income Tax*. **[Section 10(47)]**

1. A consequential amendment in Section ***139(4C)*** is that such notified entity shall be required to file return of income if their *total income is exceeding the income exempt* from tax before permitting exemption under section 10.
2. *Any interest* received by a *non- resident* not being a company or a foreign company from such notified infrastructure debt fund shall be taxable at the special rate of 5% on the gross amount of such interest income. **[Section 115A]**
3. Tax shall be deducted @ 5% by such notified infrastructure debt fund on any interest paid by it to a non- resident not being a company or foreign company. **[Section 194LB]**

Changes under the head "Profits and gains of business or profession"

Weighted deduction for contribution made for approved scientific research programme enhanced *Section 35(2AA)* [w.e.f. A.Y. 2012-13]

Under the existing provisions of section 35(2AA) of the Income Tax Act, ***weighted deduction*** to the extent of 175% is allowed for any sum ***paid to***

- ➔ *a National Laboratory or*
- ➔ *a university or an Indian Institute of Technology (IIT) or*
- ➔ *a specified person for the purpose of an approved scientific research programme.*

In order to encourage more contributions to such approved scientific research programme, it is proposed to increase this weighted deduction from 175% to 200%.

Example

***A Ltd**. furnishes the following particulars for the P.Y. 2011-12. Compute the deduction allowable under section 35 for A.Y. 2012-13, while computing its income under the head "Profits and gains of business or profession".*

	Particulars	*Rs.*
1.	*Amount paid to Indian Institute of Science, Bangalore, for scientific research*	*1,00,000*
2.	*Amount paid to IIT, Delhi for an approved scientific research programme*	*2,50,000*
3.	*Amount paid to X Ltd., a company registered in India which has as its main object scientific research and development, as is approved by the prescribed authority*	*4,00,000*
4.	*Expenditure incurred on in-house research and development facility as approved by the prescribed authority*	
	(a) Revenue expenditure on scientific research	*3,00,000*
	(b) Capital expenditure (including cost of acquisition of land Rs. 5,00,000) on scientific research	*7,50,000*

Answer: *Computation of deduction under section 35 for the A.Y. 2011-12*

Particulars	*Rs.*	*Section*	*% of weighted deduction*	*Amount of deduction(Rs.)*
Payment for scientific research				
Indian Institute of Science	*1,00,000*	*35(1)(ii)*	*175%*	*1,75,000*
IIT, Delhi	*2,50,000*	*35(2AA)*	*200%*	*5,00,000*
X Ltd.	*4,00,000*	*35(1)(iia)*	*125%*	*5,00,000*
Expenditure incurred on in-house research and development facility				
Revenue expenditure	*3,00,000*	*35(2AB)*	*200%*	*6,00,000*
Capital expenditure (excluding cost of acquisition of land Rs. 5,00,000)	*2,50,000*	*35(2AB)*	*200%*	*5,00,000*
Deduction allowable under section 35				*22,75,000*

Investment linked deduction extended to developing and building affordable housing project and production of fertilizer in India *Section 35AD* [w.r.e.f. A.Y. 2011-12]

Under the existing provisions of section 35AD of the Income Tax Act, *investment linked tax incentive* is provided by way of allowing *100% deduction* in respect of any expenditure of *capital nature* (other than on land, goodwill and financial instrument) incurred *wholly and exclusively*, for the purposes of the "*specified business*".

Specified business shall mean

1. Setting up and operating a cold chain facilities for Storage,
2. Transportation and warehousing of agricultural produce, dairy products and other related items
3. Laying and operating natural gas/ crude/ petroleum oil pipeline network for distribution
4. *Building & operation, anywhere in India, a ~~new~~ hotel of two star or above category.*
5. *Building & operation, anywhere in India, a ~~new~~ hospital with at least 100 bed for patients.*
6. *Developing & building a housing project under a scheme for slum rehabilitation.*

It is proposed to include two new businesses as "specified business", i.e., -

7. *developing and building a **housing project** under a scheme for affordable housing framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed; and*
8. ***production of fertilizer** in India.*

The dates of commencement of the "specified business" as an eligibility condition are detailed in section 35AD(5). It is proposed that the date of commencement of operations in the case of the two "specified businesses" of affordable housing projects and production of fertilizer in a new plant or in a newly installed capacity in an existing plant shall be *on or after 1.4.2011*.

It is further provided that deduction for capital expenditure shall be allowed not only for production in a new plant but it shall also be allowed in a newly installed capacity in an existing plant for production of fertilizer.

Adjustment of losses of specified business: Under section 73A, any loss of a "specified business" (under section 35AD) is allowed set-off against profit and gains of any other "specified business". In order to remove any ambiguity in this regard in respect of the business of *hotels and hospitals*, it is proposed to remove the word "new" from the definition of "specified business" in the case of hotels and hospitals under section 35AD (8) (c). With this, the loss of an assessee on account of a "specified business" claiming deduction under section 35AD would be allowed to be set off against the profit of another "specified business" under section 73A, whether or not the latter is eligible for deduction under section 35AD.

Therefore, an assessee who currently operates a hospital or a hotel would be able to set off the profits of such business against the losses, if any, of a new hospital or new hotel which begin to operate after 1.4.2010 and which is eligible for deduction of expenditure under section 35AD. This amendment will take effect retrospectively from 1.4.2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

Example

XYZ Ltd. commenced operations of the business of a new three star hotel in Madurai, Tamil Nadu on 1.4.2011. The company incurred capital expenditure of Rs. 50 lakh during the period January, 2011 to March, 2011 exclusively for the above business, and capitalized the same in its books of account as on 1st April, 2011. Further, during the P.Y. 2011-12, it incurred capital expenditure of Rs. 2 crore (out of *which Rs. 1.50 crore was for acquisition of land) exclusively for the above business. Compute the income under the head "Profits and gains of business or profession" for the A.Y. 2012-13, assuming that XYZ Ltd. has fulfilled all the conditions specified for claim of deduction under section 35AD and has not claimed any deduction under Chapter VI-A under the heading "C. – Deduction in respect of certain incomes". The profits from the business of running this hotel (before claiming deduction under section 35AD) for the A.Y. 2012-13 is Rs. 25 lakhs. Assume that the company also has another existing business of running a four-star hotel in Coimbatore, which commenced operations 5 years back, the profits from which are Rs. 120 lakhs for A.Y. 2012-13.*

Answer:

Particulars		**Rs.**
Profits from the specified business of new hotel in Madurai (before providing deduction under section 35AD)		25 lakh
Less: Deduction under section 35AD		
Capital expenditure incurred during the P.Y. 2011-12 (excluding the expenditure incurred on acquisition of land) = Rs. 200 lakh – Rs. 150 lakh (See point no. (ii) above)	50 lakh	
Capital expenditure incurred prior to 1.4.2011 (i.e. prior to commencement of business) and capitalized in the books of account as on 1.4.2011 (See point no. (iii) above)	50 lakh	
Total deduction under section 35AD for A.Y. 2012-13		100 lakh
Loss from the specified business of new hotel in Madurai		**(75 lakh)**
Profit from the existing business of running a hotel in Coimbatore		120 lakh
Net profit from business after set-off of loss of specified business against profits of another specified business under section 73A		**45 lakh**

Employer's contribution towards a PENSION SCHEME Section 36(1)(iva) [w.e.f. A.Y. 2012-13]

Any sum paid by the assessee as an employer by way of contribution towards a PENSION SCHEME, as referred to in section 80CCD, on account of an employee to the extent it does not exceed ten per cent of the salary of the employee in the previous year.

"Salary" includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.

(1) *Computation of deduction in the hands of the employer in respect of contribution to pension scheme*

Example *X Ltd. contributes 20% of basic salary to the account of each employee under a pension scheme referred to in section **80CCD**. Dearness Allowance is 40% of basic salary and it forms part of pay of the employees. Compute the amount of deduction allowable under section 36(1)(iva), if the basic salary of the employees aggregate to Rs. 10 lakh. Would allowance under section 40A(9) be attracted, and if so, to what extent?*

Answer: *Computation of deduction allowable under section 36(1)(iva) and disallowanceU/S 40A(9)*

Particulars	*Rs.*

Basic Salary	*10,00,000*
Dearness Allowance @ 40% of basic salary [DA forms part of pay]	*4,00,000*
Salary for the purpose of section 36(1)(iva) (Basic Salary + DA)	*14,00,000*
Actual contribution (20% of basic salary i.e., 20% of Rs. 10 lakh)	*2,00,000*
Less: Permissible deduction under section 36(1)(iva) (10% of basic salary plus dearness pay = 10% of Rs. 14,00,000 = Rs. 1,40,000)	*1,40,000*
Excess contribution disallowed under section 40A(9)	*60,000*

(2) ***Tax treatment of employer's and employee's contribution to pension scheme in the hands of the employee***

Example

The basic salary of Mr. A is Rs. 20,000 p.m. He is entitled to dearness allowance, which is 40% of basic salary. 50% of dearness allowance forms part of pay for retirement benefits. Both Mr. A and his employer contribute 15% of basic salary to the pension scheme referred to in section 80CCD. Explain the tax treatment in respect of such contribution in the hands of Mr. A.

Answer:

Tax treatment in the hands of Mr. A in respect of employer's and own contribution to pension scheme referred to in section 80CCD

(a) ***Employer's*** contribution to such pension scheme would be treated as salary since it is specifically included in the definition of "salary" under section 17(1)(viii). Therefore, Rs. 36,000, being 15% of basic salary of Rs. 2,40,000, will be included in Mr. A's salary.

(b) Mr. ***A's contribution*** to pension scheme is allowable as deduction under section 80CCD(1). However, the deduction is restricted to 10% of salary. Salary, for this purpose, means basic pay plus dearness allowance, if it forms part of pay.
Therefore, salary for the purpose of deduction under section 80CCD, in this case, would be –

Particulars	**Rs.**
Basic Salary = 20,000 x 12 =	2,40,000
Dearness allowance = 40% of Rs. 2,40,000 = 96,000 50% of DA forms part of pay = 50% of Rs. 96,000	48,000
Salary for the purpose of deduction u/s 80CCD	**2,88,000**
Deduction u/s 80CCD(1) = 10% of Rs. 2,88,000	**28,800**

Rs. 28,800 is allowable as deduction under section 80CCD(1). This would be taken into consideration and be ***subject to*** the overall limit of Rs***. 1 lakh*** under section 80CCE.

Employer's contribution to pension scheme would be allowable as deduction under section 80CCD(2), subject to a maximum of 10% of salary. Therefore, deduction under section 80CCD(2), would also be restricted to Rs. 28,800, even though the entire employer's contribution of Rs. 36,000 is included in salary under section 17(1)(viii). However, this deduction of employer's contribution of Rs. 28,800 to pension scheme would be outside the overall limit of Rs. 1 lakh under section 80CCE i.e. this deduction would be over and above the other deductions which are subject to the limit of Rs. 1 lakh.

Amendments relating to "Deductions allowable under Chapter VIA from Gross

Total Income”

Tax benefits for NEW PENSION SYSTEM (NPS) [Section 80CCE read with section 80CCD] [w.e.f. A.Y. 2012-13]

Section 80CCD of the Income Tax Act provides, inter alia, a deduction in respect of contribution made by an employee as well as an employer to the NEW PENSION SYSTEM (NPS) account on behalf of the employee. In view of the provisions of section 80CCE, the aggregate deduction under section 80C, 80CCC and 80CCD cannot exceed Rs. 1,00,000. The allowable deduction under section 80CCD includes both the employee’s as well the employer’s contribution to the NPS.

It is proposed to amend section 80CCE so as to provide that the contribution made by the ***Central Government or any other employer to a PENSION SCHEME*** under section 80CCD(2) shall be ***excluded from the limit of Rs. 1,00,000*** provided under section 80CCE.

Currently, the contribution made by an employer towards a recognized provident fund, an approved superannuation fund or an approved gratuity fund is allowable as a deduction from business income under section 36, subject to certain limits. However, the contribution made by an employer to the NPS is not allowed as a deduction.

It is, therefore, proposed to amend section 36 so as to provide that any sum paid by the assessee as an ***employer*** by way of contribution towards a pension scheme, as referred to in section 80CCD(2) on account of an employee to the extent it does not exceed 10% of the salary of the employee in the previous year, shall be allowed as deduction in computing the income under the head “Profits and gains of business or profession”. For the purpose of this clause “salary” includes dearness allowance if the terms of employment so provide, but excludes of all other allowances and perquisites.

Example

Mrs. X is employed in Central Government since 01.01.2011 and is getting basic pay of `30,000 p.m. She has contributed `3,000 p.m. to the notified pension scheme of Central Government and employer has also contributed an equal amount. She has made investment in PPF Rs.70,000. Compute her total income for the assessment year 2012-13

Answer:

Basic Pay(30,000 x 12)		*3,60,000.00*
Contribution to the pension fund by Central Government (3,000 x 12)		*36,000.00*
Gross Salary		*3,96,000.00*
Income under the head Salary		*3,96,000.00*
Gross Total Income		***3,96,000.00***
Less: ***Deduction u/s 80C***		
PPF	*70,000.00*	
Deduction u/s 80CCD		
Contribution by Mrs. X (3000 x 12)	*36,000.00*	*1,00,000.00*
(Restricted `1,00,000 as per section 80 CCE)		
Contribution of Central Government		*36,000.00*
Total Income		***2,60,000.00***

Deduction for investment in long term infrastructure bonds *Section 80CCF* [w.e.f. 2012-13]

It is proposed to amend section 80CCF to allow deduction on account of investment in notified long-term infrastructure bonds for the year 2011-12 (assessment year 2012-13] also.

In other words Section 80CCF to allow deduction of Rs.20,000 for investment in long-term infrastructure bonds for the assessment year 2012-13 ***also***.

