For May/Nov. 2013 Exams

CA-IPC TAXATION

super summary

INCOME TAX, SERVICE TAX & VAT

Prepared by **BHAVIN PATHAK**

PREFACE TO 5TH EDITION

As we all know, the subject TAXATION is purely based on Act itself, and any Act basically needs an explanation and proper interpretations for the provision contained in it. Here, am feeling proud to contribute some percentage in you success by issuing the latest edition of Super Summary of Taxation. This contained all the course content and proper presentation of provisions. As far as study of Chartered Accountancy is concerned, the student must be up-to-date with the knowledge in the subject of Taxation. I try to maintain the professionalism in each provision and explanation of the same. For perfection in drafting and explaining the provision in-depth, I took help of professional Chartered Accountants from the Taxation field. I personally thankful to **CA Bhanvar Borana** for keep faith in my effort and **Mr Sandeep Tiwari** for his continuous support towards this effort, and all the well-wishers, who have faith in me. This booklet is divided in three parts; (A) Income Tax (B) Service Tax and (C) VAT.

I always believe in helping everyone and as result I am very happy by presenting this booklet of super summary. Technology is growing and that's why the booklet is also compatible with many smartphone devices, tablet devices and android based devices along with laptops and PCs. I said this because in this booklet to reduce cross-reference confusion, I put hyperlink wherever the cross-reference is needed. So, I always believe in productive studies and so instead on doing unproductive work on your smartphones and other technological devices, I believe this is new and amazing way of utilizing the time.

Earlier, I issued around 4 editions of Super Summary of Taxation but I personally found that is not conceptual and that's the reason here each and every provisions are explained in-depth with utmost conceptual clarity in easy language. For Service Tax and VAT, practical questions are also included for thorough practice. As we all know, ICAI always put weightage on new amendments to keep up-to-date the knowledge of students. That's the reason why I covered all amendments related to course content and present in easy language separately under heading called "Amendment Analysis". **Don't worry, the language I used is very unique, easy to understand and student-friendly**. The law, any, is based on two main thing viz. Interpretations and Presentation of the provisions contained in any law.

Don't hesitate to ask question because it may silly for you but it may not be for others. Confidence is must while you are studying any kind of subject. As per my logic, if one said, he/she is average student then one knows the ability of above average student as well as him/herself, and I don't think if someone knows the ability of themselves are average student.

Suggestions are always welcomed. Give your views, your response is my support. I hope this effort helps you and try to contribute in your success.

BOOK DEDICATED TO FRIENDS

Features of this booklet:

- As per course content provided by ICAI.
- Explanation with reader friendly language.
- Graphical presentations for easy understanding.
- As per amendments, for better understanding "Amendment Analysis" is given after each chapter.
- Service Tax and VAT covered selected practical sums for better approach for sums.
- To-the-point explanation from the point of view of examination.

Regards, **Bhavin Pathak**

PART A: INCOME TAX [50 Marks]

PART B: SERVICE TAX [25 Marks]

PART B: VALUE ADDED TAX (VAT) [25 Marks]

Rules of my life:

1. “Don't use anyone, but be useful for everyone.”
2. “There is no tax on helping each other.”
3. “If you light a lamp for somebody, it will also brighten your path.”
4. “Happiness is a by-product of an effort to make someone else happy.”

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PART A: INCOME TAX

FOR MAY/NOV. 2013 EXAMINATIONS

PART A: INCOME TAX [50 Marks]

1. BASIC CONCEPTS & DEFINITIONS

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

1. Basic Concepts and Definitions

Sections covered in this chapter:

Section	Provision
Sec. 2(31)	*Person*
Sec. 3	*Previous Year*
Sec. 2(9)	*Assessment Year*
Sec. 2(7)	*Assessee*
Sec. 2(24)	*Income*
Sec. 2(45)	*Total Income*

Indian Taxation System

The Income-tax Act, 1961 came into force with effect from **1/4/1962**. It has **XXIII (23) chapters** and **298 Sections** in all. The Indian taxation structure is a mix of number of provisions either governed by *income tax law* and at some stages by number of mercantile and corporate laws. A number of amendments in the structure have made the taxation structure very complex and difficult to handle, the subject is not that easy to digest.

India — Sec. 2(25A)

India means the territory of India as referred to in **Article 1** of the Constitution, its territorial waters, seabed and subsoil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other maritime Zones Act, 1976 and the air space above its territory and territorial waters.

Person — Sec. 2(31)

*Person includes **seven** types of persons namely*

(1) Individual,
(2) Hindu undivided family (HUF)
(3) Company,
(4) Firm,
(5) Association of persons (AOP) or a body of individuals (BOI),
(6) Local authority,
(7) Every artificial juridical person not falling within any of the preceding sub clauses.

Association of person Vs. Body of individual

The **2** basic differences between **AOP** and **BOI** are:

- ⇨ In BOI there are **only individuals** but in AOP there can be any type of persons.
- ⇨ BOI is **creation of law** whereas AOP can be created by different persons coming together for doing some income producing activity on the voluntary basis.

Assessee — Sec. 2(7)

Assessee means any person by whom tax, interest or penalty is payable under any provision of Income-tax Act, 1961 and includes:

(a) Deemed assessee
(b) Assessee in default
(c) Person against whom any income tax proceedings have been started for the assessment of his income or loss or the income of some other person or the loss for whom he is liable.

Assessment Year — Sec. 2(9)

Assessment year means the period of 12 months starting from 1st April every year and ending on 31st march of the succeeding year.

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Previous Year — Sec. 2(34)

Previous year means the year immediately preceeding to assessment year. Income for the previous year is always taxed in the assessment year.

Income of one PY taxable in same year

The following are the exceptions to the general rule that income of every previous year is chargeable to tax in the relevant assessment year.

Sec. 172: Shipping business of a non-resident;
Sec. 174: Person leaving India;
Sec. 174A: An AOP formed for the purpose of a particular event.
Sec. 175: Persons likely to transfer property to avoid tax;
Sec. 176: Discontinued business or profession

Cases where income of PY is assessed in the same year

Section	Non-resident shipping business (Sec. 172)	Assessment of persons leaving India (Sec. 174)	Association formed for short duration (Sec. 174A)	Assessment of Persons Likely to Transfer Property to Avoid Tax (Sec. 175)	Discontinued business (Sec. 176)
Applicability	**Non-Resident** owner/ Charterer of Ship Carrying passengers, livestock, goods shipped at Indian Port during PY	Appears to Assessing Officer (AO) that any individual may leave India during current PY or shortly after its expiry & has no intention of returning to India	Appears to AO that any AOP formed for particular event/purpose and is likely to be dissolved during PY	Appears to AO that any person is likely to sell any of his assets during a PY with a view to avoid payment of any liability	Where any business/ profession is discontinued in any PY
Income	**7.5 %** of amount on account of such carriage	Total Income of individual from first day of PY up-to probable date of his departure from India	Total Income of such association commencing from first day of PY up-to date of its dissolution	Total Income of such person commencing from first day of PY up-to date of commencement of proceedings by AO under this section	Business or Profession income commencing from first day of PY up-to date of discontinuance
When Taxable?	Chargeable to tax in the **same PY**	Chargeable to tax in the **same PY**	Chargeable to tax in the **same PY**	Chargeable to tax in the **same PY**	Chargeable to tax in the **same PY** at **discretion of AO**

PY for undisclosed (unexplained) sources of Income

In following cases if no satisfactory explanation is provided, then amount deemed as Income of PY of discovery

1. **Cash Credit [Sec. 68]:** Sum is found credited in Books of Accounts of assessee

Sum credited for closely held company consists of share application money/share capita/share premium/other amount, any explanation offered by company shall be deemed to be not satisfactory, unless Resident in whose name such credit is recorded also offers an explanation about nature & source of such sum so credited & such explanation in opinion of AO has been found to be satisfactory
Exception: Sum credited in Venture capital fund/venture capital company under Sec. 10(23FB) [Finance Act, 2012]

2. **Unexplained investment [Sec. 69]:** Investment not recorded in Books of Account (BOA)
3. **Unexplained money [Sec. 69A]:** Money, jewellery or other valuable article not recorded in the BOA
4. **Investment not fully disclosed [Sec. 69B]:** Investments/ bullion/jewellery > amount recorded in BOA
5. **Unexplained expenditure [Sec. 69C]:** Unexplained Expenditure
6. **Amount borrowed or repaid on Hundi [Sec. 69D]:** Amount borrowed /repaid on Hundi otherwise than through A/C payee cheque

Tax on income referred under Sec. 68, 69, 69A, 69B, 69C, 69D **Sec. 115BBE**

- If Total Income includes any income referred under above sections, income-tax shall be payable @ 30%
- No deduction in respect of any expenditure/allowance shall be allowed under any provision of this Act in computing his income referred under above sections.

Some important principles, which explained the **concept of income** for Income-tax purpose in above cases.

(1) Even **illegal income** is taxed just like any legal income.

(2) **Diversion of Income:** Income which due to compulsory obligation, is diverted before it becomes due **Income after Diversion is taxable**.
Application of income: income which has become due and afterwards assessee meets an obligation whether compulsory or self-imposed out of such income, **income before Application is taxable**

(3) **Pin Money:** Money received by wife for her personal expenses from husband is not taxable

(4) **Revenue receipt:** Receipt on account of circulating capital. Revenue receipts taxable unless specifically exempted e.g., dividend income, though a revenue receipt, is exempt from tax under Sec. 10.
Capital receipt: Receipt on account of fixed capital. Capital receipts are generally not chargeable to tax unless specifically taxable eg. profit on sale of capital assets, though it is capital receipt but it is taxable under Sec. 45

Gross total income **Sec. 14**

Gross total income is the aggregate of income from all five heads of Income, namely:

(1) Income under the head salary
(2) Income under the head house property
(3) Income under the head business and profession
(4) Income under the head capital gains
(5) Income under the head other sources

Taxability of gift

Income includes the gifts received in excess of ₹ 50000. If anyone has received gift in cash exceeding ₹ 50000 from a non-relative then whole of such amount received shall be considered his income. *However gifts received from relatives shall not be covered in this.*

Total/Taxable Income **Sec. 2(45)**

Total income is income after reducing the deduction under Chapter VI-A from the gross total income. This income is also called taxable income on which tax has to be imposed.

Computation of total income of …… For AY 2013-14

	Particulars	*Amt. (₹)*
	Income under the head Salary	……
Add:	Income under the head House Property	……
Add:	Income under the head Business and Profession	……
Add:	Income under the head Capital Gains	……
Add:	Income under the head Other Sources	……
	Gross Total Income	……
Less:	Deduction under Chapter VI-A [Sec. 80C-80U]	……
	Total/Taxable Income	……

Rounding off of total income **Sec. 288A**

The total income shall be rounded off in the multiples of ₹ 10.

Rounding off of tax liability **Sec. 288B**

The amount payable by the assessee and the amount of refund due, under the provisions of the Income Tax Act, 1961 shall be rounded off to the nearest ₹ 10.

Cess

Education cess for the AY 2013-14 is **2%** for primary education and **1%** for higher and secondary education.

1.1: TAX RATES FOR AY 2013-14

Person	Slab Rates: Total Income	Slab Rates: Rate	Surcharge
Individuals (Other than Senior citizen and very senior citizen, HUF, AOP, BOI, Artificial Judicial Person)	Up-to ₹ 2,00,000 ₹ 2,00,000 to ₹ 5,00,000 ₹ 5,00,000 to ₹ 10,00,000 Above ₹ 10,00,000	Nil 10% 20% 30%	NA
Senior citizen (Resident in India at any time of PY 12-13; age should be 60 years or more but less than 80 years)	Up-to ₹ 2,50,000 ₹ 2,50,000 to ₹ 5,00,000 ₹ 5,00,000 to ₹ 10,00,000 Above ₹ 10,00,000	Nil 10% 20% 30%	NA
Very senior citizen (Resident in India at any time of PY 12-13; age should be 80 years or more)	Up-to ₹ 5,00,000 ₹ 5,00,000 to ₹ 10,00,000 Above ₹ 10,00,000	Nil 20% 30%	NA
Co-operative Society	Up-to ₹ 10,000 ₹ 10,000 to ₹ 20,000 Above ₹ 20,000	10% 20% 30%	NA
Partnership firm/LLP and Local authority		30%	NA
Company			
Domestic company	Up-to ₹ 1,00,00,000	30%	Nil
	Above ₹ 1,00,00,000		5%
Foreign company	Up-to ₹ 1,00,00,000	40%	Nil
	Above ₹ 1,00,00,000		2%

Special rates of Income Tax	
On Short-Term Capital Gain (STCG) covered under Sec. 111A	15%
On Long-Term Capital Gain (LTCG) covered under Sec. 112	20%
On winning of lotteries, crossword puzzles, card games etc. [Sec. 115BB]	30%

2. RESIDENTIAL STATUS & SCOPE OF TOTAL INCOME

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

2. Residential Status & Scope of Total Income

Sections covered in this chapter:

Section	Provision
Sec. 2(26)	*Indian Company*
Sec. 2(30)	*NR-Individual*
Sec. 5(1)	*Incidence of Tax on R/RO/RNOR*
Sec. 5(2)	*Incidence of Tax NR*
Sec. 6(1)	*Residential Status of Individual*
Sec. 6(2)	*Residential Status of HUF/Firm/AOP/BOI*
Sec. 6(3)	*Residential Status of Company*
Sec. 6(4)	*Residential Status of other persons (Local Authority/Artificial Judicial Person)*
Sec. 6(6)(a)	*RNOR – Individual*
Sec. 6(6)(b)	*RNOR – HUF*
★ Sec. 9	*Income deemed to accrue and arise in India and definition of Royalty*
Sec. 115C	*Person of Indian origin*

[Note: ★ signed content refers to Amendment]

Residential Status of an Individual		
Status of Individual	**Conditions**	
	Basic conditions [Sec. 6(1)]	**Additional conditions [Sec. 6(6)]**
Resident & Ordinarily Resident (ROR)	**1.** He has been in India for **182 days** or more during PY **Or** **2.** He has been in India for at least **60 days** or more during PY **And** He has been in India for **365 days** or more during last **4 PYs**.	**1.** He has been in India for **730** days or more in preceding **7 PYs**. **And** **2.** He has been resident in **2 out of 7** PYs.
Resident & Not Ordinarily Resident (RNOR)	As above (Same as ROR)	Above mentioned Conditions satisfied together
Non-Resident(NR)	Neither of above conditions	Not applicable

Exception to Condition 2:
(1) *Indian citizen* **leaves** India for **employment** abroad during PY
(2) *India citizen* who is working on Indian ship **leaves** India during PY.
(3) *Indian citizen or Person of Indian Origin (PIO)* **coming** to India on a **visit** during PY.

Residential Status of Hindu Undivided Family (HUF)	Sec. 6(2) Sec. 6(6)
Status of HUF	**Conditions**
Resident & Ordinarily Resident (ROR)	**Any part** of **Control & Management (C&M)** situated in India during PY and *Karta* satisfying both additional conditions
Resident & Not Ordinarily Resident (RNOR)	**Any part** of **C&M** situated in India during PY and *Karta* not satisfying additional conditions together

Non-Resident (NR)	**No part of C&M** situated in India during PY

Residential Status of Firm, AOP & Other Corporate Assessee	**Sec. 6(2)**
Status of Firm, AOP & Other Corporate Assessee	**Conditions**
Resident & Ordinarily Resident (ROR)	**Any part** of **C&M** situated in India during PY
Non-Resident (NR)	**No part of C&M** situated in India during PY

Residential Status of Company	**Sec. 6(3)**
Status of Company	**Conditions**
Resident & Ordinarily Resident (ROR)	**Indian company or foreign company** *100% C&M* in India during PY
Non-Resident (NR)	**Foreign company** *any part of C&M* outside India during PY

Residential Status of Other Assessees	**Sec. 6(4)**
Status of Company	**Conditions**
Resident & Ordinarily Resident (ROR)	**Any part** of **C&M** situated in India during PY
Non-Resident (NR)	**No part of C&M** situated in India during PY

Scope of Income — **Sec. 5**

Types of Income	**Particulars**	**ROR**	**RNOR**	**NR**
Indian income	Due in India & receivable anywhere	Yes	Yes	Yes
	Due outside & **Received** in India	Yes	Yes	Yes
Foreign income *(Due & Recd. Outside India)*	B or P income controlled from India	Yes	Yes	**No**
	Other Income	Yes	**No**	**No**

[B or P: Business or profession]

Due includes Deemed cases — **Sec. 9**

1. Income from a **Business Connection** in India
2. Income from property asset or source **in India**
3. Capital gain from **Capital asset** situated in India
4. Salary from **services** rendered **in India**
5. Salary to **Indian citizen** from **Govt.** of India *[**Sec 10(7):** Allowance & Perquisite exempt]*
6. **Dividend** from **Indian company** *[**Sec 10(34):** Dividend is exempt from Tax]*
7. Interest/Royalty/Fee for Technical services from **Government** of India
8. Interest/Royalty/Fee for Technical services from **Resident**
   (**Except** money/service is utilized for **business outside India**)
9. Interest /Royalty/Fees for Technical services from **Non resident**
   (**Provided** money/service is utilized for **Indian business**)

   Special points
   - Where income is deemed to accrue or arise in India under **Point 7, 8 and 9**
   - such income **shall be included in total income of non-resident**
   - whether or not non-resident has a
     (i) ***Residence*** or ***Place of business*** or ***Business connection*** in India *OR*
     (ii) ***Rendered Services in India***
10. **Interest** credited to **Recognise Provident Fund (RPF)** in excess of **9.5% p.a.**
11. **Employer** contribution to RPF in excess of **12% of salary** of employee
12. **Transferred balance** in RPF

Receive includes Deemed cases	**Sec. 7**

1. **Employer contribution** under pension scheme **under Sec. 80CCD**

2.1: AMENDMENTS ANALYSIS

Offshore transactions

Income deemed to accrue and arise in India	**[Amended]**	**Sec. 9**

Following explanation has been added for transaction "income from the transfer of any capital asset situated in India":
A capital asset (being share in a company incorporated outside India) shall be deemed to be situated in India, if the share derives its value substantially from the assets located in India.

Capital Asset	**Definition**	**[Amended]**	**Sec. 2(14)**

Following explanation has been added
"Property" includes any rights in an Indian company, including rights of management or control.

Transfer	**Definition**	**[Amended]**	**Sec. 2(47)**

Following explanation has been added
"Transfer" includes
- ⇨ disposing of or parting with an asset or any interest therein,
- ⇨ or creating any interest in any asset in any manner whatsoever,
- ⇨ directly or indirectly, absolutely or conditionally, voluntarily or involuntarily,
- ⇨ by way of an agreement (whether entered into in India or outside India) or otherwise,
- ⇨ notwithstanding that such transfer of rights is dependent upon transfer of shares of a company incorporated outside India.

TDS Transaction in case of payment to non-resident	**[Amended]**	**Sec. 195**

It has been clarified that u/s 195 TDS shall be deducted even if payment is being made by a non-resident, provided amount receivable by non-resident payee is taxable under Income-tax Act, 1961.
It shall not matter whether or not the non-resident person has -
(1) a residence or place of business or business connection in India; or
(2) any other presence in any manner whatsoever in India.

Royalty	**Definition**	**[Amended]**	**Sec. 9**

Following explanations added:
Transfer of rights in respect of any right, property or information includes transfer of right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.
Royalty includes consideration in respect of any right, property or information, whether or not -
(a) the possession or control of such right, property or information is with the payer;
(b) such right, property or information is used directly by the payer;
(c) the location of such right, property or information is in India.
The expression "process" includes transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret.

3. INCOME WHICH IS DO NOT FORM PART OF TOTAL INCOME

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

2. INCOME WHICH IS DO NOT FORM PART OF TOTAL INCOME

Sections covered in this chapter:

Section	Provision
Sec. 10(10BC)	*Amount from Central Govt. (CG)/State Govt. (SG)/Local authority by way of compensation on account of any disaster*
★ Sec. 10D	*Sum received under LIC policy including bonus Exceptions:* *(a) Policy under Sec. 80DD* *(b) Key-man Insurance Policy* *(c) Policy where premium > 20% or 10% of sum insured (on Death is exempt)*
Sec. 10(16)	*Scholarship to meet cost of education*
Sec. 10(17)	*Member of Parliament (MP): Daily Allowances & Other Allowances* *Member of Legislative Assembly (MLA): Daily Allowance & Constituency Allowance*
Sec. 10(17A)	*Payment in Cash or Kind* ▪ *For award in public interest by CG/SG/body approved by CG.* ▪ *For reward by CG/SG for purpose approved by CG.*
Sec. 10(18)	*Pension received by Individual or Family Pension by family member if Individual awarded Vir Chakra or Mahavir Chakra or Param Vir Chakra or other notified gallantry awards.*
Sec. 10(19)	*Family pension received by widow /heir on death of member of armed forces during duty*
Sec. 10(19A)	*Annual value of one palace of an ex ruler provided such annual value exempt before 28.12.1971*
Sec. 10(20)	*The following incomes of Local authority* ▪ *House property, capital gains, other sources & trade/business income from supply of:* ▪ *water or electricity within or outside its jurisdictional area* ▪ *any other commodity or service within own jurisdictional area*
Sec. 10(20B)	*Income of specified news agency set up in India solely for collection & distribution of news, provided does not distribute its income to its members*
Sec. 10(20C)	*Income of professional associations/institutions Exception:* ▪ *Income from house property, Investment Incomes* ▪ *Income from specific services to its member*
Sec. 10(23C)	*Income of certain institutions like* ▪ *Prime Minister national relief fund* ▪ *National foundation for communal harmony* ▪ *Educational institutions not for profit* ▪ *Hospital treating specified ailments not for profit* ▪ *Fund or institutions for charitable purposes, having importance throughout India/States*
★ Sec. 10(23FB)	*Any income of venture capital company or venture capital fund from investment in venture capital undertaking.*
Sec. 10(24)	*House proper income & Income from other sources arising to a registered trade union*
Sec. 10(39)	*Income arising from any International sporting event held in India if such event is* ▪ *approved by international body regulating such sport* ▪ *has participation by more than two countries & is notified by CG for this clause*

Sec. 10(43)	*Amount received by an Individual as a loan, either in lumpsum or in instalment,in a transaction of reverse mortgage referred in Sec. 47(xvi)*
Sec. 10(45)	*Any allowance or perquisite, as notified by CG in the Official Gazette paid to Current/Retired Chairman/Member of Union Public Service Commission.*
Sec. 10(46)	*Any specified income arising to Body/Authority/Board /Trust/ Commission which* ▪ *Has been established under Central, State or Provincial Act, or constituted by CG/SG* ▪ *Object of any activity for benefit of general public* ▪ *Not engaged in any commercial activity* ▪ *Notified by CG in Official Gazette*
Sec. 10(47)	*Any income of an infrastructure debt fund, set up as per prescribed guidelines which is notified by CGOVT*
★ Sec. 10(48)	*Any income received in India in Indian currency by a foreign company for sale of crude oil to any person in India Provided that such income is received under agreement with Central Government in National Interest + Foreign company not engaged in any activity in India other than receipt of such income*

Income of Charitable Trust and Religious Trust

In order to claim exemption of its Income under Sec. 11, a Charitable/Religious trust should fulfill below conditions

⇨ Trust should be created for a lawful purpose
⇨ Trust should be for charitable or religious purpose
⇨ Property should be held under trust
⇨ Trust should be registered with CIT
⇨ Accounts should be audited if TI before exemption under Sec. 11 & 12 exceeds exemption amount
⇨ Trust should not be created for the benefit of particular community or caste

Special Points: Definition of Charitable and religious purpose **Sec. 2(15)**

Charitable & Religious purpose includes relief to the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest and advancement of **any other object of General Public Utility***.

* **Any other object of General Public Utility** shall not be a charitable purpose if it involves carrying on of any activity in nature of Trade, Commerce, Business or Service for consideration provided Receipts is upto 25 lakhs during PY

Various types of income from trust

(a) Income from property held under trust

Applied for charitable and religious purpose in India:

Income applied is atleast 85%* : 100% income is exempt
Income applied is less than 85% : Amount applied + 15% is exempt

Applied for charitable and religious purpose outside India:

Income Exempt, provided such trust created for Promoting international welfare in which India is interested

*** Income applied means** *actually applied or deemed to be applied for Charitable or Religious purpose in India Income deemed to be applied*

(a) Non-application due to non-receipt of Income during PY: Such income should be applied for Charitable or Religious purpose during PY of actual receipt or during next PY

(b) Non-application due to other reasons: Such income should be applied for Charitable or Religious purpose during PY next to PY to which such income relates

Special Points: Option [under (a) or (b)] has to be exercise by trust in writing before time under Sec. 139(1).

Additional exemption for Income accumulated or set apart in excess of 15% **Sec. 11(2)**

▪ Where 85% income not applied (actual or deemed) for C&R purpose

- then additional exemption for amount which is accumulated for application in future year

Provided: Notice to AO in **Form 10** upto time under Sec. 139(1), specifying period & purpose Period ***cannot exceed 5 years*** from PY in which such income is derived and Money so accumulated is deposited as per **Sec. 11(5)**

Special Points:

- Central/State Government Securities
- Deposits/Bonds of Financial Corporation providing long-term finance for industrial development
- Deposits/Bonds of public company providing long term finance for residential houses
- Debentures of any company, Units of UTI, IDBI.
- Deposit with Schedule Bank, Co-op Bank, Post Office Saving Bank.
- Immovable property excluding plant & machinery

(b) Voluntary contributions (donations) not forming part of Corpus

(Same treatment as income from property held under trust

(c) Voluntary contributions (donations) forming part of Corpus

Fully Exempt

(d) Anonymous donations

Means any voluntary contribution where a person receiving such contribution does not maintain a record of identity indicating name & address of person making such contribution

Tax treatment of anonymous donation — **Sec. 115BBC**

Income-tax @ 30% on anonymous donations > higher than 5% of total donations or ₹ 1,00,000
Sec. 115BBC not applicable for anonymous donation received by trust created wholly for religious purposes or trust created wholly for religious & charitable purposes other than any anonymous donation made for educational or medical purpose

(e) Business Income

Business income arising from business carried on by trust is also Exempt under Sec. 11 , Provided business is incidental to attainment of objectives of trust **and** Separate Books of accounts of such business are maintained

Special Point: However If income shown in accounts of such business undertaking is less than income determined by AO and then **such excess will not be exempt**.

Cases when exemption under Sec. 11 and 12 not available — **Sec. 13**

- ⇨ Income used for private religious purpose, not for public benefit
- ⇨ Trust created for benefit of particular religious community
- ⇨ According to terms of trust, Income is to applied for benefit of specified persons under Sec. 13(3)*
- ⇨ During PY income used for benefit of specified person under Sec. 13(3)
- ⇨ Funds not invested under Sec. 11(5)

Specified Person — **Sec. 13(3)**

1. Author of Trust.
2. Person contributed greater than ₹ 50,000 during PY
3. Where person above (in point 1 or 2) is a HUF, any member of such HUF
4. Trustee/Manager of trust
5. Relatives of (persons under points 1, 2, 3, 4,)
6. Concern in which (persons under points 1, 2, 3, 4, 5) has **substantial interest** (i.e. entitled to 20% of equity shares or 20% of profits of the concern whether held singly or jointly)

Registration of trust — **Sec. 12A**

Every trust wanting to claim exemption of its income under Sec. 11 or 12 shall make an application for registration of the trust in the prescribed form & manner to CIT

Procedure of registration — **Sec. 12AA**

- ⇨ The CIT on receipt of application for registration under Sec. 12A
- ⇨ Shall call for documents & information to satisfy himself about genuineness about activities of trust

⇨ After being satisfied that trust is genuine
⇨ Pass an order in writing registering the trust

Special Point: Order granting registration/refusing registration to be passed **before expiry of 6 months** from the end of month in which application was received

Sec. 12AA(3)

⇨ Where trust/institution has been granted registration and
⇨ Subsequently Commissioner of Income Tax (CIT) satisfied that activities of charitable trust or institution are not genuine or are not being carried in accordance to the object.

Special Points: Pass order in writing for **cancelling the registration** of such trust

3.1: AMENDMENTS ANALYSIS

Charitable trust **[Amended]** **Sec. 2(15)**

⇨ Section 2(15) provides that if the object of advancement of general public utility involves carrying on of any activity in the nature of **trade, commerce or business**, etc. and the aggregate value of the **receipts from such activity exceeds ₹ 25,00,000, the trust will not be considered as charitable trust**.
⇨ New Sub-section (8) has been **inserted** in Sec. 13 and a **proviso has been added** in Sec. 10(23C), with **retrospective effect from A.Y. 2009-10**, to provide that the trust or institution will not be granted exemption only for the year in which such receipts exceed ₹ 25,00,000.
⇨ Such loss of exemption in that year will not affect the registration of the trust or institution under Sec. 12AA. The exemption can be claimed in subsequent years when such receipts do not exceed ₹ 25,00,000.

Deduction of Life Insurance Premium **[Amended]** **Sec. 10(10D)**

⇨ At present, **any sum received under a life insurance policy**, including bonus, but *excluding amount received under Keyman Insurance policy*, is **exempt**, provided the premium amount **does not exceed 20% of the actual capital sum assured** in any year during the policy period.
⇨ Now, **this limit is reduced to 10% in the case of an insurance policy issued on or after 1st April, 2012**. Similar **amendment** is made under Sec. 80C, whereby it is provided that deduction in respect of life insurance premium, etc. in the case of insurance policies issued on or after 1st April, 2012 shall be available only in respect of **premium not exceeding 10%** of the actual capital sum assured.
⇨ It may be noted that in respect of **life insurance premium paid on policies issued before 31-3-2012, the old limit of 20% of actual capital sum assured will apply**.
⇨ **'Actual capital sum assured'** is also defined to mean the minimum amount assured under the policy on happening of the specified event at any time during the term of the policy, and excluding the value of any premiums agreed to be returned and benefit of bonus or otherwise over and above the sum actually assured.
⇨ This is done to ensure that **life insurance products are not designed to circumvent the prescribed limit by varying the capital sum assured from year to year.**
⇨ This **amendment** comes into force from A.Y. 2013-14 (Accounting Year ending on 31-3-2013).

Venture Capital Company (VCC) & Venture Capital Fund (VCF) **[Amended]** **Sec. 10(23FB)**

(i) This Section has been **amended** w.e.f. A.Y. 2013-14. Simultaneously, Sec. 115U has also been **amended**. Section 10(23FB) provides that a **VCC or VCF registered with SEBI and deriving income from investment in a Venture Capital Undertaking (VCU) is exempt from tax**. VCU is presently defined to mean such domestic company whose shares are *not* *listed in a recognised stock exchange in India and which is engaged in any one of the nine specified businesses*. VCC and VCF registered with SEBI are *granted a pass-through status and the income in the hands of the investor is taxed* in the like manner and to the same extent as if the investment was directly made by the investor in the VCU.

(ii) The sectoral restriction that the VCU should be engaged in only the nine specified businesses is now removed. The **definition of VCU** is now **amended** to cover any undertaking referred to in SEBI (Venture Capital Funds) Regulations, 1996. As such **VCC and VCF will be exempt from tax, irrespective of the nature of business carried out by the VCU, as long as it satisfies the conditions imposed by SEBI**.

(iii) At present, the income received by any VCC/ VCF from VCU, is **taxed on receipt basis in the hands of the investor** and hence could result in deferral of taxation till the income is distributed to the investor. It is now provided that the **income accruing to VCC/ VCF will be taxable in the hands of the investor on accrual basis**.

[Inserted]	**Section 10(23BBH)**

This new section is **inserted** w.e.f. 1-4-2013 to provide for **exemption from tax in the case of income of the Prasar Bharati** (Broadcasting Corporation of India) from A.Y. 2013-14.

[Inserted]	**Section 10(48)**

- ⇨ This is a **new provision** made w.e.f. A.Y. 2012-13 *(1-4-2011 to 31-3-2012)*.
- ⇨ This section provides for exemption in respect of any **income of a foreign company received in India, in Indian currency, on account of sale of crude oil to any person in India**.
- ⇨ This is subject to the **conditions** that
  - (i) the receipt of money is under an agreement which is entered into by the Central Government or approved by it,
  - (ii) the foreign company, and the arrangement or agreement has been notified by the Central Government and
  - (iii) the receipt of the money is the only activity carried out by the foreign company in India.
- ⇨ This provision is introduced in view of the *mechanism devised by the Government to make payment to certain foreign companies in Indian currency for import of crude oil (e.g., from Iran)*.

[Amended]	**Section 115-O**

- ⇨ In A.Y. 2012-13, *dividend distributed by a company out of the dividend received from its subsidiary company, which has paid Dividend Distribution Tax, is not liable to Dividend Distribution Tax once again.* For this purpose, the **dividend receiving company should not be a subsidiary of any other company**.
- ⇨ By **amendment** of this section, effective from 1-7-2012, the condition that **"the company is not a subsidiary of any other company" has now been removed**.
- ⇨ Therefore, any **domestic company** (whether it is a holding company or a subsidiary company) **receiving dividend from its subsidiary or step down subsidiary company** and declaring dividend in the same year out of such dividend amount will be allowed to reduce the amount of such dividend for determining the **liability to Dividend Distribution Tax if the subsidiary or step down subsidiary company has paid Dividend Distribution Tax** that is payable.