Notification Nos. 48/2010 dated 9.7.2010 & 77/2010 dated 11.10.2010
Notification of long-term infrastructure bonds by the Central Government, subscription to which would qualify for deduction under section 80CCF
Section 80CCF provides that an assessee, being an individual or a Hindu Undivided Family, shall get a deduction of upto rupees twenty thousand in computing his total income if he subscribes to long-terms infrastructure bonds as may be notified by the Central Government for this purpose.
Consequently, the Central Government has, vide these notifications, specified the long-term infrastructure bonds, subscription to which would qualify for deduction under section 80CCF. Accordingly, subscription to long-term infrastructure bonds of Industrial Finance Corporation of India, Life Insurance Corporation of India, Infrastructure Development Finance Company Limited and a non-banking Finance Company classified as an Infrastructure Finance Company by the Reserve Bank of India would qualify for deduction under section 80CCF. Further, subscription to long-term infrastructure bonds of India Infrastructure Finance Company Ltd. would also qualify for deduction under section 80CCF.

Example

The gross total income of Mr. X for the A.Y. 2012-13 is Rs. 5,00,000. He has made the following investments/payments during the F.Y. 2011-12 –

	Particulars	***Rs.***
(1)	*Contribution to PPF*	*70,000*
(2)	*Payment of tuition fees to Apeejay School, New Delhi, for education of his son studying in Class XI*	*45,000*
(3)	*Repayment of housing loan taken from Standard Chartered Bank*	*25,000*
(4)	*Contribution to approved pension fund of LIC*	*10,000*
(5)	*Subscription to IDFC long-term infrastructure bonds*	*25,000*

Compute the eligible deduction under Chapter VI-A for the A.Y. 2012-13.

Answer:

Computation of deduction under Chapter VI-A for the A.Y. 2012-13

Particulars		**Rs.**
Deduction under section 80C		
(1)	Contribution to PPF	70,000
(2)	Payment of tuition fees to Apeejay School, New Delhi, for education of his son studying in Class XI	45,000
(3)	Repayment of housing loan	25,000
		1,40,000
Deduction under Section 80CCC		

(4)	Contribution to approved pension fund of LIC	10,000
		1,50,000
As per section 80CCE, the aggregate deduction under section 80C, 80CCE and 80CCD(1) has to be restricted to Rs. 1 lakh		1,00,000
Deduction under section 80CCF		
(5)	Subscription to notified long-term infrastructure bonds of IDFC, Rs. 25,000, but restricted to Rs. 20,000, being the maximum deduction allowable under section 80CCF	20,000
Deduction allowable under Chapter VI-A for the A.Y. 2012-13		**1,20,000**

Extension of sunset clause for tax holiday for power sector [Section 80IA(4)(iv)] [w.e.f. A.Y. 2012-13]
It is proposed to amend section 80-IA(4)(iv) to extend the terminal date for a further period of one year, i.e., upto 31.3.2012.

Sunset of tax holiday for certain undertaking engaged in commercial production of mineral oil [Section 80IB(9)] [w.e.f. A.Y. 2012-13]
It is proposed that the deduction available for commercial production of mineral oil will ***not be available*** for blocks licensed under a contract awarded after 31.3.2011 under the New Exploration Licencing Policy announced by the Government of India vide Resolution No. O-19018/22/95-ONG.DO.VL, dated 10th February, 1999 or in pursuance of any law for the time being in force or by the Central or a State Government in any other manner.

Amendments relating to Transfer Pricing

Rationalisation of provisions relating to Transfer Pricing [Section 92C]

(A) It is, proposed to amend section 92C of the Act w.e.f. A.Y. 2012-13 to provide that instead of a variation of 5%, the allowable variation will be such percentage as may be notified by Central Government in this behalf.

(B) It is proposed to amend section 92CA so as to specifically provide that the jurisdiction of the Transfer Pricing Officer shall extend to the determination of the ALP in respect of other international transactions, which are noticed by him subsequently in the course of proceedings before him. These international transactions would be in addition to the international transactions referred to the TPO by the Assessing Officer.

(C) In order to enable the TPO to conduct on the spot enquiry and verification, it is proposed to amend section 92CA(7) w.e.f. 1.6.2011 so as to enable the TPO to also exercise the power of survey conferred upon an income tax authority under section 133A of the Act.

*(D) Corporate assesses face practical difficulties in accessing contemporary comparable data before 30th September in order to furnish a report in respect of their international transactions. It is, therefore, proposed to amend **Section 139** w.e.f. A.Y. 2011-12 to extend the due date for filing of return of income by such corporate assesses to 30th November of the assessment year.*

In other words (this part only for IPCC)

In the case of an assessee being a company, which is required to furnish a report referred to in section 92E, the 30th day of November of the assessment year i.e. the company entering into International Transaction, can furnish return upto 30th November of the assessment year.

Anti Tax Avoidance Measures (this part not in IPCC course, but still Read once.)

Toolbox of counter measures in respect of transactions with persons located in a notified jurisdictional area [Section 94A] [w.e.f. 1.6.2011]

In order to discourage transactions by a resident assessee with persons located in any country or jurisdiction which does not effectively exchange information with India, anti-avoidance measures have been proposed in the Income Tax Act.

It is proposed to insert a new section 94A in the Act to specifically deal with transactions undertaken with persons located in such country or area.

The proposed section provides –

(1) An enabling power to the Central Government to notify any country or territory outside India, having regard to lack of effective exchange of information by it with India, as a **notified jurisdictional area [Section 94A(1)]**;

(2) That it an assessee enters into a transaction, where one of the parties to the transaction is a person located in a notified jurisdictional area, then all the parties to the transaction shall be deemed to be associated enterprises and the transaction shall be deemed to be an international transaction and accordingly, transfer pricing regulations shall apply to such transactions **[Section 94A(2)]**;

(3) That no deduction in respect of any payment made to any financial institution shall be allowed unless the assessee furnishes an authorization, in the prescribed form, authorizing the Board or any other income tax authority acting on its behalf, to seek relevant information from the said financial institution **[Section 94A(3)(a)]**;

(4) That no deduction in respect of any other expenditure or allowance (including depreciation) arising from the transaction with a person located in a notified jurisdictional area shall be allowed under any provision of the Act unless the assessee maintains such other documents and furnished the information as may be prescribed **[Section 94A(3)(b)]**;

(5) That if any sum is received from a person located in the notified jurisdictional area, then, the onus is on the assessee to satisfactorily explain the source of such money in the hands of such person or in the hands of the beneficial owner, and in case of his failure to do so, the amount shall be deemed to be the income of the assessee **[Section 94A(4)]**;

(6) That any payment made to a person located in the notified jurisdictional area shall be liable to deduction of tax at the higher of the following rates:
   (a) at the rate or rates in force;
   (b) at the rate specified in the relevant provision of this Act;
   (c) at the rate of 30% **[Section 94A(5)]**.

Meaning of person located in a jurisdictional area, permanent establishment and transaction
[Section 94A(6)]:

(i) a person located in a notified jurisdictional area shall include-
   (a) a person who is resident of the notified jurisdictional area;
   (b) a person, not being an individual, which is established in the notified jurisdictional area; or
   (c) a permanent establishment of a person not falling in sub-clause (a) or sub-clause (b), in the notified jurisdictional area;

(ii) ***"Permanent establishment"*** *shall have the same meaning as defined in clause (iiia) of section 92F;*

(iii) ***"Transaction"*** *shall have the same meaning as defined in clause (v) of section 92F.*

Taxation of certain foreign dividends at a reduced rate [Section 115BBD] [w.e.f. A.Y. 2012-13] *(this part not in IPCC course, but still Read once.)*

It is proposed to insert a new section 115BBD to provide that where total income of an Indian company for the previous year relevant to the assessment year 2012-13 includes any income by way of dividends received from a *foreign specified company*, then such dividends shall be taxable at the rate of 15% (plus applicable surcharge and cess) on the gross amount of dividends. No expenditure in respect of such dividends shall be allowed under the Act

(a) *Meaning of dividends and specified foreign company:* ***[Section 15BBD(3)]***

(b) ***"Dividends"*** *shall have the same meaning as is given to dividend in section 2(22) but shall not include sub-clause(e) thereof;*

"Specified foreign company" *means a foreign company in which the Indian company holds 26% or more in nominal value of the equity share capital of the company.*

Amendments relating to MAT & DDT

Rate of Minimum Alternate Tax increased to 18.5% [Section 115JB(1)] [w.e.f. A.Y. 2012-13]
(This part not in IPCC course, but still Read once.)

It is proposed to amend section 115JB(1) to increase the rate of MAT to eighteen and one-half percent from the existing rate of eighteen percent of such book profit.

Sunset provisions inserted regarding exemption from Minimum Alternate Tax (MAT) and
(This part not in IPCC course, but still Read once.)
Dividend Distribution Tax (DDT) in case of Special Economic Zones [Section 115JB(6), 115-O(6) read with section 10AA & 80-IAB]

It is proposed to sunset the availability of exemption from minimum alternate tax in the case of SEZ Developers and units in SEZs in the Income Tax Act as well as the SEZ Act w.e.f. A.Y. 2012-13. Hence, units of SEZ and developers of SEZ shall be liable to MAT w.e.f. A.Y. 2012-13.

It is further proposed to discontinue the availability of exemption from dividend distribution tax in the case of SEZ Developers under the Income Tax Act as well as the SEZ Act for dividends declared, distributed or paid on or after 1.6.2011 which shall be taxable @ 16.233% (15% + 5% SC + 3% EC + SHEC).

It is also proposed to make consequently amendments by omitting Explanation to section 10(34) of the Income Tax Act w.e.f. 1.6.2011

Special provisions relating to certain Limited Liability Partnerships (LLP)

Alternate Minimum Tax for Limited Liability Partnership (LLP) [Section 115JC to 115JF] [w.e.f. A.Y. 2012-13]
(this part not in IPCC course, but still Read once.)

As per Section 115JC of the proposed amendment, where the ***regular income tax payable*** *for a previous year by a limited liability partnership is less than the* ***alternate minimum tax*** *payable for such previous year, the* ***adjusted total income*** *shall be deemed to be the total income of such limited liability partnership and it shall be liable to pay income tax on such total income at the rate of 18.5%.*

Meaning of adjusted total income, alternate minimum tax and regular income tax ***[Section 115JF]:***

(i) ***"adjusted total income"*** *shall be the total income before giving effect to this newly inserted Chapter XII-BA as increased by the deductions claimed under any section included in Chaper VIA under the heading "C – Deductions in respect of certain incomes" and deduction claimed under section 10AA;*

(ii) ***"alternate minimum tax"*** *shall be the amount of tax computed on adjusted total income at a rate of 18.5%; and*

(iii) ***"regular income tax"*** *shall be the income tax payable for a previous year by a limited liability partnership on its total income in accordance with the provisions of the Act other than the provisions of this newly inserted Chapter XII-BA.*

Tax credit for alternate minimum tax [Section 115JD]: *The credit for tax (tax credit) paid by a limited liability partnership under this newly inserted Chapter XII-BA shall be allowed to the extent of the excess of the alternate minimum tax paid over the regular income tax. This tax credit shall be allowed to be carried forward up to the tenth assessment year immediately succeeding the assessment year for which such credit becomes allowable. It shall be allowed to be set off for an assessment year in which the regular income tax exceeds the alternate minimum tax to the extent of the excess of the regular income tax over the alternate minimum tax.*

Application of other provisions of this Act [Section 115JE]: *Save as otherwise provided in this Chapter, all other provisions of this Act shall apply to a limited liability partnership referred to in this Chapter. Hence, all other provisions relating to Advance Tax, interest under sections 234A, 234B and 234C penalty, etc. shall apply to such Limited Liability Partnership also.*

Amendments relating to Tax on Income distributed to unit holders **(this part not in IPCC course, but still Read once.)**

Rationalisation of Tax on Income distributed to unit holder [Section 115R(2)] [w.e.f. 1.6.2011]

It is proposed to amend section 115R(2) to provide that the Mutual Fund shall be liable to pay additional income tax on such distributed income at the rate of –

(a) 25% if the recipient is an individual or HUF in case of distribution by a money market mutual fund or a liquid fund;

(b) 30% if the recipient is any other person in case of distribution by a money market mutual fund or a liquid fund;

(c) 12.5% if the recipient is an individual or HUF in case of distribution by a debt fund other than a money market mutual fund or a liquid fund; and

(d) 30% if the recipient is any other person in case of distribution by debt fund other than a money market mutual fund or a liquid fund.

Distribution of income by an equity-oriented fund shall continue to be exempt from tax.

Collection of information on requests received from tax authorities outside India **(this part not in IPCC course)**

Collection of information on requests received from tax authorities outside India [Section 131(2)] [w.e.f. 1.6.2011]

It is proposed to insert sub-section (2) in section 131. the new sub-section provides that the purpose of marking an enquiry or investigation in respect of any person or class of persons in relation to an agreement referred to in section 90 or section 90A, it shall be competent for any income tax authority, not below the rank of Assistant Commissioner of Income Tax, as notified by the Board in this behalf, to exercise the powers currently conferred on income tax authorities referred to in section 131(1). The authority so notified by the Board shall be able to exercise the powers under section 131(1) notwithstanding that no proceedings with respect to such person or class of persons are pending before it or any other income tax authority.

It is further proposed to amend section 131(3) so as to empower the aforesaid authority, as notified by the Board, to impound and retain any books of account and other documents produced before it in any proceeding under the Act.

Similar amendments have also been proposed in section 133 of the Income Tax Act.

Amendments relating to Filing of Income Tax Return

Return of a company assessee which is required to furnish a report in Form 3CEB as per section 92E *[Explanation* 2 to section 139(1)] [w.r.e.f. A.Y. 2011-12]

Exemption to a class or classes of persons from furnishing a return of income [Section 139(1C)] [w.e.f. 1.6.2011]

Under the existing provisions contained in section 139(1) of the Income Tax Act, every person, if his total income during the previous year exceeds the maximum amount which is not chargeable to income tax, is required to furnish a return of his income.

In the case of *salaried tax payer*, entire tax liability is discharged by the employer through deduction of tax at source. Complete details of such tax payers are also reported by the employer through Tax Deduction at Source (TDS) statements. Therefore, in such cases filing of a return is a duplication of existing information.

In order to reduce the compliance burden on small tax payer, it is proposed to insert sub-section (1C) in section 139. This provision empowers the Central Government to exempt, by notification in the Official Gazette, any class or classes of persons from the requirement of furnishing a return of income, having regard to such conditions as may be specified in that notification.

Consequently amendments are also proposed to be made to the provisions of section 296 to provide that any notification issued under section 139(1C) shall be laid before Parliament.

Return of income shall also have to be filed by (i) a body, authority, etc. referred to in newly inserted section 10(46) and (ii) a infrastructure debt fund referred to in newly inserted section 10(47) [Section 139(4C)] [w.e.f. 1.6.2011]

Processing of returns in Centralised Processing Centres
(this part not in IPCC course)

Notification for processing of returns in Centralised Processing Centres [Section 143(1B)] [w.r.e.f. A.Y. 2011-12]

Under the existing provisions of section 143(1B) of the Income Tax Act, the Central Government may, for the purpose of giving effect to the scheme made under section 143(1A), by notification in the Official Gazette, direct that any of the provisions of the Income Tax Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification. However, no direction shall be issued after 31.3.2011.

It is proposed to amend section 143(1B) to extend the existing time limit for issue of notification to 31.3.2012.

Amendments relating to Settlement Commission **(this part is not in IPCC course)**

Modification in the conditions for filing an application before the Settlement Commission [Section 245C(1)] [w.e.f. 1.6.2011] *It is proposed to expand the criteria for filing an application for settlement by a tax payer in whose case proceedings have been initiated as a result of search or requisition of books of account.*

It is, therefore, proposed to insert a new clause (ia) in the proviso to section 245C(1). This stipulates that an application can also be made, where the applicant –

(a) is related to the person [referred to in (i) above] in whose case proceedings have been initiated as a result of search and who has filed an application (hereinafter referred to as "specified person"); and

(b) is a person in whose case proceedings have also been initiated as a result of search.

The additional amount of income tax payable on the income disclosed in his application exceeds Rs. 10,00,000.

As a consequences, a tax payer who is the subject matter of a search would be allowed to file an application for settlement if additional income tax payable on the income disclosed in the application exceeds Rs. 50,00,000. Entities related to such a tax payer, who are also the subject matter of search, would now be allowed to file an application for settlement, if additional income tax payable in their application exceeds Rs. 10,00,000.

Power of the Settlement Commission to rectify its orders [Section 245D(6B)] [w.e.f. 1.6.2011]

It is proposed to insert a new sub-section (6B) in section 245D so as to specifically provide that the Settlement Commission may, at any time within a period of six months from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under section 245D(4).

It is further provided that a rectification which has the effect of modifying the liability of the applicant shall not be made unless the Settlement Commission has given notice to the applicant and the Commissioner of its intention to do so and has allowed the applicant and the Commissioner an opportunity of being heard.

Consequential amendments on similar lines are proposed to be made to section 22D of the Wealth Tax Act.

Recognition to Provident Funds – Extension of time limit for obtaining exemption from Employees Provident Fund Organisation (EPFO) [w.r.e.f. 1.1.2011]
In order to provide further time to the Employees Provident Fund Organization (EPFO) to process the applications made by establishments seeking exemption under section 17 of the EPF & MP Act, it is proposed to amend the aforesaid proviso so as to extend the time limit from 31st December, 2010 to 31st March 2012. ***Note for students***: *Interest on recognized provident fund was exempt under section 10 up to 9.5% till 31.08.2010. It was reduced to 8.5% w.e.f. 1.9.2010. However, as per Notification No. 24/2011, dated 13.5.2011, it has again been enhanced to 9.5%* ***w.r.e.f. 1.9.2010.***

IMPORTANT CIRCULARS & NOTIFICATIONS ISSUED BETWEEN 1.5.2010 AND 30.4.2011 CIRCULARS

1. Circulars No. 4/2010 dated 18.5.2010
Clarification regarding definition of new infrastructure facility for the purpose of section 80-IA(4)

The CBDT has, vide this Circular, clarified that widening of an existing road by constructing additional lanes as a part of a highway project by an undertaking would be regarded as a new infrastructure facility for the purpose of section 80-IA(4)(i). However, simply relaying of an existing road would not be classifiable as a new infrastructure facility for this purpose.

2. Circular No. 6/2010 dated 20.9.2010
Regional Rural Banks not eligible for deduction under section 80P

The CBDT has, through this circular, reiterated that Regional Rural Banks are not eligible for deduction under section 80P of the Income-Tax Act, 1961 from the assessment year 2007-08 onwards. It has also been clarified that the Circular No. 319 date 11-1-1982 deeming any Regional Rural Bank to be cooperative society stands withdrawn for application with effect from A.Y. 2007-08.

This is consequent to the amendment in section 80P by the Finance Act, 2006, providing specifically that w.e.f. 1-4-2007, the provisions of section 80P will not apply to any co-operative bank other than a Primary Agricultural Credit Society or a Primary Cooperative Agricultural and Rural Development Bank. The same has been further clarified by this circular.

3. Circular No. 7/2010 dated 27.10.2010

Clarification regarding period of validity of approvals issued under section 10(23C)(iv), (v), (vi) or (via) and section 80G(5)

For the removal of doubts about the period of validity of various approvals granted by the Chief Commissioners of Income-tax or Directors General of Income-tax under sub-clauses (iv), (v), (vi) and (via) of section 10(23C) and by the Commissioners of Income-tax or Directors of Income-tax under section 80G(5) of the Income-tax Act, 1961, the CBDT has, through, this circular clarified the following –

(1) For the purposes of sub-clauses (iv) and (v) of section 10(23C), any notification issued by the Central Government under the said sub-clauses, on or after 13-7-2006 will be valid until withdrawn and there will be no requirement on the part of the assessee to seek renewal of the same after three years.

(2) For the purposes of sub-clauses (vi) and (via) of section 10(23C), any approval issued on or after 1-12-2006 under the said sub-clauses would be a one time approval and would be valid till it is withdrawn.

(3) For the purposes of section 80G(5), existing approvals expiring on or after 1st October, 2009 shall be deemed to have been extended in perpetuity unless specifically withdrawn. Further, any approval under section 80G(5) on or after 1-10-2009 would be a one time approval which would be valid till it is withdrawn.

Notifications

1. **Notification No. 80/2010 dated 19.10.2010 (as amended by Notification No. 20/2011 dated 21.4.2011)**

   Notification of annuity plan for deduction under section 80C

   Deduction under section 80C is available in respect of any sum paid or deposited to effect or to keep in force a contract for such annuity plan of the Life Insurance Corporation or any other insurer as the Central Government may, by notification in the Official Gazette specify in this behalf. Accordingly, the Central Government, has, through this notification specified the ***Tata AIG Easy Retire Annuity plan of the Tata AIG Life Insurance Company Limited*** as the annuity plan of the Tata AIG Life Insurance Company Limited for the purposes deduction under section 80C.

2. **Notification No. 41/2010 dated 31.05.2010**

   Substitution of Rules 30, 31 & 31A in the Income-tax Rules, 1962

   Rule 30 – Time and mode of payment to Government account of TDS or tax paid under section 192(1A)

   (a) All sums deducted in accordance with Chapter XVII-B by an office of the Government shall be paid to the credit of the Central Government on the same day where the tax is paid without production of an income-tax challan and on or before seven days from the end of the month in which the deduction is made or income-tax is due under section 192(1A), where tax is paid accompanied by an income-tax challan.

   (b) All sums deducted in accordance with Chapter XVII-B by deductors other than a Government officer shall be paid to the credit of the Central Government on or before 30th April, where the income or amount is credited or paid in the month of March. In any other case, the tax deducted should be paid on or before seven days from the end of the month in which the deduction is made or income tax is due under section 192(1A).

(c) In special cases, the Assessing Officer may, with the prior approval of the Joint Commissioner, permit quarterly payment of the tax deducted under section 192/194A/194D/194H on or before 7th of the month following the quarter, in respect of first three quarters in the financial year and 30th April in respect of the quarter ending on 31st March. The dates for quarterly payment would, therefore, be 7th July, 7th October, 7th January and 30th April, for the quarters ended 30th June, 30th September, 31st December and 31st March, respectively.

Rule 31 – Certificate of TDS to be furnished under section 203

(a) The certificate of deduction of tax at source to be furnished under section 203 shall be in Form No. 16 in respect of tax deducted or paid under section 192 and in any other case, Form No. 16A.

(b) Form No. 16 shall be issued to the employee annually by 31st May of the financial year immediately following the financial year in which the income was paid and tax deducted. Form No. 16A shall be issued quarterly within 15 days from the due date for furnishing the statement of TDS under Rule 31A.

Rule 31A – Statement of deduction of tax under section 200(3)

(a) Every person responsible for deduction of tax under Chapter XVII-B shall deliver , or cause to be delivered, the following quarterly statements to the DGIT (Systems) or any persons authorized by him in accordance with section 200(3):
   (1) Statement of TDS under section 192 in Form No. 24Q;
   (2) Statement of TDS under section 193 to 196D in Form No. 26Q in respect of all deductees other than a deductee being anon-resident not being a company or a foreign company or resident but not ordinarily resident in which case the relevant form would be Form No. 27Q.

(b) The time limit for furnishing such quarterly statements shall be 15th of the month following each quarter in respect of the first three quarters and 15th May for the last quarter ending on 31st March. The due date would therefore be 15th July, 15th October, 15th January and 15th May for the quarters ending 30th June, 30th September, 31st December and 31st March, respectively.

3. **Notification No. 84/2010 dated 22.11.2010**

Salaried persons entitled to act as Tax Return Preparers In exercise of the powers conferred under section 139B(1), the CBDT had framed the Tax Return Preparer Scheme, 2006 for the purpose of enabling any specified class or classes of persons in preparing and furnishing their return of income. "Specified class or classes of persons" means any person, other than a company or a person, whose accounts are required to be audited under section 44AB or under any other law for the time being in force, who is required to furnish a return of income under the Act.

Paragraph 2(f) of the Tax Return Preparer Scheme, 2006 defining a Tax Return Preparer, specifically provided that a person who is in employment and income from which is chargeable under the head "Salaries" shall not be entitled to act as a Tax Return Preparer. This disqualification has now been removed by amending paragraph 2(f). Consequently a salaried person is now eligible to act as a Tax Return Preparer.

Consequently amendment has been made in Paragraph 11(1)(xii), which provided for withdrawal of certificate given to the Tax Return Preparer in case he, after issue of Tax Return Preparer Certificate to him, takes up an employment, income from which is chargeable under the head

"Salaries". ***Henceforth, taking up a salaried employment would not result in withdrawal of certificate given to the Tax Return Preparer.***

However, it may be noted that as per section 139B(3) of the Income-tax Act, 1961, an employee of the "specified class or classes of persons" is not authorized to act as a Tax Return Preparer. A combined reading of section 139B(3) with the amended Tax Return Preparer Scheme, 2002 reveals that employees of companies and persons whose accounts are required to be audited under section 44AB or any other law for the time being in force, are eligible to act as Tax Return Preparers.

4. **Notification No. 12/2011 dated 25.02.11**
United Stock Exchange of India Ltd. notified as a recognized stock exchange

Clause (d) of the proviso to section 43(5) provides that an eligible transaction in respect of trading in derivatives referred to in section 2(ac) of the Securities Contracts (Regulation) Act, 1956 carried out in a recognized stock exchange, which is notified by the Central Government for this purpose, shall not be deemed to be a speculative transaction.

Accordingly, in exercise of the powers conferred under section 43(5) read with Rule 6DDB, the Central Government has notified the United Stock Exchange of India Limited as a recognized stock exchange for the purpose of the said clause. The notification also lays down certain conditions to be fulfilled by the stock exchange.

It may be noted that at present, there are three other stock exchanges notified as recognized stock exchanges for the purposes of section 43(5), namely, the National Stock Exchange, Bombay Stock Exchange and MCX Stock Exchange.

5. **Notification No. 14/2011 dated 9.3.2011**
Conditions to be fulfilled for a stock exchange to qualify as a recognized stock exchange for the purposes of section 43(5) – Modification of cash and derivative market transactions registered in the system permitted in case of genuine error.

Clause (d) of proviso to section 43(5) provides that an eligible transaction in respect of trading in derivatives referred to in section 2(ac) of the Securities Contracts (Regulation) Act, 1956 carried out in a recognized stock exchange shall not be deemed to be a speculative transaction. Rule 6DDB provides for notification of recognized stock exchange for the purposes of said clause.

Further, Rule 6DDA provides the conditions that a stock exchange is required to fulfil to be notified as a recognized stock exchange for the purpose of abovementioned clause. One of the conditions, specified in clause (iv) of Rule 6DDA, is that the stock exchange shall ensure that transactions once registered in the system cannot be erased or modified. This clause has been substituted to provide that the stock exchange shall ensure that transactions (in respect of cash and derivative market) once registered in the system are not erased.

Another condition has been stipulated by insertion of clause (v), which provides that the stock exchange shall ensure that the transactions (in respect of cash and derivative market) once registered in the system are modified only in cases of genuine error. The stock exchange should maintain data regarding all transactions (in respect of cash and derivative market) registered in the system which have been modified and submit a monthly statement in Form No. 3BB to the Director General of Income-tax (Intelligence), New Delhi within fifteen days from the last day of each month to which such statement relates.

Corresponding amendment has been made in Rule 6DDB requiring that the application for notification of a recognized stock exchange should be accompanied by inter alia, confirmation regarding fulfilling the conditions referred to in clauses (ii) to (v) of Rule 6DDA.

6. **As per Notification No. 32/2011**, dated 03.06.2011, Interest on Post Office Savings Bank Account is exempt to the extent of `3500 (instead of Full) per year and in the case of joint account, exemption shall be allowed upto `7,000.