4. HEADS OF INCOME

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

Unit 1: Income from Salaries

Sections covered in this unit:

Section	Provision
Sec. 15	*Chargeability section*
Sec. 16(ii)	*Deduction for Entertainment Allowance*
Sec. 16(iii)	*Deduction in respect of Professional/Employment Tax*
Sec. 17(1)	*Meaning of Salary*
Sec. 17(2)	*Meaning of Perquisites*
Proviso to Sec. 17(2)	*Treatment of Medical Facility*
Sec. 17(3)	*Profit in lieu of Salary*
Rule	**Valuation of Perquisites under Income Tax Rules, 1962**
Rule 3(1)	*Valuation of rent free accommodation*
Rule 3(2)	*Valuation of car facility*
Rule 3(3)	*Valuation of servant facility*
Rule 3(4)	*Valuation of gas, electricity, water facility*
Rule 3(5)	*Valuation of education facility*
Section	**Exemption under the head Salary**
Sec. 10(5)	*Exemption for leave travel concession*
Sec. 10(10)	*Exemption for Gratuity*
Sec. 10(10A)	*Exemption for Commuted Pension*
Sec. 10(10AA)	*Exemption for Leave Encashment upon retirement*
Sec. 10(10B)	*Exemption for retirement compensation*
Sec. 10(10C)	*Exemption for VRS*
Sec. 10(13A)	*Exemption for HRA*
Sec. 10(14)	*Exemption for other Allowances*
Schedule IV	***Provident Fund***

Basic Concept

Any amount received by an individual shall be treated as salary only if the relationship between payer and payee is that of an employer and employee. The employee may be a full time employee or part-time employee.

Basis of charge — Sec. 5

→ For charging tax under income under the salary the foremost requirement is that the relationship of employer and employee must subsist between the payer and payee.
→ Even if the person is in employment with more than one employer, all kinds of benefits extracted from such kind of contract would be taxable under income under the head salaries.
→ The basic difference one must remember between forgone and surrender of salary is that even if forgone, salary is taxable but when salary is voluntarily transferred to the central government, such salary is not taxable.
→ **Salary is taxable on due or receipt basis whichever is earlier. Accounting method of employee is not relevant.**

Salary — [Sec. 17(1)]

It means any kind of:
⇨ Wages
⇨ Annuity
⇨ Gratuity, fees, bonus, commission, perk or profit in lieu of salary or wages
⇨ Any advance of salary
⇨ Any amount on account of leave encashment
⇨ Any contribution to RPF to the extent it is taxable

- ⇨ Any interest on RPF to the extent it is taxable
- ⇨ Any contribution under Sec. 80CCD under scheme framed by CG

Place of accrual

Salary is Deemed to accrue at place where service is rendered , however there is an exception to the same:

- ⇨ Where an Indian National is rendering service outside on behalf of government of India outside India such salary is deemed to accrue and arise in India Itself and allowances and Perks to such person are also exempt from tax. And on the principle of reciprocity any salary or wages paid in India to a foreign national in this behalf shall also not be taxable in India.
- ⇨ Also Salary received from UNO would not be taxable in India.

Taxation of Advanced Salary and Arrears of Salary

- → Any advance salary received would be taxable in the previous year in which it is received on receipt basis and any arrears of salary received which is not taxed earlier would be taxable in the year in which they are allowed , however recipient would be entitled to claim relief under Sec. 89 in respect of such arrears.
- → **However it is to be noted that Advance salary is different from advance against salary and such advance against salary is taxable when salary becomes due.**

Gratuity and exemption available **Sec. 10(10)**

Case	Particulars	Amt. ₹
(1) Government employees and employees of local authorities:	Gratuity Received	XXX
	Less: Exempt under Sec. 10(10)(i): *Amt. of gratuity recd.*	XXX
	Taxable Gratuity	NIL
(2) Government employees and employees of local authorities:	Gratuity Received	XXX
	Less: Exempt under Sec. 10(10)(ii): *Minimum of following will be exempt:* (a) Actual Gratuity Recd. (b) $\frac{15}{26} \times (\text{Last Basic Salary} + \text{DA}) \times$ Completed years+ Part in excess of six months (c) Notified Limit: ₹ 10,00,000	(XXX)
	Taxable Gratuity	XXX
	Notes: **1. Salary** = Basic Salary + Dearness Allowance (DA) **2.** $\frac{7}{26}$ in case of employees of a seasonal establishment. **3.** In the case of piece rated employees, average salary for last three months, immediately preceding retirement should be considered.	
(3) Other employees	Gratuity Received	XXX
	Less: Exempt under Sec. 10(10)(iii): *Minimum of following will be exempt:* (a) Actual Gratuity Recd. (b) $\frac{1}{2} \times \text{Average Salaries} \times$ Completed years Only (c) Notified Limit: ₹ 10,00,000	(XXX)
	Taxable Gratuity	XXX
	Notes: **1. Salary** = Basic Salary + Dearness Allowance (DA) + Commission (% of turnover)	

	2. Average salary should be considered for last 10 months, immediately preceding the month of retirement.

Pension [Exemption Available]			**Sec. 10(10A)**
Uncommuted pension:	***Meaning:*** Monthly or periodical pension ***Taxability:*** Fully taxable for all employees (including Government Employees)		
Commuted pension:	**Cases**	**Particulars**	**₹**
	(1) Employees for Govt./ Local auth./ Statutory corp.	Pension received on commuted basis *Less:* Exemption under Sec. 10(10A)(*i*): Full amt. recd. as pension (commuted basis) Taxable Pension (Fully exempt, so)	XXX (XXX) NIL
	(2) Employees recd. Gratuity as well	Pension received on commuted basis *Less:* Exemption under Sec. 10(10A)(*ii*) $\frac{1}{3}$rd of 100% commuted pension Taxable Pension	XXX (XXX) XXX
	(3) Employees recd. does not recd. Gratuity	Pension received on commuted basis *Less:* Exemption under Sec. 10(10A)(*iii*) $\frac{1}{2}$(half) of 100% commuted pension Taxable Pension	XXX (XXX) XXX

Leave Salary and Exemption available			**Sec. 10(10AA)**
Encashment during tenure of service	***Taxability:*** Fully taxable		
Encashment at the time of retirement	**Cases**	**Particulars**	**₹**
	(1) Govt. employees	Leave Encashment received *Less:* Exemption under Sec. 10(10AA)(*i*): Full amt. of leave encashment Taxable Leave Encashment (Fully exempt, so)	XXX (XXX) NIL
	(2) Other employees	Leave Encashment received *Less:* Exemption under Sec. 10(10AA)(*ii*) (a) Actual leave encashment received (b) 10 × Avg. Salary (c) Cash equivalent (on the basis of avg. salary) of unavailed leave calculated on the basis per completed year (Fraction ignored) (d) Notified limit: ₹ 3,00,000 Taxable Leave Encashment	XXX (XXX) XXX
		Notes: **1.** Salary = Basic Salary + DA (Ret.) + Commission (% of turnover) **2.** Avg. Salary is to be computed on the basis of last 10 months immediately preceding the date of retirement.	

Retirement compensation and Exemption available	**Sec. 10(10B)**
Particulars	**Amt. (₹)**
Retrenchment compensation actually received	XXX
Less: Exempt under Sec. 10(10B): *Minimum of*	
(a) Actual amount received	
(b) Amount calculated as per the provisions of the Industrial Disputes Act, 1947; which is equal to 15 days average pay for every completed year of service or part thereof in excess of 6 months	
(c) Notified limit: ₹ 3,50,000	(XXX)
Taxable Retrenchment Compensation	XXX

Voluntary retirement compensation **Rule 2BA***

Conditions:

(i) 10 years of service or 40 years of age

(ii) For all employees *(except directors of the company)*

(iii) Reduction in number of employees

(iv) Not to be filled up

(v) No same management

** Rules refers to Income Tax Rules, 1962*

Exemption available	**Sec. 10(10C)**
Particulars	**Amt. (₹)**
Voluntary retirement compensation actually received	XXX
Less: Exempt under Sec. 10(10C): *Minimum of*	
(a) Actual amount received	
(b) Last drawn salary $\times$ 3 months $\times$ $\frac{\text{No.of completed}}{\text{years of services}}$	
(c) Last drawn salary $\times$ $\frac{\text{Balance months'}}{\text{services left}}$	
(d) Notified Limit: ₹ 5,00,000	(XXX)
Taxable voluntary retirement compensation	XXX

Provident fund

Recognised Provident Fund	⇨ Employer's contribution – excess of **12%** salary *(Taxable)*
	⇨ Interest on provident fund – excess of **9.5%** *(Taxable)*
Unrecognised Provident Fund	⇨ Employer's contribution – Taxable *(Salary)*
	⇨ Interest on Employer's contribution – Taxable *(Salary)*
	⇨ Interest on Employee's contribution – Taxable *(Other sources)*

Allowances

(1) Fully Taxable Allowance

Dearness Allowance	As is clear by its name, this allowance is paid to compensate the employee against the rise in price level in the economy. Although it is a compensatory allowance against high prices, the whole of it is taxable.
City Compensatory Allowance	This allowance is paid to employees who are posted in big cities. The purpose is to compensate the high cost of living in cities like Delhi, Mumbai etc. However, it is fully taxable.
Tiffin/Lunch Allowance	It is fully taxable. It is given to employees for lunch as coupons or added as part of salary
Overtime Allowance	When an employee works for extra hours over and above his normal hours of duty, he is given overtime allowance as extra wages. It is fully taxable.
Fixed Medical Allowance	Medical allowance is fully taxable even if some expenditure has actually been incurred for medical treatment of employee or family.

Servant Allowance	It is fully taxable whether or not servants have been employed by the employee.
Other Allowance	There may be several other allowances like family allowance, project allowance, marriage allowance, education allowance, and holiday allowance etc. which are not covered under specifically exempt category, so are fully taxable.

(2) Partly Exempt Allowance

Interest on Post Office Savings Bank Account **Sec. 10(15)**

Individual Account ₹ 3,500 and
Joint account ₹ 7,000

House Rent Allowance and Exemption Available **[Rule 2A]** **Sec. 10(13A)**

	Particulars	**Amt. (₹)**
	House Rent Allowance actually received	XXX
Less:	Exempt under Sec. 10(13A): *Minimum of*	
	(a) Actual amount received	
	(b) Rent paid – 10% Salary	
	(c) 50% of salary – If accommodation is in Mumbai, Kolkata, Delhi, Chennai	
	40% of salary – For any other place	(XXX)
Taxable House Rent Allowance		XXX

Exempt Minimum of
(1) Actual amount received (2) Amount spent

(i) Travelling (ii) Daily (iii) Conveyance (iv) Helper (v) Academic (vi) Uniform

Exempt Minimum of
(1) Actual amount received (2) Limit Specified

(i) *Children education allowance* – ₹ 100 p.m. per child (maximum 2 children)
(ii) *Hostel expenditure allowances* – ₹ 300 p.m. per child (maximum 2 children)
(iii) *Transport allowance* – ₹ 800 p.m. (₹ 1600 for blind/handicapped)
(iv) *Allowance allowed to transport employees (who not received daily allowance)*
(a) 70% of such allowance *or* (b) ₹ 10,000 p.m. (*whichever is less*)
(v) *Allowance allowed to Chairmen/Member of UPSC [Sec. 10(45)]*
(a) Serving chairmen/member of UPSC
1. Value of *conveyance facilities including transport allowance*
2. *Sumptuary allowance*
(b) Retired chairmen/member of UPSC
1. Maximum ₹ 14,000 p.m. for meeting expenses incurred towards secretarial assistance
(vi) *Tribal area allowance* – ₹ 200 p.m.
(vii) *Underground allowances* – ₹ 800 p.m.

(3) Fully Exempt Allowance

Foreign (Govt.) Employees	This allowance is usually paid by the government to its employees being Indian citizen posted out of India for rendering services abroad. It is fully exempt from tax.
HC & SC Judges	Allowance to **High Court and Supreme Court Judges** of whatever nature are exempt from tax.
UNO	Allowances from **UNO organisation to its employees** are fully exempt from tax.

Perquisites **Sec. 17(2)**

(1) Taxable in the hands of all employees

Rent Free Accommodation and Exemption Available **Rule 3(1)**

Govt. Employee	***Non-Govt. Employee***	
As per Govt. Rules	*Owned by employer*	*Not owned by employer*
	In cities population above 25,00,000: 15% of salary	***Minimum of*** (1) Actual Rent (2) 15% of Salary

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	In cities population 10,00,000 to exceeding 25,00,000: 10% of salary **In other place:** 7.5% of salary	

Valuation of monetary obligation of employee

Actual expenditure

Perquisites received by Chairmen/Member of UPSC: [Exemption Available] **Sec. 10(45)**

(a) Serving chairmen/members of UPSC:
1. The value of rent free official residence
2. The value of leave travel concession

(b) Retired chairmen/members of UPSC:
1. Free telephone connection + Up to 1500 calls p.m.

Interest free loan

(1) Interest Rate of SBI OR (2) 12%

(Maximum exemption loan: ₹ 20000)

Use of Movable Assets

(1) 10% p.a. of actual cost OR (2) Actual rental charge

Transfer of Movable Assets

Computer & electronic items	Dep. @ 50% for completed years (WDV)
Motor car	Dep. @ 20% for completed years (WDV)
Other assets	Dep. @ 10% for completed years (SLM)

Valuation of Car Facility **Rule 3(2)**

Car owned/*hired* by → Employer Expenses incurred by→ Employer *(Running & Maintenance)*	***Use***	***Exemption***
	Official use	Exempt
	Private use	10% of cost OR Actual hire charges *Add:* Running and Maintenance exp. *Less:* Amount recoverable
	Partly official partly private	For/below 1.6 ltr. CC → ₹ 1,800 p.m. Above 1.6 ltr. CC → ₹ 2,400 p.m. *(Nothing deductible on account of amount recovered)*
Car owned by → Employer Expenses incurred by → Employee *(Running & Maintenance)*	***Use***	***Exemption***
	Official use	NIL
	Private use	10% of cost OR Actual hire charges *Less:* Amount recoverable
	Partly official partly private	For/below 1.6 ltr. CC → ₹ 600 p.m. Above 1.6 ltr. CC → ₹ 900 p.m. If chauffer provided → ₹ 900 p.m. *(Nothing deductible on account of amount recovered)*
Car owned by → Employee Expenses incurred by → Employee	***Nothing is taxable.***	
Car owned/*hired* by → Employer Expenses incurred by→ Employer *(Running & Maintenance)*	***Use***	***Exemption***
	Official use	NIL
	Private use	Amount of expenditure
	Partly official partly private	Expenditure *Less:* (For/below 1.6 ltr. CC: ₹ 1,800 p.m. Above 1.6 ltr. CC : ₹ 2,400 p.m.) *Less:* If chauffer provided: ₹ 900 p.m. *(Greater deduction can be allowed if as per official records it is established that expenditure was for official use)*

Any other automotive owned by Employer	*Use*	*Exemption*
	Official use	NIL
	Private use	Expenditure incurred
	Partly official partly private	Expenditure *Less:* ₹ 900 p.m. *(Greater deduction can be allowed if as per official records it is established that expenditure was for official use)*
Conditions:	→ When such a facility is provided to high court or supreme court judges, it is exempt from taxation → When such a facility is provided for commuting between residences to office, it is exempt from taxation.	
Documents to be maintained by employee:	1. Complete details of journey undertaken for official purposes 2. Employer's certificate that expenditure was incurred wholly for official use. ***Note:*** *When 2 or more cars are provided, the value for one car would be as provided for partly official partly private and for other cars as purely for personal purposes.*	

(2) Taxable in the hands of specified employees

Specified employees means–Director, 20% (beneficial ownership), salary more than ₹ 50,000 p.a.

Sweeper, gardener or watchman	Actual Cost	
Gas, electricity or water suppliers	**[Rule 3(4)]**	(1) Actual cost OR (2) Manufacturing cost
Education facilities	**[Rule 3(5)]**	₹ 1,000 p.m. *(exempt)*

(3) Tax free perquisites in the hands of all employees

Medical facilities

Medical treatment in India	***Medical Treatment Outside India***
→ Employer's hospital, Govt. Hospital, Notified hospital, Group medicine insurance, medical insurance under Sec. 80D *(fully exempt)* → Any other medical expenditure-maximum of ₹ 15,000	→ Medical treatment and stay expenses abroad-exempt *(If permitted by RBI)* → **Travel expenditure is fully exempt if** • GTI upto ₹ 2,00,000 • GTI above ₹ 2,00,000

Leave travel concession [Exemption Available] **Sec. 10(5)**

Maximum of 2 journeys in block of 4 years by air/first class air-conditioned in train by shortest distance

Deductions from Salary

Entertainment Allowance *(Only for Govt. Employees)* **Sec. 16(ii)**

Minimum of

(a) Actual amount of entertainment allowance
(b) 20% of Basic Salary
(c) ₹ 5,000

Professional Tax/Employment Tax **Sec. 16(iii)**

Actual amount paid

Meaning of salary in deferent cases	
(1) For entertainment allowances	Basic Salary only
(2) Gratuity for employees (Covered under Gratuity Act)	Basic Salary + DA
(3) Gratuity for employees (not covered under Gratuity Act) (4) Leave Salary (5) Voluntary retirement compensation (6) Contribution to RPF (7) House rent Allowances	Basic Salary + DA (if forming part of retirement benefit) + Commission as a fixed percentage turnover
(8) Rent free accommodation	Basic salary + DA (for R.B.) + Bonus or commission + Taxable Allowances
(9) Employer's contribution towards employee pension scheme referred under Sec. 80CCD	Basic salary + DA (form part of salary) *(Excludes all Allowances and perks)*

Income under the head Salary		**[Format]**	
	Particulars	***Amt. (₹)***	***Amt. (₹)***
Basic Salary			……
Dearness Allowance/Pay			……
Bonus			……
Commission *(Based on turnover)*			……
Commission *(Fixed or Other)*			……
Other Taxable Allowances			
	Medical allowance	……	
Add:	*City compensation allowance*	……	
Add:	*Split duty allowance*	……	
Add:	*Tiffin/lunch allowance*	……	
Add:	*Deputation allowance*	……	
Add:	*Overtime allowance*	……	
Add:	*Servant or warden allowance*	……	
Add:	*Non-practicing allowance*	……	……
Allowances exempt with conditions			
	Amount received	……	
Less:	*Exempt amount*	(……)	……
Allowances exempt without conditions			
	Amount received	……	
Less:	*Exempt amount*	(……)	……
	Employers contribution to RPF	……	
Less:	*Exempt amount*	(……)	……
	Interest on balance of RPF	……	
Less:	*Exempt amount*	(……)	……
Employer's contribution to notified pension fund			……
Value of perquisites			……
Leave encashment *(Current Year)*			……
Retirement benefit			
	Gratuity	……	
Less:	*Exempt amount*	(……)	……
	Leave encashment upon retirement	……	
Less:	*Exempt amount*	(……)	……
	Pension:		
	Un-commuted pension		……
	Commuted pension	……	
Less	*Exempted amount*	(……)	……
	Compensation under VRS	……	
Less:	*Exempted amount*	(……)	……
	Retrenchment compensation	……	
Less:	*Exempted amount*	(……)	……
Amount received from URPF upon retirement			……
GROSS SALARY			……
Less:	***Deduction under Sec. 16***		
	Deduction for Entertainment Allowance [Sec. 16(i)]		(……)
	Deduction for Professional/Employment Tax [Sec. 16(ii)]		(……)
INCOME UNDER THE HEAD SALARY			……

UNIT 2: INCOME FROM HOUSE PROPERTY

Sections covered in this unit:

Section	Provision
Sec. 22	*Basis of charge (i.e. Charging Section)*
Exp. to Sec. 23(1)	*Unrealised rent*
Sec. 24(a)	*Statutory deduction*
Sec. 24(b)	*Interest on borrowed capital*
Sec. 25A	*Recovery of unrealised rent*
Sec. 25AA	
Sec. 25B	*Arrears (Outstanding) rent received*
Sec. 26	*Property owned by co-owners*
Sec. 27(i)	*Deemed ownership – Transfer to Spouse*
Sec. 27(ii)	*Deemed ownership – Holder of an impartible estate*
Sec. 27(iii)	*Deemed ownership – Member of co-operative society etc.*
Sec. 27(iiia)	*Deemed ownership – Person in profession of property as per Sec. 53A of Transfer of Property Act, 1882*
Sec. 27(iiib)	*Deemed ownership – Person having right in property for a period not less than 12 years*

Basis of charge — Sec. 22

→ There must be a property consisting of building or land appurtenant thereto
→ The Assessee should be owner of that property
→ Such property should not be used for Business or profession of assessee the profits of which are chargeable to tax

Some important points

→ It must be noted that the word property or part thereof means part or unit of that property
→ If there is any income from vacant piece of land such income would be charged under Profits and gains from business and profession or under income from other sources depending upon nature of the case.
→ Property not owned by assessee should not be charged under house property, stating and example we mention that income from subletting is charged under income from other sources.

Ownership

It includes legal owner as well as deemed owner. *The term ownership includes ownership of any kind and includes:*

→ Freehold Property
→ Leasehold property
→ Deemed ownership

Deemed Ownership — Sec. 27

The various cases in which owner would be counted as deemed owner of property are as follows:-

Transfer to spouse:	Where an individual transfers his/her house property to his/her spouse without any adequate consideration ***(except in an agreement to live apart)***, the transferor would be deemed to be owner of such house property. It is to be noted that only house property is transferred and not any cash through which House property is purchased, in such a case, clubbing provisions will apply.
Transfer to minor child	Where property is transferred to minor child ***(except married minor daughter)***, Transferor would be deemed to be owner of that house property.
Holder of an impartible estate	Such holder would be deemed to be owner of that property.

Member of co-operative estate	Person holding property under a co-operative estate as leasehold or freehold property would be deemed to be owner of that property.
Person holding some rights of property under Sec, 53A of Transfer of Property Act, 1882	***Conditions:*** → There is an agreement in writing → Purchaser has paid consideration or agreed to pay the same → Purchase has taken possession of the property
Person holding lease of a property for not less than 12 years	Such a person would be deemed to be owner of that property provided that lease is renewed after a minimum period of 12 months.
Disputed property	A person who holds the possession of a disputed property or enjoys income from that property is deemed to be owner of that property.

Use of House Property and its impact on Taxation

House property may be used for either commercial or residential purposes. Some cases of taxation are as follows:

→ Where property is held as Stock in trade then also taxed under house property
→ When it is business to give property on rent, then also it is taxed under this head of house property
→ When hotel or P.G. accommodation building is given on rent then also taxed under house property but where separate rooms are given on rent then it is taxed either business or profession or under income from other sources.
→ Some exceptions to general rule of taxation under house property are:
- Where property is used for business of assessee
- Where P.G. or hostel accommodation is run by assessee
- Where property is given on rent for efficient conduct of business
- Where H.P. is given on rent to Govt. agency for locating branch, etc. for conducting business efficiently, it is taxed under income from business and profession.
- Where it is a case of composite rent.

Income from House Property not chargeable to tax

→ House Property use for Business of Assessee
→ Building held for charitable purposes
→ Self-occupied property
→ Property of registered trade union
→ Palace of ex ruler
→ Income from Farm house:
Conditions:
- Farm house in India
- In immediate vicinity of agricultural land
- Used as a dwelling or store house

Cases of composite rent

Composite rent can be on amount of
→ ***Provision of facilities with House Property***
→ ***Provision of assets with House Property***

(a) Rent On account of House Property and Other facilities like gas, etc. should be separated and rent on account of House Property would be taxed under income from House Property and rest would be taxable under either under the head Business & Profession or income under the head other sources.
(b) Rent on account of House Property and hire charges of assets is treated as follows:

⇨ If assets form an integral part of lending, whole of the rent should be taxed under either Income under the head "Profits and gains from Business and Profession" (PGBP) or Income under the head "Income from Other Sources" as the case may be.

- If asset do not form an integral part of lending, rent should be separated into :-
- Rent for H.P. and should be taxed under H.P.
- Rent for assets must be taxed under P.G.B.P. or income from other sources

Annual Value	**Sec. 23**
Step 1	**Take higher of** (a) Expected rent (which is computed by taking higher of municipal value or fair rent whichever is higher but limited to standard rent) or, (b) Actual rent received or receivable (c) But in this clause c, we compute actual rent which would have been there if there would have been no vacancy, if such rent is higher than expected rent, then rent computed under this clause (c) would be used otherwise rent computed in clause (a) that is the expected rent would be used.
Step 2	From this Calculate GAV by taking rent as per above provisions and subtracting vacancy allowance on the basis of actual rent from the same.
Step 3	This is our **Gross Annual Value (GAV)**
Step 4	From GAV deduct Standard deduction @ 30% of GAV and municipal taxes actually paid and borne by the owner during the previous year.
Step 5	Finally we have computed our *Net Annual Value or annual value*

Unrealised rent — Rule 4

Sometimes owner is not able to recover some portion of rent from the tenant such a rent is called as unrealized rent, *Unrealized rent is allowed as a deduction only when following 4 conditions given in Rule 4 are satisfied:*

→ Tenancy is bonafide
→ Every step has been taken to get the property vacated
→ Every step has been taken to recover unrealized rent
→ Tenant is not in occupation of any other property of Owner

There are a number of conflicting views regarding treatment of unrealized rent due to difference of opinion created by income tax law and income tax return form, However Taking in to account the provisions of law; the appropriate provisions are written below:

Just deduct amount of unrealized rent from Step 1 Point (b) and Point (c) of above Steps i.e. While Computing figures for actual rent, these are allowed as a deduction. The Rest of Steps Follow in the same manner as written above.

Vacancy

→ In point "Annual Value", everything regarding vacancy clause has been discussed in the 5 steps for computation of annual value, so we are not discussing the same separately.
→ It is to be noted that there is a difference of opinion among authors regarding vacancy allowance, rest necessary and commonly accepted provisions have been discussed in point "Annual Value".

House property let out during part of year and part of year self-occupied

→ The Income from such property is calculated as if let out for whole of the year. In This case, expected rent would be taken for whole year but actual rent would be taken for let out period only and no special allowance for this purpose is allowed.
→ *However where property is acquired during the year itself, expected rent would be taken for only that portion for which property has been owned by assessee and rest provisions remains the same.*

Treatment of Vacancy + Unrealised rent

If the problem is such that adjustment is required both for Vacancy and unrealized rent then following treatment follows which is a combination of provisions written in Point "Unrealised rent" and Point "Vacancy" above:

→ The amount of unrealized rent would be deducted from Step 1 Point (b) and Point (c)
→ Next, the treatment of unrealized rent is same as per provisions written in point "Annual Value" in the next steps.

Income from House Property – Self Occupied for Residence

When property is:

→ Self-occupied for residence or
→ Cannot be self-occupied for residence owing to reason of employment and he has to reside at some other place not belonging to him

Then, Annual Value of such property would be taken to be NIL.

Annual value not NIL:

→ House Property Actually let out during the year
→ Any other benefit is derived from property.

Case where more than one house is for self-occupation:

Then the assesse has option to take any of the above houses as self-occupied and the other one would be treated as deemed let out property.

Notes:

- Annual value here denotes value after municipal taxes.
- This option is available only to individuals and Hindu undivided families.
- Where an assessee let out his house to the employer and the employer in return allots the same to assessee only then, then tax treatment would be as follows:-
  - Tax on income of house property and
  - Tax on the matter of rent free or concessional accommodation provided by employer taxable under income under the head salaries.

Deductions from Income from House Property — Sec. 24

(1) Standard deduction: A Standard Deduction of 30% of Net Annual Value Would Be allowed as a deduction from net Annual Value, irrespective Of expenditure incurred. No other deduction on account of any expenditure is allowed.

However such deduction would not be allowed when annual value is negative.

(2) Deduction on account of interest: Any Kind of interest on borrowed capital would be allowed as a deduction from H.P. income on "accrual" basis. Interest includes pre construction period interest installment.

However Interest would not be allowed as a deduction if such interest is paid out of India and No TDS has been deducted from it and there is no person in India who can be assessed in respect of person to whom interest is paid.

Notes:

- Loan can be for any purpose like repairs, construction or any kind of extension to house property but should be connected with H.P.
- Fresh loan to merely repay original loan would be counted as if like original loan and interest would be allowed as a deduction.

Pre-construction period: Period starting from date on which capital is borrowed and ending on

→ 31st march immediately preceding the date on which construction of property is completed or
→ Date on which borrowed capital is repaid, whichever is earlier.
→ Pre-construction period interest is allowed as deduction in 5 equal installments commencing from year in which construction is completed.

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Example:
If capital is borrowed on June 30, 2010 and construction of property is completed on 30th July 2012, then interest from period June 30, 2010 to 31st March 2012 would be counted as pre-construction interest and would be allowed a deduction in 5 equal installments and interest from 1st April 2012 would be counted as interest for the current period.

Deductions in case of Self-occupied Property

Deductions as written above are not fully applicable in case of a self-occupied property. The changes case of self-occupied property are as follows: -

(1) *No standard deduction* of 30% would be allowed
(2) *Deduction in case of money borrowed:* Here also deduction is allowed subject to certain terms and conditions:-

These conditions are as follows:

→ Money is borrowed after 1-4-1999
→ Money is borrowed for construction or acquisition of property
→ Construction or acquisition of property is completed within 3 years from end of financial year in which money is borrowed
→ Creditor gives a certificate that amount was borrowed for construction or acquisition of property.

In Case above 4 provisions are satisfied the amount of deduction is Actual interest (inclusive of pre-construction period interest) or ₹ 150000 otherwise the amount of interest deduction would be ₹ 30000.

However, Interest would not be allowed as a deduction if such interest is paid out of India and No TDS has been deducted from it and there is no person in India who can be assessed in respect of person to whom interest is paid.

Recovery of unrealised rent and arrears of rent:

Recovery of unrealised rent	*Recovery of arrears of rent*
→ This provision is applicable only if unrealized rent is allowed as a deduction earlier. → Any amount recovered on account of unrealized rent should be directly added to house property income. → No Standard Deduction or any kind of deduction is allowed. → No other deduction is allowed on account of any expenditure. → This provision is applicable whether property exists or not.	→ This income is chargeable to tax under house property income. → Standard Deduction of 30% is allowed to the assessee. → No other deduction is allowed on account of any expenditure. → This Provision is applicable whether property exists or not.

Co-owners property:

→ If shares of co-owners are definite, then such property would be assessed in hands of individual persons.
→ If shares of individual owners are not definite then such property would be assessed as body of individuals/association of persons.
→ In case property is self-occupied than each co-owner would be allowed a deduction of ₹ 150,000 / ₹ 30,000.
→ In case property is let out, we will ignore co-ownership and compute income and in the next step we will distribute the income among co-owners in ratio of co-ownership.

Can Annual Value be negative? [Common Doubt]

Yes annual value can be negative.

In Case of Self-occupied property: Yes, annual value of a property can be negative but only to the extent of ₹ 1,50,000 / ₹ 30,000

In Case of Let-out property: The annual Value can be negative Because of deduction on account of municipal taxes and interest.
There is no limit to which such income can be negative.