7. As per **Notification No. 85/2010,** dated 22.11.2010, Outstation allowance exemption shall be 70% of allowance received or `10,000 p.m. (instead of `6,000 p.m.), whichever is less

8. **Cost Inflation Index for assessment year 2012-13 is 785.**

Miscellaneous Provisions *(this part is not in IPCC course)*

Extension of time limit for assessments in case of exchange of information [Explanation 1 to section 153] [w.e.f. 1.6.2011]

It is proposed to insert a new clause (viii) in *Explanation* 1 to section 153. It provides that the period commencing from the date on which a reference for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is received by the Commissioner, or a period of six months, whichever is less, shall be excluded.

Similar amendments are proposed to be made to section 153B of the Income Tax Act.

Omission of the requirement of quoting of Document Identification Number [Section 282B] [w.r.e.f. A.Y. 2011-12]

Considering the practical difficulties due to non-availability of requisite infrastructure on an all India basis. It is proposed to omit the aforesaid section.

Reporting of activities of liaison offices [Section 285] [w.e.f. 1.6.2011]

It is proposed to seek regular information from non-residents regarding the activities of their liaison offices in India. A new section 285 is, therefore, proposed in the Income Tax Act mandating the filing of annual information, within sixty days from the end of the financial year, in the prescribed form and providing prescribed details by non-residents as regards their liaison offices.

SERVICE TAX AMENDMENTS

INTEREST on delayed payment of service tax Section 75
If any person has failed to credit the tax to the Central Government within the prescribed time period, such person shall pay interest for the period of delay at the prescribed rate. As per notification no. 14/2011 dated 01.03.2011, the rate of interest **shall be 18% p.a.** If in the case of a service provider, whose value of taxable services provided in a financial year does not exceed 60 lakh rupees during any of the financial years covered by the notice or during the last preceding financial year, as the case may be, such rate of interest shall be reduced by three per cent per annum i.e. rate shall be **15% p.a.**

PENALTY for failure to pay service tax Section 76
if any person liable to pay service tax has failed to pay service tax, he shall be liable to pay service tax *along with interest u/s 75* and also penalty may be imposed which shall be **`100 per day (Earlier it was ` 200 per day) or 1% of such tax, per month** whichever is higher starting with first day after the due date till the date of actual payment. However total amount of penalty **shall not exceed 50% (Earlier it was 100%) of service tax payable**.

Example

ABC Ltd, an assessee, fails to pay service tax of ten lakh rupees payable by 5th March. ABC Ltd. pays amount on the 15th March. The default has continued for ten days The penalty payable by ABC Ltd. is ***computed as follows:—***

100 x 10 = `1,000
10,00,000 x 1% x 10/31 = `3,225.80 — *whichever is higher*
Penalty liable to be paid is ` 3226.00.

Example

Mr. X, an assessee, fails to pay service tax of `3,000 payable by 31st March. Mr. X pays the amount on 30th April. The default has continued for 30 days. The penalty payable by Mr. X is computed as follows:

100 x 30 = `3,000
3,000 x 1% x 30/30 = `30 — *whichever is higher.*
Penalty liable to be paid is `3,000 but penalty cannot exceed 50% of the amount of service tax, hence amount of penalty shall be `1,500

Penalty for contravention of rules and provisions of act for which no penalty is specified elsewhere Section 77

(1) Any person who has **failed to** take registration shall pay penalty of `200 per day or `10,000 whichever is higher
(2) Any person who has failed to maintain the book of accounts shall pay penalty which may extend upto `10,000.
(3) Any person who has failed to furnish information or failed to furnish any document to the service tax officer shall pay penalty of `200 per day or `10,000 whichever is higher.
(4) If any person has failed to pay service tax electronically shall pay penalty which may extend upto `10,000
(5) Any person, who contravenes any of the provisions of this Chapter or any rules made thereunder for which no penalty is separately provided in this Chapter, shall be liable to a penalty which may extend to 10,000 rupees.

PENALTY for suppressing value of taxable service Section 78

If any person has not paid service tax or has short paid service tax or there was a refund of service tax because of fraud, willful mis-statement etc., in such cases he shall be liable to pay **service tax along with interest and also penalty** shall be payable which shall be equal to the **amount of service tax**.
Provided that where true and complete details of the transactions are available in the specified records, penalty shall be reduced to **50%** of the service tax so not levied or paid or short-levied or short-paid or erroneously (wrongly) refunded. If the **tax and interest has been paid within 30 days of receiving** the orders from the Central Excise Officer, penalty payable shall be **25% of such service tax**. Further such penalty should also be paid within the period of **30 days** as mentioned above.

If the service provider whose value of taxable services do not exceeds **`60 lakhs** during any of the year covered by the notice or during the last preceding financial year, the period of **30 days** shall be taken as **90 days**.

Provided also that if the penalty is payable under this section, the provisions of section 76 shall not apply.
As per section 80, no penalty is imposable if the assessee proves that there was reasonable cause for such failure.

Determination of Rate for Service Tax.

As per rule 5B of STR, 1994, the rate of tax in case of services provided, or to be provided shall be the rate prevailing at the time when the services are deemed to have been provided.

Payment of Service Tax Section 68/ Rule 6 of STR 1994

An **individual** or **proprietary firm** or **partnership firm** shall be required to pay service tax on **quarterly basis** and should be paid upto 5th of the month subsequent to the quarter in which the *service is deemed to be provided* (i.e. the quarter in which **point of taxation** falls) but if the payment is being made electronically through internet banking, payment can be made upto 6th of such month. However, payment for the last quarter should be made upto 31st March of that year.

Any other service provider like **Company** or **HUF** etc. shall be required to pay service tax on **monthly basis** and it should be paid upto 5th of the month succeeding the month in which *service is deemed to be provided* but if payment is being made electronically through internet banking, payment can be made upto 6th of the month however, payment for last month should be made upto 31st March of that year

As per Notification No. 17/2011 dated 01.03.2011

Taxable service provided to a developer of special economic zone or a unit (including a unit under construction) of special economic zone by any service provider, for consumption of the services within such special economic zone, are exempt from the whole of service tax. If the services are consumed outside SEZ, the service provider should charge service tax however, the recipient can claim refund.

In case of excess payment of Service Tax maximum amount that can be adjusted was `100000 per month or per quarter as the case may be but now this limit has been increased to `200000 w.e.f. 01.04.2011 **(Notification No.3/2011 dated 01.03.2011)**

As per **Rule 4A of STR, 1994**, every person providing taxable service, not later than 14 days from the date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier, shall issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him in respect of such taxable service provided or to be provided and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely:—

(*i*) the name, address and the registration number of such person;

(*ii*) the name and address of the person receiving taxable service;

(*iii*)description, classification and value of taxable service provided or to be provided; and

(*iv*) the service tax payable thereon :

Provided also that in case of continuous supply of service, every person providing such taxable service shall issue an invoice, bill or challan, as the case may be, within fourteen days of the date when each event specified in the contract, which requires the service receiver to make any payment to service provider, is completed:

Every input service distributor distributing credit of taxable services shall, in respect of credit distributed, issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him, for each of the recipient of the credit distri-buted, and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely:—

(*i*) the name, address and registration number of the person providing input services and the serial number and date of invoice, bill, or as the case may be;

(*ii*) the name and address of the said input service distributor;

(*iii*) the name and address of the recipient of the credit distributed;

(*iv*) the amount of the credit distributed :

Maximum amount of penalty under section 70 (delay in furnishing of return) has been increased to `20,000 instead of `2,000 **(Finance Act, 2011).**

With effect from 01.10.2011 **e- filing** of service tax returns has been made mandatory for all the assesses (Notification No.43/2011 dated: 25.08.2011)

In case of sale of lottery ticket, service tax shall be as given below:	
Where the guaranteed lottery prize payout is > 80%	` 6000/- on every `10 lakh (or part of `10 lakh) of aggregate face value of lottery tickets printed by the organizing State for a draw.
Where the guaranteed lottery prize payout is < 80%	` 9000/- on every `10 lakh (or part of `10 lakh) of aggregate face value of lottery tickets printed by the organizing State for a draw.

In case of life insurance, rate was 1% of the gross amount but now it will be 1.5% of the gross amount. **(Notification No. 35/2011 dated 25.04.2011)**

Option to pay service tax in case of a Money Changer Rule 6(7B)

In case of exchange of foreign currency, rate of service tax was 0.25% of the gross amount of currency exchange but now w.e.f. 01.04.2011 the rate will be as given below: (Notification No. 26/2011 dated 31.03.2011)

S. No.	For an amount	Service tax shall be calculated at the rate of
1.	Upto `1,00,000	0.1% of the gross amount of currency exchanged Or `25 *Whichever is higher*
2.	Exceeding 1,00,000 and upto 10,00,000	`100 + 0.05% of the gross amount of currency exchanged
3.	Exceeding `10,00,000	` 550 + 0.01% of the gross amount of currency exchanged  Or `5,000 *Whichever is lower*

Service tax collected wrongly or in excess from any person.

As per **section 73B**, such person shall pay interest @ 18% p.a. from the first day of the month succeeding the month in which the amount ought to have been paid, till the date of payment of such amount. However if the total value of taxable services in the relevant financial year or in the preceding year is not exceeding `60,00,000, rate of interest shall be 15% p.a.

Point of Taxation Rules

Point of Taxation for Payment of Service Tax Rule 3

Prior to 01.04.2011, service tax was to be paid on actual receipt basis but *w.e.f. 01.04.2011*, service tax shall be paid on the basis of point of taxation i.e. the point in time when the service shall be deemed to have been provided shall be taken into consideration.

As per **Rule 3**, services shall be deemed to have been provided on the ***date***

(i) If Invoice is issued in 14 days from completion of service:-

Date of Payment or *date of invoice* whichever is earlier.

(ii) If invoice is **not** issued in 14 days of completion of service:-

Date of Payment or *date of completion* whichever is earlier.

Explanation: - If any advance is received, the date of receipt of each advance shall be point of taxation.

It can be further shown as given below:

S. No.	Date of completion of service	Date of invoice	Date on which payment recd.	Point of Taxation	Remarks
1.	April 10, 2011	April 20, 2011	April 30, 2011	April 20, 2011	Invoice issued in 14 days and before receipt of payment
2.	April 10, 2011	April 26, 2011	April 30, 2011	April 10, 2011	Invoice not issued within 14 days and payment received after completion of service
3.	April 10, 2011	April 20, 2011	April 15, 2011	April 15, 2011	Invoice issued in 14 days but payment received before invoice
4.	April 10, 2011	April 26, 2011	April 5, 2011 (part payment) and April 25, 2011 (balance payment)	April 5, 2011 (part payment) and April 10, 2011 (balance payment)	Invoice not issued in 14 days, point of taxation 10th April but for part payment received on 05th April' 2011, POT shall be 05th April' 2011.
5.	*April 10, 2011*	*1st April' 2011*	*15th April' 2011*	*01st April' 2011*	*Invoice issued before completion of service*

Service tax to be paid on actual receipt basis in certain cases Rule 7
As per rule 7 of point of taxation in the following cases, service tax shall be paid on actual receipt basis. 1. Individuals or proprietary firms or partnership firms providing taxable services referred below: (i) Consulting Engineer (ii) Practising Chartered Accountant (iii) Scientist or a Technocrat (iv) Legal Consultancy Services (v) Practising Company Secretary (vi) Practising Cost Accountant (vii) Interior Decorator (viii) Architect

2. In case of Reverse Charge, but payment should be made within a period of 6 months otherwise point of taxation shall be determined in the normal manner.
3. In case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be the date of credit in the books of account of the person receiving the service or date of making the payment whichever is earlier.

Rule 4 of POT Rules 2011

Point of taxation for determining the rate of Service Tax

Rate of service tax shall be determined as per Rule 4 in the manner given below:

Case 1: Taxable **services** have been **completed before** the change in effective rate of tax

Situation	Point of Taxation
where the invoice issued as well as the payment received after the change in effective rate of tax	Date of Receipt or issuing of invoice, whichever is earlier
where the invoice is issued prior to change in effective rate of tax but the payment is received after the change in effective rate of tax	Date Of Issue Of Invoice
where the payment is received before the change in effective rate of tax, but the invoice for the same has been issued after the change in effective rate of tax	Date of Receipt

It will be further clear with help of the following illustrations.

S. No.	Date of completion of service	Change in effective rate of tax	Date of invoice	Date on which payment recd.	Point of Taxation	Rate applicable
1.	April 10, 2011	April 25, 2011	April 26, 2011	April 30, 2011	April 26, 2011	New rate
2.	April 10, 2011	April 25, 2011	April 15, 2011	April 30, 2011	April 15, 2011	Old rate
3.	April 10, 2011	April 25, 2011	April 30, 2011	April 15, 2011	April 15, 2011	Old rate

Case 2: Services have been completed after the change in effective rate of tax

Situation	Point of Taxation
where the payment for the invoice is made after the change in effective rate of tax but the invoice has been issued prior to the change in effective rate of tax	date of Receipt of payment
where the invoice has been issued and the payment for the invoice received before the change in effective rate of tax	date of receipt of payment or date of issuance of invoice, whichever is earlier
where the invoice has also been raised after the change in effective rate of tax but the payment has been received before the change in effective rate of tax	date of issuing of invoice

The applicability of the rule will be clear from the illustrations in the following table:

S. No.	Date of completion of service	Change in effective rate of tax	Date of invoice	Date on which payment recd.	Point of Taxation	Rate of Tax
1.	April 30, 2011	April 25, 2011	April 20, 2011	April 30, 2011	April 30, 2011	New rate
2.	April 30, 2011	April 25, 2011	April 20, 2011	April 15, 2011	April 15, 2011	Old rate
3.	April 30, 2011	April 25, 2011	April 30, 2011	April 20, 2011	April 30, 2011	New rate

Rule 5 of POT Rules 2011

New Services

As per Rule 5, in case of new services, no service tax shall be charged if invoice has been issued and also payment has been received before such service became taxable. If payment has been received before the service became taxable and also invoice has been issued within 14 days, no service tax shall be charged.