Income under the head House Property **[Format]**

	Particulars	In case of Let out property (₹)	In case of Self-occupied property (₹)
	Gross Annual Value	……	……
Less:	Municipal Taxes	(……)	(……)
	Net Annual Value	……	……
Less:	Deduction under Sec. 24		
	Standard Deduction @ 30%	(……)	Not Allowed
	Deduction on account of Interest	(……)	(1,50,000 or 30,000)
	Income under the head House Property	……	……

NOTES

UNIT 3: PROFITS & GAINS OF BUSINESS OR PROFESSION

Sections covered in this unit:

	Section	Provision
	Sec. 28	*Income chargeable as PGBP*
	Sec. 29	*Computation sheet of PGBP*
	Sec. 30	*Deduction for expenses in relation to building*
	Sec. 31	*Deduction for expenses in relation to plant, machine and furniture*
	Sec. 32(1)(i)	*Depreciation by SLM for electricity company*
	Sec. 32(1)(ii)	*Depreciation by WDVM for other assessees*
★	Sec. 32(1)(iia)	*Deduction for additional depreciation for manufacturing concern*
	Sec. 32(1)(iii)	*Deduction for terminal depreciation (Under SLM)*
	Sec. 32(2)	*Deduction for unabsorbed depreciation*
	Sec. 33AB	*Special deduction for Tea Growing and Manufacturing concern*
	Sec. 33ABA	*Deduction for Site Restoration fund*
	Sec. 35	*Deduction for the activities of scientific research*
	Sec. 35A	*Deduction for expenses on patent and copyrights (old provision)*
	Sec. 35ABB	*Deduction for acquisition of telecommunication licenses*
	Sec. 35AC	*Deduction in respect of eligible project*
★	Sec. 35AD	*Deduction in respect of expenditure for specific businesses*
	Sec. 35CCA	*Deduction in respect of donation to RDP or NUEF*
★	Sec. 35CCC	*Expenditure on extension of agricultural project*
★	Sec. 35CCD	*Expenditure on skill development project*
	Sec. 36(1)	*Other revenue deductions*
	Sec. 37(1)	*General deductions*
	Sec. 37(2B)	*Disallowance of payment to political party*
	Sec. 38	*Disallowance of expense on assets not wholly (used) for business*
	Sec. 40(a)	*Certain expenditure disallowed*
	Sec. 40(b)	*Remuneration and Interest allowed to Partner from Firm*
	Sec. 40A(2)	*Disallowance of payment made to related party*
	Sec. 40A(3)	*Disallowance @ 20% on certain cash payments*
	Sec. 40A(7)	*Disallowance of provision for gratuity*
	Sec. 41(1)/(2)/(3)/(4)	*Certain income chargeable to tax as PGBP*
	Sec. 43(1) + Exp.	*Actual cost of depreciable asset under different situation*
	Sec. 43(6)	*Meaning of WDV for charging depreciation on WDVM*
	Sec. 43B	*Certain expenses allowed on payment basis only*
	Sec. 44AA	*Requirements of maintenance of books of accounts*
★	Sec. 44AB	*Requirements of tax audit*
★	Sec. 44AD	*Presumptive taxation*
	Sec. 50	*Capital gains on depreciable assets (WDVM)*
	Sec. 50A	*Capital gains on depreciable assets (SLM)*
	Sec. 145	*Method of Accounting [AS 1 & AS 2: Cash System OR Mercantile (Accrual)]*

Basis of charge *[Essential conditions]*	**[Sec. 28]**

- ⇨ Profit from Business or Profession
- ⇨ Any Compensation received or receivable
  - (a) Termination or Modification of affairs other than Indian Company
  - (b) Termination or Modification of affairs of Indian Co.
  - (c) Rested power on Agencies/ Corporation
- ⇨ Profit on sale of import license
- ⇨ Any Subsidy received from Govt.
- ⇨ Profit from Speculation Business
- ⇨ Salary, Bonus, Commission, of Partner
- ⇨ Tax on Non-monetary perquisites
- ⇨ Income from key man insurance policy

Business	→ Have skills, talent, knowledge → Special qualities → Carried on business with intension of profit
Occupation	→ Don't have skill or talent → No qualitative → Bonus or commission earned

Computation of Business Profit		**[Sec. 29]**
Balance as per profit and loss or Income - expenditure account		……
Add: *Expenses expressly disallowed but not debited to P & L A/c*	……	
Expenses not allowed but debited to P&L A/c	……	
Incomes or receipts taxable under this head but not credited to P& L A/c	……	
Capital expenses debited to P & L A/c	……	
Personal expenses debited to P & L A/c	……	
Expenses in excess of the allowed amount, debited to P & L A/c	……	
Losses not allowed but debited to P & L A/c	……	
Expenses not relating to the previous year but debited to P & L A/c	……	
Under-valuation of closing stock or over-valuation of opening stock	……	……
Less: *Expenses expressly allowed but not debited to P & L A/c*	……	
Expenses relating to the previous year but not debited to P & L A/c	……	
Losses allowed but not debited to P & L A/c	……	
Incomes or receipts not taxable under this head but credited to P & L A/c	……	
Capital receipts credited to P & L A/c	……	
Incomes or receipts taxable under other head but credited to P & L A/c	……	
Over-valuation of closing stock or under-valuation of opening stock	……	
Profits taxable under the head incomes from business or profession.	……	(……)
INCOME UNDER THE HEAD PGBP		……

Keyman insurance policy

- → **Meaning:** Keyman insurance policy is taken by a business concern **on the life of an employee (keyman) whose services contribute substantially to the success of the business**.
- → **Objective:** The object of the keyman insurance is to **indemnify a business concern from the loss of earning resulting from the death of a valuable employee**.
- → **Determine the amount:** The amount of keyman insurance can be estimated as the monetary value of the likely setback to profits of the concern due to the death of the keyman.
- → **Tax impact:** Any sum received under a keyman insurance policy including the sum allocated by way of bonus is also taxable.

Sum received by	***Employee-employer relationship***	***Taxable under the head***
Employee	Exist	Salary
	Does not exist	Other Sources
Management		PGBP

3.1: Allowable Deductions [Sec. 30 to Sec. 37]

Rent, rates, taxes, repairs and insurance for building **Sec. 30**

Nature of expenditure	***Deduction if building is taken on rent***	***Deduction if building is owned***
Rent ***paid****	Allowed	–
Cost of repairs *(Revenue nature)*	Allowed	Allowed
Cost of repairs *(Capital nature)*	Not Allowed	Not Allowed
Land revenue, Municipal Tax, Local Rates	Allowed	Allowed
Premium on insurance of building against damage or destruction	Allowed	Allowed

For the purpose of Sec. 28 to 43 the word paid means* ***actually paid*** *or* ***incurred*** *according to the* ***method of accounting*** *upon the basis of which income is computed under the head PGBP* **Sec. 43(2)**

Repairs and insurance of plant and machinery **Sec. 31**

Nature	***Deduction***
Repairs *(Revenue nature)*	Allowed
Repairs *(Capital nature)*	Not Allowed
Insurance against damage/destruction	Allowed

Note: *Any expenses incurred for increasing efficiency of machinery will be also treated as revenue nature and it will be deductible.*

Depreciation **Sec. 32**

In respect of	**(1) Tangible Assets**: Building, machinery, plant or furniture
Block of Asset **Sec. 2(11)**	**(2) Intangible Assets:** Know-how, patents, copyright, trademarks, licenses, franchises or any other business or commercial rights of similar nature (acquired on or after 1/4/1998)
Conditions	⇨ *Owned wholly or partly* by the assessee and used *for the purpose of the business and profession* ⇨ *Depreciation* shall be *allowed* on the ***WDV*** of the *block* of assets *at prescribed percentage*

Some important points kept in mind while calculation of Depreciation

When 50% Depreciation?

In following cases assesses can claim only half rate of deprecation if he fulfil following conditions:

1. If asset acquired during the PY
2. Applicable only for the year of acquisition *(purchase)*
3. Put to use not more than 180 days

Capital expenditure **Exp. to Sec. 32(1)**

→ Assesse carried on business on lease
→ Any Capital expenditure incurred by him
→ Treated him as owner of the building

Additional Depreciation **Sec. 32(1)(iia)**

If following conditions fulfil by assessee then he can claim additional ***20%*** *deprecation on original cost value:*

1. If new plant & machinery acquired for industrial undertaking purpose
2. Assessee must be engage in manufacturing or production of any article or thing

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3. Installed after 31st march 2005.

Aggregated Depreciation

In case of	***Depreciation allowable to***
Succession [under Sec. 47(xiii) or Sec. 47(xiiib) or Sec. 47(xiv) or Sec. 170]*	Predecessor and the successor
Amalgamation	Amalgamating company and amalgamated company
Demerger	Demerged company and resulting company

When AOP/Firm/individual/ business acquired by company or firm then deprecation will be calculated day wise not month wise. In case of amalgamation of companies, number of days of use of assets in ratio will be kept in mind.

Sec. 47(xiii)*	Transfer of a capital asset by *a firm to a company* as result of **succession** of a firm by a company
Sec. 47(xiiib)	Transfer of a capital asset by a *private company/unlisted public company to LLP (Limited Liability Partnership)* as a result of **conversion** of private company/unlisted public company
Sec. 47(xiv)	Transfer of a capital asset by a *partnership concern to a company* result of **succession** of partnership concern by a company
Sec. 170	**Succession of business/profession otherwise than on death:** Where a person succeeds business/profession of any other person: → Predecessor *(Seller)* shall be assessed in respect of the income of the PY in which the succession took place up to the date of succession & → Successor *(Purchaser)* shall be assessed in respect of the income of PY after the date of succession

Written Down Value **Sec. 43(6)**

	Particulars	***Amt. (₹)***
	WDV of block of assets as on PY (i.e. as on 1/4/2011)	……
Add:	***Actual Cost*** of the asset falling within the block acquired during the PY	……
		……
Less:	***Money Payable*** in respect of asset sold/discarded/demolished/destroyed during the PY and the amount of scrap value	……
	WDV of the block at the end of PY (i.e. as on 31/3/2012) for the purpose of charging depreciation for the PY	……
Less:	Depreciation for PY 2011-12 [AY 2012-13]	……
	WDV of the block at the beginning of next PY [i.e. 1/4/2012]	……

Depreciation = Closing WDV** (WDV of the block at the beginning of next PY)* × ***Rate of depreciation

1. ***Actual cost*** means the actual cost of the asset to the assessee, reduced by the portion of the cost which has been directly or indirectly met by any other person or authority
2. ***Money payable*** means Sale Price and it includes insurance compensation
3. The reduction of ***money payable*** shall only be to the extent that WDV becomes NIL.
4. Depreciation on fractional ownership is allowed.
5. No depreciation is admissible where WDV has been zero, though the block of assets does not cease to exist *(block of assets is not empty)* on the last day of PY.
6. If a block of asset cease to exist or if all asset of the block have been transferred and the ***block of the asset is empty*** on the last day of the PY, no depreciation will be admissible in such case.

Special provision for computing Capital Gains in case of depreciable assets **Sec. 50**

Computation of capital gain/loss can be made only in following two situation:

1. On the last day of PY, ***WDV of the block of assets is zero***, although block of assets is not empty because all assets in the block are not transferred during the PY.
2. When ***block of assets is empty on the last day of PY*** because all assets in that block are transferred during the PY.

	Computation of capital gain	₹	₹
	Sales consideration		……
Less:	WDV of block of assets at the beginning of **PY** (i.e. as on 1-4-2011)	……	
	Actual Cost of the asset falling within the block acquired during the PY	……	
	Transfer expenses	……	……
	Short term capital gain		……

Notes:

1. It is not necessary that depreciation is allowed for the year under consideration. If the depreciation is allowed in the current year *(or any earlier years)*, Sec. 50 will be applicable.
2. If Sec. 50 is not attracted *(affected)* then the expenditure on transfer of assets shall be allowed as business expenditure under Sec. 37(1). It shall not be reduced from Sales consideration.
3. As per Sec. 45(1A), value of any money or FMV of assets received as compensation from insurance company shall be deemed to be full value of consideration received as a result transfer of asset which was destroyed.

Set-off and carry forward of unabsorbed depreciation — Sec. 32(2)

Step 1	Depreciation allowance of the current PY is first deductible from Income under PGBP head
Step 2	If depreciation allowance is not fully deductible under the head PGBP because of absence or inadequacy of profit, it is deductible from income chargeable under other heads of income *(except income under the Salary)* of the current PY
Step 3	If depreciation allowance still remains unabsorbed, it can be carry forward to the subsequent AYs by the same assessee.

Same head → Any head of income other than salary → Carry forward to any number of years

Notes:

1. Unabsorbed depreciation can be carry forward and set off, even ROI *(Return of Income OR Income Tax Return)* is filed after ***due date*** of furnishing the return of Income.
2. No time limit is fixed for the purpose of carrying forward of unabsorbed depreciation, *it can be carried forward for indefinite period, if necessary*.
3. In the subsequent AYs, unabsorbed depreciation can be set off against any income whether chargeable under the head PGBP or under any other head *(except income under the head Salary)* In the matter of set-off, the following order of priority is followed in subsequent AYs:
   (a) Depreciation of current PY
   (b) Brought forward business loss
   (c) Brought forward unabsorbed depreciation
   If in the subsequent AYs, there is no ***brought forward loss***, brought forward unabsorbed depreciation can be added to ***depreciation of current PY*** for the purpose of claiming deduction.
4. For claiming depreciation, the assessee should be ***beneficial owner*** of the asset. It is not necessary that he should be registered owner.
5. Revaluation of assets does not have any impact on Income Tax Act, 1961. For the calculation of depreciation, ***revaluation should be ignored***.

Depreciation for power generating undertakings — Sec. 32(1)(i)

1. They have option to claim depreciation
   (a) SLM on ***each*** *assets* OR (b) WDVM on ***block*** *assets*
2. Put to use less than 180 days: Same as block asset concept
3. Depreciation allowed shall not exceed actual cost of the asset
4. Open to such undertaking to opt the depreciation under WDVM
5. Above option is not exercised depreciation is allowed on the basis of SLM

Terminal Depreciation — Sec. 32(2)(iii)

→ Depreciation claimed under Sec. 32(1)(i) → Sold, destroyed or discarded
→ Sale consideration < [Actual Cost – Depreciation Allowed]
→ Difference of above shall allowed as terminal depreciation in PY in which asset sold, destroyed or discarded

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Computation of Terminal Depreciation		₹
	Written Down Value (WDV)	……
Less:	Insurance received	……
	Terminal Depreciation	……

Balancing charge **Sec. 41(2)**

→ Depreciation claimed under Sec. 32(1)(i) → Sold, destroyed or discarded
→ Sale consideration > [Actual Cost – Depreciation Allowed]
→ *Minimum of* following will be treated as ***Balancing charge***
(a) Cost *Less* WDV OR (b) Sales consideration *Less* WDV

Capital Gain on the transfer of Capital Asset on which SLM depre. charged **Sec. 50A**

Sales consideration exceeds actual cost of such assets

Computation of Capital Gain on the transfer of Capital Asset on which SLM depre. Charged		₹
	Sales consideration	……
Less:	Actual cost of Assets	……
	Capital Gain on the transfer of Capital Asset on which SLM depre. charged	……

APPENDIX

Rates of depreciation for various block of assets

Block No.	*Name of Asset*	*Rate of Depreciation*
***Class 1: Buildings** [included roads, bridges, culverts, wells and tube-wells]*		
Block 1	Residential buildings	**5%**
Block 2	Non-residential buildings *(e.g. office, factory, godown etc.)*	**10%**
Block 3	Purely temporary erections such as wooden structures	**100%**
Class 2: Furniture and fittings		
Block 1	Furniture and fittings include ***electronic fittings*** ***[Electronic fittings** include electrical wiring, switches, sockets and other fittings and fans etc.**]***	**10%**
Class 3: Plant and machinery		
Block 1	(a) Motor cars *(other than those used in business of running them on hire)* (b) Any other plant and machinery *(other than those covered by Block 2 to 8 below)*	**15%**
Block 2	Ocean-going ships, vessels ordinarily operating on inland waters including speed boats	**20%**
Block 3	(a) Motor buses, motor lorries and motor taxis used in a business of running them on hire (b) Moulds used in rubber and plastic goods factories (c) Machinery used in semi-conductor industry	**30%**
Block 4	(a) Aeroplanes – Aero-engines (b) Specified life-saving medical equipment	**40%**
Block 5	Containers made of glasses or plastic used as re-fills	**50%**
Block 6	(a) Computer including computer software (b) Books (other than annual publication) owned by professional (c) Gas cylinders (d) Plant used in field operation by mineral oil concerns (e) Direct fire gas melting furnace used in glass manufacturing concerns	**60%**
Block 7	(a) Energy saving devices *(e.g., Automatic Voltage Controller)* (b) Renewal energy devises *(e.g., Flat Plate Solar Collectors)* (c) Rollers in flour mills, sugar works and steel industry	**80%**

Block 8	(a) Air pollution control equipment (b) Water pollution control equipment (c) Solid waste control equipment (d) Wooden parts used in artificial silk manufacturing machinery (e) Cinematograph films, bulbs of studio lights (f) Wooden watch frames in match factories (g) Some plants used in mines, quarries and salt works (h) Books (annual publication) owned by professional (i) Books (may or may not be annual publication) owned by assessees carrying on business in running libraries	**100%**
Class 4: Intangible assets		
Block 1	Know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature	**25%**

	Tea Development Account	**Sec. 33AB**	**Site restoration fund Account**	**Sec. 33ABA**
Applicable	Tea or Coffee or rubber		Petroleum or natural gas	
Time Limit	Six months of end of P/Y or before ROI		Before end of P/Y	
Deposit	NABARD or TCR board		SBI or Scheme of Ministry of P & G	
Deduction	40% of profits of such business (max. limit)		20% profit of such business (mix. limit)	

Common provision in case of Sec. 33AB & 33ABA

Deduction withdrawn → Purchase for office or residence, office appliances *(other than computer)*

Deduction allowed → In one year, XI^{th} Schedule, sale before 8 years from end of PY

Expenditure on scientific research **★ Sec. 35**

Purpose	***Donee***	***Deduction***
Specific research	National laboratories, IIT, specified person	200% of donation
Specific research	Research association, university, college, other institutions	175% of donation
Specific research	Company (company's main object being is to carry on scientific research)	125% of donation
Research in social sciences, statistical research	Research association, university, college, other institutions	125% of donation

Special business: Bio-technologies or companies engaged in the business of manufacturer or production of an article or thing except those specified in the XIth Schedule of the Income Tax Act.
Unabsorbed expenditure: Same Treatment as unabsorbed depreciation

The XI^{th} (Eleventh) schedule: List of articles or things

1. Beer, wine and other alcoholic spirits.
2. Tobacco and tobacco preparations, such as, cigars and cheroots, cigarettes, biris, smoking mixtures for pipes and cigarettes, chewing tobacco and snuff.
3. Cosmetics and toilet preparations.
4. Tooth paste, dental cream, tooth powder and soap.
5. Aerated waters in the manufacture of which blended flavouring concentrates in any form are used.
   Explanation: "Blended flavouring concentrates" shall include, and shall be deemed always to have included, synthetic essences in any form.
6. Confectionery and chocolates.
7. Gramophones, including record-players and gramophone records.
8. Projectors.
9. Photographic apparatus and goods.

10. Office machines and apparatus such as typewriters, calculating machines, cash registering machines, cheque writing machines, intercom machines and tele-printers.
    Explanation: The expression "office machines and apparatus" includes all machines and apparatus used in offices, shops, factories, workshops, educational institutions, railway stations, hotels and restaurants for doing office work 16[and for data processing (not being computers within the meaning of section 32AB
11. Steel furniture, whether made partly or wholly of steel.
12. Safes, strong boxes, cash and deed boxes and strong room doors.
13. Latex foam sponge and polyurethane foam.
14. Crown corks, or other fittings of cork, rubber, polyethylene or any other material.
15. Pilfer-proof caps for packaging or other fittings of cork, rubber, polyethylene or any other material.

Expenditure on acquisition of Patent Rights *or* Copy Rights — Sec. 35A

Before 1/4/1998 → Allowed in 14 equal annual instalments
On or after → Depreciation at 25% *(WDV)*

Expenditure for Obtaining license to Operate Telecommunication Services — Sec. 35ABB

Actual payment made to obtain a license, shall be allowed as deduction in equal instalments during the number of years for which the license is in force.

If licence fee (amt.) paid before commencement of business	*If licence fee (amt.) paid after commencement of business*
Amt. of deduction = $\frac{\text{Actual amt. (fee) paid}}{\text{Total no. of license period}}$	Amt. of deduction = $\frac{\text{Actual amt. (fee) paid}}{\text{Remaining no. of license period}}$

Treatment after sale of license *(for capital gain purpose)*

Fully licence right sold	**SV>AV**	Sale value *Less* Org. Cost = Capital Gains Org. Cost *Less* WDV = Business income
	SV>WDV	Org. Cost *Less* WDV = Business income
Partly license right sold	**SV>AV**	Sale Value *Less* WDV = Business income
	SV>WDV	WDV *Less* Sale Value = WDV

Expenditure *(Donation)* on eligible project or schemes — Sec. 35AC

(1) Eligible expenditure → Payment to public sector company, local authority, approved association, direct expenditure incurred on eligible project *(For Company only)*
(2) Amount deduction → Actual payment *OR* Actual expenditure
(3) Disallowance unless assessee furnishes along with his Return of Income Tax a certificate
  → In Form No. 58A from entity in respect of contribution *(Expenditure or Donation)* made
  → In case where the expenditure is directly incurred *(only for companies)*, a certificate from the Chartered Accountant.

Deduction in respect of certain specified business — ★ Sec. 35AD

→ **Investment-linked tax incentive for specified business-cold chain facilities, warehousing facilities for storage of agriculture produce, and**
→ **Cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities**

Sr. No.	Specified Business	Eligible assessee	Starting	Deduction
1.	Cold chain facility	Any assessee	1/04/2009	150%
2.	Warehouse facility for agricultural produce	Any assessee	1/04/2007	150%
3.	Cross-country natural gas pipeline network	Indian Company	1/04/2007	150%
4.	Cross-country crude/petroleum oil pipeline network	Indian Company	1/04/2009	100%
5.	Hotel	Any assessee	1/04/2010	100%

6.	Hospital	Any assessee	1/04/2010	150%
7.	Housing project for redevelopment for rehabilitation	Any assessee	1/04/2010	100%
8.	Housing project for affordable housing	Any assessee	1/04/2011	150%
9.	Production of fertilizer in India	Any assessee	1/04/2011	150%
10.	Inland container depot or container freight station	Any assessee	1/04/2012	100%
11.	Bee-keeping and production of honey and beeswax	Any assessee	1/04/2012	100%
12.	Warehousing facility for sugar	Any assessee	1/04/2012	100%

Deduction:	→ 100% deduction of capital expenditure incurred during the previous year. → 100% of capital expenditure incurred prior to commencement of business shall be allowed in year of commencement of business only if same has been capitalized on the date of commencement of business. → Capital expenditure shall not include land, goodwill & financial instrument.* [* **Sec. 28(vii):** *Any sum, whether received or receivable, on account of capital assets (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred, if the whole of the expenditure on such capital asset has been allowed as deduction under Sec. 35AD shall be treated as income of assessee chargeable to income under the head PGBP.*]
Other Provisions	→ Business should be new business i.e. should not be formed by splitting/ reconstruction of old business. → Business should not be set up by transfer of old plant & machinery. Old plant & machinery should not be more than 20% of total plant & machinery used for the business. → Deduction under Chapter VI-A shall not be allowed in respect of such business for any assessment year. → Actual cost of the asset for which deduction has been allowed under Sec. 35AD shall be taken as NIL → Further, receipts on account of sale of these assets shall be taxable under head PGBP only, whatever the amount may be.
Explanation regarding amendment	→ Since the word "new" is deleted, therefore the hotels (2 star or above) and hospital (100 or more bed) carried on by assessee before 1.4.2010 is now covered under "Specified business". However, no deduction under this section is available because one of the conditions for claiming deduction is the business must be operate on or after 1.4.2010. → But the assessee is eligible to set off the loss with the profit of earlier hotel business under Sec. 73A. Because, Sec. 73A allow to Set-Off of losses of one specified business with the profit of another specified business. Hence, for set off what is important is only "Specified business" and whether such specified business is eligible to claim deduction under Sec. 35AD or not is immaterial.

Expenditure by way of payment to associations and institutions for carrying out rural development programmes — Sec. 35CCA

Assessee contribute for
(i) National fund for Rural Development
(ii) National Urban poverty Eradication fund,
The assessee shall be allowed a deduction of the amount of such expenditure incurred during the PY.

Amortisation of certain preliminary expenses — Sec. 35D

Meaning of expenses:	Any expenses incurred before commencement of business sections (1) Preparation of feasibility report/project report

Q. Who can claim? **A.** Resident person OR Indian company	(2) Conducting market surveys or any other surveys necessary for business (3) Legal charges for drafting any agreement/registering the compant (4) Legal charges for drafting MoA/AoA (5) Printing of MoA/AoA (6) In connection with the issue, for public subscription of shares and debentures, underwriting commission (7) Engineering services relating to business of the assessee	
Amount of deduction:	***Expenditure incurred on or before 1-4-1998*** **(Avail for 10 successive years)**	*Minimum of* (1) $\frac{1}{10} \times \left[\textit{Maximum of } (a) \begin{matrix}\text{2.5\% of project}\\ \text{value}\end{matrix} \text{ OR } (b) \begin{matrix}\text{2.5\% of Capital}\\ \text{Employed}\end{matrix} \right]$ (2) Actual expenditure
	Expenditure incurred on or after 1-4-1998 **(Avail for 5 successive years)**	*Minimum of* (1) $\frac{1}{5} \times \left[\textit{Maximum of } (a) \begin{matrix}\text{5\% of project}\\ \text{value}\end{matrix} \text{ OR } (b) \begin{matrix}\text{5\% of Capital}\\ \text{Employed}\end{matrix} \right]$ (2) Actual expenditure
Some important terms	***Cost of project***	All fixed cost *(Actual)*
	Capital employed	Equity share capital *Add:* General reserve *Add:* Debenture *Add:* Preference share

Expenditure of amalgamation/demerger	**Sec. 35DD**
Who can claim?	Indian companies
Deduction:	$\frac{1}{5}$th of expenditure (in 5 equal installments)

Expenditure incurred on compensation under VRS	**Sec. 35DDA**
Deduction:	$\frac{1}{5}$th of expenditure (in 5 equal installments)
Amended [on AY 2011-12]	→ Where a private company or unlisted company is succeeded (purchased) by a LLP, the provision of Sec. 35DDA shall apply to the successor (purchaser) LLP, as they would have applied to predecessor (sold) company. → However, as per Sec. 35DDA (5), no deduction under Sec. 35DDA shall be allowed to the predecessor (sold) company in the PY in which conversion takes place.

Other Deductions — Sec. 36

1. Insurance premium on **stock/stores** used in Business or Profession *(only in year of payment)*
2. Insurance premium on **life of cattle** *(only in year of payment)*
   Amount of deduction = Actual cost of animal ***less*** Amount realized on sale of animals
3. Insurance premium on **health of employee** under following schemes:
   Mode of payment: Other than cash
   (1) General Insurance Corporation of India approved by CG
   (2) Any other insurer approved by IRDA
4. **Interest** on *capital borrowed* for business purpose
5. Contribution by **employer** to recognised P.F. or Approved Superannuation fund *Subject to limit specified in those fund*
6. Contribution to approved **Gratuity Fund** for exclusive benefits of employees
7. Contribution from employees → on *or* before the due date under the relevant Act — **Sec. 36(1)(va)**
8. Bonus or commission paid to an employee for service rendered
9. Bad debts → only actual bad debts allowed — **Sec. 36(1)(vii)**

10. Family planning expenses → only for company assesse — **Sec. 36(1)(ix)**
    - Revenue expenditure → fully allowed
    - Capital expenditure → Allowed in 5 years in equal instalments
    - Unabsorbed family planning expenditure → same manner as unabsorbed depreciation
11. Discount on zero coupon bonds → on the basis of life of the bonds and on ***pro-rata basis*** — **Sec. 36(1)(iiia)**
12. Banking transaction tax on taxable banking transaction by assessee — **Sec. 36(1)(xiii)**
13. Securities Transaction Tax — **Sec. 36(1)(xv)**
14. Employer's contribution towards employee pension scheme referred under Sec. 80CCD — **Sec. 36(1)(iva)**
    Minimum of
    (1) Amount contributed
    (2) 10% of Salary [Here, Salary = Basic Salary + DA]

General clause for deductions — **Sec. 37(1)**

Any expenditure other than referred under Sec. 30 to 36 shall allowed provided following conditions are satisfied:
1. It should not be in the nature of capital expenditure
2. It should not be in the nature of personal expenditure
3. Incurred wholly and exclusively for the purpose of business or profession

Note: *Any expenditure incurred for any purpose which is an offence or which is prohibited by law (e.g., extortion money, protection money, hafta, bribes etc.) shall not be allowed under Sec. 37(1)*

Expenditure on advertisement in any souvenir, brochure, tract, pamphlets or like that published by any ***political party*** will not allowed — **Sec. 37(2B)**

3.2: DISALLOWED EXPENDITURES [SEC. 40 TO SEC. 43B]

Expenses not deductible — **Sec. 40(a)**

(1) Salary, Interest, Royalty, etc. for non-resident *(without TDS)*
(2) Interest, Commission, Royalty, etc. for resident *(without TDS)*
(3) Fringe benefit tax
(4) Income tax/Dividend tax
(5) Wealth Tax

Disallowance for partnership firms — **Sec. 40(b)**

→ Payment of interest to any partner → *Minimum of* (1) as per deed or (2) **12%** p.a.
→ For payment of salary, bonus to working partner:

Specified Profession Firm	Other Firm
On the first ***₹ 3,00,000*** of the book profit or in case of loss	***₹1,50,000*** or at the rate of 90% of the book profit, whichever is more
On the balance of the book profit	60% of book profit

Payment to specified persons — **Sec. 40A(2)**

→ A.O. may disallowed → excessive or unreasonable (*fair market value*)

Cash Payment in respect of expenditure exceeding ₹ 20,000 — **Sec. 40A(3)**

Payment in excess of ₹ 20,000 *(for transporter ₹ 35,000)* otherwise **Account Payee** cheque *or* Demand Draft → 100% disallowed

Note: Sec. 40A(3) will not apply if assessee purchase a capital asset.

Exceptions: Payment made to bank and financial institutions, Govt., Banking Holiday, Employees *(not exceed ₹ 50,000)*, village not served by any bank, book adjustment, producer of agriculture, Poultry farm, Dairy, Cottage Industry *(without aid of power)*

Disallowance in provision for gratuity **Sec. 40A(7)**

→ Provision for Gratuity
→ Approved gratuity fund (*allowed*), actual payment of gratuity (*allowed*)

Certain deduction on actual payment basis **Sec. 43B**

Certain deduction are made only on actual payment on or before the due date of ROI
→ Any tax, duty, cess, Interest on loans from scheduled bank or any public financial institution,
→ Any bonus or commission or leave encashment to employees, contribution to PF

Profit chargeable to tax **Sec. 41(1)**

(a) Where any loss or expenditure has been allowed as deduction and subsequently any amount is received and then the amount so received shall be deemed to be the Income of the P/Y in which such amount is received.
(b) Where a deduction has been allowed in respect of a trading liability and subsequently there is a remission or cessation of the trading liability then the amount of trading liability so ceased shall be deemed to be the income of the P/Y in which such remission or cessation took place.

*[**Note:** The above provisions shall apply even if the business is not in existence]*

Recovery of bad debts **Sec. 41(4)**

Where a deduction has been allowed in respect of bad debts and the bad debts is subsequently recovered, and then the amount so recovered shall be deemed to be the income of P/Y in which the amount is recovered.

*[**Note:** The above provision shall apply even if the business is not in existence]*

Special provisions regarding mutual concern **Sec. 44A**

Trade/professional			***Other***		
Specific services to members	*General services to members*	*General/specific services to non-members*	*General services to members*	*General/specific services to non-members*	*Specific services to members*
Taxable	Exempt	Taxable	Exempt	Taxable	Taxable

*[**Note:** The tax rate applicable to a mutual concern shall be the same as applicable to an individual (except where the Mutual Concern is incorporated as a company)]*

Maintenance of accounts by person carrying on profession or business **Rule 6F** **Sec. 44AA**

(1) ***Business assesse (Other than notified profession)***: Income from business or profession exceeds ₹ 1,20,000 *Or* Total sales/gross receipts exceeds ₹ 10,00,000.
In any of 3 preceeding P/Y or likely to exceeds in case of newly setup business or profession.
Assessee is required to maintain → books of account and other documents (*for computation of income*)
(2) Not required to maintain any books if specified amount are not exceeded.

Notified Professions: Profession of Law, Medicine, engineering, accounting, CA, CS, etc.

(i) Gross receipts exceeding ₹ 1,50,000 *(in all three years immediately preceeding the PY or likely to exceed if the profession is newly setup)*
Assessee is required to maintain Specified books → Cash Book, Journal, Ledger, Carbon Copies of Bills exceeding ₹ 25, Original Bill for expenditure exceeding ₹. 50
In case of medicine profession: Daily Cash Register, Medicine Inventory Register
(ii) In other cases: Assessee is required to maintain such books of account and other documents as may enable the Assessing Officer to compute income

Compulsory Tax Audit of accounts **Sec. 44AB**

(1) Applicability:
(a) For business total sales or gross receipts exceed ₹ 1,00,00,000

(b) For profession gross receipts exceeds ₹ 25,00,000
(c) Business referred to under Sec. 44AD/AE/AF and declaring lower income

(2) Filing of report: Audit report of CA on or before 30th September of the relevant AY
(3) If accounts audited under any other law: Report with audit report under any law
(4) Consequence of non-compliance: Defective return **[Sec. 139(9)]**

Penalty: *Failure to Keep/maintain books of account, documents etc.*	**Sec. 271A**	₹ 25,000
Penalty: *Failure to get accounts audited/to furnish audit report*	**Sec. 271B**	₹ 1.5 lakh

Due dates for getting books audited or submission of audit report and its Form No.

Different Taxpayes	***Audit Form No.***	***Statement of particulars***	***Due dates for getting books audited***	***Due dates for submission of audit report***
In the case of a person who carries on Business or Profession and who is required by or under any law to get his accounts audited	Form No. 3CA	Form No. 3CD	30th September of the AY	30th September of the AY
In the case of a person who carries on Business or Profession but not being a person referred above	Form No. 3CB	Form No. 3CD	30th September of the AY	30th September of the AY

Presumptive taxation **Sec. 44AD**

Notwithstanding anything to the contrary contained in ***Sections 28 to 43C***,

→ In the case of an ***eligible assessee***# engaged in an ***eligible business****,
→ A sum equal to 8% of the total turnover or gross receipts of the assessee in the previous year on account of such business or, as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee,
→ Shall be deemed to be the profits and gains of such business chargeable to tax under the head Profits and gains of business or profession.

Effect of this amendment: Now not only retail business but all business covered so scope of this section is very wide. That is also evident from the fact , that just because of this amendment, a new ITR has come called "Sugam"

 # Eligible assesse:

1. An individual, HUF or a partnership firm, who is **resident**, but not LLP as define in Sec. 2(1)(n) of the Limited Liability Partnership Act, 2008 and
2. Who has not claimed deduction under any of Sec. 10A, 10AA, 10B, 10BA or 80HH to 80RRB

*** Eligible Business:**

1. Any business except the business of plying, hiring or leasing goods carriages referred to in Sec. 44AE; and
2. Whose total turnover or gross receipts in the previous year does not exceed an amount of ₹ 1,00,00,000.
There is specific Turnover limit of ₹ 25 Lakhs for Profession under ***Section 44AB***, which means that profession is totally separate from Business.

The assessee is bound to get the books of accounts audited, if the following two conditions are satisfied:

1. His profits and gains from the eligible business are lower than the profits and gains specified in sub-section (1) i.e. his net profit is lower than 8% of turnover

And

2. Whose total income exceeds the maximum amount which is not chargeable to income-tax

Things to kept in mind with above provisions:
(1) Deduction under *Section 30-38 (deemed to be allowed)*
(2) Depreciation *(deemed to be allowed)*
(3) Turnover for under *(Sec. 44AB not to considered)*
(4) Option for lesser amount *(Section 44AA & 44AB applicable)*
(5) Partner's – Interest, salary *(allowed)*
(6) Deduction under *Section 80C-80U (allowed)*

Special provision to computing profit and gains of business of plying, hiring or leasing goods carriage on presumptive basis	**Sec. 44AE**

Heavy goods vehicles: ₹ **5,000** per month/ part of month for each heavy goods vehicle.
Other vehicles: ₹ **4,500** per month/ part of month for each light goods vehicle *(Maximum 10 goods carriage)*

Common doubts:

Q. 1: ***Whether Depreciation is allowed in respect of "Goodwill"?***
Ans.: It was held in case of ***Raveendran Pillai Vs. CIT (2010)*** that if the goodwill is specifically purchased then depreciation is allowed. However, In case of self-generated Goodwill no depreciation is allowed.

Q. 2: ***Whether computer printers and scanner are eligible to get higher rate of depreciation of 60% as computer or only general rate of 15%?***
Ans.: It was held in case of ***Samiran Majumdar*** that for the purposes of depreciation computer printers and scanners to be regarded as computers and eligible for 60% rate and not 15%.

Income under the head Profits and Gains from Business or Profession **[Format]**

Particulars	***Amt. (₹)***	***Amt. (₹)***
Net profit as per Profit and Loss A/c		……
Add: Expenses debited to Profit and Loss A/c but not allowed as deduction		……
Less: Expenses not debited to Profit and Loss A/c but allowed as deduction		(……)
Less: Incomes credited to Profit and Loss A/c but either exempt or taxable under other heads of income		(……)
Add: Incomes not credited to Profit and Loss A/c but taxable under other heads of Profit and Gain from Business or Profession		……
Add: Adjustment of over-valuation of opening stock		……
Less: Adjustment of under-valuation of opening stock		(……)
Add: Adjustment of under-valuation of closing stock		……
Less: Adjustment of over-valuation of closing stock		(……)
Add: Adjustment of goods withdrawn by proprietor		
Cost Price	……	
Less: Price charged	(……)	……
Less: Adjustment of goods withdrawn by proprietor		(……)
Price charged	……	
Less: Cost Price	(……)	……
Add: Depreciation as per books of accounts		……
Less: Depreciation as per Income Tax Rules		(……)
PROFITS AND GAINS FROM BUSINESS OR PROFESSION		……

3.3: AMENDMENTS ANALYSIS

Additional depreciation **[Amended]** **Sec. 32(1)(iia)**

- In A.Y. 2012-13, an assessee engaged in the business of manufacture or production of any article or thing is entitled to **additional depreciation of 20% of the cost of the new plant and machinery in the year of acquisition**.
- But as per **amendment**, from A.Y. 2013-14, this benefit is now **extended to an assessee engaged in the business of generation or generation and distribution of power**.

[Amended] **Sec. 32(1)(iia)**

- According to the existing provisions (of A.Y. 2012-13) of Sec. 35 (2AB) *weighted deduction at 200% of expenditure on approved in-house research and development by a company engaged in the business of biotechnology or in the manufacture of specified articles is allowable up to 31-3-2012*.
- As per **amendment**, this benefit is now **extended upto 31-3-2017**.

Deduction on expenditure on specified business **[Amended]** **Sec. 35AD**

1. **Investment-linked deduction of 100% of capital expenditure** (excluding expenditure incurred for land, goodwill or financial instrument) **is allowed for certain specified businesses**. In the list of specified businesses, there are 8 types of businesses in A.Y. 2012-13. With effect from 1-4-2012, 3 new businesses have been added to this list. These 3 businesses relate to setting up and operating
   (a) inland container depot, or container freight station,
   (b) warehousing facility for storage of sugar and
   (c) beekeeping and production of honey beeswax
   which commence operations on or after 1-4-2012.
2. Further, the above investment-linked **deduction is now enhanced to 150% of the capital expenditure incurred on or after 1st April, 2012** in respect of certain specified businesses which commence operations on or after 1-4-2012. These specified businesses are setting up and operating
   (a) cold-chain facility,
   (b) warehousing facility for agricultural produce,
   (c) building and operating a hospital with at least 100 beds,
   (d) developing and building affordable housing project and
   (e) production of fertiliser in India.
3. Further, it is provided that an assessee who builds a hotel of two-star or above category as classified by the Central Government and subsequently, continuing to own the hotel, transfers the operation thereof, the assessee shall be deemed to be engaged in specified business and will be eligible to claim deduction under Sec. 35AD. **This amendment has been made with effect from A.Y. 2011-12.**

Expenditure on extension of agricultural project **[Inserted]** **Sec. 35CCC**

When an assessee incurs any **capital or revenue expenditure for agricultural extension project notified by the CBDT**, he will be allowed **deduction of 150% of such expenditure**.

Expenditure on skill development project **[Inserted]** **Sec. 35CCD**

Where a **company incurs expenditure (other than expenditure on any land or building) on any skill development project notified by the CBDT**, it will be allowed **deduction of 150% of such expenditure**.

Presumptive basis of taxation **[Amended]** **Sec. 44AD**

The limit of **turnover/gross receipts for tax audit** under Sec. 44AB has also been **increased for business to ₹ 1,00,00,000 and for profession to ₹ 25,00,000** w.e.f. A.Y. 2013-14.

UNIT 4: CAPITAL GAINS

Sections covered in this unit:

	Section	Provision
	Sec. 45(1)	*Basis of charge (i.e. charging Section)*
★	Sec. 2(14)	*Meaning of capital asset*
	Sec. 2(42A)	*Short-term capital asset*
	Sec. 2(29A)	*Long-term capital asset*
	Sec. 2(42B)	*Short-term capital gain*
	Sec. 2(29B)	*Long-term capital gain*
★	Sec. 2(47)	*Definition of transfer*
	Sec. 48	*Method of calculating capital gain*
	1st proviso to Sec. 48	*Computation of capital gain from transfer of shares or debentures of Indian company held by NR assesse and purchased in foreign currency*
	Rule 115A	*Method of conversion*
	2nd proviso to Sec. 48	*Indexation*
	Sec. 55	*Cost of acquisition*
	Sec. 47	*Certain transaction not regarded as transfer*
★	Sec. 49	*Cost with reference to certain modes of acquisition*
	Sec. 49(1)	*Cost with reference to certain modes of acquisition*
	Sec. 49(2AA)	*Where the capital gain arises from the transfer of specified security or sweat equity shares referred to in Sec. 17(2)(vi), the COA of such security or shares shall be the FMV which has been taken into account for the purpose of said Sec. 17(2)(vi)*
	Sec. 49(4)	*Where the capital gain arises from the transfer of a property which has been subject to income-tax under Sec. 56(2)(vii), the COA of such property shall be deemed to be the value which has been taken into account for the purpose of said Sec. 56(2)(vii)*
	Sec. 2(42A)	*Period of holding*
	Sec. 55	*Cost of improvement*
	Sec. 50C	*Adoption of stamp duty for transfer of land or building or both*
★	Sec. 50D	*Fair market value deemed to be full value of consideration in certain cases*
	Sec. 111A	***STCG** on transfer of **equity shares or units of equity-oriented mutual fund** taxable @ 15%*
	Sec. 112	*Tax on LTCG @ 20%*
	Proviso to Sec. 112	***In case of listed securities or units (units may be listed or unlisted) or zero coupon bonds**, Tax on LTCG shall be minimum of following:* *(1) **20%** of LTCG after Indexation* *(2) **10%** of LTCG before Indexation*
	Sec. 51	*Advanced money forfeited*
	Sec. 45(1A)	*CG shall not be taxable in the year in which the asset is destroyed but shall be taxable in the year in which money is received or an asset is received from insurance company*
	Sec. 45(2)	*CG arising from the transfer (conversion) of capital asset into stock-in-trade shall be charged to tax in the PY in which stock-in-trade is sold or otherwise transferred*
	Sec. 45(2A)	*CG from transfer of securities held in DEMAT form shall be taxable as the income of beneficial owner in the PY in which transfer took place*

	Sec. 45(3)	*Where a partner of a firm transfers an asset to the firm by way of capital contribution on normal sale, CG chargeable as tax in PY in which transfer took place*
	Sec. 45(4)	*CG arising from the transfer of a capital asset by way of distribution of capital asset to partner on dissolution or 'otherwise'*
	Sec. 145A(b)	*Interest received on original/enhanced compensation, shall be deemed to be income of the year in which it is received, irrespective of the method of accounting followed by the assessee*
	Sec. 56(2)(viii)	*Interest received on original/enhanced compensation is taxable under the head **IOS***
	Sec. 57(iv)	*In case of interest received on original/enhanced compensation, a deduction of sum equal to 50% of such income shall be allowed*
★	Sec. 55A	*Reference to valuation officer*
★	Sec. 98	*Securities Transaction Tax*
	Sec. 54	***Exemption** – Residential house property*
★	Sec. 54B	***Exemption** – Agricultural land*
	Sec. 54D	***Exemption** – Land or building compulsorily acquired by the Government*
	Sec. 54EC	***Exemption** – Any long-term capital asset other than residential H.P.*
	Sec. 54F	***Exemption** – Land, building, plant or machinery in order to shift in an industrial undertaking from urban area to rural area*
	Sec. 54GA	***Exemption** – Land, building, plant or machinery in order to shift in an industrial undertaking from urban area to any Special Economic Zone*
★	Sec. 54GB	***Exemption** – Capital gain on transfer of residential property not to be charged in certain cases*
	Sec. 10(33)	***Exemption** – Unit Scheme, 1964*
	Sec. 10(37)	***Exemption** – Urban agricultural land compulsorily acquired by Govt.*
	Sec. 10(38)	***Exemption** – Equity share or units of an equity oriented fund*

Basis of charge **Sec. 45(1)**

Profit or gain arising from the transfer of capital asset during PY is chargeable under the head Capital Gains if following conditions are satisfied:

Condition 1	There should be a ***capital asset***
Condition 2	There is ***transfer*** of capital asset
Condition 3	Transfer takes place ***during the PY***
Condition 4	Any profit or gain arises as a result of transfer
Condition 5	Such profit or gain is not exempt from tax under Sec. 54, 54B, 54D, 54EC, 54F, 54G and 54GA

Capital Asset **Definition** **Sec. 2(14)**

Capital asset means property of any kind, whether or not connected with business or profession of assessee, it includes, ***any rights in an Indian company, including rights of management or control***; but ***does not include***:

(1) Any stock-in-trade
   Personal effects meaning
   → Movable property
   → Held for use by assessee or member of family dependent upon him
   → The following assets can never be personal effects:
   - Jewellery
   - Archaeological collection
   - Drawings
   - Paintings

- Sculptures
- Any other work of art
- Does not include house property as it is immovable property

(2) Rural agricultural land
  → Within municipal limits and population less than 10,000
  → If outside municipal limits at least 8 km away from municipal limits

(3) $6\frac{1}{2}\%$ Gold Bonds, 1977 or 7% Gold Bonds, 1980 or National Defence Gold Bonds, 1980 issued by Central Govt.

(4) Special Bearer Bonds, 1991 issues by Central Govt.

(5) Gold deposit bonds issued under a Gold Deposit Scheme, 1999

Transfer	Definition	Sec. 2(47)

Transfer *includes*
1. sales
2. exchange
3. relinquishment of the asset
4. extinguishment of any rights therein
5. compulsory acquisition of any capital assets by Govt.
6. conversion of capital assets into stock-in-trade
7. *disposing of or parting with an asset or any interest therein,*
8. *or creating any interest in any asset in any manner whatsoever,*
9. *directly or indirectly, absolutely or conditionally, voluntarily or involuntarily,*
10. *by way of an agreement (whether entered into in India or outside India) or otherwise,*
11. *notwithstanding that such transfer of rights is dependent upon transfer of shares of a company incorporated outside India.*

Exceptions: However following transfer are specified excluded for definition of transfer that is in following case no capital gain shall attracted:

1. Distribution of any assets by Indian company at the time of liquation to his shareholder sec.46(1) from company point of view it is not transfer but from shareholder point of view it is transfer of share & same shall be subject to capital gain after considering deemed divided [Sec 2(22)(c)]
2. Transfer of assets by way of gift, will, inheritances however w.e.f. 01/10/2009 in certain gift are treated as IOS in hand of receiver under Sec. 56(2)(vii)
3. Any transfer of assets by HUF to its members at the time of partition
4. Transfer of capital assets by holding company to its holding (100%) owned Indian subsidiary company
5. Transfer of capital assets by subsidiary company to its holding owned (100%) Indian holding company
   Restriction: *In above 4 & 5 following two restriction*
   (i) Holding company should continue to hold 100% shares for at list 8 years from the date of transfer of capital assets
   (ii) The transferee company should not convert such capital assets in to stock in trade (if either or both condition/s are/is not fulfilled than capital gain shall be taxed in year in which condition violated)
6. Surrender of share of Amalgamation company under the schemas of Amalgamation where the consideration received only from of shares of Amalgamated company
7. Conversion of debenture or debenture stock in to shares
8. Transfer of assets by the proprietor or firm is succeeded by a company [Sec. 47(xiii)and(xiv)] conditions
   (i) All the assets & liabilities of proprietor or firm should be transfer to the company.
   (ii) Consideration should be received only in the form of shares.
   (iii) Shareholding of firm/partner/proprietor should be at list 50%
   (iv) 50% beneficiary right in the company of the partner/proprietor should continue at list 5 years &

   (v) In case of firm the shareholder of the partnership firm should be same proportion in which there capital account is standing in books at the time of suction.
9. Any transfer of capital assets being any work of art, archaeological collation ,art collection, books, drawing, painting transfer to Govt. or university or national museum, national art gallery etc.
10. *Reverse mortgage* – In case of reverse mortgage any amount received by the assessee either in installment or in lump-sum is not treated as transfer

Computation of capital gains — Sec. 2(48)

(1) Computation of Short Term Capital Gain:
Full value of consideration ***Less*** Transfer expenses, COA, COI, Exemption u/s 54B, 54D & 54G

(2) Computation of Long Term Capital Gain:
Full value of consideration ***Less*** Transfer expenses, ICOA, ICOI, Exemption u/s 54-54H

Types of Capital Assets

Short Term Capital Assets	***Long Term Capital Assets***
Asset held by assessee for not more than 36 months immediately preceding date of transfer	An asset which is not a short term capital asset.

Notes:

(1) In case of following assets the period of 36 months is reduced by 12 months:-
- → Equity or preference shares
- → Any other security on recognized stock exchange
- → Units of UTI or mutual fund
- → Zero coupon bonds

(2) For calculating period of 36 months or 12 months, the date of transfer should be excluded.

Types of Capital Gains

Short Term Capital Gain	***Long Term Capital Gain***
On transfer of Short Term Capital Asset	On transfer of Long Term Capital Asset

The need for such distinction arises because STCG is taxable at normal rates and added to gross total income whereas LTCG is taxable at concessional rate of 20%.

How to know Short Term Capital Assets (STCA), Long Term Capital Assets (LTCA)& Short Term Capital Gain/Loss (STCG/L) or Long Term Capital Gain/Loss (LTCG/L)?

<table>
<tr><th colspan="2">Short Term Capital Gain/Loss</th><th colspan="2">Long Term Capital Gain/Loss</th></tr>
<tr><td colspan="2">Transfer of STCA — Sec. 2(42A)</td><td colspan="2">Transfer of STCA — Sec. 2(29A)</td></tr>
<tr><td>A List</td><td>B List</td><td>A List</td><td>B List</td></tr>
<tr><td>1. Shares
2. Listed securities
3. Unit of UTI/Unit of Mutual funds specified under Sec. 10(23D)
4. Zero coupon bond
↓
Hold up to 12 months</td><td>(Capital Assets other than A List)
1. Urban agricultural land
2. Unlisted securities
3. Jewellery, drawing, painting, any art work, archaeological collection, Sculptures
↓
Hold up to 36 months</td><td>↓
Held for more than 12 months</td><td>↓
Held exceeding 36 months</td></tr>
</table>

Determination of holding period: *The total period for which asset was held by assessee together with the period of ownership by previous holder under Sec. 49(1) is called period of holding.*

[Note: While calculating it date of acquisition is included and date of transfer is excluded.**]**

Transaction/Situation	***Inclusion/Exclusion [What to include & what not to]***
Assets transfer by the Assessee which was acquired by him by way of Gift ,will or inherent	The period of holding pervious holder shall also include for determining whether assets is Short Term (ST) or Long Term (LT)
Transfer of shares/security of Amalgamated company which was earlier held in Amalgamating company	The period of holding of shares Amalgamating company should be also including for determining whither assets is ST or LT
Transfer of ownership on in security which was acquired base on holding of original shares/security.	The period of holding shall be considered form the date of allotment security & not from the date of security allotment of original shares/security.
Considerations received from company on the liquidation base of shares holding in the company.	The capital gain is taxable in the year in which consideration is received but period of holding is considered only up to the date of liquidation.
Transfer of right renounces in favour of assessee base on existing shares holding.	The period of holding shall be considered from the date right renounces in favour of assessee from the date on which share & security base on which right allotted.(date on which right is given for purchase of shares)
Transfer of right which was acquiring right from the existing shares holder.	The period of holding shall be considered from the date when the shares were allotted to assessee irrespective of date of purchase of right *(date on which shares are purchase)*
Transfer of share which was acquiring in IPO.	The period of holding shall be considered from date of allotment of share not from date of application.

In case of DEMAT account if assessee has purchase the shares of same script on different date FIFO method is follows determining which lot transfer. **Must Remember**

Capital gain to non-resident on transfer of shares or debentures of Indian company — **First proviso to Sec. 48**

→ Capital gain arising to non-resident
→ On transfer of shares or debentures of Indian company
→ Such shares are bought in foreign currency
→ **Here for computing LTCG, no indexation is allowed.**
→ *Further Capital gain is computed in following manner:*

- **COA** shall be converted in foreign currency used for purchasing such securities **using average of TT buying and selling rate on date of acquisition**
- **Expenses of transfer** shall be converted into same foreign currency using **average of TT buying and selling rate on date of transfer**
- **Consideration** is also converted in foreign currency using **average of TT buying and selling rate on date of sale**
- **Capital gain is computed in such foreign currency**
- Such amount of **capital gain is converted into Indian Rupees using TT buying rate only on date of transfer** of capital asset. This capital gain may be short term or long term.

Indexation — Second proviso to Sec. 48

→ Indexation is available only to the long term capital assets (LTCA) excluding Debentures (listed or non-listed) bonds however capital indexed bonds issued by Govt. are eligible to indexation
→ Indexation benefit shall be available only for the period in which assessee himself it's the owner & nature of assets not be change.

Indexation Period:
The indexation period is either equal to or less than period of holding but it newer exceeds period of holding.
Example:
If assets transfer by the assessee was acquired was acquired by way of gift, will, inheritance the period of holding previous owner is also considered to determined assets is ST/LT but indexation benefit is available only from the year in which assessee become owner.

Certain cases where indexation is not allowed

→ Transfer of bonds other than capital index bonds
→ Transfer of shares or debentures of an Indian company acquired by non-resident in foreign currency
→ Slump sale
→ Transfer of UTI funds purchased in foreign currency by non-resident
→ Transfer of GDR's purchased in foreign currency by non-residents or bonds of Indian company or public company
→ Transfer of GDR's purchased in foreign currency by resident or employee of Indian company
→ Transfer of securities of foreign institutional investors
→ Transfer of foreign exchange asset by Non-resident Indian

Cost of Acquisition — Sec. 55 (2)

The cost incurred to acquire any asset by the assessee is called as its cost of acquisition. It is to be noted that cost of acquisition includes deemed cost of acquisition where asset was acquired by some other person other than assessee but was gradually passed on to assessee and in such a case cost means cost incurred by previous owner.

Cost of acquisition for assets acquired on or before 1-4-1981:

It would be any one of:

$$\left.\begin{array}{l}\text{Cost incurred OR}\\ \text{Fair market value on } 1-4-1981\end{array}\right\}\text{Whichever is beneficial to assessee}$$

COA of Goodwill, Trademark, Patent, Rights etc.		***COA of Right Shares***	***COA of Bonus Share***
If acquired	***If self-generated***	→ Cost at which such shares are purchased → If right is sold, whole amount is capital gain and COA is NIL → Sale of shares by such person acquiring right: ***COA = Cost of Purchase Right + Payment to Company for Purchase of Shares***	→ Here COA is NIL → But if such shares acquired on or before 1/4/1981, cost on 1/4/1981 can be taken as COA
Take Actual Cost *[Cost on 1/4/1981 is not allowed in this case.]*	Cost of such asset is assumed to be NIL.		

Treatment of Advanced Money Received (forfeited) — Sec. 51

If self-generated: Cost of such asset is assumed to be nil
If acquired: Take actual cost.
[Cost on 1-4-1981 not allowed in this case]
If assessee has received any advance money for sale of asset but later on such sale could not completed and as a r4esult some advance money was forfeited by assessee such advance money would be treated as follows:

→ It would be deducted from cost of asset
→ If such amount is received by previous owner, it would not be deducted
→ Such amount would be deducted before indexation.
→ If advance money is more than COA, such advance money received would be a capital receipt and hence not taxable however capital gain on sale would be taxable.

Cost of Improvement — Sec. 55 (1)

Cost incurred to add value to the asset is called its cost of improvement. It is calculated as follows:
→ If asset acquired before 1-4-1981 it is always NIL
→ In relation to Goodwill or right to manufacture any product or right to carry on business it would always be NIL
→ In all other cases it is expenditure actually incurred by assessee or the previous owner
→ It does not include routine expenditure on repairs, etc. which are allowed in PGBP, other sources, house property.

ICOA	→ Indexation benefit is available in case of LTCG only. $= \text{COA} \times \dfrac{\text{Cost of the year in which asset is transferred}}{\left.\begin{array}{c}\text{CII of the first year in which } \textbf{\textit{asset was first held by assessee}} \\ \textit{OR} \\ \text{CII of the year beginning on 1/4/1981}\end{array}\right\\} \text{Whichever is later}}$
ICOI	$= \text{COA} \times \dfrac{\text{CII of the year in which asset is transferred}}{\text{CII of the year in which improvement took place}}$

No indexation benefit in case of LTCG on bonds and debentures. However benefit of indexation available for Capital Indexed Bonds.

Cost Inflation Index (CII)

The Central Govt. has notified the CII for the purpose of LTCG as follows:

Financial Year	CII	Financial Year	CII	Financial Year	CII	Financial Year	CII
1981-82	100	1991-92	199	2001-02	426	2011-12	785
1982-83	109	1992-93	223	2002-03	447	**2012-13**	**852**
1983-84	116	1993-94	244	2003-04	463		
1984-85	125	1994-95	259	2004-05	480		
1985-86	133	1995-96	281	2005-06	497		
1986-87	140	1996-97	305	2006-07	519		
1987-88	150	1997-98	331	2007-08	551		
1988-89	161	1998-99	351	2008-09	582		
1989-90	172	1999-00	389	2009-10	632		
1990-91	182	2000-01	406	2010-11	711		

Capital gain on zero coupon bonds — Sec. 2(48)

(a) Issued *(on or after 1/6/2005)* → Infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank
(b) No payment and benefit → before maturity or redemption
(c) Central government → Notification in the Official Gazette
(d) If period of holding more than 12 months, it is regarded as LTCG otherwise as STCG. LTCG on such bonds: Taxable @ 10% without indexation.

Capital Gain on money received from insurer

→ Where any person receives during year any amount from insurer on account of damage, destruction, etc. of a capital asset
→ Such damage, destruction, etc. would be regarded as transfer.
→ Capital gain shall arise in the year when amount or asset is actually received from insurer

→ However period f holding would be up to date of damage, destruction, etc. which is regarded as date of transfer
→ Indexation is also done up to date of transfer.

Full value of consideration:

- Money received or
- Value of asset received

However, in case of block of asset system, capital gain treated as per section 50 but liability to pay same arises only when money is actually received from insurance company.

Capital gain on conversion of capital asset into stock in trade:

→ This section is applicable when capital asset (not personal effect) is converted into stock-in-trade.
→ Transfer shall be in year in which asset is sold
→ Indexation shall be done till date of conversion
→ FMV on date of transfer is sale consideration
→ Sale price less FMV on date of transfer is business income.

Capital asset transfer to firm, AOP/BOI as capital contribution or otherwise:

Transfer and capital gain both in the year of transfer
Full value of consideration: Amount recorded in books on such transfer.

Firm/AOP transfers capital asset to members on dissolution:

→ Capital gain is chargeable to firm
→ ***Full value of consideration:*** FMV on date of transfer instead value at which it is given to partner
→ There can be LTCG/STCG
→ But cost of acquisition by partner is the amount at which it is given to the partner not the deemed value for taxation.

Distribution of stock in trade to partners on dissolution:

Such income of the firm is taxed as business income.

Computation of Capital Gain on Compulsory Acquisition of Asset:

→ This section deals with compulsory acquisition of an asset
→ It does not include compulsory acquisition of urban agricultural land
→ Period of holding till date of acquisition
→ Capital gain taxable in year when either whole or part of amount is actually received.
→ ***Enhanced compensation:***
  - Capital gain in nature of original capital gain
  - COA is NIL
  - Expenses of realization allowed

→ If the amount of compensation is in dispute then also taxable at original value first. And if amount of compensation is subsequently reduced, the capital gain would be recomputed by A.O. and necessary relief would be provided.

Conversion of debenture into shares:

→ It would not be regarded as transfer
→ On sale of such shares, COA of these shares would be deemed to be that part of cost of debentures as surrendered by the assessee.

Period of holding of shares: Date of allotment of shares to date of sale of such shares.

Conversion of preference share into equity shares:

→ This transaction is regarded as a transfer
→ Capital gain on date of allotment of shares

Sale consideration: FMV of equity on date of transfer

Transfer of goodwill, trademarks, right to carry on business etc.:

The following assets are covered under this section: -

- Goodwill of business, not of profession *(there is no capital gain on sale of self-generated goodwill of profession,*
  - ***Goodwill of profession is not Taxable – B. Srinivas Setty; SC Judge***
- Trademark or brand name associated with business
- Right to manufacture or process any article, example:- patents, copyrights
- Right to carry on business
- Tenancy rights
- Route permits
- Loom hours

Cost of Acquisition	***Cost of improvement***
If self-generated: NIL *If acquired:* Price paid by owner or previous owner [Sec. 49(1)]	*Not allowed for* goodwill, right to carry on business, right to manufacture any articles, etc. *Allowed for* Trademark, tenancy right, loom hours, route permits

Capital Gain on Depreciable Assets on Block of Assets System:

Capital gain in case of block of assets is always short term capital gain

COA: WDV of the block

Short term capital loss: In this case, it is possible only when whole or part of block is transferred for a value exceeding WDV of the block at the end of the year.

Capital Gain on Depreciable Assets of Electricity Company:

Such capital gain can be long term capital gain or short term capital gain

COA: Actual cost

Rest is same as explained in "profits and gains from business and profession"

Slum sale:

If acquired	**If self-generated**
Price paid by owner or previous owner u/s 49(1)	It is always assumed to be NIL
Allowed for	**Not allowed for**
Trademark, tenancy rights, loom hours, route permits.	Goodwill, right to carry on business, right to manufacture any article, etc.

- When whole of undertaking or part of undertaking is sold, it is called as slump sale
- Part of undertaking means any division or unit of undertaking
- Undertaking when owned and held for more than 36 months, it is Long term capital gain otherwise short term capital gain
- ***COA:*** COA in this case is "net worth" of the unit or undertaking. Net worth is value of assets of organization less value of liabilities of the organization; in valuation any change in value on account of revaluation is ignored.
- Every assessee in case of slump sale has to furnish a report by Chartered accountant in the relevant form indicating that net worth has been correctly arrived at.
- Capital gain in year in which sale is effected
- ***Arriving at value of assets:***

In case of depreciable assets	***In case of assets whole cost is allowed or allowable u/s 35AD***	***In case of any other assets***
What would have been value if this would have been only asset in the block. However aggregate of the value computed can't exceed WDV of the block.	NIL	Book value of asset

Cost of Acquisition of different types of shares		Sec. 55
Particulars of Assets	**Date of acquisition/Holding Period**	**Cost of Acquisition**
(1) Shares originally purchased:		
(a) Primary market	Date of Allotment	Allotment price
(b) Secondary market		
(i) Transaction trough share broker	Date of broker's note	Amount paid + Brokerage charges + Adjustment for exp. & com. + dividend/interest
(ii) Transaction between parties directly	Date of contract of sale	As above (*excluding brokerage*)
(2) Bonus share	Date of allotment	NIL
(3) Shares acquired in different lots at different point of time	FIFO method	FIFO method
(4) Shares held in depositary system *(taxable in hands of beneficial owner)*	FIFO method	FIFO method
(5) Right shares offered to existing shareholders and subscribed by them	Date of allotment	Offer Price
(6) Right share acquired by a person by way of renouncement	Date of allotment	Offer price + Amount paid for renouncement
(7) Renouncement of right shares in favour of another person	Holding period is date of offer of such right to the date of renouncement *(always STCG)*	NIL
(8) Financial asset acquired without any payment	Date of allotment of such financial assets	NIL

Reference of a valuation officer **Sec. 55A**

(1) Sale consideration < FMV
(2) Difference between FMV and sale consideration *(more than ₹25,000 or 15%)*

Exemption on compulsory acquisition of agriculture land **Sec. 10(37)**

→ Individual or HUF
→ Holding period 2 year or more
→ Consideration determined by CG or RBI
→ On or after 1/4/2004

Exemption on LTGC from shares **Sec. 10(38)**

Transfer on or after 1/10/2004 → Through recognized stock exchange → Security transaction tax applicable

Tax on STCG from shares **Sec. 111A**

Tax @ 15% on STCG → Transfer on or after 1/10/2004 → Through recognized stock exchange → Security transaction tax applicable

Tax on LTCG on listed securities **Sec. 112**

Minimum of
(1) Tax @ 20% on LTCG after Indexation *or*
(2) Tax @ 10% on LTCG without indexation

Exemption to NRI's on account of LTCG arising by transfer of foreign exchange asset	**Sec. 115F**

→ NRI transfers long term foreign exchange asset,
→ He can claim exemption under Sec. 115F
→ Foreign exchange asset means:
- Shares of Indian company
- Debentures of Indian company not a private company
- Deposit with Indian public limited co.
- Central govt. securities
- National Saving Certificates – VI and VII issue.

Conditions for claiming exemption:
He (the NRI) has invested the whole or any part of net consideration in any new foreign exchange asset within a period of six months from date of transfer of original asset.

Quantum of exemption:
The exemption in this case shall be computed in the following manner:
→ If amount invested is more than net consideration, whole of capital gain is exempt
→ Otherwise, exemption is calculated in the following manner

$$= \frac{\text{Amount invested}}{\text{Net consideration}} \times \text{Long Term Capital Gain}$$

Net consideration = Consideration ***Less*** Expenses of transfer

Withdrawal of exemption: If the new asset is transferred within 3 years of its date of acquisition, the exemption so granted under Sec. 115F would be withdrawn. It would be deemed to be income of the year in which such asset is transferred.