Example

Hotel accommodation services have become taxable w.e.f. 01.05.2011 and Ashoka Hotel has received ` 12,00,000 from ABC Ltd. in connection with stay of their employees for one month from 01.05.2011 to 30.06.2011. Full payment was received on 18.04.2011 and invoice was issued on the same date, in this case, no service tax is payable.

If in this case, payment was received on 27.04.2011 and invoice was issued on 07.05.2011, even then services are exempt.

If payment was received on 01.05.2011 and invoice was issued on 03.05.2011, in this case, service tax shall be paid however, exemption shall be allowed for `10,00,000 and service tax shall be charged on the balance amount.

Rule 6 of POT Rules 2011

Continuous Supply of Service

As per Rule 2 **"Continuous Supply of service"** means any service which is provided, or to be provided continuously, under a contract, for a period exceeding three months, or where the Central Government, by a notification specify such service to be a continuous supply of service, whether or not subject to any condition.

As per Rule 6 of point of taxation for continuous supply of service shall be determined as below

Situation	Point of Taxation
For the service provided or to be provided	The time when the invoice is issued
Where the invoice is not issued within fourteen days of the completion of the provision of the service	Date of completion of Service
If Advance is Received	Date of receipt of each such advance

Where the provision of the whole or part of the service is determined periodically on the completion of an event in terms of a contract, which requires the service receiver to make any payment to service provider, the *date of* *completion of each such event as specified in the contract* shall be deemed to be the date of completion of provision of service.

For example*, in the case of construction services if the payments are linked to stage-by-stage completion of construction, the provision of service shall be deemed to be completed in part when each such stage of construction is completed.*

The following services have been notified as "continuous supply of services".

(a) Telecommunication service [65(105)(zzzx)]
(b) Commercial or industrial construction [65(105)(zzq)]
(c) Construction of residential complex [65(105)(zzzh)]
(d) Internet Telecommunication Service [65(105)(zzzu)]
(e) Works contract service [65(105)(zzzza)]

Thus these services will constitute "continuous supply of services" irrespective of the period for which they are provided or agreed to be provided. Other services will be considered continuous supply only if they are provided or agreed to be provided continuously for a period exceeding three months.

Illustration : *ABC Ltd. is a construction company and it has entered into an agreement with XYZ Ltd. to construct one building which will have 4 floor and as per the contract. Each floor shall be considered to be one stage of completion.*

ABC Ltd. submitted particulars as given below:

Completed Ground Floor	*on 16/06/2011*
Issued Bill	*on 01/07/2011*
Half payment of ` 10,00,000 plus service tax received	*on 27/06/2011*
And balance payment of ` 10,00,000 plus Service Tax received	*on 10/07/2011*
Completed 1st floor	*on 27/08/2011*
Issued Bill	*on 07/09/2011*
Half payment of ` 9,00,000 plus service tax received	*on 31/08/2011*
And balance payment of ` 9,00,000 plus Service Tax received	*on 10/09/2011*
Completed 2nd Floor	*on 30/11/2011*
Issued Bill	*on 10/11/2011*
Half payment of ` 8,00,000 plus service tax received	*on 30/10/2011*
And balance payment of ` 8,00,000 plus Service Tax received	*on 01/12/2011*
Completed 3rd Floor	*on 10/03/2012*
Issued Bill	*on 01/04/2012*
Full amount of ` 10,00,000 plus Service Tax received	*on 01/08/2012*

In FY 10-11, Bill issued by company were ` 200 lakh and service tax was paid @ 10.3 %

Payment of service tax for March 2012 was made on 21/04/2012

Show tax treatment of service tax for each month and also compute interest and penalty payable u/s 75 and 76 respectively.

Solution: `

April 2011	*NIL*
May 2011	*NIL*
June 2011	
Taxable value	*20,00,000*
Service tax @10.3%	*20,6000*
July 2011	*NIL*

Aug 2011		
Taxable value		*9,00,000*
Service tax @ 10.3%		*92,700*
Sept 2011		
Taxable value		*9,00,000*
Service tax @ 10.3 %		*92,700*
Oct 2011		
Taxable value		*8,00,000*
Service tax @ 10.3 %		*82,400*
Nov 2011		
Taxable value		*8,00,000*
Service tax @ 10.3 %		*82,400*
Dec 2011		*NIL*
Jan, Feb 2012		*NIL*
March 2012		
Taxable value		*10,00,000*
Service tax @10.3%		*1,03,000*
Delay in payment 21 days		
Interest u/s 75		
` 1,03,000 x 18% x 21/365 = 1066.68	*1,067*	
Penalty u/s 76		
` 1,03,000 x 1% x 21/30 = ` 721		
OR		
21 x 100 = ` 2100		
Whichever is higher		
Thus penalty will be	*2,100*	

Determination of Point of Taxation in case of Copyrights etc. Rule 8

In respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider gives rise to any payment of consideration, the service shall be treated as having been provided *each time when a payment in respect of such use or the benefit is received by the provider in respect thereof, or an invoice is issued by the provider, whichever is earlier.*

THE SERVICES DELETED FROM SYLLABUS ARE AS GIVEN BELOW:
1. ~~CUSTOM HOUSE AGENT~~
2. ~~MAN POWER RECRUITMENT OR SUPPLY AGENCY~~
3. ~~CARGO HANDLING SERVICES~~
4. ~~LEGAL CONSULTANCY SERVICES~~

NOTIFIED EIGHT SERVICES APPLICABLE FOR EXAMINATION MAY 2012

1. Consulting Engineer's Services

Section 65(105)(g) (w.e.f. 7th July 1997, Notification No. 23/1997-ST dated 2nd July 1997)

Section 65(105)(g) – Consulting Engineer's Service means any service provided, to any person, by a consulting engineer in relation to **advice, consultancy or technical assistance** in any disciplines of engineering including the discipline of computer hardware engineering.

Section 65(31) - "Consulting engineer" means any professionally qualified engineer or any body corporate or any other firm who, renders any advice, consultancy or technical assistance in any disciplines of engineering.

Services rendered by a consulting engineer in connection with computer hardware engineering as well as software engineering or only in connection with hardware engineering, shall be taxable as consulting engineers services.

If services are rendered only for computer software engineering, it will be taxable as information technology service.

The scope of the services of a consultant may include:

(*i*) Feasibility report;

(*ii*) Basic design engineering;

(*iii*) Detailed design engineering;

(i*v*) Construction supervision and project management;

(*v*) Supervision of commissioning and initial operation;

(vi) Post-operation and management;

(vii) Trouble shooting and technical services, including establishing systems and procedures for an existing plant.

'Consulting Engineer' will not include those qualified engineers who act as 'insurance surveyors and loss assessor' for insurance companies and therefore service tax levy on the consulting engineer in any discipline of engineering will not cover the insurance surveying and loss assessment services rendered by a qualified engineer.

As per rule 7 of Point of Taxation Rule, 2011, service tax shall be payable on actual receipt basis i.e. rule 3 of POT Rules, 2011 shall not be applicable.

As per N. N. 46/2011, dated 19.09.2011, Central Government, hereby exempts the taxable services provided by a consulting engineer to any person on transfer of technology from so much of the service tax leviable thereon under section 66 of the said Act, as is equivalent to the amount of cess paid on the said transfer of technology under the provisions of section 3 of the Research and Development Cess Act, 1986.

(Section 3 of The Research and Development Cess Act, 1986

(1) There shall be levied and collected, for the purposes of this Act, a cess at such rate not exceeding five per cent. on all payments made towards the import of technology, as the Central Government may, from time to time, specify, by notification, in the Official Gazette.

(2) The cess shall payable to the Central Government by an industrial concern which imports technology on or before making any payments towards such import and shall be paid by the industrial concern to any specified agency.)

Illustration: *Mr. Ramesh, a Consulting Engineer provides the following particulars in respect of various services rendered by him during the quarter ending December 2011:*

S. No.	Particulars	`
(i)	Professional advice to one of his friend	5,000
(ii)	Consultancy services in computer hardware engineering	15,000
(iii)	Technical assistance in computer software engineering and hardware engineering	25,000
(iv)	Advice in relation to metallurgical engineering	10,000
(v)	Professional advice to his friend free of charge	

Compute the service tax payable by Mr. Ramesh for the quarter ending December, 2011.
Service tax has been charged separately by Mr. Ramesh and is not included in any of the receipts mentioned above.
Mr. Ramesh is not entitled to the benefit of small service provider available under Notification No. 6/2005 ST dated 01.03.2005.
Presume all the payments have been received upto 31st Dec, 2011.
(b) *Will your answer be different if the above services are rendered by AB Ltd., a consulting engineering company?*

Solution:

Computation of service tax payable

Particulars	`
Professional advice to one of his friend	5,000
Consultancy services in computer hardware engineering	15,000
Technical assistance in computer software engineering and hardware engineering	25,000
Advice in relation to metallurgical engineering	10,000
Total	55,000
Value of taxable services	55,000
Service tax @10%	5,500
Add: Education cess @ 2%	110
Add: Secondary and higher education cess @ 1%	55
Service tax payable	5,665

Notes:
1 Advice to friend is taxable as service rendered to any person is taxable.
2.Consultancy and technical assistance in relation to both computer hardware and software engineering are taxable.
3. Advice in relation to any branch of engineering is taxable.
4. Services rendered free of charge are not liable to service tax.
(b) *Answer will be the same as Consulting Engineer inter alia means any Body Corporate as well.*

Illustration : *Mr. X is a Consulting Engineer who is liable to pay service tax and has submitted information as given below:*

(i) Received advance `2,00,000 inclusive of service tax from ABC Ltd. on 10th April 2011 and services were rendered in September 2011 and bill was issued in October 2011.

(ii) Rendered services to Mr. A in October 2011 and a bill of `5,00,000 was issued inclusive of service tax and payment of `3,00,000 was received in February 2012 and balance is yet to be received.

(iii) Rendered services to United Nations in December 2011 and payment of `7,00,000 was received in December 2011. No service tax has been collected.

(iv) Rendered services to a unit in SEZ and `3,00,000 was received in March 2012 without service tax.

(v) Rendered services to foreign diplomatic mission and `5,50,000 was received in January 2012 without service tax.

(vi) Rendered services to family members of diplomatic agents and `1,50,000 was received in October 2011 without service tax.

Show the tax treatment for Service Tax.

Solution:

(i) ***April to June 2011***

Taxable value of services = 2,00,000
Service tax payable = 2,00,000 / 110.3 x 10.3 = 18,676.34
Rounded off under section 37D = 18,676
Last date for making payment shall be 5th July 2011 and if payment is through internet banking, last date shall be 6th July 2011.
(ii) ***January to March 2012***

Total bills raised	*= 5,00,000*
Less: Amount received	*= 3,00,000*
Amount not received	*= 2,00,000*

Since amount charged is inclusive of service tax hence amount of service tax shall be
= 3,00,000 / 110.3 x 10.3 = 28,014.51
Rounded off under section 37D = 28,015
Last date for making payment shall be 31st March 2012.
(iii) Services provided to United Nations or an international organization is exempt from service tax.
(iv) Services provided to a developer of SEZ or a unit of SEZ is exempt from service tax.
(v) Services provided to foreign diplomatic mission are exempt from service tax.
(vi) Services provided to family members of diplomatic agents are exempt from service tax.

2. Mandap Keeper's Service

Section 65(105)(m) (w.e.f. 1st July 1997, Notification No. 19/1997-ST dated 26th June 1997)
Section 65(105)(m) – Mandap Keeper service means any service provided, to any person, by a mandap keeper in relation to the use of mandap in any manner including the facilities provided in relation to such use and also the services, if any, provided as a caterer.

As per section 65(66) – "Mandap" means any immovable property as defined in section 3 of the Transfer of Property Act, 1882 and includes any furniture, fixtures, light fittings and floor coverings, photography or video film facilities etc. therein let out for consideration for organizing any **official, social or business function**;

As per Section 65(67) – "Mandap keeper" means a person who allows temporary occupation of a Mandap for consideration for organizing any official, social or business function. Social function include marriage.

1. **As per notification no. 1/2006, if the catering services are also provided, value for the purpose of**

service tax shall be 60% of the gross amount i.e. abatement shall be allowed for 40%.

e.g. if a Mandap Keeper liable to pay service tax and is providing catering service has charged `30,00,000, amount of service tax to be charged by him shall be 30,00,000 x 60% x 10.3% = `1,85,400

2. "Hotels and Restaurant which let out their banquets as well as rooms, gardens etc. for holding/organizing any marriage, party, conference shows are covered in the definition of Mandap keeper and are subject to service tax".

3. Renting out of halls etc. for the purpose of holding a dance, drama or music programme or similar competition is also chargeable to Service Tax, in this category. Programmes of dance, drama and music are social functions.

4. Renting out of premises by Art Gallery for exhibition will be exempt from service tax.

5. Services provided by the religious centers as mandap keeper in their precincts (premises) have been exempted from service tax. E.g. Mr. X has arranged marriage of his son in Birla Temple and has paid `21,000, no service tax shall be charged in this case.

If any Tent has been erected on the open ground for the purpose of any such function etc., it will be covered in Pandal and Shamiana services and not in Mandap Keeper Services.

Illustration: *Maharaja Banquets is engaged in providing service in relation to letting out marriage hall and all facilities relating to marriage like catering service. DJ facilities, flower decoration etc.*

The hall was booked by Mr. A for the marriage of his son on 3rd July, 2011. Maharaja Banquets issued a bill of `20, 00,000(excluding service tax) on 15th July, 2011 for the marriage function and it includes the charges for all other facilities like catering services, DJ services, flower decoration etc.

Maharaja Banquets purchased input for `3,00,000 and paid excise duty @ 10% plus EC plus SHEC and has also taken input services for `2,00,000 plus service tax plus EC plus SHEC.
Purchased a laptop of `1, 00,000/- plus excise duty@10% plus EC & SHEC for providing DJ services and paid the amount on the same date.
Calculate the service tax payable by Maharaja Banquets., Service tax rate applicable is 10.3%.
Cenvat credit on laptop purchased is allowed 50% in the year of purchase and the balance in the subsequent year.
(b) Calculate the amount of service tax payable if assessee is availing abatement under N.N. 01/2006 and Advise the assessee which option is better for him.

Solution (a):

Output service tax [20,00,000 x 10.3%]	*2,06,000*
Less: Input tax Credit	
On inputs (3,00,000 x 10.3%)	
(30,900)	
On input service [2,00,000 x 10.3%]	*(20,600)*
On Laptop [1,00,000 x 10.3% x 50%]	*(5,150)*
Net Service tax payable	*1,49,350*

Solution (b):

Assessee is availing abatement under N.N. 01/2006, hence assessee is not eligible to take cenvat credit of input, input service and capital goods and is liable to pay service tax on 60 percent of the gross amount charged.

Total Value Charged	*20,00,000*
Less: Abatement N.N. 01/2006 (40% of gross amount charged)	*8,00,000*
Taxable value	*12,00,000*
Service tax @ 10.3% on 12,00,000	*1,23,600*

Option (b) is better for the assessee as the service tax payable in option (b) is less than the service tax in option (a)

***Illustration :* Determine in the following cases whether service tax is payable or not:**

(i) *Mr. A rendered a service which become taxable from 1st June,2011 and issued invoice on 30th April, 2011 and received the amount on 20th May, 2011.*

Solution:

No Service tax is payable on the above service as the invoice and payment are received before the service becomes taxable.

(ii) *Mr. A received payment of ` 2,00,000(excluding Service tax) on 1st July,2011 and invoice is issued within 14 days from the date of receiving the payment and the service rendered has become taxable from 10th July, 2011.*

Solution:*As per Rule 5 of Point of Taxation Rules 2011, No service tax shall be payable if the payment has been received before the service becomes taxable and invoice has been issued within a period of 14 days.*

In the given case, as payment is received before the service is become taxable and invoice is issued within 14 days , so no service tax shall be payable .

Illustration : *Mr. X is engaged in providing Mandap Keeper Services and also he has one Art Gallery and has given the following information for the quarter July to September' 2011:*

(i) Let out the Garden and hall for the purpose of marriage. Issued a bill of ` 10, 00,000/- including charges for catering services on 12th July, 2011. Half the amount is received on 21st July, 2011.

(ii) Let out hall for the purpose of holding dance, drama and issued a bill of `3,00,000 on 15th July, 2011 but the amount is not yet received.

(iii) Let out the Art Gallery to the artist for the exhibition of work of art. Issued a bill of `2,00,000 on 21st July, 2011.

(iv) Let out hall for the purpose of holding dance for `5,00,000 on 25th September, 2011 and issued the bill on 05th October, 2011.

All the figures are excluding service tax. Calculate the value of taxable service and service tax payable for the quarter July to September, 2011.

***Solution:* Computation of Taxable value of service tax under Mandap keeper service for the quarter July to September, 2011**

Particulars	***Amount in `***
(i) Letting out garden including catering charges is taxable but only 60% of gross amount charged is chargeable as per Notification no 01/2006 dated 01.03.2006. [10,00,000 x 60%]	*6,00,000*

(ii) Letting out hall for holding dance, drama is a social function and covered under Mandap Keeper Service.	*3,00,000*
(iii) Exhibition of work of arts is not covered under Mandap Keeper Service as per circular no 42/05/2002-ST dated 29.04.2002	*Nil*
(iv) Letting out hall is taxable in the Month of October (Note)	*Nil*
Total taxable value	*9,00,000*
Service tax @ 10.3%	*92,700*

Note: *Letting out hall for holding dance is covered under Mandap Keeper Service but as per Point of Taxation Rules if bill is issued within 14 days of completion of service, point of taxation shall be the date of issue of invoice i.e 05.10.2011 and it will be taxable in the month of October.*

3. **Practising Chartered Accountant**

Section 65(105)(s) (w.e.f. 16th October 1998, Notification No. 53/1998-ST dated 7th Oct 1998)

Section 65(105)(s) – Practising Chartered Accountant service means any service provided or to be provided, to any person, by a practising chartered accountant in his professional capacity, in any manner.

Section 65(83) - "Practising Chartered Accountant" means a person who is a member of the Institute of Chartered Accountants of India and is holding a certificate of practice granted under the provisions of the Chartered Accountants Act, 1949 and includes any concern engaged in rendering services in the field of chartered accountancy.

Services rendered to any person, by a practising chartered accountant in his professional capacity, in any manner shall be chargeable to service tax. As per Notification No. 32/2011 dated 01.05.2011

If any Chartered Accountant has represented any person in the Court of Commissioner (Appeals) or before Income Tax Appellate Tribunal or before any Statutory Authority, in that case also, it will be subject to service tax.

As per rule 7 of Point of Taxation Rule, 2011, service tax shall be payable on actual receipt basis i.e. rule 3 of POT Rules, 2011 shall not be applicable.

MEMBERS WHO ARE DEEMED TO BE IN PRACTICE

"A member of the Institute shall be deemed "to be in practice" when individually or in partnership with Chartered Accountants in practice, he, in consideration of remuneration received or to be received-
(i) engages himself in the practice of accountancy; or
(ii) offers to perform or performs service involving the auditing or verification of financial transactions, books, accounts or records, or the preparation, verification or certification of financial accounting and related statements or holds himself out to the public as an accountant; or
(iii) renders professional services or assistance in or about matters of principle or detail relating to accounting procedure or the recording, presentation or certification of financial facts or data; or
(iv) Management Consultancy and other Services and it will include

*(a) Financial management planning and financial policy determination.**
*(b) Capital structure planning and advice regarding raising finance.**
*(c) Working capital management.**
*(d) Preparing project reports and feasibility studies.**

(e) Preparing cash budget, cash flow statements, profitability statements, statements of sources and application of funds etc.

(f) Budgeting including capital budgets and revenue budgets.

(g) Inventory management, material handling and storage.

(h) Market research and demand studies.

(i) Price-fixation and other management decision making.

(j) Management accounting systems, cost control and value analysis.

(k) Control methods and management information and reporting.

(l) Personnel recruitment and selection.

(m) Setting up executive incentive plans, wage incentive plans etc.

(n) Management and operational audits.

(o) Valuation of shares and business and advice regarding amalgamation, merger and acquisition.

(p) Business Policy, corporate planning, organisation development, growth and diversification.

(q) Organisation structure and behaviour, development of human resources including design and conduct of training programmes, work study, job-description, job evaluation and evaluation of work loads.

(r) Systems analysis and design, and computer related services including selection of hardware and development of software in all areas of services which can otherwise be rendered by a Chartered Accountant in practice and also to carry out any other professional services relating to EDP.

(s) Acting as advisor or consultant to an issue, including such matters as:

- *Drafting of prospectus and memorandum containing salient futures of prospectus. Drafting and filing of listing agreement and completing formalities with Stock Exchanges, Registrar of Companies and SEBI.*
- *Preparation of publicity budget, advice regarding arrangements for selection of (i) ad-media, (ii) centres for holding conferences of brokers, investors, etc., (iii) bankers to issue, (iv) collection centres, (v) brokers to issue, (vi) underwriters and the underwriting arrangement, distribution of publicity and issue material including application form, prospectus and brochure and deciding on the quantum of issue material (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).*
- *Advice regarding selection of various agencies connected with issue, namely Registrars to Issue, printers and advertising agencies.*
- *Advice on the post issue activities, e.g., follow up steps which include listing of instruments and dispatch of certificates and refunds, with the various agencies connected with the work.*

Explanation - For removal of doubts, it is hereby clarified that the activities of broking, underwriting and portfolio management are not permitted.

(t) Investment counselling in respect of securities [as defined in the Securities Contracts (Regulation) Act, 1956 and other financial instruments.] (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).

(u) Acting as registrar to an issue and for transfer of shares/other securities. (In doing so, the relevant provisions of the Code of Ethics must be kept in mind).

(v) Quality Audit.

(w) Environment Audit.

(x) Energy Audit.

(y) Acting as Recovery Consultant in the Banking Sector.

(z) Insurance Financial Advisory Services under the Insurance Regulatory & Development Authority Act, 1999, including Insurance Brokerage.

Pursuant to Section 2(2) (iv) of the Chartered Accountants Act, 1949, read with Regulation 191 of Chartered Accountants Regulations, 1988 a member shall be deemed to be in practice if he, in his professional capacity and neither in his personal capacity nor in his capacity as an employee, acts as a liquidator, trustee, executor, administrator, arbitrator, receiver, adviser or representative for costing, financial or taxation matters or takes up an appointment made by the Central Government or a State Government or a court of law or any other legal authority or acts as a Secretary unless his employment is on a salary-cum-full-time basis.

Illustration: *Mr. X a Chartered Accountant, who is liable to pay service tax has submitted particulars as given below:*

(i) Rendered services in May 2011 and issued bill for `1,20,000 inclusive of service tax. (Out of which `75,000 was received by a cheque on 10th August 2011 and balance on 3rd March 2012.)

(ii) Rendered services in the month of June 2011 in connection with scrutiny assessment and a bill of `75,000 was issued and payment was received on 10.10.2011 and amount is inclusive of service tax.

(iii) Rendered free services in July 2011 (market value `20,000).

(iv) Represented one client in the court of Commissioner (Appeals) in September 2011 and a bill of `1,00,000 was issued and payment was received on 3rd October 2011 and amount is inclusive of service tax.

(v) Rendered services to different clients in the month of January 2012 and bills of `7,00,000 was issued inclusive of service tax but only `5,00,000 was received in the same month in full and final settlement.

(vi) Received `70,000 in advance inclusive of service tax in March 2012 for services to be rendered in April 2012.

Gross receipt is not exceeding `60,00,000 during the year.

In the last year he has paid service tax of `2,00,000.

Compute amount of service tax payable for each quarter and also the last date upto which tax should be paid for the financial year 2011-12.

(b) *If in the above case there is a delay of 10 days in payment of tax in each quarter. Compute interest payable under section 75 and penalty payable under section 76.*

(c) *If the return for the half year ending September 2011 was filed on 18th October 2011 return for half year ending March 2012 was filed on 27th April 2012, compute penalty payable for each of the return and also determine the last date upto which revised return can be filed.*

Solution:

As per rule 7 of Point of Taxation Rule, 2011, service tax shall be payable on actual receipt basis i.e. rule 3 of POT Rules, 2011 shall not be applicable.

April to June 2011

Nil

July to September 2011

Since amount charged is inclusive of service tax hence amount of service tax shall be

= 75,000 / 110.3 x 10.3 = 7,003.63

Rounded off under section 37D = 7,004

Last date for making payment shall be 5th October 2011 and if payment is through internet banking, last date shall be 6th October 2011

October to December 2011

1,75,000 / 110.3 x 10.3 = 16,341.79

Rounded off under section 37D = 16,342

Last date for making payment shall be 5th January 2012 and if payment is through internet banking, last date shall be 6th January 2012

January to March 2012

Since amount charged is inclusive of service tax hence amount of service tax shall be

= 5,00,000 + 45,000 + 70,000 = 6,15,000

= 6,15,000 / 110.3 x 10.3 = 57,429.73

Rounded off under section 37D = 57,430

Last date for making payment shall be 31st March 2012.

Solution (b):

April to June 2011

Nil

July to September 2011

Interest Payable under section 75

7,004 x 15% x 10/366 = `28.70 = `29

Penalty payment under section 76

1% of the amount of default for 10 days = 1% x 7,004 x 10/31 = `22.59

Or

Penalty calculated @ `100 per day for 10 days = `1,000

Penalty liable to be paid is `1,000

October to December 2011

Interest Payable under section 75

16,342 x 15% x 10/366 = `66.98 = `67

Penalty payment under section 76

1% of the amount of default for 10 days = 1% x 16,342 x 10/31 = `52.72

Or

Penalty calculated @ `100 per day for 10 days = `1,000

Penalty liable to be paid is `1,000

January to March 2012

Interest Payable under section 75

57,430 x 15% x 10/365 = `236.01 = `236

Penalty payment under section 76

1% of the amount of default for 10 days = 1% x 57,430 x 10/30 = 191.43

Or

Penalty calculated @ `100 per day for 10 days = `1,000

Penalty liable to be paid is `1,000

Solution (c):

If the return for the half year ending September 2011 was filed on 18th October' 2011, there is no penalty because return is filed within prescribed time period.

Revised return can be submitted within a period of 90 days from the date of submission of the original return. – 16th Jan' 2012

If return for the half year ending March 2012 was filed on 27th April'2012, the penalty shall be `500.

Revised return can be submitted within a period of 90 days from the date of submission of the original return. – 26th July' 2012

Illustration: *Ashish Agarwal is a Chartered Accountant. He acquired the certificate of practice from the ICAI in November, 2011. For the quarter ended on March, 2012, his receipts are as follows: (The amounts given below are exclusive of service tax). He is not availing SSP exemption.*

Particulars	***Amount (`)***
Certification of documents under Export and Import Policy of Government of India	*2,00,000*
Preparation of the financial statement of ABC Ltd.	*5,00,000*
Representation of the client before Income Tax Appellate Tribunal	*50,000*
Receipts for tax consultancy provided in the month of December, 2011	*10,000*

He has purchased certain capital goods like computers, laptops, printers, air-conditioners etc. on 01.01.2012 for ` 10,00,000 and has paid excise duty @ 10% plus EC plus Delhi VAT @ 12.5%

Using the above information, calculate the value of taxable services for the quarter ended on March, 2012.

Tax credit for capital goods shall be allowed to the extent of 100% in the first year itself.