Summarised provisions relating to securities in case of capital gains

Securities of resident

Short Term		**Long Term**		
		Non-listed	***Listed and Mutual Fund***	
			Not sold through RSE	*Sold through RSE*
Securities mentioned in Sec.111A sold RSE and STT paid: Taxable @15%	*Rest of securities: Taxable @ normal rates of STCG*	*Taxable at normal rates of LTCG @ 20%*	*Min. of* (1) Limit of 10% (2) 20 *(as per Sec. 112)*	Exempt under Sec. 10(38)

Securities of non-resident

Short Term		**Long Term**		
		Non-listed	***Listed and Mutual Fund***	
			Not sold through RSE	*Sold through RSE*
Securities mentioned in Sec. 111A sold through RSE and STT paid: Taxable @ 15%. However calculation of capital gain has to be made (as per first proviso in Sec. 48 in case of an Indian co.)	*Rest of securities: Taxable @ normal rates of STCG. However calculation of capital gain has to be made as per first proviso in Sec. 48 in case of an Indian co.*	*Taxable at normal rates of LTCG i.e. @ 20%. However Due care in calculation as per first proviso in Sec. 48*	*Taxable @ of 10% and Due care in calculation as per first proviso in Sec. 48*	Exempt under Sec. 10(38)

Note: *In case Of NRI certain benefit of exemption as per Sec. 115F in case of long term foreign exchange asset has been given.[RSE – Recognised Stock Exchange]*

Tax rates on capital gain income:

→ **STCG:** Simply taxed at normal rates and added to income of assessee.
→ **STCG Referred in Sec. 111A:** Taxable at special rate of 15% and No deduction under chapter VI A is allowed from this income.
→ **LTCG:** Taxable at special rate of 20% and No deduction under chapter VI A is allowed from this income
→ Besides this there are some rates prescribed in "Tax on LTCG from listed Securities" which are to be taken care of.
→ It is to be noted that above rates are exclusive of education cess, secondary and higher education cess and surcharge which re charged separately at the normally prescribed rates.

Computation of capital Gain in special cases:

Section	Nature of Transaction	Year of taxability	Computation of Capital gain
Sec. 45(1A)	Insurance claim on loss of assets	Year of receipt of claim	Insurance claim received ***Less*** COA or COI
Sec. 45(2)	Conversion of capital assets into Stock-in-trade (*Key note:* Indexation based on year of conversion, not on year of sale)	Year of transfer of converted stock	FMV of the capital asset on conversion ***Less*** COA or ICOA Business income= Sale consideration ***Less*** FMV considered as above
Sec. 45(2A)	Sale of shares held as depository *(FIFO method)*	Year of transfer	Consideration for transfer ***Less*** COA or ICOA
Sec. 45(3)	Introduction of capital assets by partner into firm	Year of distribution	Amount credited in partners' capital a/c in the books of the firm ***Less*** COA or ICOA
Sec. 45(4)	Distribution of capital asset by partners/ members on dissolutions of firm/AOP/BOI	Year of first receipt	FMV on date of transfer ***Less*** COA or ICOA
Sec. 45(5)	Compulsory acquisition of capital asset by Government		
	(a) Normal compensation	Year of first receipt	Whole of normal compensation received or receivable ***Less*** COA or ICOA
	(b) Enhanced compensation	Year of receipt of claim	Enhanced compensation ***Less*** Expenses incurred
Sec. 45(6)	Redemption 80CCB Units	Year of repurchase	Repurchase price ***Less*** Amount invested *(no indexation)*
Sec. 46	Receipts of Assets/cash from company on liquidation	Year of receipt	FMV of asset received ***Add*** Amount received in Cash ***Less*** Deemed dividend under Sec.

			2(22)(c) ***Less*** COA or ICOA of hares
Sec. 46A	Repurchase/bay back of shares/Specified securities	Year of repurchase	Consideration for transfer ***Less*** COA or ICOA
Sec. 50B	Sale or undertaking as a going concern or Slump sale	Year of transfer	Lump sum consideration ***Less*** Net worth
Sec. 50C	Transfer of land or building or both at less than stamp duty authority value	Year of transfer	Value determined by stamp duty authority ***Less*** COA or ICOA

4.1: EXEMPTIONS AVAILABLE UNDER THIS HEAD

Exemption available only to Individual and/or HUF Assessees			
Provisions	***Capital gains on sale of residential property used for residential property***	***Capital gains on sale of urban agricultural land and used for another agricultural land***	***Capital gain on sale of LTCA not to be charged in case of investment in residential house***
	Sec. 54	**Sec. 54B**	**Sec. 54F**
Assessee	Individual/HUF	Individual & HUF	Individual/HUF
Nature of assets	LTCA	LTCA/STCA	LTCA
Assets transferred	Residential house property being building or land appurtenant thereto.	Agricultural land used by individual or his parents for agricultural purposes during 2 years of transfer	Any capital assets not being residential house property. Exemption is not available if assessee owns more than 2 houses including new house.
New assets to be purchased or constructed	Residential house property i.e. building, land appurtenant thereto.	Agricultural land *(in rural or urban area)*	Residential house property i.e. building, land appurtenant thereto.
Time limit of purchased or constructed	***Purchase:*** Within 1 year before or 2 years after the date of transfer; and ***Construction:*** Complete construction within 3 years from date of transfer	***Purchase:*** Within 2 years of the date of transfer	***Purchase:*** Within 1 year before or 2 years after the date of transfer; and ***Construction:*** Complete construction within 3 years from date of transfer
Deposit scheme	Applicable	Applicable	Applicable
Amount of exemption	*Min. of* (1) Capital gains (2) Investment	*Min. of* (1) Capital gains (2) Cost of new asset	$\text{Cost of new house} \times \frac{\text{Capital gains}}{\text{Net consideration}}$

Exemption available only to All assessees				
Provisions	***Compulsory acquisition of land and building*** **[Sec. 54D]**	***Investment in certain bonds*** **[Sec. 54EC]**	***Shifting of undertaking to rural area*** **[Sec. 54G]**	***Shifting of undertaking to SEZ*** **[Sec. 54GA]**
Assessee	Any person	Any person	Any person	Any person
Nature of Asset	STCA/LTCA	LTCA	STCA/LTCA	STCA/LTCA
Assets transferred	Compulsory acquisition of land or building which was used in the business of industrial undertaking during 2 years prior to date of transfer.	Any LTCA	Transfer of plant, machinery or land or building for shifting industrial undertaking from urban area to rural area	Transfer of plant, machinery or land or building for shifting industrial undertaking from urban area to Special Economic Zone
New assets to be purchased or constructed	New land or buildings for the industrial undertaking	Bonds, redeemable after 3 years issued – (a) By National Highway Authority of India; or (b) By Rural Electrification Corporation, Maximum exemption limit being ₹ 50 lakhs *(Amended by FA, 2007 w.e.f. 1/4/08)*	(a) Purchase/ Construction of plant, machinery, land or building in such rural area or, (b) Shifting original assets to that area or, (c) Incurring notified expenses	(a) Purchase/ Construction of plant, machinery, land or building in such SEZ or, (b) Shifting original assets to that area or, (c) Incurring notified expenses
Time limit of purchased or constructed	Within 3 years from date of receipt of initial compensation.	Within 6 months from the date of transfer of original asset.	Within 1 year before or 3 years after the date of transfer.	Within 1 year before or 3 years after the date of transfer.
Deposit scheme	Applicable	Applicable	Applicable	Applicable
Amount of exemption	*Min. of* (1) Capital gains (2) Amt. invested			

Key note: *Under all above sections, amount deposited in Capital Gains Account Schemes, if not utilised with prescribed time, it will be taxed in the PY in which prescribed period expires*

Big debate:

Topic: **In case of gift or inheritance the Cost of acquisition and period of holding is taken when the previous owner has acquired the assets. However, the indexation shall be done when the assessee/current owner acquired/received the assets. [We follow this as per the provisions of the Act]**

Argument: However, it was held in the case of **Mrs. *Puspa Devi Sofat* (Chandigarh Tribunal)** that the indexation shall also be done when the previous owner has acquired the assets. A similar view has been taken in case of ***Kamal Mishra*** by Mumbai tribunal and also in the case of Munjal Shaw.

Income under the head Capital Gains **[Format]**

Particulars	***Amt. (₹)***	***Amt. (₹)***
Sale consideration		……
Less: Cost of Acquisition (COA)	……	
Cost of Improvement (COI)	……	
Transfer Expenses	……	(……)
		……
Less: Exemption under Sec. 54B, 54D, 54G & 54GA		(……)
SHORT-TERM CAPITAL GAIN		……

Particulars	***Amt. (₹)***	***Amt. (₹)***
Sale consideration		……
Less: Indexed Cost of Acquisition (ICOA)	……	
Indexed Cost of Improvement (ICOI)	……	
Transfer Expenses	……	(……)
		……
Less: Exemption under Sec. 54, 54B, 54D, 54EC, 54F 54G & 54GA		(……)
LONG-TERM CAPITAL GAIN		……

4.2: AMENDMENTS ANALYSIS

Cost with reference to certain modes of acquisition	[Amended]	Sec. 49

- Earlier (before this amendment) there were no provision to treat the cost of assets of a proprietary concern, converted into a company, or a firm converted into a company as the cost of the assets in the case of the company.
- It is now provided, w.e.f. A.Y. 1999-2000, that the cost of assets on conversion of a proprietary concern or a firm into a company under Sec. 47(*xiii*), or 47 (*xiv*), in the hands of the company shall be the same as in the hands of the converting enterprise.
- Similarly, when an unlisted company is converted into LLP under Sec. 47(*xiiib*), the cost assets in the case of the company shall be treated as cost in the case of the LLP.

Fair market value deemed to be full value of consideration in certain cases	[Amended]	Sec. 50D

Where the full value of consideration is not ascertainable or cannot be determined, then fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration.

Exemption on transfer of agricultural land	[Amended]	Sec. 54B

- Before this **amendment**, the benefit of exemption from capital gain on **sale of agricultural land** is available to the assessee on reinvestment of such capital gain for purchase of another **new agricultural land within 2 years**.
- One of the conditions is that the land should have been used by the assessee or his parent for agricultural purposes.
- This provision is **amended**, w.e.f. A.Y. 2013-14, to provide that even if such land **was used by the HUF**, **in which the assessee or his parent was a member**, this exemption can be claimed.

Capital gain on transfer of residential property not to be charged in certain cases	[Inserted]	Sec. 54GB

This is a **new section** which is inserted w.e.f. A.Y. 2013-14 to provide that if an Individual or HUF makes capital gains on sale of a residential house or plot, he can claim exemption from Capital Gains Tax if he invests the net consideration in equity shares of a new SME (Small and Medium Enterprise) company. Such SME company is required to invest this amount in **purchase of new plant and machinery**. This exemption can be claimed subject to the following **conditions**:

(1) The investee company should **qualify as a small or medium enterprise** under the Micro, Small and Medium Enterprises Act, 2006. (SME).
(2) The company should be **engaged in the business of manufacture** of an article or a thing.
(3) SME Company should be **incorporated within the period from 1st of April of the year in which capital gain arises to the assessee and before the due date for filing the return** by the assessee under Sec. 139(1).
(4) The assessee should **hold more than 50% of the share capital or the voting right after the subscription** in the shares of a SME company.
(5) The assessee will not be able to transfer the above shares for a period of 5 years.
(6) The company will have to utilise the amount invested by the assessee in the purchase of new plant and machinery. If the entire amount is not so invested before the due date of filing the return of income by the assessee under Sec. 139, then the company will have to deposit the amount in the scheme to be notified by the Central Govt.
(7) The above new plant and machinery acquired by the company cannot be sold for a period of 5 years.
(8) The above scheme of exemption granted in respect of capital gains on sale of residential property will remain in force up to 31-3-2017.

Reference to valuation officer	[Amended]	Sec. 55A

- This section is **amended** w.e.f. 1-7-2012.

- Under this section, the AO (Assessment Officer) **can make a reference** to the Valuation Officer with a view to **ascertain the fair market value** of the capital asset.
- **Before amendment**, such reference can be made when the AO is of the view that the value disclosed by the assessee is less than the fair market value.
- In some cases it is held that when the assessee exercises his option to substitute fair market value of the capital asset as on 1-4-1981, for the cost of the asset, and if the **AO is of the view that such market value as declared by the assessee was more**, he **cannot make a reference to the Valuation Officer**.
- To overcome this position, this amendment provides that w.e.f. 1-7-2012 the **AO can make such reference to the Valuation Officer**.
- This amended provision will apply w.e.f. 1-7-2012 but will **have retroactive effect**, inasmuch as; the AO can make such a reference to the Valuation Officer in respect of all pending assessments of earlier years.

Security Transaction Tax	**[Amended]**	**Sec. 98** **(Finance Act)**

- Section 98 of the Finance (No. 2) Act, 2004, providing for rates of STT has been **amended w.e.f. 1-7-2012**. The revised rates of **STT in Cash Delivery Segment are reduced from 0.125% to 0.1%**. Therefore, in the case of *delivery-based transaction relating to equity shares of a company or units of equity oriented fund of a mutual fund entered into through a recognised Stock Exchange, the STT payable by*
  (a) a **purchaser** is reduced from 0.125% to 0.1% and
  (b) a **seller** is reduced from 0.125% to 0.1% **w.e.f. 1-7-2012**
- In order to encourage unlisted companies to get them listed in recognised Stock Exchange, it is now provided that *sale of unlisted equity shares by any holder of such shares, under an offer for sale to the public included in an Initial Public Offer (IPO), if subsequently such shares are listed on the recognised Stock Exchange, will be liable for payment of STT at* ***0.2%****. If such STT is paid, long-term capital gain on such sales will be exempt from tax and tax on short-term capital gain will be* ***payable at concessional rate of 15%*** *under Sec. 111A.*

NOTES

UNIT 5: INCOME FROM OTHER SOURCES

Sections covered in this unit:

Section	Provision
Sec. 56(1)	*Basis of charge*
Sec. 145	*Method of accounting*
Sec. 8	*Basis of charge of dividend income*
Sec. 56(2)	*Specified incomes chargeable under the head IOS*
Sec. 57	*Deductions of expenses from specific incomes chargeable under the head IOS*
Sec. 58	*Amount not deductible in computing the income under the head IOS*
Sec. 59	*Deemed income chargeable under the head IOS*
★ Sec. 68	*Taxation of unexplained cash credit*
Sec. 115BB	*Special rate of income-tax in case of winning from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or gambling or betting of any form or nature whatsoever*
★ Sec. 115BBE	*Tax rates on incomes taxable by virtue of sections 68 to 69D*
★ Sec. 56(2)(*vii*)	*Income to include gift of money and/or **property***
Sec. 56(2)(*viii*)	*Income to include transfer of shares in case of recipient firms and companies*
★ Sec. 56(2)(*viib*)	*Issue of shares at more than FMV*

Basis of charge **Sec. 56(1)**

Income which is **not exempt** and which **cannot be taxed under any other head of income** is taxable under the head 'Income from Other Sources'

Some specified incomes included (chargeable) under this head **Sec. 56(2)**

- *Dividends*,
- Winning from *lotteries, crossword puzzles, races, card games, gambling or betting* of any form,
- *Interest* on securities, compensation or on enhanced compensation
- Income from *letting* of machinery, plant or furniture
- Sum received under a *keyman insurance policy* including bonus.
- *Gift* Received by an individual or an HUF.
- Where a firm or a *private company receives shares of closely held company*, without consideration or for inadequate consideration, FMV of which exceeds ₹ 50000 or FMV of which exceeds inadequate inconsideration by ₹ 50000, the aggregate of such sum shall form part of income.

Other incomes which is normally included (chargeable) under this head:

- Income from sub-letting of a house property by a tenant
- Casual income
- Insurance commission
- Family pension
- Interests on bank deposits

Deemed dividend **Sec. 2(22)**

Dividend includes disbursements by the company to the shareholders, to the extent of accumulated profits, whether capitalized or not:

(a) Any distribution by a company if such distribution ***reduces company's assets***
(b) Distribution of debenture/ deposit certificates to shareholder and ***bonus shares to preference shareholders***
(c) Distribution of accumulated profits at the time of ***liquidation*** except to preference shareholders
(d) Distribution of accumulated profits on ***reduction of share capital*** to preference shareholders

(e) Any ***advance/loan*** by a ***closely held company*** to

a. An equity shareholder, or to any person on behalf of such equity shareholder, who ***holds not less than 10% voting power***.

b. Any concern in which such shareholder is ***having not less than 20% voting power or 20% profit sharing***

- ⇨ Such advance/loan shall be considered to be dividend in the hands of shareholder but ***only to the extent of accumulated profits excluding capitalized profits.***
- ⇨ If any such advance/loan has been ***repaid*** by the shareholder, even in that case, ***it will be considered to be dividend***
- ⇨ However, if any such company has business of lending money i.e. ***it is a banking company, then provisions of Sec. 2(22)(e) shall not apply***.

Dividends covered under Sec. 2(22)(a), (b), (c), (d) are exempt under Sec. 10(34) in the hands of shareholder but ***dividends under Sec. 2(22)(e) shall be taxable*** in the hands of employees under the head 'Income from other sources'

Method of accounting **Sec. 145**

Income chargeable under this head shall be computed on the basis of books of accounts maintained by the assessee and the ***assessee has the option*** to maintain the books of accounts either on the basis of ***mercantile system of accounting OR on cash basis***.

Deductions allowed **Sec. 57**

Income	***Deduction allowed***
Interest/dividend	Commission or remuneration of realization of such income or interest on money borrowed for such investment.
Family pension	Family pension received by legal heir of deceased employee, taxable under the head "other source. Standard deduction to legal heirs is allowed. $\left.\begin{array}{l}(1)\ 33.33\%\text{ of pension}\\(2)\ ₹15,000\end{array}\right\}$ Whichever is lower **[Sec. 37(*iia*)]**
Income of letting	Deduction of repair, insurance and depreciation

[**Note:** Any other expenditure incurred wholly and exclusively for earning such income]

Interest on securities *(Rates of TDS)*

Types of Security	***Rate of TDS***
(1) CG/SG securities	No TDS
(2) Listed securities	10%
(3) Unlisted Securities	20%

*[**Note:** In case of tax free non-government securities → Grossing up* of interest]*

* Grossing up in this way: $\frac{\text{Interest income received}}{100-\text{Rate of TDS}}\times 100$

Expenses not allowed **Sec. 58**

- ⇨ ***Personal*** Expenses
- ⇨ Interest/Salary paid ***outside India*** on which ***tax has not been deducted at source***
- ⇨ Expenditure referred to in ***Sec. 40A***
- ⇨ *Income Tax/ Wealth Tax paid*
- ⇨ Any expenditure or allowance in connection with ***winning of lottery, crossword puzzles, etc.***

However, expenditure incurred by the assessee for the ***activity of owning and maintaining race horses*** shall be allowed as deduction.

Deemed income **Sec. 59**

If any expense was ***claimed*** by the assessee in any year and subsequently it was ***recovered*** by him, it shall be ***included in his income***.

Gifts received by an Individual/HUF — Sec. 56(2)(*vii*)

Gifts received by an individual/HUF ***from unrelated person or persons*** shall be taxable under Sec. 56(2)(vii)

Gift received	*Consideration*	*Taxable Amount*
Any sum of money	Without consideration	Whole of such sum if it exceeds ₹ 50000
Immovable property	Without consideration	If Stamp duty value of such property exceeds ₹ 50000, then income shall be stamp duty value
Movable property	Without consideration	If FMV of such property exceeds ₹ 50000, then income shall be FMV of property
	Inadequate consideration	If difference between the consideration and FMV is more than ₹ 50000, then income shall be difference between consideration paid and FMV.

Gifts received by an Individual/HUF not taxable in certain cases

When the sum of money or any property is received:

- → From any relative*
- → On the occasion of the marriage of the individual
- → Under a will or by way of inheritance
- → In contemplation of death of the payer or donor
- → From any local authority, trust or university etc.

*[*Note: For the purpose of this clause 'relative' means:*

(1) Spouse of the individual
(2) Brother or sister of the individual
(3) Brother or sister of the spouse of the individual
(4) Brother or sister of either of the parents of the individual
(5) Any lineal ascendant or descendant of the individual
(6) Any lineal ascendant or descendant of spouse of the individual
(7) Spouse of persons referred to in items (1) to (6) above.
(8) Definition of relative has been extended to include member of HUF. Therefore, gift received by HUF from its member shall not be taxable.]

Bond washing transaction — Sec. 94(1)

If owner of ***any security*** sell it ***just before due date*** and ***again acquires*** them after due date, he will be able to avoid payment of tax on interest.
In such case, ***interest would be deemed to be income of the transferor and not transferee***.
Exceptions:

- ⇨ If there is no avoidance of tax
- ⇨ Avoidance of tax is exceptional or is unsystematic.

Dividend Stripping in case of Shares/Units — Sec. 94(7)

If any person has ***purchased shares/units within 3 months prior*** to record date and after receiving the dividends, the ***shares were sold within 3 months or the units were sold within 9 months after*** the record date, in such cases, ***any loss incurred*** to the extent dividend were received ***shall not be taken into consideration***.

Bonus Stripping in case of Shares/Units — Sec. 94(8)

If any person has ***purchased units within 3 months*** prior to record date and after receiving the ***additional units***, the original units were ***sold within 9 months*** after the record date, in such cases, any ***loss incurred shall not be taken into consideration***.

Rates of tax in case of winning from lottery etc. — Sec. 115BB

30% of such income

5.1: AMENDMENTS ANALYSIS

Taxation of Gift	**[Amended]**	**Sec. 56(2)(*vii*)**

- Under this section any gift exceeding ₹ 50,000 in any year received by an Individual or HUF on or after 1-10-2009, is taxable as income from other sources, subject to certain exceptions.
- One of the exceptions is about **gift received from relatives of the individual as defined**. Similar exemption is **not given in respect of gifts from members of HUF**.
- It is now provided, w.e.f. 1-10-2009, that **gifts received by HUF from its members will be exempt**. However, if such a gift is **given by a member to such HUF, income from the property gifted will be clubbed with the income of the member** under Sec. 64(2). In order to mitigate hardship experienced in practical life it is suggested that the following relationship should have been covered in the definition of relatives.
  - (i) Gifts by HUF to its members
  - (ii) Gifts to an Individual by any lineal descendant of a brother or sister of the Individual or his/ her spouse (i.e., gift by a nephew or niece to an uncle or aunt). **Similar provision is made in Sec. 314(214)(h) of DTC Bill, 2010**.

Issue of shares at more than FMV	**[Inserted]**	**Sec. 56(2)(*viib*)**

- This is a **new provision inserted** from the A.Y. 2013-14.
- It is now provided that *where a closely held company issues shares to a resident, for* ***amount received in excess of the fair market value of the shares****, it will be* ***deemed to be the income of the company under the head 'Income from other Sources'***.
- The fair market value for this purpose is the **higher of the value arrived at on the basis of the method to be prescribed or the value as substantiated by the company to the satisfaction of the Assessing Officer**.
- The company **can** substantiate the value based on the value of the tangible and intangible assets and various types of **commercial rights as stated in the section**.
- This **provision will not apply to** amounts received by a venture capital undertaking from a venture capital fund or a venture capital company. Further, this **provision will not apply to** amount received from a non-resident, a foreign company or from a class of persons as may be notified by the Government.
- The provision appears to have been made with a view to **ensure that excessive amount, representing revenue payment, is not received in the form of share premium and does not escape taxation**.

Taxation of unexplained cash credit	**[Amended]**	**Sec. 68**

- This section deals with **taxation of cash credits**.
- The section is **amended** w.e.f. A.Y. 2013-14.
- This section now provides that *in the case of a closely held company, if the amount credited in the name of a resident is by way of share application money, share capital, share premium or any such amount, by whatever name called, and the explanation offered for the* ***credit is not considered to be satisfactory, such amount will be considered as income of the company.***
- However, if the person (being a resident) in whose name the amount is credited offers explanation about the source and nature of the amount credited and such explanation is found to be satisfactory by the Assessing Officer this Section shall not apply.
- In the event of failure to do so, the entire amount credited will be taxed at the rate of 30% plus applicable surcharge and Education cess in the hands of the company.
- This provision does not apply to amount received from a venture capital fund or a venture capital company. It will also not apply to the amount received from a non-resident or a foreign company.

Tax on certain dividends received from foreign companies.	[Amended]	Sec. 115BBD

- Before the **amendment**, this section provides that rate of tax, for **dividend received by an Indian company from a foreign company** in which it has share-holding of **26% or more**, is **15% for A.Y. 2012-13**.
- This concession has been **extended for one more year** i.e., A.Y. 2013-14.

Tax rates on incomes taxable by virtue of sections 68 to 69D	[Inserted]	Sec. 115BBE

This is a **new section inserted** from A.Y. 2013-14.The section provides that unexplained amounts treated as income

(1) Under Sec. 68: Cash credits,
(2) Under Sec. 69: Unexplained investment,
(3) Under Sec. 69A: Unexplained money, bullion, jewellery or other valuable articles,
(4) Under Sec. 69B: Amount of investments, expenditure on jewellery, bullion or other valuable articles not fully disclosed in books,
(5) Under Sec. 69C: Unexplained expenditure, and
(6) Under Sec. 69D: Amount borrowed or repaid on a Hundi in cash,

will now be taxed at a flat rate of 30% plus applicable surcharge and education cess. No deduction for any expenditure or allowance will be allowed against such income.

NOTES

5. CLUBBING OF INCOME

[INCOME OF OTHER PERSON INCLUDED IN ASSESSEE'S TOTAL INCOME]

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

5. CLUBBING OF INCOME

Sections covered in this chapter:

Section	Provision
Sec. 60	*Transfer of income when there is no transfer of asset*
Sec. 61	*Revocable transfer of assets*
Sec. 62	*Transfer of asset which is revocable during the lifetime of the beneficiary/transferee*
Sec. 63	*Meaning of 'revocable transfer'*
Sec. 64(1)(ii)	*Clubbing of income of spouse*
Sec. 64(1)(iv)	*Clubbing of income from asset transferred to spouse*
Sec. 64(1)(vi)	*Clubbing of income from asset transferred to son's wife for inadequate consideration*
Sec. 64(1)(vii)	*Clubbing of income from asset transferred for inadequate consideration to any person for the benefit of the spouse*
Sec. 64(1)(viii)	*Clubbing of income from asset transferred for inadequate consideration to any person on or after 1/4/1973 for the benefit of the son's wife*
Sec. 64(1A)	*Clubbing of income of minor child*
Sec. 10(32)	*Exemption of ₹ 1,500 for each minor child to parent whose Total Income (excluding minor's income) is greater*
Sec. 64(2)	*Conversion of self-occupied property into HUF property*
Sec. 288A	*Rounding off of total income*
Sec. 288B	*Rounding off of tax etc.*

Transfer of Income without transferring assets — Sec. 60

Where there is a ***transfer of income*** by a person to another person, ***without the transfer of asset***, such income shall be ***taxable in the hands of transferor***.

Revocable transfer of assets — Sec. 61

If there is ***revocable transfer*** of an asset by one person to another, then income from such assets shall be ***taxable in the hands of transferor***.

No clubbing if transfer is irrevocable — Sec. 62

→ If any person has transferred any asset through ***irrevocable transfer***, in such cases, ***clubbing provisions shall not apply***.

→ If any person has transferred any asset for the ***lifetime of the transferee***, it will be considered to be irrevocable and ***clubbing provisions shall not apply***.

Definition of Revocable Transfer — Sec. 63

Transfer shall be deemed to be revocable if:

(1) If whole or any part of the income or assets ***can be re-transferred*** to transferor

(2) If transferor can ***re-assume power*** over the whole or any part of income or assets

Income of Individual to include income of spouse, minor child etc. — Sec. 64

Remuneration of spouse — Sec. 64(1)(ii)

If spouse of an individual is receiving salary, commission, fees or any other remuneration from any concern in which the individual is having ***substantial interest*** then such salary etc. shall be included in the income of the individual.

Exceptions:	There shall be no clubbing of income if the salary etc. paid to the spouse is due to his/her technical or professional qualifications or knowledge or experience.

Substantial interest:	***Company:***	If individual along with his relatives (Spouse, brother, sister or any lineal ascendant or descendant of the individual) holds not less than ***20% equity shares beneficially***.
	Others:	If individual along with his relatives is entitled to ***at least 20% of profits***
	However, if both husband and wife have substantial interest in the concern and both are receiving remuneration from the same concern, then the remuneration of both the person shall be clubbed in the hands of that spouse whose total income is greater, before clubbing such income.	

Income from Assets transferred to Spouse **Sec 64(1)(ii)**

If an individual ***transfers any asset*** other than house property ***to his/her spouse***, income from such assets shall be ***clubbed in the hands of transferor***.

Exceptions:	→ Transfer is for adequate consideration → Transfer is under an agreement to live apart → If the relationship of husband and wife does not exist either at the time of transfer or at the time of accrual of income.
Cross transfer:	If any person has transferred any asset to the spouse of some other person and such other person has transferred the asset to the spouse of the first person, in this case clubbing provisions shall apply.
Important points:	→ If any person has transferred the asset to the spouse, income from the asset shall be clubbed in the hands of the transferor. But if such income is further invested, any ***subsequent income shall not be clubbed***. → If transferred asset is invested by the spouse in any business, then income from such business shall be clubbed in the hands of transferor. $\text{Income from business} \times \frac{\text{Amt. invested out of asset transferred}}{\text{Total invt. of transfaree in the beginning of the year}}$

Income from Assets transferred to Son's Wife **Sec. 64 (1)(vi)**

Income arising from an asset transferred by an individual to his son's wife, without adequate consideration, shall be clubbed in the hands of transferor.

Income from Assets transferred to any person for the benefit of the spouse or Son's Wife **[Sec. 64(1)(vii) Sec. 64(1)(viii)]**

Income from assets transferred to any person for the immediate or deferred benefit of the spouse or son's wife, without adequate consideration, shall be taxable in the hands of the transferor.

Clubbing of Income of Minor Child **Sec. 64 (1A)**

All such income which accrues or arises to the minor child is to be clubbed in the hands of that parent whose total income (excluding the income of minor child) is greater. However, if the marriage of parents does not subsist, it shall be included in the income of that parent who maintains the child.

If the income of child is so included, the parent shall be entitled to an exemption of maximum ₹1500 in respect of each minor child. **Sec. 10 (32)**

Where any income is once included in the total income of either parent, it will continue be clubbed in the hand of that parent only, in all future years, unless the assessing officer is satisfied that income shall be clubbed in the hands of other parent.

However, income of minor child shall not be clubbed in following cases:

→ Child is suffering from any ***disability*** of the nature specified in Sec. 80U, like physically disabled, totally blind etc.

→ Income accruing to child on account of ***manual work*** or activity involving application of his ***skills, talent or specialized knowledge and experience***.

Income from self-acquired property converted into joint family property **Sec. 64 (2)**

If an Individual, who is a member of HUF, converts his self-acquired property into HUF property then income derived by HUF from such property shall be included in the hands of transferor.

Implication in case of subsequent partition: ***After partition of HUF, income arising from any asset received by the spouse shall be clubbed in the hands of transferor.***

Liability of person (transferor and transferee)	**Sec. 65**

Even though the income arising from the transfer of assets is clubbed in the hands of transferor, ***tax on such income may also be demanded from the transferee***.

NOTES

6. SET-OFF OR CARRY FORWARD AND SET-OFF OF LOSSES

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

6. Set-off or Carry-Forward and Set-off of Losses

Sections covered in this chapter:

Section	Provision
Sec. 70	*Set-off of loss from one source against income from other source under the same head of income (i.e.* ***Intra-head adjustment****)*
Sec. 71	*Set-off of loss from one head against income from other head (i.e.* ***Inter-head adjustment****)*
Sec. 71B	*Carry forward and Set-off of loss from House Property*
Sec. 72	*Carry forward and Set-off of loss from non-speculative business*
Sec. 72A	*Unabsorbed loss and unabsorbed depreciation of Amalgamating Co./Pvt Co./Unlisted Public Co. shall be deemed to be the losses and depreciation of Amalgamated Co./LLP of the PY in which amalgamation or conversion took place*
Sec. 41(5)	***"Loss" of business or profession of the PY*** *in which business was discontinued can set-off against the Income under* ***Sec. 41(1), 41(3) and 41(4)*** *arising subsequent to the discontinuance of business*
Sec. 41(1)	*Recovery of loss or expenditure allowed as deduction & remission and cessation of trading liability*
Sec. 41(3)	*Profit on sale of scientific research asset*
Sec. 41(4)	*Bad debt recovery*
Proviso to Sec. 72(1)	*Where business is discontinued due to flood, cyclone, earthquake, riots etc. and re-established before expiry of 3 years from the end of PY in which business discontinued, then the loss of such business* ***including brought forwarded loss*** *can be set-off against non-speculative business income in the AY relevant to the year in which business is re-established and balance in 7 succeeding AY*
Sec. 73	*Losses of Speculation Business*
Sec. 74	*Losses under the head Capital Gains*
Sec. 74A	*Losses from activity of owning and maintaining of race horses*
Sec. 80	*Return of loss should be filed on or before due date of furnishing return as prescribed under Sec. 139(1)*
Sec. 73A	*Set-off or carry forward & Set-off of losses by specified business referred to in Sec. 35AD*

Set-off of loss from one source against income from other source under the same head of income (i.e. Intra-head adjustment) — Sec. 70

Loss from one source in any head of income can be set off against income from any other source falling under the ***same head***.