Solution:

Calculation of the value of taxable services for the quarter ended on March, 2012:-

Particulars	***Amount (`)***
Certification of documents under Export and Import Policy of Government of India	*2,00,000*
Preparation of the financial statement of ABC Ltd.	*5,00,000*
Representation of the client before Income Tax Appellate Tribunal	*50,000*
Receipts for tax consultancy provided in the month of December, 2011	*10,000*
Total	*7,60,000*

	Service Tax	*EC @ 2%*	*SHEC @ 1%*
7,60,000 x 10.3%	*76,000*	*1,520*	*760*
Less: Cenvat credit i.e. 10,00,000 x 10.3%	*1,00,000*	*2,000*	*1,000*
Balance Cenvat credit to be credit forward	*24,000*	*480*	*240*

If a Chartered Accountant is providing the following services, it will not be subject to service tax

1. Contributing articles to newspapers/magazines

2. Rendering services as author of a book

3. Delivering guest lecture

4. Editing any magazine etc.

5. Other services which are not considered to be services rendered in professional capacity

4. Scientific and Technical Consultancy Service

Section 65(105)(za) (w.e.f. 16th July, 2001, Notification No. 4/2001-ST dated 9th July 2001)

Section 65(105)(za) – Scientific And Technical Consultancy service means any service provided or to be provided, to any person, by a Scientist or a Technocrat, or any science or technology institution or organisation, in relation to scientific or technical consultancy.

Section 65(92) - "Scientific or technical consultancy" means any advice, consultancy, or scientific or technical assistance, rendered in any manner, either directly or indirectly, by a scientist or a technocrat, or any science or technology institution or organisation, to any person, in one or more disciplines of science or technology.

The following points have been clarified vide Letter No. F. NO. B-II/I/2000-TRU, Dated 9-7-2001 - Annexure I.

Point raised for clarification	*Clarification*
Whether services rendered by doctors, medical colleges, nursing homes, hospitals, diagnostic and pathological labs, etc. would come under the purview of the proposed levy.	*In common parlance, these categories of service providers are not known as scientists or technocrats or science or technology institutions or organisations. They will not be covered under service tax.*
Whether public funded research institutions like CSIR, Indian Council for Agricultural Research, Defence Research and Development Organisation, Indian Institute of Technology and IISC, Regional Engineering Colleges etc., which are exempt from payment of income-tax are covered under the service tax.	*Yes. Service tax is liable to be paid when any scientific or technical consultancy service is rendered whether by public funded institutions or by private agencies.*
Whether testing services will be covered under the proposed levy?	*Mere testing will not attract service tax. However, in case testing is an integral part of the consultancy, then such activity is part and parcel of the taxable service and no abatement of any kind*

	admissible.
Many public funded research institutions receive grants or aids from the Government for conducting research/project work. Whether such activities would be covered under the levy?	*In the facts of this case, no service is rendered to any one. Hence the question of payment of service tax does not arise. However, if they render service to anyone on payment basis, service tax will be payable on such services.*
Whether the service tax will be leviable on consultancy provided to Government departments, public sector undertakings?	*If scientific or technical consultancy is provided to a Government department for which consultation fees are received, then service tax would be applicable.*

As per rule 7 of Point of Taxation Rule, 2011, service tax shall be payable on actual receipt basis i.e. rule 3 of POT Rules, 2011 shall not be applicable.

Illustration: *Mr. Mohit Agarwal , a technocrat, is providing scientific and technical consultancy services and his receipts are `20,00,000 through taxable services in the financial year 2010-11. He furnishes the following information relating to the services rendered , bills raised, amount received pertaining to this service, for the financial year ended on 31st March, 2012 as under-*

Particulars	Service rendered on	Bill raised on	Amount received on
Advice to Mr. Murali in regard to technical feasibility of a project for `2,00,000	22.12.2011	03.01.2012	05.01.2012
Suggestion to Mrs. Neelu Bansal for improvement in existing technology for `3,00,000	06.02.2012	06.02.2012	15.12.2011
Technical consultancy provided to Government departments for `6,00,000	05.01.2012	22.11.2011	05.01.2012
Services provided to UNICEF, an international organisation in relation to adopting a new technology for `8,00,000	05.03.2012	05.03.2012	22.03.2012

Service tax and education cess have been charged separately.

1. Compute service tax liability of Mr. Mohit Agarwal for the financial year 2011-12 and also determine the date upto which service tax should be paid.

2. If the return for the half year ending on September 2011 was filed on 27th October 2011 compute penalty payable and also determine the last date upto which revised return can be filed.

Solution:

Since gross receipts in the earlier year has exceeded `10,00,000 hence service tax is payable. Further, since the service provider is an individual, service tax shall be paid on quarterly basis in the manner given below:

As per rule 7 of Point of Taxation Rule, 2011, service tax shall be payable on actual receipt basis i.e. rule 3 of POT Rules, 2011 shall not be applicable.

April to June, 2011	***Nil***
July to September, 2011	***Nil***
October to December, 2011	
Services provided to Neelu Bansal	*3,00,000*
Service tax @ 10%	*30,000*
Add: Education cess @ 3%	*900*
Total service tax liability	*30,900*

Last date for making payment shall be 5th January 2012 and if payment is through internet banking, last date shall be 6th January 2012.

January to March 2012

Advice to Mr. Murali	*2,00,000*
Technical consultancy to government departments	*6,00,000*
Services provided to UNICEF	*Nil*
Taxable value of services	*8,00,000*
Service tax @ 10%	*80,000*
Add: Education cess @ 3%	*2,400*
Total service tax liability	*82,400*

Last date for making payment shall be 31st March 2012.

2. If return for the half year ending September 2011 was filed on 27th October 2011, the penalty shall be `500. Revised return can be submitted within a period of 90 days from the date of submission of the original return. – 25th January' 2012.

Note:

(1) As per Notification No.16/2002 ST dated 02.08.2002, the Central Government has exempted all the taxable services specified in section 65 of the Finance Act, 1994 provided by any person to the International organizations like UNICEF, from whole of the service tax leviable thereon under section 66 of the Act.

5. Commercial Training or Coaching

Section 65(105)(zzc) (w.e.f. 1st July 2003, Notification No. 7/2003-ST dated 20th June 2003)

Section 65(105)(zzc) – Commercial Training or Coaching service means any service provided or to be provided, to any person, by a commercial training or coaching centre in relation to commercial training or coaching.

"Commercial Training or Coaching Centre" shall include any centre or institute, by whatever name called, where training or coaching is imparted for consideration, whether or not such centre or institute is registered as a trust or a society or similar other organisation under any law for the time being in force and carrying on its activity with or without profit motive and the expression "commercial training or coaching" shall be construed accordingly.

Section 65(26) – "Commercial training or coaching" means any training or coaching provided by a commercial training or coaching centre.

Section 65(27) – "Commercial training or coaching centre" means any institute or establishment providing commercial training or coaching for imparting skill or knowledge or lessons on any subject or field other than the sports, with or without issuance of a certificate and includes coaching or tutorial classes.

Services not liable to be taxed

1. As per N.N. 24/2004 dated 10.09.2004, Services rendered by Recreational Training Institute shall be exempt from service tax.
   "Recreational training institute" means a commercial training or coaching centre which provides training or coaching relating to recreational activities such as dance, singing, martial arts or hobbies.

2. Services rendered by Vocational Training Institute shall be exempt from service tax. As per Letter No. 334/1/2010 dated 26.02.2010, "Vocational training institute" means an Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961. Some such trades are as given below:

1. Welder (Gas and Electric) 2. Electrician 3. Wireman 4. Auto Electrician 5. Carpenter 6. Plumber 7. Mason (Building Constructor) 8. Furniture and Cabinet Maker 9. Beautician 10. Hair Dresser 11. Health and slimming Assistant 12. Data Preparation & Computer Software 13. Desk Top Publishing Operator 14. Programming and systems Administration Assistant

3. As per N.N. 33/2011 dated 25.04.2011, no service tax shall be charged in case of pre-school coaching or training. Also no service tax shall be charged in case of any coaching or training leading to grant of a certificate or diploma or degree or any educational qualification which is recognised by any law.
4. As per Letter No. 334/3/2011 dated 28.02.2011, if any institute is providing recognised education as well as unrecognised education, in that case unrecognised education shall be taxable.
5. As per N.N. 23/2010 dated 29.04.2010, if any vocational training provider registered under skill development initiative scheme with Director General of Employment and Training and is offering coaching in relation to Modular Employable Skill Courses approved by National Council of Vocational Training, it will be exempt from service tax.
6. Individual imparting home coaching in their independent capacity i.e. not on behalf of a Commercial Training or Coaching Centre.
7. In-house training provided to the employees by their employer in his independent capacity. However, if the employer avails the services of a Commercial Training or Coaching Centre for the purpose of imparting training to his employees, then employer (in his capacity as Service Recipient) will be liable to pay Service Tax to the concerned Commercial Training or Coaching Centre.

Question:

ABC technical training institute is providing training for the course like welding, electrician, carpenter etc. it is not recognized by National Council for Vocational Training and has charged `11,00,000. Discuss tax consequences.

Answer: *The company is liable to pay service tax because it is not recognized by National Council for Vocational Training. If it is a recognized by National Council for Vocational Training, it will be exempt from service tax.*

6. Technical Testing and Analysis Service

Section 65(105)(zzh) (w.e.f. 1st July, 2003, Notification No. 7/2003-ST dated 20th June 2003)

Section 65(105)(zzh) – Technical Testing and Analysis service means any service provided or to be provided, to any person, by a Technical Testing and Analysis agency, in relation to technical testing and analysis.

Section 65(106) - "Technical testing and analysis" means any service in relation to **physical**, **chemical**, **biological or any other scientific testing or analysis** of goods or material or information technology software or any immovable property, but does not include any testing or analysis service provided in relation to human beings or animals.

"Technical Testing and Analysis" includes testing and analysis undertaken for the purpose of clinical testing of drugs and formulations; **but does not include testing or analysis for the purpose of determination of the nature of diseased condition, identification of a disease, prevention of any disease or disorder in human beings or animals.**

Section 65(107) - "Technical testing and analysis agency" means any agency or person engaged in providing service in relation to technical testing and analysis.

Exemption on services provided by Government owned State or District Level Laboratory

As per Notification No.6/2006, services provided by Government owned State or District level laboratory in relation to testing and analysis of water quality shall be exempt from service tax.

Exemption to approved clinical Research Organizations

As per Notification No. 11/2007, dated: 1-3-2007, **s**ervices provided by Clinical Research Organization approved to conduct clinical trials by the Drugs Controller General of India, in relation to testing and analysis of newly developed drugs, including vaccines and herbal remedies, on human participants so as to ascertain the safety and efficacy of such drugs on human participants shall be exempt from service tax.

As per Circular/Letter D.O.F. NO. 334/1/2008-TRU, dated 29-2-2008**,** 'Testing and Analysis of IT software' shall be included in technical testing and analysis services

Exemption to Central and State Seed Testing Laboratories

As per Notification No. 10/2010-ST, dated 27-2-2010, services provided by a Central or State Seed Testing Laboratory and Central or State Seed Certification Agency notified under the Seeds Act, 1966 to any person, in relation to technical testing and analysis shall be exempt from service tax.

Illustration : *Mr. X is running an agency of Technical Testing and Analysis service and submitted the information as*

(a) Provided services to ABC Ltd in relation to biological, chemical scientific testing services on 01.06.2011 for `12,00,000 (exclusive of Service Tax) and bill is issued on same date but ABC Ltd paid the same upto 01.09.2011.
(b) Input services taken `4,00,000 plus Service Tax plus EC on 15.06.2011 for providing output taxable service but the payment was not made till year end.
(c) It provides services in regard to Testing and Analysis of Information Technology Software of `6,00,000 (exclusive of service tax) and billed on 10.01.2012 but amount is received on 30.04.2012.
(d) It provides service for Testing and Analysis in regard to human beings or animals on 31.01.2012 and charged `14,00,000 for the same and payment was received on 15.02.2012.
(e) Services provided to UNICEF on 01.02.2012 and charged `5,50,000 and issued bill on 10.02.2012 and amount received for the same on 26.02.2012
(f) It provide service for the purpose of clinical testing of drugs and formulation and received the advance for the same of `3,00,000 (exclusive of service tax) on 15.02.2012 the bill was issued on 01.04.2012 and service was completed on 15.04.2012.
(g) Input service taken `2,00,000 plus Service Tax on 18.02.2012 for providing output taxable service and paid the amount on 18.04.2012.
(h) Mr. X has made payment of Service Tax on 31st July, 2011 for the quarter April to June 2011 through cheque but the cheque was cleared on 4th August, 2011.
(i) Mr. X has filed Service Tax return on 31st December, 2011 for the half year ended on 30th September, 2011.

Presume gross receipt is not exceeding `60,00,000 and also assessee is not eligible for SSP exemption of `10,00,000.

You are required to compute:-
(i) Service Tax Payable by Mr. X for the F.Y 2011-2012?
(ii) Interest payable u/s 75 and penalty u/s 76?
(iii) Whether it is mandatory to file Service Tax Return Electronically by Mr. X?
(iv) Compute Penalty to be paid for late filing of Service Tax Return.
(v) Upto what period the record of Service Tax should be maintained?

Solution: `

April to June, 2011

Services provided to ABC Ltd	*12,00,000*
Service tax @ 10%	*1,20,000*
Add: Education Cess @ 3%	*3,600*
Service Tax Liability	*1,23,600*
Less	
Input Service Tax Credit (4,00,000 x 10.3%)	*41,200*
Net Service Tax Payable	*82,400*

July to September, 2011

Service Tax Payable *41,200*

Note: Since the Amount of input service is not paid on time i.e. within 3 month of input service taken hence Cenvat Credit taken earlier should be reversed back i.e. 41,200.(Rule 4(7) of Cenvat Credit Rules, 2004.