Exceptions:

- ⇨ Loss under head PGBP cannot be set off against income from salary
- ⇨ Loss of specified business under Sec. 35AD can be set off only against income of specified business
- ⇨ Loss under head capital gains cannot be set off against income of any other head
- ⇨ Loss from maintaining and owning horse races cannot be set off against any other type of income.
- ⇨ No loss can be adjusted against Income of winning from lottery etc.

Carry forward and Set off of loss of House Property — Sec. 71B

- ⇨ ***Unadjusted loss of House Property*** shall be allowed to be carried forward to the subsequent assessment year for a ***maximum period of 8 years*** following the assessment year in which loss was computed.

- ⇨ Carry forward loss of House property can be adjusted only ***against income of house property*** in subsequent years.

Carry forward and Set-off of loss from (non-speculative) business	**Sec. 72**

- ⇨ Unadjusted loss under the head 'Profits and Gains of Business or profession'(Except loss in speculation business) shall be allowed to be carried forward to the subsequent assessment year for a ***maximum period of 8 years*** following the assessment year in which loss was computed.
- ⇨ Carry forward loss of PGBP (other than speculation loss) can be adjusted ***only against income of PGBP*** in subsequent years.
- ⇨ ***Unabsorbed depreciation under Sec. 32(2) or scientific research expenditure under Sec. 35*** can be carried forward for ***unlimited period*** and is allowed to be ***adjusted against any other income*** *(except casual income like winning of lotteries etc.)*

Expenditures, losses and depreciation shall be adjusted in the order given below:

(1) Current year business expenditure
(2) Current year depreciation, capital expenditure on family planning or scientific research
(3) Brought forward loss of PGBP
(4) Brought forward depreciation/ unabsorbed expenditure on scientific research/ family planning

Carry forward and Set off of loss in case of amalgamation/demerger/ Conversion of proprietorship/ partnership firm into company etc.	**Sec. 72A**
Amalgamation	The unadjusted loss and unabsorbed depreciation of the amalgamating company shall be deemed to be the loss of the amalgamated company ***as if incurred in the year of amalgamation***, if : ⇨ The amalgamated company ***continues the business*** of amalgamating company for a period of ***at least 5 years*** ⇨ The amalgamated company continues to hold at least ***75% of the book value of assets*** for a period of ***5 years***. ⇨ Fulfil other conditions as prescribed
Demerger	Unadjusted losses and depreciation of the demerged company is allowed to be carried forward and set off by the resulting company for the ***remaining period***.
Conversion of proprietorship or partnership firm into company	Unadjusted losses and depreciation of the proprietorship/ partnership firm shall be deemed to be the losses of company ***as if incurred in the year of conversion***, if conditions laid down under Sec. 47 are complied with.
Conversion of private or unlisted company into LLP	Unadjusted losses and depreciation of the private or unlisted company shall be deemed to be the losses of LLP ***as if incurred in the year of conversion***, if conditions laid down under Sec. 47 are complied with.

Losses in Speculation Business	**Sec. 73**

- ⇨ Loss from speculative business is allowed to be set off only ***against profits of speculative business****.
- ⇨ Unadjusted loss of Speculative business shall be allowed to be carried forward to the subsequent assessment year for a ***maximum period of 4 years*** following the assessment year in which loss was computed and is allowed to be set-off ***only against profits of speculative business*** in subsequent years.

Meaning of speculative business*	**Sec. 41(5)**

Speculative business means such business transactions in which a contract for the purchase or sales of any commodity including stocks and shares is settled otherwise than by the actual delivery.

Carry Forward and Set off of Losses by specified business under Sec. 35AD	**Sec. 73A**

- ⇨ Loss from specified business under Sec. 35AD is allowed to be set off ***only against profits of any other specified business***.

⇨ Unadjusted loss of Specified business shall be allowed to be carried forward to the subsequent assessment year for ***unlimited period*** and is allowed to be set-off ***only against profits of specified business in subsequent years***.

Losses under the head Capital Gains	**Sec. 74**

⇨ ***Short term capital loss*** can be set off ***either from STCG or LTCG***, but ***long term capital loss*** can be adjusted ***against LTCG only***.
⇨ Losses under the head capital gain are ***not allowed to be set off against any other head*** of income.
⇨ Unadjusted loss of Capital Gains shall be allowed to be carried forward to the subsequent assessment year for a ***maximum period of 8 years*** following the assessment year in which loss was computed.
⇨ Carry forward loss under head Capital Gains can be adjusted only against income under the head Capital Gains in subsequent years. Short term capital loss can be adjusted from STCG or LTCG but long term capital loss can be adjusted against LTCG only.

Losses under the head Income from Other Sources	**Sec. 74A**

⇨ Losses from activities under the head other sources (except maintaining and owning race horses) is allowed to be set-off within same head or any other head except casual income.
⇨ ***Carry forward of loss under head other source is not allowed.***
⇨ Losses from owning and maintaining race horses is allowed to be set off ***only against profit of owning and maintaining race horses*** and unadjusted losses is allowed to be carried forward for a ***maximum period of 4 years*** and it can be set-off only against the profit of owning and maintaining race horses in subsequent years.

Carry forward of losses - Change in constitution of firm or on succession	**Sec. 78**

⇨ If there is change in the constitution of a firm, then the ***loss proportionate to the share of retired or deceased partner shall not be allowed to be carried forward*** by the firm. This provision does not apply to unabsorbed depreciation.
⇨ Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, such other person cannot carry forward and set off against his income, any loss incurred by the predecessor. However, in case of inheritance, ***legal heirs are entitled to carry forward and set off the loss of predecessor***.

Carry forward and Set-off of losses in case of closely held companies	**Sec. 79**

Losses of closely held companies shall be allowed to carried forward only if the shareholder holding ***at least 51% of voting power*** are the same as on the last day of the year in which the loss has been incurred and as on the last day of the year in which the loss is to be set off.
This provision does not apply in following cases:
→ Unabsorbed depreciation
→ Change in shareholding is due to death of shareholder
→ Change in shareholding is due to gift of share by shareholder to his relative.

Submission of return of losses	**Sec. 80**

Losses (except losses under the head House Property) can be ***carried forward only if loss has been determined as per a return of loss filed on or before the date under Sec. 139(1)***.

Nature of Income		*Set-off* Same source under same head	*Set-off* Inter-source under same head	*Set-off* Inter-head	*Carry forward for AY*	*Set-off from*
Salary		NA	NA	NA	NA	NA
PGBP	*Non-speculative*	✓	✓	✓ *Except Salary*	8 years	Same head
	Speculative	✓	✓		4 years	Same head
Capital gains	*Short term*	✓	✓	×	8 years	Same head
	Long term	✓	✓	×	8 years	Same head
Other Sources	*Owning and maintenance of race horses*	✓	✓	×	4 years	Same head
	Winning from lottery etc.	×	×	×		
	Interest etc.	✓	✓	✓		

NOTES

7. DEDUCTIONS UNDER CHAPTER VI-A

[UNDER SECTION 80C-80U]

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

7. Deductions under Chapter VI-A

Summarised provisions mentioned in the chapter:

Sec.	Particulars	Eligible assessee	Quantum of deduction	Special points
80C	Deduction for specified payments of future benefits	Individual and HUF	Max. ₹ 1 lakh	Deduction on premium on LIC will not be applicable on policy issued on or after 1.04.2012 if premium is more than 10% of sum assured.
80CCC	Deduction in respect of certain provident fund	Individual	Max. ₹ 1 lakh	Pension fund referred under Sec. 10(23AAB)
80CCD	Deduction respect of notified pension scheme of Central Govt.	Individual employed by CG or any other employer or individual being self-employed	Employer & employees contribution not exceeding 10% of Salary (each case) and 10% of GTI in case of self-employed. [Max. ₹ 1 lakh]	Amt. to be deposited in notified pension scheme.
80CCE	Limit for max. deduction can be claimed under Sec. 80CC, 80CCC & 80CCD	—	Max. ₹ 1 lakh	—
80CCF	Investment made under an equity saving scheme	Resident individual	*Min. of:* (1) 50% of amt. invested in equity share or (2) ₹ 25,000	Assessee who has invested in a PY, *acquired listed equity share* in accordance with following conditions: (a) GTI should not exceed ₹ 10 lakhs during relevant AY (b) He is a fresh (new) retail investor (c) Investment made in specified listed equity shares (d) Lock-in period: 3 yrs. from date of acquisition (e) Any other condition prescribed: If assessee failed to comply the original deduction allowed shall be the income of the PY in which

				such condition is violated and taxed in the relevant AY
80D	Medical insurance premium & preventive health check-up of self, spouse, dependent children and parents not exceeding ₹ 5,000	Individual and HUF	*Individual, spouse and children:* ₹ 15,000 or ₹ 20,000 *Parents:* ₹ 15,000 or ₹ 20,000 *(presumptive health check-up included in the above limits)*	*Not-senior citizen:* ₹ 15,000 *Senior citizen (age of 60 yrs. or more):* ₹ 20,000 *[Mode of payment other than cash but in case of presumptive health check-up any mode including cash.]*
80DD	Maintenance including medical treatments *[disabled person]*	Individual or HUF (Resident Indian)	*Normal disability:* ₹ 50,000 *Severe disability:* ₹ 1 lakh	This deduction is irrespective of expenditure.
80DDB	Deduction in respect of medical treatment	Individual or HUF (Resident Indian)	Max. ₹ 40,000 *Senior citizen (60 or above age)*: ₹ 60,000	Furnish certificate in Form 10-I, for specific decease by neurologist, oncologist, urologist, haematologist, immunologist etc.
80E	Interest paid on loan taken for pursuing higher education	Individual (Resident or not)	Actual amt. of interest paid	Loan given by *financial institution or charitable institution*. Deduction allowed for **8 yrs.** starring from AY in which repayment begins
80G	Deduction in respect of certain donations or fund	All assessee	(a) 100% or 50% of eligible deduction of donation (b) 100% of 50% of eligible deduction of Max. 10% of Adjusted GTI	No deduction allowed the donation given ₹ 10,000 is paid cash (can be paid by any mode including a bearer cheque)
80GG	Donation for scientific research or rural development	All assessee (not having business income)	Amt. donated	If approval with draw for scientific research or rural development institution after donation then also the donation stands valid. No deduction allowed the donation given ₹ 10,000 is paid cash (can be paid by any mode including a bearer cheque)
80GGA	Donation to political parties or electoral trust	Any assessee (other than local authority	Amt. contributed	—

		& every artificial juridical person whether wholly or partially formed by Govt.)		
80-IA	Profits & Gains from industrial undertaking or enterprise engaged in infrastructural development	Industrial undertaking or enterprise engaged in infrastructural development	30 to 100% of profits	Many business having different % of exemption for certain period of time.
80-IAB	Deduction in respect of industrial undertaking or enterprise engaged in infrastructural development of SEZ (Special Economic Zone)	Undertaking engaged in development of SEZ	100% of profit for 10 consecutive AYs & 50% of profits for next 5 years	—
80-IB	Profits & Gains from industrial undertaking or enterprise engaged in other than infrastructural development	All assessees (engaged in the business of industrial undertaking / hotels / ships / infrastructure / development / scientific & industrial research & development	25% to 100% of profit for specified period	—
80-IC	Undertaking or enterprises in certain special category states	All assessees deriving income from an undertaking or enterprise situated in special category states which begin manufacturing / production between specified period	25% to 100% of Profits for Specified period.	—
80-ID	Deduction in respect of Profit & Gains from business of hotels in specified area or world heritage site	All assesses deriving income from the business of hotel & convention	100% of Profits for 5 consecutive years.	—

	& convention centers in specified area.	center in specified areas.		
80-IE	Special provisions in respect of certain undertaking in North Eastern States.	All assessees deriving income from eligible undertaking in any North Eastern States.	100% of Profits for 10 consecutive years.	—
80JJA	Profits & Gains from Business of collecting and processing of bio degradable waste.	All assessees	100% of Profits for 5 years.	—
80JJAA	Employment of new workmen.	Indian Company.	30% of additional wages for 3 years.	—
80LA	Deduction in respect of certain income from offshore banking unit	Only Schedule bank owing offshore banking unit in SEZ.	100% of Profits for 1st 5year & 50% of profits for next 5 yrs.	—
80P	Income of Co-operative society	Co-operative society	100% of Profit but in some cases fixed ₹ 40,000 or ₹ 20,000	—
80QQB	Royalty Income of Author of certain books other than text book	Resident Individual being an author	*Minimum of:* (1) 10% of income (2) ₹ 3,00,000	The book should be literary, artistic or scientific in nature & the author is professionally competent. Income = lumpsum consideration for grant of copyright (+) Royalty or Copyrights *(Deduction allowed if certificate furnished in Form 10CCD for Indian Income & Form 10H for Income outside India)*
80RRB	Royalty Income on Patents	Resident Individual being a Patentee.	*Minimum of:* (1) 10% of income (2) ₹ 3,00,000	Patent is registered on or after 01.04.2003 *(Deduction allowed if certificate furnished in Form 10CCD for Indian Income & Form 10H for Income outside India)*
80TTA	Interest on Saving Bank Account	Individual or HUF	Max. ₹ 10,000	Bank Means (a) Banking company as defined by Banking Regulation Act, 1949

				(b) Co-operative society engaged in Banking Business. (c) Post Office.
80U	Deduction in respect of a person with disability	Resident individual	*Normal disability:* ₹ 50,000 *Severe disability:* ₹ 1,00,000	This deduction is irrespective of the expenditure.

Rules of Deduction	
Sec. 80A(2)	Deduction cannot exceeds Gross Total Income
Sec. 80A(3)	Deduction not allowed to AOP/BOI
Sec. 80A(4)	If deduction under any other provisions of Act has already been allowed then it is not allowed under Chapter VI-A. (i.e. Double deduction is not allowed)
Sec. 80A(5)	Deduction allowed only when it is claimed by assessee otherwise it is not allowed.
Sec. 80A(6)	⇨ Profit & Gains to be recomputed if inter unit or inter business transaction are not at market value at Arms' Length as defined in Sec. 92F. (Finance Act, 2012) ⇨ The assessee's duty is to place relevant material
Sec. 80AB	Deduction to be allowed only in respect of Net Income included in GTI.
Sec. 80AC	Benefit of certain deduction cannot be allowed if Return of Income is not filed in specified time. (Sec. 80-IA, 80-IB, 80-IC or 80-ID)

General condition

Deductions from Gross Total Income are ***not allowed*** *from the following incomes:*

→ Long Term Capital Gain
→ Short Term Capital Gain under Sec. 111A
→ Winning from lotteries, horse races etc.

Deductions for Life Insurance Premium, Provident Fund etc.		**Sec. 80C**
Investment/Expenditure	**Eligible for**	**Special points**
Life Insurance Premium	⇨ An individual himself ⇨ Individual's spouse ⇨ Any child of individual	Premium exceeding 20% of capital sum insured shall not be allowed as deduction
Payment of deferred annuity	⇨ An individual himself ⇨ Individual's spouse ⇨ Any child of individual	—
Annuity deducted by employer	—	Maximum $\frac{1}{5}$th of salary
Statutory Provident Fund or Recognised Provident Fund	—	Only employees' contribution is eligible
Public provident fund	Individual *OR* HUF	—
Approved superannuation fund	—	Only employees' contribution is eligible
National Saving Scheme, 1992	Individual *OR* HUF	—
National Saving Certificate (VIII issue)	Individual *OR* HUF	Any interest on this certificate is deemed to be re-invested.
ULIP, UTI, or mutual fund referred in Sec. 10(23D), retirement benefits	Individual *OR* HUF	—
Annuity plan of LIC or any other insurer	Individual *OR* HUF	Except: New Jeewan Dhara, New Jeewan Dhara-I & New Jeewan Akshay, New Jeewan Akshay-I, New Jeewan Akshay-II

Pension fund set by National Housing Bank	Individual *OR* HUF	—
National Deposit Scheme	Individual *OR* HUF	⇨ Public Sector Companies engaged in providing long term loan for construction or purchase of house in India for residential purpose. ⇨ Any authority constituted in India by or under any Law enacted either for dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of city, town or village or both.
Tuition fees paid	Individual	⇨ It excludes development fees or donation or similar payment ⇨ Payment at the time of admission ⇨ Paid to any university, college, school or other educational institution situated in India ⇨ Full time education ⇨ Payment for 2 children
Specified equity shares or debentures	Individual *OR* HUF	Any eligible capital approved by the way of wholly of public company, any public financial institution where proceeds are utilised for infrastructure company.
Term deposit	Individual *OR* HUF	⇨ For a period not less than 5 years with scheduled bank. ⇨ Which is in accordance with scheme framed and notified by Central Govt. in official gazette for the purpose of this cause
Bonds issued by National Bank for Agriculture & Rural Development (NABARD)	Individual *OR* HUF	⇨ Notified by Central Govt. in official gazette
Senior Citizen Saving Scheme Rules, 2004	Individual *OR* HUF	—
Post Office Time Deposit Rules, 1981	Individual *OR* HUF	Minimum 5 years

Contribution to Certain Pension Funds **Sec. 80CCC**

Deduction is allowed for payment made by ***individual*** towards ***annuity plan*** of insurance company for ***receiving annuity or pension*** and it is allowed up to a maximum limit of ***₹1,00,000***.

Contribution to Pension Scheme of Central Government **Sec. 80CCD**

Self-employed	***Employees***	
	Employer's contribution	***Employees contribution***
(1) ***Minimum of*** (a) Amount contributed (b) 10% of GTI	(1) Taxable under salary and then, deduction u/s. 80CCD	(1) ***Min. of*** (a) Amount contributed or (b) 10% of Salary

(2) Deduction subject to ***maximum ₹1,00,000***	***Min. of*** (a) Amount contributed or (b) 10% of Salary (2) Deduction is available without the ***maximum limit of ₹ 1,00,000 under Sec. 80CCE.***	(2) Deduction is subject to ***maximum limit of ₹ 1,00,000 under Sec. 80CCE.***

[Salary = Basic + DA *(forming part of retirement benefit)*]

Limits of deduction under Sec. 80C, 80CCC and 80CCD — Sec. 80CCE

The aggregate amount of deduction under Sec. 80C, 80CCC and 80CCD (except employer contribution) shall not, in any case, exceeds ***₹1,00,000.***

Subscription to long term infrastructure bonds — Sec. 80CCF

Deduction is allowed to an ***individual/HUF*** for payment towards subscription to ***long-term infrastructure bonds*** as notified by Central Government, but up to a maximum limit of ***₹20,000***

Deduction in respect of medical insurance premium — Sec. 80D

Deduction is allowed to an ***individual/HUF*** for payment towards ***Medical Insurance Premium*** or to any contribution made to the Central Government Health Scheme) by any mode ***other than cash***.

Quantum of deduction
- ⇨ Maximum ***₹15,000*** (For insurance of Individual, Spouse, Dependent Children) or ***₹20,000*** in case of senior citizen, and
- ⇨ Maximum ***₹15,000*** (For insurance of Parents) or ***₹20000*** if parents are senior citizen.

Deduction in respect of maintenance including medical treatment of a dependent who is a person with disability — Sec. 80DD

Deduction is allowed to a ***resident individual/HUF*** for payment towards ***Medical treatment or training and rehabilitation of a dependent relative who is a person with disability***. Deduction is also allowed for payment towards deposit in a scheme for receiving annuity or lump sum amount for the benefit of such disabled person.

Quantum of deduction: Deduction of ***₹50,000***, ***irrespective of the actual amount*** spent or deposited. In case of ***severe disability*** deduction allowed shall be ***₹1,00,000***, irrespective of the amount spent or deposited.

Relative: Relative, for individual, shall include spouse, children, brothers, sisters and parents. Relative, for HUF, shall be its members.

Deduction in respect of medical treatment, etc. — Sec. 80DDB

- ⇨ Deduction is allowed to a ***resident individual/HUF*** for payment towards ***Medical treatment*** of specified disease of self or dependent relative or member of HUF.
- ⇨ Deduction is allowed for the amount actually spent or ***₹40000*** (***₹60,000*** in case of senior citizen), whichever is less.
- ⇨ Deduction shall be reduced by the amount received from the insurer or employer. Further, a certificate from doctor of government hospital has to be furnished for claiming the deduction.

Deduction of interest paid on loan taken for pursuing higher education — Sec. 80E

- ⇨ Deduction is allowed to an ***individual*** for payment of ***interest on loan*** taken for pursuing higher education [1] of himself or relative [2].
- ⇨ Loan must have been taken from financial ***institutions or approved charitable institution***. There is no maximum limit prescribed under this section and also deduction can be claimed for ***maximum period of 8 years*** starting from the year in which payment of interest on the loan begins.

[1] ***Higher education*** — *Higher education means any course of study pursued after passing Senior Secondary Examination.*

[2] ***Relative***	*Relative means spouse, children or the student for whom; he/she is the legal guardian.*

Deduction in respect of investment made under an equity savings scheme	**Sec. 80CCG**

This is a **new Section inserted** w.e.f. A.Y. 2013-14 (Accounting Year 1-4-2012 to 31-3-2013) and provides as under:

- The deduction under this section can be **claimed by an Individual who is a resident, if he acquires listed equity shares in accordance with the scheme to be notified by the Government**. The assessee will be **allowed deduction of 50% of the amount invested subject to the limit of deduction of ₹ 25,000** in the computation of income for the year of investment. It may be noted that this **deduction is not allowable to an HUF**.
- The above deduction is subject to the following **conditions**:
  - (a) The **Gross Total Income** of the assessee for the relevant assessment year **should not exceed ₹ 10,00,000**.
  - (b) The assessee should make the above investment in **retail category specified in the scheme**.
  - (c) The above investment should be in **listed equity shares as specified** under the scheme.
  - (d) There will be **locking period of 3 years** for such investment.
- If the assessee **fails to comply** with any of the **above conditions** in any year, the amount of **deduction allowed in earlier years will be taxable** in that year.

Deduction in respect of donation	**Sec. 80G**

- Deduction is allowed to ***all assessee*** for payments made to specified funds/ institutions
- Donation shall be sum of money; Donation in kind is not deductible. Further proof of payment shall be furnished with the return

Part A:	**Donations made to following are eligible for 100% deduction without any qualifying limit:**

- National Defence Fund set up by the Central Government
- Prime Minister's National Relief Fund
- Prime Minister's Armenia Earthquake Relief Fund
- Africa (Public Contributions - India) Fund
- National Foundation for Communal Harmony
- A University or any educational institution of national eminence as may be approved by the prescribed authority
- Chief Minister's Earthquake Relief Fund, Maharashtra
- Any fund set up by the State Government of Gujarat exclusively for providing relief to the victims of earthquake in Gujarat
- Zila Saksharta Samiti constituted in any district
- National Blood Transfusion Council
- Any fund set up by a State Government to provide medical relief to the poor
- Army Central Welfare Fund or the Indian Naval Benevolent Fund or the Air Force Central Welfare Fund
- Andhra Pradesh Chief Minister's Cyclone Relief Fund
- National Illness Assistance Fund
- Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund
- National Sports Fund set up by the Central Government
- National Cultural Fund set up by the Central Government
- Fund for Technology Development and Application set up by the Central Government National
- Trust for Welfare of Persons with mental retardation and multiple disabilities.

Part B:	**Donations made to following are eligible for 50% deduction without any qualifying limit:**

- Jawaharlal Nehru memorial fund
- Prime Minister's Drought Relief Fund
- National Children's Fund

- Indira Gandhi Memorial Trust
- Rajiv Gandhi Foundation

Part C:	**Donations made to following are eligible for 100% deduction subject to qualifying limit:**

- Donation to Government or any approved local authority, institution or association to be utilized for promoting family planning
- Donation made by a company to Indian Olympic Association or to any other notified institution, for development of infrastructure for sports in India.

Part D:	**Donations made to following are eligible for 50% deduction subject to qualifying limit:**

- Donation to Government or any approved local authority, institution or association to be utilized for any other charitable purpose other than promoting family planning
- Donation to any approved charitable institution which satisfies the condition of Section 80G.
- Donation to any authority for satisfying the need for housing accommodation or any corporation for promoting interest of minority community.
- Donation to any notified temple, mosque, gurudwara, church or other place notified by the Central Government to be of historical, archaeological or artistic importance for renovation or repair of such place.

[**Note:** Donations under **Part C** and **Part D** above ***shall not exceed*** the qualifying limit.[1]]

[1] **Qualifying limit**	Qualifying limit means ***10% of adjusted Gross Total Income*** [2]	
[2] **Adjusted GTI**		Gross Total Income
	Less:	Long Term Capital Gains
	Less:	Short Term Capital Gains under Sec. 111A
	Less:	Deduction under Sec. 80C to 80U **except Sec. 80G**

Special Points:

- Deduction for **donation of ₹ 10,000 or more** under these sections will **not be allowed if the same is paid in cash**.
- This provision will apply to donations made in the Accounting Year 2012-13 onwards.

Deduction for payment of rent	**Sec. 80GG**

Deduction is allowed to an ***individual*** in respect of ***rent paid*** for his ***residential accommodation*** subject to fulfilment of following conditions:

(i) He is a ***self-employed*** person or if he is an ***employee***, he is ***neither getting HRA nor rent free accommodation***

(ii) Assessee, spouse, minor child or HUF ***does not own*** any residential accommodation in the city where he lives or where he works.

The deduction in respect of rent paid is allowed to the extent of ***minimum of*** the following:

(1) Rent paid over 10% of Adjusted Gross Total Income

(2) 25% of the Adjusted Gross Total Income [1]

(3) ₹ 2,000 per month

[1] **Adjusted GTI**		Gross Total Income
	Less:	Long Term Capital Gains
	Less:	Short Term Capital Gains under Sec. 111A
	Less:	Deduction under Sec. 80C to 80U **except Sec. 80GG**

Deduction in respect of donations for scientific research or rural development	**Sec. 80GGA**

Deduction is allowed to all assessee provided the assessee does not have income under the head PGBP. Deduction is allowed equal to the amount of donation or contribution given below:

(1) Donation to notified scientific research association as per Sec 35

(2) Donation to notified institution for the purpose of eligible project as per Sec 35AC.

(3) Donation given to notified institution for rural development or to national urban poverty eradication fund as per Sec. 35CCA

Special Points:

- Deduction for **donation of ₹ 10,000 or more** under these sections will **not be allowed if the same is paid in cash**.
- This provision will apply to donations made in the Accounting Year 2012-13 onwards.

Deduction in respect of contribution given by companies to political parties	**Sec. 80GGB**

Any sum contributed by ***Indian Company*** to ***political party or electoral trust*** is allowed as deduction.

Deduction in respect of contribution given by any person to political parties	**Sec. 80GGC**

Any sum contributed by ***any person*** (except local authority or artificial juridical person) to ***political party or electoral trust*** is allowed as deduction.

Deduction in respect of profits and gains from business of collecting and processing of bio-degradable waste	**Sec. 80JJA**

- Deduction is allowed to ***all assessee*** who are engaged in the ***business of collecting/ processing or treating etc. of bio-degradable waste*** for generating power or to make pellets for fuel or to use it in organic manure or to use it in bio-gas plant etc.
- Deduction is allowed equal to ***100% profit***s of such business for the ***5 consecutive AYs*** beginning with the year in which such business is commenced.

Deduction in respect of employment of new workmen	**Sec. 80JJAA**

- Deduction is allowed to ***Indian Company***, equal to ***30% wages of the new regular workman for 3 AYs*** including the year in which the employment is provided.
- Companies shall be engaged in the ***manufacture or production of any article or thing*** and accounts must be audited by Chartered Accountant and the report shall be furnished with the return of income.

Wages qualifying for deductions	→ ***In the case of new company:*** Wages paid to workers ***in excess of 100*** → ***In the case of existing company:*** Wages paid to workers ***in excess of 100***, ***but*** there should be ***at least 10% increase in number of workers***, as employed on the last day of the preceding year.
Regular workmen does not includes	(1) Person employed in ***managerial or administrative*** capacity or (2) Workman employed as a ***casual workman*** or ***contract labour*** or (3) Any other workman employed for a period of ***less than 300 days*** during the PY

Deduction in respect of certain incomes of Offshore Banking Units and International Financial Services Centre	**Sec. 80LA**

Deduction is allowed to	(1) A scheduled bank having an offshore banking unit in SEZ or (2) Any bank, incorporated under the laws of a foreign country and having an offshore banking unit in SEZ or (3) A unit of International Financial Services Centre (IFSC)	
Quantum of deduction	***For the first 5 consecutive years:***	***100%*** of such income beginning with the previous year in which (a) The permission under the ***Banking Regulation Act*** was obtained or (b) The permission under the ***SEBI Act, 1992*** was obtained or (c) Permission or registration under ***any relevant law*** was obtained
	For the next 5 years:	***50%*** of such income
Conditions	(1) ***A report of Chartered Accountant***, certifying that the deduction has been correctly claimed, should be submitted with return of income	

	(2) ***Copy of permission obtained*** under the Banking Regulation Act, 1949 should be furnished along with the return of Income.

Deductions in respect of co-operative societies **Sec. 80P**

[1] Income from following activities shall be allowed 100% deduction in case of co-operative societies:

(1) Income from business of banking or providing credit facilities to its members
(2) Income from cottage industry
(3) Income from marketing of the agricultural produce grown by its members
(4) Income derived from the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture
(5) Income from processing without the aid of power
(6) Income from fishing or allied services
(7) Income from supplying milk, oilseeds, fruits & vegetables raised by its members to federal milk co-operative society

[2] Co-operative societies engaged in a business other than those mentioned above shall not be liable to pay tax on:

In case of consumer co-operative society:	Maximum up to ***₹1,00,000*** of income
In other case:	Maximum up to ***₹50,000*** of income

[3] Deduction allowable to all co-operative societies:

(1) Any ***interest, dividend*** income derived from its investments with ***any other co-operative society***
(2) Income derived from ***letting out*** of godown or warehouses for storage, processing or facilitating the marketing of commodities
(3) 100% of the income from interest on securities or income from house property in case of co-operative society not being
(i) A housing society or
(ii) An urban consumer society or
(iii) Society carrying on transport business or
(iv) Society engaged in the performance of any manufacturing operating with the aid of power, provided its GTI does not exceed ₹20,000.

Deduction in respect of Royalty Income etc. of books **Sec. 80QQB**

Deduction is allowed to ***resident individual*** for royalty income from assignment of copyright of books, maximum up to ***₹3,00,000***.
(1) Books should be a work of literary, artistic or scientific nature. Books ***shall not include*** text books, diaries, commentaries, journals etc.
(2) Royalty in ***excess of 15%*** of the value of the books sold during the previous year shall be ignored. However, this condition is ***not applicable*** where the royalty is received in lump sum.
(3) If royalty is received from ***outside India***, then to claim deduction, it must be ***brought into India within 6 months*** from the end of the PY in which such income is earned.

Deduction in respect of Royalty Income on patents **Sec. 80RRB**

⇨ Deduction is allowed to ***resident individual***, who is a ***patentee***, for royalty income of patents but maximum upto ***₹3,00,000***.
⇨ If royalty is received from ***outside India***, then to claim deduction, it must be brought into India ***within 6 months*** from the end of the previous year in which such income is earned.

Deduction in case of a person with disability **Sec. 80U**

Conditions	(1) The deduction is available to ***resident individual*** (2) He is a ***person with disability*** (3) He is certified by the medical authority to be a person with disability ***at any time during PY***

	(4) For claiming the deduction, the assessee shall have to ***furnish a copy of certificate issued by medical authority along with Return of Income***
Quantum of deduction	(1) Fixed deduction of ₹ 50,000 (2) ₹ 1,00,000 for a person with severe disability

7.1: AMENDMENT ANALYSIS

Deduction in respect of specified payments for future benefits	**[Amended]**	**Sec. 80C**

Section 80C is amended to provide that the **deduction of LIP** in respect of life policy taken out on or after 1-4-2012 shall be **restricted to 10%** of the capital value assured.

Deduction in respect of investment made under an equity savings scheme	**[Inserted]**	**Sec. 80CCG**

As mentioned in the notes

Medical insurance premium & preventive health check-up	**[Amended]**	**Sec. 80D**

- Under this section deduction up to **₹ 15,000 is allowed to an assessee (individual or HUF)** for premium paid on medi-claim insurance policy.
- For **senior citizens** the **limit** for deduction **is ₹ 20,000**.
- Now it is provided that, effective from Accounting Year 2012-13, if the assessee **makes payment up to ₹ 5,000 in a year for preventive health check-up, deduction will be allowed within the above ceiling limit.**
- Further, age limit for senior citizens is reduced from 65 years to 60 years.
- It is suggested that this **deduction upto ₹ 5,000 should have been allowed over and above the existing ceiling limit of ₹ 15,000 or ₹ 20,000**.
- The limits of **₹ 15,000/20,000 were fixed in the year 2000** and deserve to be enhanced due to increase in medical cost and consequential increase in insurance premium.

Deduction in respect of certain donations or fund, political parties or electoral trust	**[Amended]**	**Sec. 80G & 80GGA**

- Deduction for **donation of ₹ 10,000 or more** under these sections will **not be allowed if the same is paid in cash**.
- This provision will apply to donations made in the Accounting Year 2012-13 onwards.

[Amended]	**Sec. 80-IA(4)(*iv*)**

- Under this section an industrial undertaking engaged in the **business of generation and distribution of power and allied activities is entitled to tax holiday for 10 years** if such undertaking begins its activities on or before 31-3- 2012.
- **This date is now extended to 31-3-2013**.

Deduction in respect of interest on saving bank account	**[Inserted]**	**Sec. 80TTA**

- This is a **new section** which has been introduced effective from A.Y. 2013-14 (Accounting Year ending 31-3-2013).
- Under this section, in the case an **Individual or HUF, interest from savings bank account with a bank, co-operative bank or post office bank up to ₹ 10,000 will not be taxable**.
- This provision will **not apply to interest on fixed deposit** with banks.

NOTES

8. COMPUTATION OF TOTAL INCOME AND TAX PAYABLE

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

8. Computation of Total Income & Tax Payable

Sections covered in this chapter:

Sections	Provisions of
Sec. 15 to 17	*Income under the head Salaries*
Sec. 22 to 27	*Income under the head House Property*
Sec. 22 to 44DB	*Income under the head Profit and Gains from Business or Profession*
Sec. 45 to 55A	*Income under the head Capital Gains*
Sec. 56 to 59	*Income under the head Income from Other Sources*
Sec. 80C to 80U	*Deductions under Chapter VIA*

Total income **Sec. 2(25A)**

The Total income of an individual is arrived at after making deductions under Chapter VIA from the Gross Total Income. Gross Total Income is the aggregate of the net income computed under the 5 heads of income, after giving effect to the provisions for clubbing of income and set-off and carry forward and set-off of losses.

Income to be considered while computing total income of individuals

Capacity in which income is earned by an individual	***Treatment of income earned in each capacity***
In his personal capacity (under the 5 heads of income)	Income from salaries, Income from house property, Profits and gains of business or profession, Capital gains and Income from other sources.
As a partner of a firm	(i) Salary, bonus etc. received by a partner is taxable as his business income. (ii) Interest on capital and loans to the firm is taxable as business income of the partner. *The incomes mentioned in (i) and (ii) above are taxable to the extent they are allowed as deduction to the firm.* (iii) Share of profit in the firm is exempt in the hands of the partner.
As a member of HUF	(i) Share of income of HUF is exempt in the hands of the member (ii) Income from an impartible estate of HUF is taxable in the hands of the holder of the estate who is the eldest member of the HUF (iii) Income from self-acquired property converted into joint family property
Income of other persons included in the income of the individual	(i) Transferee's income, where there is a transfer of income without transfer of assets (ii) Income arising to transferee from a revocable transfer of an asset. *In cases (i) and (ii), income is includible in the hands of the transferor.* (iii) Income of spouse as mentioned in Sec. 64(1) (iv) Income from assets transferred to son's wife or to any person for the benefit of son's wife. (v) Income of minor child as mentioned in Sec. 64(1A)

Special provision for spouses governed by Portuguese civil code **Sec. 5A**

This section relates to the computation of total income of husband and wife governed **by the system of community** of property as in force in the **State of Goa and in the Union Territories of Dadra and Nagar Haveli and Daman and Diu**. Such income shall not be assessed as that of the community of property. The income under each head of income (other than under the head 'Salaries') should be apportioned equally between the husband and wife and should be included separately in their respective total income. However, in the case of salary income, it will be assessed in the hands of the spouse who has actually earned it.

Computation of Total Income and Tax Liabilities of Individuals	
Step 1:	*Determination of residential status*
Step 2:	*Classification of income under different heads*
Step 3:	*Exclusion of income not chargeable to tax*
Step 4:	*Computation of income under each heads*
Step 5:	*Clubbing of income of spouse, minor child etc.*
Step 6:	*Set-off and carry forward and set-off of losses*
Step 7:	*Computation of Gross Total Income*
Step 8:	*Deduction from GTI under Sec. 80C to 80U / Chapter VIA*
Step 9:	*Total Income*
Step 10:	*Application of the rates of tax on the total income*
Step 11:	*Education Cess and Secondary and Higher Secondary Education Cess*
Step 12:	*Credit of advance tax and TDS*

NOTES

9. AGRICULTURAL INCOME

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

9. AGRICULTURAL INCOME

Sections covered in this chapter:

Section	Provisions
Sec. 2(1A)(a)	*Any **rent** or **revenue** derived from land which is situated in India and used for agricultural purpose*
Sec. 2(1A)(b)	*Any income derived from such land by agricultural operations including processing of the agricultural produce, raised or received as rent-in-kind so as to render it fit for the market, or sale of such produce*
Sec. 2(1A)(c)	*Income attributable to a farm house subject to the condition that the building is situated on or, in the immediate vicinity of the land and is used as dwelling house, store house or other outbuilding and the land is assessed to land revenue or local or, alternatively, the building is situated on or the immediate vicinity of land, which (though not assessed to land revenue or local rate) is situated outside the **urban areas***
Sec. 10(1)	*Exemption of agricultural income*
Rule 7	***Any other case (e.g. sugarcane)*** *Market value of any agricultural produce, raised by the assessee or received by him as rent-in-kind an utilised as raw material in his business, is deducted*
Rule 7A	*Income derived from sale of centrifuged latex or cenex or latex based crepes or brown crepes or technically specified block rubbers manufactured or processed from field latex or coagulum obtained from rubber plants grown by the seller in India*
Rule 7B	*Income derived from the sale of coffee **grown** and **cured** by the seller in India*
Rule 7B(1A)	*Income derived from the sale of coffee **grown, cured, roasted** and **grounded** by the seller in India, with or without mixing chicory or other flavouring ingredients*
Rule 8	*Income from sale of tea **grown** and **manufactured** by the assessee in India*

Basic concept:

Agricultural income is ***exempt from tax under Sec. 10(1)*** of the Income-tax Act, 1961. However for computing tax on non-agricultural income, ***agricultural income is added to non-agricultural income***.

Meaning of Agricultural Income — **Sec. 2(1A)**

Agricultural income includes:

(a) Rent or revenue derived from land
(b) Income derived from such land by way of agriculture or forming process of marketing process by way of sale of such produce
(c) Income from a farm building

Meaning of Agricultural Income — **Sec. 2(1A)(*a*)**

Any rent or revenue whether in kind or in cash derived from land situated in India which is used for agricultural processes as indicated above is wholly exempt from tax.

Income derived from such land by way of agriculture or forming process of marketing process by way of sale of such produce — **Sec. 2(1A)(*b*)**

Any income derived by cultivator or receiver of rent in kind from agriculture by sale of agricultural produce on which necessary operations(may be or may not be needed) are carried on to render the produce fit for consumption and taking it to market is called as agricultural income. Such income is exempt from taxation. However in case operations performed are not in the nature as mentioned above, income has to be separated so as to compute tax on non-agricultural income. The operations mentioned above are called as agricultural or marketing operations.

Income from a farm building — **Sec. 2(1A)(*c*)**

→ Farm house situated in India
→ In immediate vicinity of land used for agricultural purposes

→ Is occupied by cultivator or receiver of rent in kind
→ Land used as dwelling house, store house or other out building.
→ Land is assessed to land revenue at local rates, if not subject to land revenue, it is not situated in urban areas.
→ However if land is used for any other purpose other than those mentioned in (d) it would not be deemed to be agricultural income.

Necessary conditions for income to be agricultural income

(1) Income should be ***derived from land***
(2) Land must be ***situated in India***
(3) Land must be used for ***basic operations of agriculture***. Land may also be used for subsequent operations but such subsequent operations can only be with ***conjunction or together*** with the basic operations. These are what are called as agricultural ***operations and classified into basic and subsequent operations***.
(4) Income from nursery *(It is always **exempt**)*

Scheme of partial integration

Though agricultural income is exempt from tax, however there is special method of partial integration applicable for computing tax on non-agricultural income. This method is applicable only when:
(1) Net agricultural income exceeds ₹ 5,000
(2) Non-agricultural income exceeds maximum amount non chargeable to tax i.e. the exemption limit

If scheme of partial integration is applicable, tax liability will be determined as follows:

Computation of tax

Step 1:	*Add agricultural income to non-agricultural income and calculate tax as if this is total income*
Step 2:	*Add agricultural income to maximum amount non- chargeable to tax and calculate tax as if this is total income.*
Step 3:	*Deduct tax computed in step 2 from tax computed in Step 1.* The amount so computed is the **Actual Tax Payable**.
Step 4:	*Add surcharge, education cess and secondary and higher education cess.*

Format: Computation of tax liability

Particulars	***Amt. (₹)***
Total/Net/Taxable Income	……
Total income subject to special tax rates	……
Total income ***(including agricultural income)*** subject to normal tax rate	……
Tax on Total Income subject to special tax rates	……
Tax Total income ***(including agricultural income)*** subject to normal tax rate	……
	……
Less: Income tax on agricultural income plus maximum amount not chargeable to tax at normal rates	……
Income tax	……
Add: EC @ 2%	……
	……
Add: SHEC @ 1%	……
	……
Add: Interest / Penalty	……
	……
Less: Prepaid taxes (i.e. Advanced Tax, TDS, etc.)	……
Tax Payable/Refund	……

Income which is partially agricultural and partially from business

Income-tax Rule, 1962	*Nature of Income*	*Amount of agricultural income*	*Amount of business income*
Rule 8	*Income from sale of tea **grown** and **manufactured** by the assessee in India*	60%	40%
Rule 7A	*Income derived from sale of centrifuged latex or cenex or latex based crepes or brown crepes or technically specified block rubbers manufactured or processed from field latex or coagulum obtained from rubber plants grown by the seller in India*	65%	35%
Rule 7B	*Income derived from the sale of coffee **grown** and **cured** by the seller in India*	75%	25%
Rule 7B(1A)	*Income derived from the sale of coffee **grown, cured, roasted** and **grounded** by the seller in India, with or without mixing chicory or other flavouring ingredients*	60%	40%
Rule 7	***Any other case (e.g. sugarcane)*** *Market value of any agricultural produce, raised by the assessee or received by him as rent-in-kind an utilised as raw material in his business, is deducted*		

NOTES

10. TAX DEDUCTED AT SOURCES, PAYMENT OF ADVANCE TAX & INTEREST

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

UNIT-1: PROVISIONS REGARDING TAX DEDUCTED AT SOURCES [TDS]

Summarised provisions related to this unit:

Sec.	*Nature of payment*	*Person responsible to deduct tax*	*Maximum limit on which TDS is not deductible*	*Time of deduction of TDS*	*Rates of TDS**
192	Salary	All assessee	₹ 2,00,000/ ₹ 2,50,000/ ₹ 5,00,000	At the time of payment	As applicable to an individual
193	Interest on securities	Local authority or Statutory corporation	Exempt categories listed	At the time of Payment or credit whichever is earlier.	10%
		Central Govt. in case of 8% (taxable) saving bonds, 2003	₹ 10,000		10%
		Company	Monetary limit of ₹ 5,000 in case of listed debenture; otherwise no minimum		*Listed Deb.:*10% (20% in case the payee is a company) *Non-Listed Deb.:* 20%
194A	Interest other than interest on securities	All Assessee (except those individual & HUF who are not covered u/s 44AB(a) or 44AB(b) in the preceding P Y)	₹ 5,000, (₹ 10,000, in case the payer is a banking co./co-operative bank/post office)	At the time of Payment or credit whichever is earlier.	Non-co.: 10% Co.: 20%
194B	Winnings from lotteries, crossword puzzles, etc.	All Assessees	₹ 10,000	At the time of payment	30%
194BB	Winnings from horse races	Any person being a book maker or a person who is a licensee	₹ 5,000	At the time of payment	30%
194C	Consideration of any work contract	Specified persons/all assessees except those individuals and HUF (also AOP and BOI) who are not covered u/s 44AB(a) or 44AB(b) in the preceding P.Y	₹ 30,000 for single payment or aggregate amount in the financial year does not exceed ₹ 75,000	At the time of payment or credit whichever is earlier	In case of Advertising contract: 1% In other Case: 2% In case of sub-Contractor: 1%
194D	Insurance commission	Insurance companies	₹ 20,000	At the time of payment or credit	If payee is a Company: 20% If payee is Other than

				whichever earlier.	Company: 10%
194E	Payment to non-resident sportsmen	Non-resident cum non-citizen entertainer performing in India (e.g. in IPL)	—do—	At the time of payment	20%
194G	Commission on sale of lottery tickets	Stockist, distributor, etc. of lottery tickets	₹ 1,000	At the time of payment or credit whichever earlier.	10%
194H	Commission or brokerage	All Assessee (except those individual & HUF who are not covered u/s 44AB(a) or 44AB(b) in the preceding PY)	₹ 5,000	—do—	10%
194I	Rent	All Assessee (except those individual & HUF who are not covered u/s 44AB(a) or 44AB(b) in the preceding P Y)	Exceeds ₹ 1,80,000 in a financial year	At the time of payment or credit whichever earlier.	For use of P & M: 2% For use of other asset: 10%
194J	Fees for professional or Technical Services or royalty or non-compete fee	—do—	₹ 30,000 each in a financial year	At the time of payment or credit whichever earlier.	10%
194LA	Payment of compensation on acquisition of certain immovable property	All assessee who pay the amt. at the time of acquisition of immovable property (except agricultural land whether urban or rural)	₹ 2,00,000	At the time of payment or credit whichever earlier.	10%
194LB	Income by way of interest from infrastructure debt fund	Non-resident or to a foreign company.	Any amount	At the time of payment or credit whichever earlier.	5%
194LC	Income by way of interest from Indian company	Payer (i.e. Indian Company) pays to non-resident or foreign company	Interest on money borrowed between 01/07/2012 and 30/06/2015 in foreign currency under loan agreement or by	At the time of payment or credit whichever earlier.	5%

			issue of long-term infrastructure bonds		

* Education cess @ 2% and SHEC @ 1% shall also be added.

***Notes*:**

1. Where amount is credited on the last day of accounting year, the tax amount thereon is to be deposited within two months from the end of the month in which credit is made.
2. If the amount is credited on the last day of the accounting year then the TDS certificate in Form No. 16A may be issued within one week from the end of two months from the last day of the month in which amount is credited.
3. The person responsible for deducting tax may (on request of payee) issue one consolidated certificate for tax deducted during the whole of the financial year within one month from the close of such financial year.
4. e-filing of statements is mandatory in case of:
   (a) Office of the Government, or
   (b) A company, or
   (c) A person required to get his accounts audited under section 44AB in the immediate preceding financial year or
   (d) If the number of deductees in an immediate preceding quarter is 50 or more, and optional for other assessees.

   The quarterly statement filed on computer media should be accompanied by following forms:
   Quarterly statement : Form No. 27A
   Quarterly statement of TCS : Form No. 27A
   Where other assessees file paper return, it should be accompanied by copies of the receipted challans and TDS certificates.
5. Where interest/income is credited to any account, whether called interest account, suspense account or by any other name in the books of accounts of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee.

Rules and forms for TDS/TCS returns	
Verification of e-TDS/TCS	Form 27A, 27B
Quarterly TDS/TCS under Sec. 200(3) and proviso to Sec. 206C(3)	Form 26Q, 27EQ
TDS/TCS returns under Sec. 206 and 206C(5A)	Form 24Q , 26Q, 27, 27E
Statement of TDS/TCS to be issued to taxpayer under Sec. 203AA or Second proviso to Sec. 206C(5)	Form 26AS

1.1: AMENDMENT ANALYSIS

Interest on security	[Amended]	Sec. 193

- Before the **amendment**, no tax is required to be deducted at source if interest payable to a resident individual on debentures issued by a listed company **does not exceed ₹ 2,500** in a year.
- **This limit is increased to ₹ 5,000 w. e. f. 01-07-2012**.
- This concession will now apply to debentures issued by unlisted public companies as well as to interest payable to resident HUF.
- The existing exemption in respect of interest paid on debentures issued by listed companies which are held in DEMAT Account will continue without any limit.
- The **amendment** in this section comes into force on 01-07-2012.

TDS from fees from Professional or Technical services	[Amended]	Sec. 194J

- This section is now **amended** w. e. f. 01-07-2012.
- It will now be necessary for a company to deduct tax at source from any remuneration, fees or commission paid or payable to a director, if no tax is deductible under Sec. 192 under the head salary.
- **The rate for TDS is 10%**.
- It may be noted that the manner in which the section is amended indicates that this deduction is to be made irrespective of the quantum of such payment in the year.
- As regards professional fees, technical service fees, royalty, etc. to which this Section applies it is provided that tax is to be deducted only if payment under each head exceeds ₹ 30,000 in the financial year.
- Therefore, in case of payment of fees to non-executive directors and independent directors as “Director's Fees”, the tax at 10% will be deductible even if the total payment in the F.Y. is less than ₹ 30,000 to each of them.

Payment of compensation on acquisition of certain immovable property	[Amended]	Sec. 194LA

- Before amendment, TDS from compensation on compulsory acquisition of immovable property at **10%** is required to be made if compensation amount exceeds ₹ 1,00,000.
- After the **amendment**, this will now be required to be made if the compensation amount exceeds ₹ 2,00,000 w. e. f. 1-7-2012.

Income by way of interest from Indian company	[Inserted]	Sec. 194LC

- This is a new section **inserted** in the Income-tax Act w.e.f. 1-7-2012.
- It provides for deduction of tax at the concessional rate of **5% plus applicable surcharge and education cess, in respect of interest paid to a non-resident, other than a foreign company.**
- This interest should relate to **money borrowed by an Indian company from the non-resident at any time on or after 1-7-2012 and before 1-7-2015 in foreign currency from a source outside India**.
- This borrowing should be **(i) under a loan agreement or (ii) by way of issue of long-term infrastructure bonds approved by the Central Government**.
- Further, the rate of such interest should **not exceed the rate approved by the Government** for this purpose.

UNIT 2: PROVISIONS REGARDING ADVANCE TAX & INTEREST

Sections covered in this unit:

Section	Provisions
Sec. 208	*Conditions of liability to pay advance tax*
Sec. 209	*Computation of advance tax*
Sec. 211	*Due dates for payment of advance tax*
Sec. 234A	*For default in furnishing of return of income*
Sec. 234B	*For default in payment of advance tax*
Sec. 234C	*For deferment of advance tax*

Conditions of liability to pay advance tax — Sec. 208

Advance tax shall be payable during a financial year in every case where the amount of such tax payable by the assessee during that year, as computed in accordance with the provisions of this Chapter, is ₹ 10,000 or more.

Computation of advance tax — Sec. 209

Particulars	*Amt. (₹)*	*Amt. (₹)*
Income under the 5 heads of income		……
Adjustment in respect of B/F loss and allowance		……
GROSS TOTAL INCOME		……
Less: Deduction admissible under Chapter VI-A		(……)
TAXABLE INCOME		……
Tax on Taxable Income	……	
Less: Rebate under Sec. 88E	(……)	
Tax Payable	……	
Add: Surcharge	……	
Add: EC @ 2%	……	
Add: SHEC @ 1%	……	
Net Tax Payable	……	
Less: Relief under Sec. 89, 90, 90A, 91	(……)	
Tax liability	……	
Less: TDS/TCS (actually deducted/collected)	(……)	
Less: MAT Credit under Sec. 115JAA	(……)	
ADVANCE TAX	……	

Due dates for payment of advance tax — Sec. 211

Due date of installments: On or before	***Companies***	***Other assessee***
15th June	*Not less than 15% of Adv. Tax liability*	–
15th Sept.	*Not less than 45% of Adv. Tax liability*	*Not less than 30% of Adv. Tax liability*
15th Dec.	*Not less than 75% of Adv. Tax liability*	*Not less than 60% of Adv. Tax liability*
15th March	*The whole amt. of Adv. Tax Liability*	*The whole amt. of Adv. Tax Liability*

Note: *Any amount paid by way of advance tax on or before the 31st day of March shall also be treated as advance tax paid during the financial year ending on that day for all the purposes of this Act.*

Liability to pay interest for default in furnishing Return of Income **[Sec. 234A]**

(1) Where the Return of income of any AY is furnished after due dates as per Sec. 139(1) or not furnished, the assessee shall be liable to pay simple interest @ 1% for every month or part of a month

(2) The interest shall be payable for the period commencing from the next date after the due date and ends on-
   (a) Where the return of income furnishes after the due date of filling of return; or
   (b) When no return has been furnished after the due date, the date of completion of assessment *(Normally the best judgement assessment under Sec. 144)*

(3) The interest is calculated on total income **minus** Advance Tax (paid up to 31st March of PY) **minus** TDS

(4) The total tax is calculated on the returned income. However, the income is changed subsequently, due to assessment/reassessment/appeal/revision/rectification, then the total tax should be calculated on the changed income (assessed income) and the interest would be recalculated.

Procedure to be followed in calculating interest **Rule 119A**

In calculating interest payable by the assessee, the amount of tax, penalty or other sum in respect of which interest is to be calculated will be rounded off to the nearest multiple of ₹ 100 ignoring by fraction of ₹ 100. And accordingly, for calculating the interest under Sec. 234A, 234B and 234C, this procedure of round off should be followed.

Liability to pay interest for default in payment of advance tax **Sec. 234B**

When interest is payable?	*Amount on which interest is payable*	*Rate of interest*	*Period of which interest is payable*
An assessee who is liable to pay advance tax has failed to pay such tax	Interest is payable on assessed tax	Simple interest @ 1% for every month or part of month	From 1st April of the AY to the date of determination of income under Sec. 143(1) or where regular assessment is made to the date of regular assessment
An assessee who has paid advance tax[1] but the amount of advance tax paid by him is less than 90% of assessed tax	Assessed tax **minus** Advance tax		

[1]**Note:** ***Assessed Tax*** means the tax on total income determined on the basis of summary assessment under Sec. 143(1) or regular assessment as reduced by TDS (Tax Deducted at Sources) or TCS (Tax Collected at Sources) on any income which is take into account in computing advance tax. *If interest under Sec. 234B is to be calculated for the purpose of self-assessment under Sec. 140A [2], then 'assessed tax' means tax on returned income*

Adjustment when tax is paid before regular assessment **Sec. 140A [2]**

If before the date of determination of total income under Sec. 143(1) or completion of a regular assessment, tax is paid on the basis of self-assessment under Sec. 140A or otherwise (periodical payments on adhoc basis), the interest shall be calculated up to the date on which the tax is paid and thereafter the interest shall be calculated only on the reduced amount.

Liability to pay interest for deferment of advance tax **Sec. 234C**

When interest is payable? *[If adv. Tax paid on or before…]*	***In case of non-corporate assesse***			***In case of corporate assessee***		
	Rate of Simple interest	***Period of interest***	***Amt. on which interest is payable***	***Rate of Simple interest***	***Period of interest***	***Amt. on which interest is payable***
(1)	**(2)**	**(3)**	**(4)**	**(2)**	**(3)**	**(4)**
15th June	NA			1%	3 months	15% (a–b) – c
15th Sept.	1%	3 months	30% (a–b) – c	1%	3 months	45% (a–b) – d
15th Dec.	1%	3 months	60% (a–b) – d	1%	3 months	75% (a–b) – e

15th March	1%	1 months	100% (a–b) – e	1%	1 months	100% (a–b) – f
Note for above provisions:	***In case of non-corporate assessee***			***In case of corporate assessee***		
	a. Tax on **Total income declared in the return** filled by assessee b. TDS or TCS c. Adv. Tax paid on or before 15th Sept. for the FY in immediate preceding the AY d. Adv. Tax paid on or before 15th Dec. for the FY in immediate preceding the AY e. Adv. Tax paid on or before 15th March. for the FY in immediate preceding the AY			a. Tax on **Total income declared in the return** filled by assessee b. TDS or TCS c. Adv. Tax paid on or before 15th June for the FY in immediate preceding the AY d. Adv. Tax paid on or before 15th Sept. for the FY in immediate preceding the AY e. Adv. Tax paid on or before 15th Dec. for the FY in immediate preceding the AY f. Adv. Tax paid on or before 15th March. for the FY in immediate preceding the AY		

Payment of Advance Tax in case of Capital Gains/casual income — **Proviso to Sec. 234C**

- → Advance tax is payable on all types of income, including capital gains and winnings of lotteries, crossword puzzles, etc.
- → However, it is not normally possible for an assessee to estimate his capital gains or winnings from lotteries, etc. which are generally unexpected. Therefore, it is provided that if any such income arises after the due date of any instalment, then, the entire amount of tax payable (after deduction of tax at source, if any) on such capital gain or casual income should be paid in remaining instalments of advance tax which are due or where no such instalment is due, by 31st March of the relevant Financial Year.
- → If the entire amount of tax payable is so paid, then no interest on late payment will be leviable

2.1: AMENDMENT ANALYSIS

Advance tax — **[Amended]** — **Sec. 207**

Advance tax shall not be payable by individual resident in India and age 60 yrs. or more if he does not have any income chargeable under the head PGBP. Resulting, such individuals shall not be liable for interest under Sec. 234B & 234C.

Calculation of advance tax — **[Amended]** — **Sec. 209**

While making calculations for advance tax liability and interest under Sec. 234B & 234C, actual amount of TDS deducted shall be considered and not the amount of TDS deductible.

11. RETURN OF INCOME

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

11. RETURN OF INCOME

Sections covered in this chapter:

Section	Provision
Sec. 139(1)	*Company, firm and other person (if total income exceeds maximum amount which is not chargeable to tax) are required to file ROI on or before due date*
Sec. 139(1C)	***Specified class or classes of person exempt from filing return of income*** *For reducing the compliance burden of small taxpayers, the Central Government has been empowered to notify any class or classes of persons who will be exempted from the requirement of furnishing a return of income.*
Exp. 2 to Sec. 139(1)	*Due date of filing of ROI*
Rule 12	*Forms of filing the ROI*
4th proviso to Sec. 139(1)	*Individual, HUF, AOP/BOI and Artificial Judicial Person required to file ROI on or before due date if GTI before claiming deductions under Sec. 10A, 10B and 10BA exceeds maximum amount not chargeable*
Sec. 139(3)	*Loss return*
Sec. 80	*Notwithstanding anything contained in* ***Chapter VI,*** *the loss which has not been determined in pursuance of a return filed in accordance with the provisions of Sec. 139(3), shall not be allowed to be '****carried forward and set off****' under Sec. 72 or 73 or 74 or 74A*
Sec. 139(4)	*Belated return*
Sec. 139(4A)	*If the* ***total income*** *of charitable or religious trust or institution,* ***before exemption under Sec. 11 and 12****, exceeds the maximum amount not chargeable to tax, then the trust or institution is under an obligation to furnish the ROI within the time allowed under Sec. 139(1)*
Sec. 139(4B)	*In the* ***total income*** *of a political party, before exemption under Sec. 13A, exceeds maximum amount not chargeable to tax, then the political party is under an obligation to furnish the ROI within the time allowed under Sec. 139(1)*
Sec. 139(4C)	***Return of Income of certain associations and institutions*** *The following amendments has been made under this Section* *a. Body or authority or Board or Trust or Commission referred to in Section 10(46);* *b. Infrastructure debt fund referred to in section 10 (47), shall, furnish a return of such income of the previous year in the prescribed form and prescribed manner, if the total income before giving exemption exceeds maximum exemption limit*
Sec. 139(5)	*Revised return*
Sec. 139(9)	*Defective return*
Sec. 139B	*New scheme to facilitate submission of returns through Tax Return Preparers*
Sec. 139C	*Power of CBDT to dispense with furnishing of documents*
Sec. 139D	*Power of CBDT to make rules for filing of returns in e-form*
Sec. 140	*Who shall sign the return?*

Submission of Return of Income **Sec. 139(1)**

Every person

(a) Being a ***company*** or a ***firm***; or

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(b) Being a ***local authority***, if its total income during the previous year exceeds the maximum amount which is not chargeable to income tax; or

(c) Being a ***person other than*** a company or a firm or a local authority, if

(i) His total income OR

(ii) The total income of any other person

During the previous year (without giving effect to provisions of Chapter VI-A), exceeds the maximum amount which is not chargeable to income-tax.

Shall, furnish a return of his income or the income of such other person.

Such return of income must be furnished on or before the due date, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

Due date of furnishing return of income		**Expl. 2 to Sec. 139(1)**
Particulars		**Due date (of AY)**
Company	*Not undertaking international transaction*	30th September
	Undertaking international transaction	30th November
Other than company	*Where the accounts of the assessee are required under this Act or any other law to be audited or where the assessee is a working Partner in a firm whose accounts are required to be audited under this Act or under any other law for the time being in force*	30th September
	In case of other assessee	30th July

Tax Returns Preparers — Sec. 139B

→ CBDT may, by way of notification, frame a scheme providing that such persons may furnish their returns of income through a Tax Return Preparer authorised to act as such under the scheme.

→ This scheme is not applicable for a company or a person who is required to undergo a 'tax audit' or 'audit under any other law'.

→ It has also been provided that a TRP may be an ***individual*** other than a person who is
- Any officer of a scheduled bank in which the assessee maintains a current account or has regular dealings.
- A legal practitioner or
- A chartered accountant (CA).

Return of Loss — Sec. 139(3)

→ Loss under the head PGBP or under the head Capital Gains or loss on account of owning & maintaining race horses can be carried forward only if a return of loss is furnished by the assessee within the time prescribed under Sec. 139(1).

→ Loss under the head House Property and unabsorbed depreciation can be carried forward even if the return of loss is filled after due date.

→ In short, ***for carry forward of loss it is necessary that return is filed by due date***

Return is *necessary* for carry forward for	**Return is *not necessary* for carry forward for**
→ Business loss → Speculation business loss → Capital gain loss → Loss on account of owning and maintaining horses	→ House property loss → Loss of business specified under Sec. 35AD → Unabsorbed depreciation, etc.

Note: (1) Sec. 139(3) read with Sec. 80 do not stop set off of loss in current year even if return is not filed it just prohibits carry forward of such loss

(2) It is to be noted that current year loss cannot be carried forward if return is not filed but in this case, losses pertaining to preceding years can be carried forward if return for these years is filed by due date.

Belated Return	**Sec. 139(4)**

If an assessee has not submitted his return of income
⇨ on or before the due date mentioned under Sec. 139(1) or 142(1),
⇨ he can still file the return of income to be called as belated return
⇨ at any time before the expiry of following on the basis of whichever is earlier

- 1 year from **end of the relevant AY**, or
- before the **completion of the assessment**

} Whichever is earlier

Return of income of Charitable Trust and Institution	**Sec. 139(4A)**

Every person who is in receipt of following income:
⇨ Income from property held under trust whose income is wholly or In part only for religious or charitable purposes
⇨ Income by way of voluntary contribution on behalf of such trust.
⇨ *Must file return of income in ITR-7 if such income before allowing exemption under Sec. 11 and 12 exceeds the exemption limit must file his return of income by 30th September.*

Consequences of failure to file return: Penalty of **₹ 100 per day** till default continues

Return of income of political party	**Sec. 139(4B)**

The CEO of every political party shall,
⇨ if the total income of the political party (computed before allowing exemption under Sec. 13A)
⇨ exceeds the maximum amount not chargeable to income-tax,
Furnish a return of income within the time period prescribed under Sec. 139(1).

Return of income of certain association and institutions	**Sec. 139(4C)**

The following associations or institutions are also required to furnish a return of income if their respective income (before exemption under Sec. 10), exceeds the maximum amount which is not chargeable to income-tax:
(1) Scientific research association referred to Sec. 10(21);
(2) News agency referred to Sec. 10(22B);
(3) Association or institution referred to in Sec. 10(23A);
(4) Any institution referred in Sec. 10(23B);
(5) Fund or institution referred to in Sec. 10(23C);
(6) Trade union referred to in Sec. 10(24)

Mandatory filing return of income/loss	**Sec. 139(4D)**

Every university, college or other institution referred to in Sec. 35,
→ Which is not required to furnish return of income or loss under any other provision of this section,
Shall furnish the return in respect of its income or loss in every previous year and all the provisions of this Act shall be treated as return furnished under Sec. 139(1).