October to December, 2011

NIL

January to March, 2012

Services provided for IT software testing	*6,00,000*
Services for testing and analysis on human or animal	*NIL*
Service provided for Clinical testing and drugs	*3,00,000*
Taxable value of services	*9,00,000*
Service tax @ 10%	*90,000*
Add: Education cess @ 3%	*2,700*
Service Tax Liability	*92,700*
Less:	
Input Service Tax Credit (2,00,000 x 10.3%)	*20,600*
Net Service Tax Payable	*72,100*

(ii)

Interest u/s 75

82,400 x 15% x 26/366 = 878.03

Rounded off u/s 37D = 878

Penalty u/s 76

1% of the amount of default for 26 days

82,400 x 1% x 26/31 = 691.09

Rounded Off u/s 37D = 691

or

Penalty calculated @ `100 per day for 26 days `2,600

Hence Penalty would be ` 2,600

(iii) *Notification No. 43/2011 – Every assessee shall submit the half yearly return electronically". Hence Mr. X is required to file Service Tax Return electronically.*

(iv) *Penalty for late filing of Service Tax Return Rule7C (Service Tax Rules, 1994)*

Upto 30 days `1,000 and after that `100 per day i.e. for 37 days (from 25th November, 2011 to 31st December, 2011) = `3,700

Hence penalty shall be `4,700.

(v) *According to Rule 5 (Service Tax Rules, 1994) All records should be preserved for at least 5 years immediately after the financial year to which such records pertain.*

Question:

Max Hospital has rendered services for technical testing and analysis services with particulars as given below:

1. Conducted tests for determination of symptoms of various diseases and charged `6,00,000

2. Given vaccinations for prevention of diseases and charged `3,00,000

3. Conducted tests for determination of disorder in human being (blood test, echo-cardiograph, liver function test, lipid profile, TSH, Bone densitometry, kidney test, Treadmill test (TMT), Ultra-sound etc) and charged `25,00,000

They have not collected any service tax. Discuss tax consequences.

Answer:

As per section 65(106), all the above services are exempt from service tax.

Question:

Shri Ram Centre for water research has rendered technical testing and analysis services for testing and analysis of water and charged `5,00,000. Discuss tax consequences.

Answer:

As per Notification No.6/2006, services provided by Government owned State or District level laboratory in relation to testing and analysis of water quality shall be exempt from service tax.

Since exemption is given only to the Government laboratory, in the given case, service tax is payable.

7. Business Exhibition Service

Section 65(105)(zzo) (w.e.f. 10th September 2004, vide Finance (No.2), Act, 2004.)

Section 65(105)(zzo) – Business Exhibition service means any service provided or to be provided, to an exhibitor, by the organiser of a business exhibition, in relation to business exhibition.

Section 65(19a) - "Business exhibition" means an exhibition,—

(*a*) to market; or

(*b*) to promote; or

(*c*) to advertise; or

(*d*) to showcase,

any product or service, intended for the growth in business of the producer or provider of such product or service, as the case may be.

As per Circular No. 80/10/2004-S.T., DATED 17-9-2004, business exhibition service is a service rendered to an exhibitor by an organizer of a business exhibition that intends to market, promote, advertise or show-case products or services for growth in business of the producers or providers of such products or services. **Thus, organizers of events such as trade fairs, road shows, fashion shows, display show-cases kept in airports, railway stations, hotels etc. would be covered under Business Exhibition Service.** A display of consumer goods in shops or shopping centres for customers to select and purchase would normally not attract any service tax, as normally no separate charges are collected by the shop-keepers for displaying such goods. However, in case an amount is collected for merely displaying an item, the same would be chargeable to service tax.

While event management service (a currently taxable service) also relates to organizing such events, but in that case, the services are rendered to the organizer by an event manager in relation to planning, promoting, organizing etc. Thus, an organizer of a business exhibition is not covered under Event Management Services, but would be covered under 'Business Exhibition Services'. Similarly, while services rendered in relation to a circular, label, documents, hoardings or any other audio visual representation of a product or service falls under 'advertisement services', the services relating to actual exhibition or display of the product or services would fall under the category of 'Business Exhibition Services'.

Illustration: *ABC Ltd. is engaged in providing Business Exhibition services and the company has submitted the information as given below for the month of September 2011.*

1. Services completed for X Ltd. for arranging one fashion show on 10.09.2011 and invoice issued under Rule 4A on 22.09.2011 and amount is `2,00,000 plus service tax and it was received on 10.10.2011.

2. Services completed for Y Ltd. for arranging road show on 01.10.2011 but bill issued on 30.09.2011 and payment was received in advance on 31.08.2011 and amount is `3,00,000 plus service tax.

3. Services completed for Z Ltd. for arranging trade fair on 10.09.2011 but bill issued on 10.10.2011 and payment was received on 03.10.2011 and amount is `4,00,000 plus service tax.

Compute amount of service tax payable for the month of September 2011 and also the last date upto which payment should be made.

Service tax paid by the company in the Financial year 2010-11 was `11,00,000.

(b) If the payment was delayed by 10 days. Compute interest under section 75 and penalty under section 76. (presume gross receipt is exceeding `60,00,000)

Solution:

1. In this case point of taxation shall be 22.09.2011 and service tax should be paid upto 6^{th} October 2011.

2. In this case, point of taxation shall be 31.08.2011, hence service tax should be paid upto 6^{th} September 2011.

3. In this case, point of taxation shall be 10.09.2011 and service tax shall be paid upto 6^{th} October 2011

Amount of service tax to be paid for September 2011 is as given below:

Amount of taxable service	*2,00,000*
Amount of taxable service	*4,00,000*
Total amount of taxable services	*6,00,000*
Service Tax @ 10.3%	*61,800*

Last date for payment of service tax shall be 6^{th} October 2011.

(b) *In case of delay for 10 days, interest under section 75 shall be i.e. 61,800 x 18% x 10/366 = `303.93*

Rounded off under section 37D = `304

Penalty under section 76 i.e. 100 x 10 = `1,000

Or

61,800 x 1% x 10/31 = `199.35

Penalty shall be `1,000

Illustration: *Abhi-Ash Services Ltd. Provides Business Exhibition Services to the exhibitors for organizing trade fairs, road shows, fashion shows etc. and submitted the information as follows:-*

(a) Provided service to Bachan Ltd. on 01.10.2011 for ` 8,50,000 and bill was issued on the same date.
(b) Input services taken of ` 12,00,000 on 02.11.2011 for providing output taxable services and paid the amount on the same date.
(c) It has provided services of ` 12,50,000 to Hero Honda Ltd. For road show on 18.12.2011 and billed the same on 20.12.2011. No payment has been received till the end of the year.
(d) Services provided to UNICEF on 05.10.2011 and charged ` 5,00,000 and issued bill on 10.02.2012 amount for the same was received on 26.02.2012.
(e) It has provided services for which advance was received of ` 30,000 on 14.11.2011. However, the bill was issued on 01.03.2012 and services were completed on 15.03.2012.
(f) Input services taken of ` 10,000 on 10.12.2011 for providing output taxable services, but the payment was not made till the end of the year.
(g) Company has made payment of Service Tax on 31.01.2012 for the month December' 2011 through cheque although the cheque was cleared on 05.02.2012.
(h) Company has filed Service Tax Return for the half year ended 31st March, 2012 on 31st December, 2012.

(All the above figures are excluding of Service Tax)

You are required to compute:-
(i) Service Tax Payable by Abhi-Ash Services Ltd. for the months October'2011 to December'2011?
(ii) Interest payable u/s 75 (presume rate to be 15%) and penalty us/ 76?
(iii) Whether it is mandatory to file Service Tax Return electronically by Abhi-Ash Services Ltd.?
(iv) Compute Penalty to be paid for late filing of Service Tax Return.
(v) Upto what period the record of Service Tax should be maintained?

Solution:

(i) Computation of Tax Liability of Abhi-Ash Services Ltd.

`

October, 2011

Services provided to Bachan Ltd.	*8,50,000*
Service Tax @10%	*85,000*
Add: Education Cess @3%	*2,550*
Service Tax Payable	*87,550*

November, 2011

Advance Received on 14.11.2011	*30,000*
Service Tax @10%	*3,000*
Add: Education Cess @3%	*90*
Service Tax Payable	*3,090*
Less: Input Service Tax Credit	*1,23,600*
(12,00,000 x 10.3%)	
Balance Cenvat credit carried forward	*1,20,510*

December, 2011

Services provided to Hero Honda Ltd.	*12,50,000*
Service Tax @10%	*1,25,000*
Add: Education Cess @ 3%	*3,750*
Service Tax Payable	*1,28,750*
Less: Cenvat Credit brought forward	*1,20,510*
Less: Cenvat Credit (10,000 x 10.3%)	*1,030*
Balance Service Tax Payable	*7,210*

Note:

(i) Services provided to UNICEF is exempt from Service Tax.

(ii) Since the Amount of input service is not paid on time i.e. within 3 month of input service taken hence Cenvat Credit taken earlier should be reversed back i.e. `1,030 in the Month of March' 2012.

(ii) <u>Interest u/s 75</u>

7,210 x 15% x 26/366 = 76.83 = 77

<u>Penalty u/s 76</u>

Higher of the following:-

(a) @ 100 per day for 26 days = `2,600

Or

(b) 7,210 x 1% x 26/31 = ` 60.47 = 60

Hence the penalty would be ` 2,600

(iii) Every assessee shall submit the half yearly return electronically. Hence, Abhi-ash services Ltd. required to file Service Tax return electronically.

(iv) Penalty for late filing of Service Tax Return Rule7C (Service Tax Rules, 1994)

Upto 15 days	*` 500*
Next 15 days	*` 500*
On Balance Days	
(i.e. for 220 days from 26.05.2012 to 31.12.2012 @100 per day)	*`22,000*
Total Penalty Payable	*`23,000*

However, Maximum penalty that can be imposed is ` 20,000.

Hence the penalty would be ` 20,000.

(v) According to Rule 5 of Service Tax Rules, 1994 All records should be preserved for atleast period of 5 years, immediately succeeding the financial year to which such records pertains.

8. Information Technology Software Service

<u>Section 65(105)(zzzze)</u> (w.e.f. 16th May 2008, Notification No. 18/2008-ST dated 10th May 2008)

Section 65(105)(zzzze) - Taxable service means any service provided or to be provided, to any person, by any other person in relation to information technology software including,—

(*i*)development of information technology software,

(*ii*) study, analysis, design and programming of information technology software, (*iii*) adaptation, upgradation, enhancement, implementation and other similar services related to information technology software,

(*iv*) providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the start-up phase of a new system, specifications to secure a database, advice on proprietary information technology software,

(*v*) providing the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information technology software products,

(*vi*) providing the right to use information technology software supplied electronically;

Section 65(53) – **"information"** has the meaning assigned to it in clause (v) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000).

Section 65(53a) - "information technology software" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of a computer or an automatic data processing machine or any other device or equipment.

Section 2(1)(v) of the Information Technology Act, 2000 - "information" includes data, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche.

Receipts for providing the right to use the packaged software is exempt under Notification No. 53/2010.

Illustration: *Swastik Services Ltd. is carrying on the business of providing Information Technology software services and has provided the following information:*

- *It has provided software upgradation service to ABC Private Ltd. on 12.03.2012 electronically and has charged ` 23,00,000. However, the bill was issued on 20.03.2012.*
- *It has conducted feasibility study on implementation of a new IT system for SEZ which is completed on 15.01.2012 and received payment of ` 1,50,000 on the same date.*
- *It has also provided software development service to Mr. Amit for personal use on 18.01.2012 for `1,80,000 and received the payment on the same date.*
- *Swastik Services Ltd. has taken input services of ` 80,000 for providing taxable output services on 15.03.2012.*
- *Company has filed Service Tax return for the Half year ended September' 2011 on 15.03.2012.*

(All the above figures are exclusive of Service Tax)

Ignore SSP exemption.

You are required to:-

(i) Compute Service Tax payable by the Swastik Services Ltd. for the period from 01.01.2012 to 31.03.2012.

(ii) Compute the amount of Penalty on late filing of service tax return by the company. What is the maximum amount of penalty that can be imposed?

Solution:

(i) Computation of Service Tax payable by Swastik Services Ltd. `

January' 2012

Value of services provided to Mr. Amit	*1,80,000*
Service Tax @ 10%	*18,000*

Add: Education Cess @ 3%	*540*
Total Service Tax payable	*18,540*
February' 2012	*NIL*
March' 2012	
Value of Service provided to ABC Pvt. Ltd.	*23,00,000*
Service Tax @ 10%	*2,30,000*
Add: Education Cess @ 3%	*6,900*
Total Service Tax payable	*2,36,900*
Less: CENVAT Credit Availed (80,000 x 10.3%)	*8,240*
Net Service Tax payable	*2,28,660*
(ii) Penalty for late filing of Service Tax Return Rule7C (Service Tax Rules, 1994)	`
Upto 15 days	*500*
Next 15 days	*500*
On Balance Days (i.e. for 112 days from 25.11.2011 to 15.03.2012 @100 per day)	*11,200*
Total Penalty Payable	*12,200*

Maximum amount of penalty that can be imposed is ` 20,000

Question:

ABC Ltd. is selling various softwares like Quick Heal Anti Virus, Tally, Windows, Office etc. and is not charging service tax. Discuss tax consequence.

Answer: *No service tax is payable in case of sale of such readymade softwares which is called packaged software rather it is subject to State VAT as per N.N. 53/2010.*

Question:

INFOSYS Limited has rendered services for study, analysis, design and programming of information technology software, outside India and has charged `600 lakhs. They are also rendered services for providing advice and consultancy for the matters of IT Software in India and has charged `400 lakhs. They have not collected any service tax. They have taken input services for rendering such services and has paid `100 lakh plus service tax. Discuss tax consequences. (Ignore SSP exemption)

Answer:

Services rendered outside India are exempt but services rendered in India are taxable and `400 lakhs shall be considered to be inclusive of service tax and output service tax shall be
400,00,000 x 10.3 / 110.3
37,35,267.00
Company shall be allowed tax credit of `100,00,000 x 10.3% *10,30,000.00*
Net Tax Payable shall be
27,05,267.00