Revised return	**Sec. 139(5)**

If an assessee, after furnishing the return of income:
(a) Under Sec. 139(1), or
(b) In pursuance of to a notice under Sec. 142(1),
Discovers any omission or any wrong statement in the return filed, he may furnish a revised return at any time

- before the expiry of 1 year from **end of the relevant AY**, or
- before the **completion of the assessment**

} Whichever is earlier

Landmark judgements	
A belated return filed under Sec. 139(4) cannot be revised.	***Kumar Jagdish Chandra Sinha Vs. CIT (SC)***

A revised return can be further revised, if the assessee discovers any omission or any wrong statement in a revised return.	***Niranjan Lal Ram Chandra Vs. CIT (All)***
Revised return substitutes the original return	***Dhampur Sugar Mills Ltd. Vs. CIT (All)***

Power of Board to dispense with furnishing documents, etc. with the return **Sec. 139C**

The Board may make rules providing for

→ A class or classes of persons

→ Who may not be required to furnish documents, statements, receipts, certificates, reports of audit or any other documents, which are required to be furnished, along with the return

→ But on demand to be produced before the Assessing Officer.

Filing of return in electronic form **Sec. 139D**

The Board may make rules providing for

(a) The class or classes of persons who shall be required to furnish the return in electronic form;
(b) The form and the manner in which the return in electronic form may be furnished;
(c) The documents, statements, receipts, certificates or audited reports which may not be furnished along with the return in electronic form but shall be produced before the Assessing Officer on demand;
(d) The computer resource or the electronic record to which the return in electronic form may be transmitted.

Permanent Account Number [PAN] **Sec. 139A**

(1) Every person who has not been allotted a permanent account number shall, within such time, as may be prescribed, apply in Form No. 49A to the Assessing Officer for the allotment of a permanent account number in the following cases:
   (a) if his total income or the total income of any other person in respect of which he is assessable under this Act during any previous year exceeded the maximum amount which is not chargeable to income-tax; or
   (b) if he is carrying on any business or profession whose total sales, turnover or gross receipts are or is likely to exceed ₹ 5,00,000 in any previous year; or
   (c) he is required to furnish a return of income under Sec. 139(4A)
(2) The Assessing Officer, having regard to the nature of the transactions as may be prescribed, may also allot a PAN, to any other person (whether any tax is payable by him or not), in the manner and in accordance with the procedure as may be prescribed.
(3) Any other person may apply for the allotment of a PAN.

Power delegated to the Central Government to notify class or classes of persons for whom it will be obligatory to apply for permanent account number (PAN)	**Sec. 139A(1A)** **Sec. 139A(1B)**

Time limit for applying for PAN

Whose Total income Exceeds exemption limit and covers the case where he is assessable for any other person	On or before 31st May of the assessment year for which income is assessable
Whose Receipts of his business and profession exceeds ₹5,00,000	On or before end of that accounting year
Trust or charitable institutions	
In any other cases	

Transactions where quoting of PAN has been made compulsory

(a) Sale/purchase of any immovable property valued at ₹ 5 lakhs or more;
(b) Sale/purchase of motor vehicle (other than two wheeled vehicles);
(c) Time deposit exceeding ₹ 50,000 with a bank/banking company/banking institution;
(d) Deposits exceeding ₹ 50,000 in Post Office Savings Bank;
(e) Contract for sale/purchase of securities exceeding ₹ 1,00,000;
(f) Opening an account with a bank;

(g) Application for installation of a telephone connection including cellular connection;
(h) Payment to hotels/restaurants of bills exceeding ₹ 25,000 at any time;
(i) Payment in cash for purchase of bank draft or pay orders or banker's cheques for an amount aggregating ₹ 50,000 or more during any one day;
(j) Deposit in cash aggregating ₹ 50,000 or more, with a banking company during any one day;
(k) Payment in cash in connection with travel to any foreign country of an amount exceeding ₹ 25,000 at any one time.
(l) Making an application for issue of a credit card;
(m) Payment of an amount of ₹ 50,000 or more to
  (i) A mutual fund for purchase of its units, or
  (ii) A company for acquiring shares issued by it, or
  (iii) A company or an institution for acquiring debentures or bonds issued by it, or
  (iv) The Reserve Bank of India for acquiring bonds issued by it.

Return by whom to be signed	**Sec. 140**
Individual	(1) The individual himself; or (2) Where he is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf; (3) Where he is absent from India, by the individual himself or by some person duly authorised by him on his behalf;
HUF	**(1)** Only by the Karta **(2)** Any other adult member of the family where the Karta is absent from India
Company	→ The managing director or any director, if no MD or MD is not in India
Firm/LLP	→ The managing partner or any partner, if no MP or MP is not in India
Local authority	→ The principal officer
Political party	→ The chief executive officer of such party
Any other association	→ Any member of the association or the principal officer
Any other person	(1) That person or (2) Some person competent to act on his behalf.

Return by whom to be signed	**Sec. 140A**

Every person, before submitting a return of income is under an obligation
→ To make a self-assessment of his income and
→ After taking in account the amount of tax, if any, already paid,
→ Pay the self-assessment tax, if due.

Self-assessment tax = Total Tax Liability including interest, if any – Advance Tax Paid – TDS – TCS

Form	**Description**
ITR-1 (SAHAJ)	For individuals, whose total income includes chargeable under the head – (a) "Salaries" or income in the nature of family pension under Sec. 57(iia) (b) "Income from house property", where the assessee does not own more than one house property and does not have any brought forward loss under the head; (c) "Income from other sources", except winnings from lottery or income from race horses.
ITR-2	For individuals & HUFs not having income from Business or Profession.
ITR-3	For individuals/HUFs being partners in firms and not carrying out business or profession under any proprietorship
ITR-4	For individuals & HUFs having income from a proprietary business or profession.
ITR-4S (SUGAM)	For presumptive business income covered under Sec. 44AD and 44AE
ITR-5	For firms, AOPs and BOIs

ITR-6	For Companies other than companies claiming exemption under Sec. 11
ITR-7	For persons including companies required to furnish return under Sec. 139(4A) or Sec. 139(4B) or Sec. 139(4C) or Sec. 139(4D). *(Not available for e-Filing)*
ITR-V	**Indian Income Tax Return Verification Form:** This Form is to be used where the data of the Return of Income in Form ITR-1, ITR2, ITR- 3, ITR-4 and ITR-5 transmitted electronically without digital signature.

11.1: Amendment Analysis

Due date of filling ROI **[Amended]** **Sec. 139(1)**

Due date of November 30 has been made applicable for all assessees (earlier only for companies) required to submit report of CA under Sec. 92E.

Further, ROI filing on or before due date has been made compulsory for residents (except RNOR), if

1. Such assessee has any asset (including any financial interest in any entity) located outside India *OR*
2. Such assessee has signing authority in any account located outside India It does not matter whether he has income chargeable to tax or not.

APPENDIX

Unit	
I.	Assumptions
II.	Meaning of relatives
III.	Amendments Highlight

FOR MAY/NOVEMBER 2013 EXAMINATIONS

I. ASSUMPTIONS

Note: *If nothing mentioned clearly in the question then make following assumptions*

No.	Particulars	Assumption
	INCOME FROM SALARY	
1.	Govt./Non-Govt.	Assume non-govt. employee
2.	Gratuity	Employee is not covered under Payment of Gratuity Act
3.	Pension	Un-commuted pension
4.	Employees PF contribution	Basic salary is gross without deducting employees' contribution
5.	Dearness Allowances	It is not under terms of employment
6.	Dearness Pay	It is under terms of employment
7.	Specified Allowances (*Travelling Allowances, Daily Allowances*)	If expenditure not given assume that fully expended for official purpose
8.	HRA, city in which house taken on rent	Assume 40% (*For any other place*)
9.	Rent free Accommodation	If nothing is mentioned or only Fair Rent Value given than assume that owned by employer and if Actual Rent or Lease Rent given then not owned by employer
10.	Rent free Accommodation	If owned by employer and population not given then assume that in city of more than 25,00,000
11.	Interest free loan	If rate of interest of SBI not given assume to be 12% p.a.
12.	Education facility	Employer has no contract with the school and it is not maintained by employer
13.	Medical facility	In any other hospital and exemption upto ₹ 15,000
	INCOME FROM HOUSE PROPERTY	
1.	Interest for self-occupied property	Loan was taken before 1/4/1999
2.	Recovery of unrealized rent	Covered under Sec. 25A
	INCOME FROM OTHER SOURCES	
1.	Debentures	Non-listed at any recognized stock exchange
	SET-OFF OR CARRY FORWARD OF LOSSES	
1.	Business Losses	Non-speculation Business Losses

II. Meaning of Relatives

No.	*Particulars*	*Meaning of Relative*
		INCOME FROM SALARY
1.	Prescribed fringe benefits	Member of household (a) Spouses (b) Children and their spouses (c) Parents (d) Servants and dependents
2.	Medical facilities and leave travel concession	(a) The spouses & children (b) Parents, brothers and sisters of the individual wholly or mainly dependent on the individual
		PROFIT & GAIN FROM BUSINESS OR PROFESSION
1.	Payment to specified persons [Sec. 40A(2)]	Specified person means relative, partner, director or person having substantial interest or relative of any such person (*Any relative i.e., spouse, any brother, sister lineal ascendant or descendant of such individual*)
		INCOME FROM OTHER SOURCES
1.	Gifts (in money) [Sec. 56(2)]	(a) Spouse of the individual (b) Brother or sister of the individual (c) Brother or sister of spouse of the individual (d) Brother or sister of either of the spouse or the individual (e) Any lineal ascendant or descendant of the individual (f) lineal ascendant or descendant of spouse of the individual (g) Spouse of the person referred to in clauses (b) to (f)
		CLUBBING OF INCOME
1.	Substantial Interest	Individual, spouse, brother, sister or lineal ascendant & descendant
		DEDUCTIONS
1.	Life Insurance Premium [Sec. 80C]	LIP on life of himself, spouse and children. In HUF: any member of family
2.	Medical Insurance Premium [Sec. 80D]	(1) Individual, spouse, parents (whether dependent or not), dependent children (2) In case of HUF: in the name of any member
3.	Sec. 80DD & Sec. 80DDB	(i) Individual, spouses, children, parents, brother and sister (ii) In case of HUF, any member of HUF
4.	Sec. 80E	Spouse, children of individual

III. Amendments Highlights

- The Finance Minister presented the Budget for the year 2012-13 on 16th March, 2012, and introduced the Finance Bill, 2012, containing **154 clauses**.
- Out of these, **113 clauses relate to 'Direct Taxes' and other 41 clauses relate to 'Indirect Taxes'.** There was heated discussion on the various provisions of the Bill which included over **30 amendments in various sections of the Income-tax Act with retrospective effect**.
- There was lot of protest in India and abroad as most of these amendments would affect non-residents and will have adverse effect on global trade.
- In spite of this protest, the Government could manage to get through the legislation with some changes. The Finance Act, 2012, containing **119 sections relating to Direct Taxes is now passed by both Houses of the Parliament and received the assent of the President on 28-5-2012**.
- Originally, the existing Income-tax Act was to be replaced by the Direct Taxes Code (DTC) w. e. f. 1-4-2012. Since the **implementation of DTC is delayed**, we will have to live with the existing Income-tax Act for one more year.
- Some of the amendments made by the Finance Act, 2012, will give some relief in the computation of Income and Tax. However, *some of the amendments, which have retrospective and retroactive effect, will make the life of taxpayers miserable.*
- In particular, **the retrospective amendments of some of the sections of the Income-tax Act will increase the tax burden of non-resident assessees and also increase their compliance cost**. In this respect, the **tax litigation will also increase in the assessment year**.

Sec. or Provision	Amendment
	RATES
AMT	⇨ Tax @ 18.5% of the adjusted book profit (if normal tax is less than 18.5% of book profit)+ Education Cess is applicable @ 3% ⇨ AMT will not be applicable for Individual, HUF, AOP, BOI (who have taken deduction under part C of VI-A) if adjusted total income of does not exceeds ₹ 20,00,000
STT	Rate of STT changes from .125% to .100 % for delivery based unit of Equity Oriented Fund, Equity shares
	BASIC CONCEPTS AND DEFINITIONS
Sec. 9	Definition of ⇨ Asset amended to include sale of asset in India directly or indirectly ⇨ Transfers to include Indirect transfers ⇨ Royalty to include computer software and fees paid for usage, lease or licence of the same. Deeming fiction have been included in definition of Capital asset, transfer, Sec. 195
	INCOME WHICH IS DO NOT FORM PART OF TOTAL INCOME *(Exemptions under Sec. 10)*
Sec. 10(10D), 10(23), 13	⇨ For 80D, 80DDB & 197A, Eligible age for senior citizen will be 60 years. ⇨ Sum received under LIC policy will be exempt only if the premium payable for any year shall not exceed 10% ⇨ Charitable organization does not get benefit of tax exemption In the "Previous Year" in which it's Receipts from Commercial activities exceed the threshold ₹ 25,00,000.
Sec. 10(48)	⇨ Any income of a foreign company Received in India in Indian Rupee on account of sale of crude oil to any person in India will be exempt subject to the following conditions: ⇨ Receipt is in accordance with Central Government agreement taken in national interest. ⇨ The receipt of the money is the only activity carried out by the foreign company in India
Sec. 10(23BBH)	Exemption from tax w.r.t. income of the Prasar-Bharati (Broadcasting Corporation of India)
	PROFITS AND GAINS OF BUSINESS OR PROFESSION
Sec. 32(1)(a)	Extending benefit of initial depreciation to the power sector
Sec. 35AD	⇨ Specified Business will also include Setting up and operating an inland container depot or a container freight station as approved as per customs act; Bee-keeping and production of honey and beeswax; and Setting up and operating a warehousing facility for storage of sugar.

	⇨ **Deduction @ 150%** will be allowed to Specified business, Commencing operations, on or after 01-04-2012 Setting up & operating a cold chain facility; Setting up & operating a warehousing facility for storage of agricultural produce; Building & operating, anywhere in India, a new hospital with at least one hundred beds for patients; Developing and building a housing project under a scheme for affordable housing framed by Govt.; and Production of fertilizer in India. ⇨ Assessee builds a hotel and subsequently, while continuing to own the hotel, **transfers the operation thereof to another person**, the assessee shall be deemed to be carrying on the specified business of building and operating hotel i.e. still eligible for deduction under Sec. 35AD.
Sec. 35(2AB), 35CCC, 35CCD	⇨ Weighted deduction -Scientific research & development extended upto 31.3. 2017. ⇨ A weighted deduction @ 150%On Expenditure Agricultural extension project Notified by Board. ⇨ A weighted deduction @150% On Expenditure (Except on Land & Building) in Skill Development
Sec. 44AB	⇨ Limit for Tax audits in case of Business increased to ₹ 1 crore, in Profession to ₹ 25,00,000. ⇨ Sec. 44AD not applicable to professional as per Sec. 44AA(1), person earning commission or brokerage income & Person carrying agency business
CAPITAL GAINS	
Sec. 47	**Capital gains in cases of amalgamation and demerger:** Earlier, Transfer will not regarded as a transfer if, In a scheme of amalgamation/Demerger Shareholders transfer shares in a amalgamating/resulting Company in consideration of the allotment to him, of any shares in the amalgamated/resulting Indian company. Now, **Amalgamated/Resulting company need not require to issue shares When the shareholders is Amalgamated/Resulting company itself.**
Sec. 49	**Cost of acquisition** in case of conversion of sole proprietorship or firm into a company which is not regarded as a transfer, the cost of acquisition of asset in the hands of the company would be the **same as that in the hand of the sole proprietary concern or the firm**.
Sec. 50	**FMV to be taken wherever consideration unascertainable.**
Sec. 54	⇨ For Exemption under Sec. 54B, HUF now included in list of eligible persons ⇨ **Exemption under Sec. 54GB:** Re-investment of sale consideration in the equity of a new start-up SME company in the manufacturing sector which is utilized by the company for the purchase of new plant and machinery for lock in of 5 years along with other conditions
Sec. 55A	**Reference to a Valuation Officer** under Sec. 55A, where AO feels that value of asset as per assessee is **more than FMV**, he may refer the valuation to a Valuation Officer.
INCOME FROM OTHER SOURCES	
Sec. 56(2)	⇨ Source of funds in hands of resident Shareholder is required to be explained by the closely held company. Exception- Venture capital undertaking. ⇨ HUF is added to the list of related person. ⇨ Consideration in excess of FMV of shares to be treated as income for closely held company unless substantiated. Exception- Venture Capital undertaking ⇨ Lower rate of tax on dividends received from foreign companies @15% Benefit extended to one more year i.e. for FY 2012-13.
DEDUCTIONS UNDER CHAPTER VI-A	
Sec. 80C-80U	⇨ **Sec. 80C:** LIC premium allowed under 80C up to 10% of Capital assured ⇨ **Sec. 80CCF:** Rajiv Gandhi scheme for investment in shares maximum 50k, deduction allowed ₹ 25,000; lock in period 3 years ⇨ **Sec. 80D:** Preventive Healthcare expense up to 5000 included in 80D (Can be in cash) ⇨ **Sec 80CCF:** Deduction in Infrastructure bonds discontinued. ⇨ **Sec. 80TTA:** ₹ 10,000 deduction allowed on Interest on Saving A/c in Bank/Co-op society/Post office. ⇨ **Sec. 80G, 80GGA:** Donations in cash exceeding 10K will be disallowed. ⇨ **Sec. 80-IA:** Extension of sunset date for tax holiday for power sector u/s 80-IA(4) 31st March 2013
TAX DEDUCTED AT SOURCES	

Sec. 193 and other inserted provisions	⇨ Threshold for TDS on compensation or consideration for compulsory acquisition increased to ₹ 2 lakhs ⇨ Threshold for TDS on payment of interest on debentures to a resident individual or HUF on listed / Unlisted debentures ₹ 5000 and No TDS if, the same is paid by account payee Cheque ⇨ Company should deduct TDS @10% from any remuneration, fees or commission paid or payable to a director, if no tax is deductible under the head salary. ⇨ Payer who fails to comply TDS provisions shall not be deemed to be an assessee in default in respect of such tax if such resident payee has furnished his ROI u/s 139; Offered such income for taxation, Paid Requisite Taxes and an accountant (e.g. CA) certifies the same.
Sec. 201	⇨ Where the payer fails to comply TDS provisions and 'not' an assessee in default u/s 201(1) the interest under section 201(1A)(*i*) shall be payable from the date on which such tax was deductible to the date of Furnishing of ROI by such resident payee. Where an assessee makes these to a "Resident Payee" without deduction of tax and is not deemed assessee in default under Sec. 201(1) then, for the purpose of allowing deduction of such sum, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of Return filed by the resident payee. ⇨ In respect of non-deduction/short deduction of tax, a person can be deemed to be an assessee in default, by an order, which can be passed within a period of 'four Six years' from end of FY in a case where no statement as referred to in section 200 has been filed
TCS	⇨ 1% of sales on Bullion, Jewellery If Sale consideration of Bullion (excluding any coin/ article weighing 10 grams or more) exceeds ₹ 2,00,000 or If Sale consideration of jewellery exceeds ₹ 5,00,000 in cash. ⇨ 1% on sale of Coal Lignite & Iron ore. Exception- Personal consumption, Used in manufacturing, Generation of power ⇨ Similar amendment as in TDS, default can be removed if other party has paid tax.
ADVANCE TAX & INTEREST	
Sec. 207	Resident senior citizen will exempt for Advance Tax payment if no business or professional income.
Sec. 209	Liability to pay advance tax in case of non-deduction of tax Where a person has Received any income without deduction or collection of tax, he shall be liable to pay advance tax in respect of such income.
RETURN OF INCOME	
Sec. 139	Every Ordinary Resident having any assets (Including Financial interest in any entity) located outside India, or Signing Authority in any a/c located outside India Irrespective of the fact that he has taxable income or not, File ROI. Due Date for Return Filing in Case of Corporate Assessee, Who is required to obtain and file Transfer Pricing report (under Sec. 92E),extended to 30th Nov.
MISCELLANEOUS AMENDMENTS	
Sec. 68, 69	Unexplained credits, money, investment, expenditure, etc. shall be taxed @ 30% & No deduction of any expenditure for earning said unexplained income.
Sec. 115-O	Removal of the cascading effect of Dividend Distribution Tax (DDT) in case any company receives, during the year, any dividend from any subsidiary and such subsidiary has paid DDT as payable on such dividend, then, dividend distributed by the holding company in the same year, to that extent, shall not be subject to Dividend Distribution Tax under section 115-O of the Act

[**Note:** *Amendments are very important from point of view of examination and discussed in detailed in chapters and unit specified in this booklet. So, above table is highlight of the amendment.*]

PART B: SERVICE TAX

FOR MAY/NOV. 2013 EXAMINATIONS

PART B: SERVICE TAX [25 Marks]

1. INTRODUCTION TO SERVICE TAX

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

1. INTRODUCTION TO SERVICE TAX

Significance / Important / Need of Service tax in India **C**

It is the prime responsibility of the Government to fulfil the increasing development needs of the country and its people, by way of public expenditure. The Government's primary sources of revenue are direct and indirect taxes. Central Excise Duty on the goods manufactured and produced in India and Customs Duties on imported goods constitute the two major sources of indirect taxes in India. Due to WTO commitments and rationalization of commodity duties, the revenue receipts from customs and excise duties are low.

*[**Note:** 'C' denote the importance from exam point of view, topics divided into ABC Analysis]*

Constitutional validity **C**

According to Article 265 of the constitution India, no tax of any nature can be levied or collected by Central or State Governments, except by the Authority of Law. According to Article 246, law can be enacted by the Parliament or the State Legislature, if such power is given by the Constitution of India.

List - I (Union list): Parliament has the exclusive right to make law in respect of that entry.

List - II (State list): Any state has exclusive power to make law for such state or any part thereof with respect to such an entry.

List - III (Concurrent list): The parliament or the legislature of a state has power to make laws with respect to any matter, enumerated in List III.

- ⇨ There are various matters enumerated in each list. Each matter in the list is known as an entry.
- ⇨ Entry 97 of the Union list is the residuary entry and it empowers the Central Government to levy tax on any matters, which are not enumerated in List II (State List) or List III (Concurrent List).
- ⇨ In 1994, the Service Tax was levied by the Central Government, under the powers granted under the said Entry 97, of List I.
- ⇨ Entry 92C has been inserted to the 1st List, in the VII Schedule so as to make the enactment a subject matter of Union List.
- ⇨ Although the Government has amended the Constitution and inserted entry No.92C in the List 1 of Schedule VII, **no separate Act** has been passed yet and Service Tax is still being governed by entry 97 i.e. residuary entry.

Administration of Service tax law in India **B**

"The responsibility of administration and collection of Service Tax has also been vested upon the Central Board of Excise and Customs."

The Administrative set up under the Central Excise Act, 1944 is as follows:

Designation	Work Profile
1. Central Board of Excise and Customs (CBEC) constituted under the Central Board of Revenue Act, 1963	Highest administrative authority issuing orders, instructions and directions under Section 37B of the Central Excise Act, 1944
2. Chief Commissioner of Central Excise	Head of Zones and supervisory in nature
3. Commissioner of Central Excise	Administrative-in-charge of Commissionerates
4. Commissioner of Central Excise (Appeals)	Appellate Authority equal in rank of Commissioner
5. Additional Commissioner of Central Excise	Restricted power of adjudication and for appellate purposes, lower in rank of Commissioner
6. Joint Commissioner of Central Excise	Lower in rank of Commissioner
7. Deputy / Assistant Commissioner	Head of divisional office
8. Superintendent of Central Excise	Head of range office and officer of gazette rank
9. Inspector of Central Excise	Sector officers

Overview of Service tax Administration:

(1) Ministry of finance
(2) Department of revenue
(3) Central Board of Excise and Customs
(4) Central Excise Zones headed by chief Commissioners
(5) Central Excise Commissionerates headed by Commissioners
(6) Director General of Service Tax [Co-ordinator between (3) and (5)]

Sources of Service tax law **A**

Laws relating to Service Tax: An understanding of the Service Tax law requires the study of the following:

1. Chapter V and V A, of the Finance Act, 1994, amended upto date.
2. Rules on Service Tax.
3. Notifications, issued by the Central Government, from time to time.
4. Circulars and clarifications, issued by Central Board of Excise and Customs (CBEC).
5. Trade Notice, issued by respective Jurisdictional Commissionerate.
6. Definitions given under other statutes.
7. Judicial decisions.

Extent, Commencements and Application (of Service tax) **Sec. 64 [Finance Act]** **A**

- **The Finance Act, 1994** came into force from 01.07.1994.
- The Act extends to the whole of India **except the state of J&K**. Thus, *services provided in the state of J&K are not liable to service tax*.
- Applicability of ST provisions shall be decided w.r.t. **location of services** and not with reference of location of **service provider**.
- Thus, Service tax will not be payable only if service is provided in J&K. However, if a person from J&K provides the service outside J&K, the service will be liable to service tax. Merely because the office of the service provider is situated in Jammu and Kashmir, it does not mean that service is provided in Jammu and Kashmir.
- Service provided within the territorial waters will be liable to service tax as levy of service tax extends to whole of India except Jammu and Kashmir and 'India includes territorial waters".
- Indian territorial waters extend upto **12 nautical miles** from the Indian land mass. **[1 NM = 1.852 km]**
- The provisions of service tax have been extended to the **designated areas in Exclusive Economic Zone** of India also. **(EEZ = upto 200 NM from base line)**

Levy of Service tax **Sec. 66B [Finance Act]** **A**

Charging Section (Sec.66B w.e.f. 1-7-2012): *There shall be levied a tax (here in after referred to as the service tax) at the rate of 12 percent. On the value of all services, other than those services specified in the negative list, provided or agreed to be provided in the taxable territory by one person to another and collected in such manner as be prescribed.*

1. Thus important ingredients for charge of service tax are -
2. The service should have been provided or agreed to be provided.
3. The service should be provided by one person to another person.
4. The service should be provided in taxable territory as per Place of Provision of Service Rules, 2012.
5. Services must not be specified in the negative list.
6. Service tax is levied @ 12% (increased by EC @ 2% & SHEC @ 1%). Hence, effective rate is 12.36% of value of taxable service.
7. Service tax is collected in such manner as may be prescribed (i.e. in accordance with Service Tax Rules, 1994).

Note: "Taxable territory" means territory to which the provisions of Chapter V apply and any other territory is called "non-taxable territory" under Sec. 65B(35).

Definition of 'service'	**Sec. 66B**	**A**
⇨ Service means	Any activity carried by a person for another [2] for consideration [3]	
⇨ And includes	a declared service [4]	
⇨ But shall not include	(a) an activity [1] which constitutes, **merely**, 1. a transfer of title in **goods or immovable property** [5], by way of sale, gift or in any other manner; *OR* 2. such transfer, delivery or supply of any goods which is **deemed to be sale** [6] within the meaning of Article 366 clause (29A) of Constitution; *OR* 3. a transaction in **money or actionable claim** [7]; (b) a provision of service by an **employee to the employer** in the course of or in relation to his employment [8] (c) **fees taken in any court** or tribunal established under any law for the time being in force.	

Significance of above terms

1 Activity

Activity means legal obligation to do or not to do act (May be active or passive)

Example:
- ⇨ A beggar playing music on road not taxable even if soliciting money but taxable if same beggar performs at a function for consideration
- ⇨ Non-compete agreements taxable.

2 By a person for another

What is the significance of the phrase 'carried out by a person for another'?	The phrase 'provided by one person to another' signifies that services provided by a person to self are outside the ambit of taxable service. Example of such service would include a service provided by one branch of a company to another or to its head office or vice-versa.
Are there any exceptions wherein services provided by a person to oneself are taxable?	Yes. Two exceptions have been carved out to the general rule that only services provided by a person to another are taxable. These exceptions, contained in Explanation 2 of clause (44) of section 65B, are: *Exception 1:* An establishment of a person located in taxable territory and another establishment of such person located in non-taxable territory are treated as establishments of distinct persons. *Exception 2:* An unincorporated association or body of persons and members thereof are also treated as distinct persons. Implications of these deeming provisions are that inter-se provision of services between such persons, deemed to be separate persons, would be taxable. **Example:** Services provided by a club to its members and services provided by the branch office of a multinational company to the headquarters of the multinational company located outside India would be taxable provided other conditions relating to taxability of service are satisfied.

3 For consideration

In simple terms, 'consideration' means everything received or recoverable in return for a provision of service which includes monetary payment and any consideration of non- monetary nature or deferred consideration **as well as recharges between establishments located in a non-taxable territory on one hand and taxable territory on the other hand**.

<table>
<tr><td>What is monetary consideration?</td><td colspan="3">Monetary consideration means any consideration received in the form of money. ‘Money’ has been defined in section 65B and includes not only cash but also cheque, promissory note, bill of exchange, letter of credit, draft, pay order, travellers’ cheque, money order, postal or electronic remittance or any such similar instrument.</td></tr>
<tr><td>What is non-monetary consideration?</td><td colspan="3">Non-monetary consideration essentially means compensation in kind such as the following:
⇨ Supply of goods and services in return for provision of service
⇨ Refraining or forbearing to do an act in return for provision of service
⇨ Tolerating an act or a situation in return for provision of a service
⇨ Doing or agreeing to do an act in return for provision of service</td></tr>
<tr><td rowspan="5">Illustrations:</td><td>If…</td><td>And in return</td><td>Then,</td></tr>
<tr><td>A agrees to dry clean B’s clothes</td><td>B agrees to click A’s photograph</td><td rowspan="4">For the services provided by A to B, the acts of B specified in 2nd column are nonmonetary consideration provided by B to A. Conversely, for services provided by B to A, similar reasoning will be adopted.</td></tr>
<tr><td>A agrees not to open dry clean shop in B’s neighbourhood</td><td>B agrees not to open photography shop in A’s neighbourhood</td></tr>
<tr><td>A agrees to design B's house</td><td>B agrees not to object to construction of A's house in his neighbourhood</td></tr>
<tr><td>A agrees to construct 3 flats for B on land owned by B</td><td>B agrees to provide one flat to A without any monetary consideration</td></tr>
<tr><td>What are the implications of the condition that activity should be carried out for a ‘consideration’?</td><td colspan="3">⇨ To be taxable an activity should be carried out by a person for a ‘consideration’
⇨ Activity carried out without any consideration like donations, gifts or free charities are therefore outside the ambit of service. For example grants given for a research where the researcher is under no obligation to carry out a particular research would not be a consideration for such research.
⇨ An act by a charity for consideration would be a service and taxable unless otherwise exempted.
⇨ Conditions in a grant stipulating merely proper usage of funds and furnishing of account also will not result in making it a provision of service.
⇨ Donations to a charitable organization are not consideration unless charity is obligated to provide something in return e.g. display or advertise the name of the donor in a specified manner or such that it gives a desired advantage to the donor.</td></tr>
<tr><td>Would imposition of a fine or a penalty for violation of a provision of law be a consideration for the activity of breaking the law making such activity a ‘service’?</td><td colspan="3">No. To be a service an activity has to be carried out for a consideration. Therefore fines and penalties which are legal consequences of a person's actions are not in the nature of consideration for an activity.</td></tr>
<tr><td>Can a consideration for service be paid by a person other than the</td><td colspan="3">Yes. The consideration for a service may be provided by a person other than the person receiving the benefit of service as long as there is a link between the provision of service and the consideration. For example,</td></tr>
</table>

person receiving the benefit of the service?	holding company may pay for services that are provided to its associated companies.

4 Declared Services — Sec. 66E

1. Renting of immovable property;
2. Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration is received after issuance of certificate of completion by a competent authority;
3. Temporary transfer or permitting the use or enjoyment of any intellectual property right;
4. Development, design, programming, customization, adaptation, up gradation, enhancement, implementation of information technology software;
5. Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
6. Transfer of goods by way of hiring, leasing, licensing or any such manner without transfer of right to use such goods;
7. Activities in relation to delivery of goods on hire purchase or any system of payment by instalments;
8. Service portion in execution of a works contract;
9. Service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as part of the activity.

5 Immovable property & Goods

Immovable property:	No definition, thus definition as per general clauses act applicable. Things rooted in earth, or embedded in earth or, permanently fastened to anything embedded in earth.
Goods:	Goods has been defined in section 65B of the act as 'every kind of moveable property other than actionable claims and money, and includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be served before sale or under contract of sale'.

6 Deemed sales — Article 366(29A) [Constitution of India]

The six categories of deemed sales as defined in article 366(29A) of the Constitution are

- ⇨ Transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration
- ⇨ Transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract
- ⇨ Delivery of goods on hire-purchase or any system of payment by instalments
- ⇨ Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration
- ⇨ Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration
- ⇨ Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration.

7 Transactions only in money or actionable claims do not constitute service

What kind of activities would come under 'transaction only in money'?	⇨ The principal amount of deposits in or withdrawals from a bank account. ⇨ Advancing or repayment of principal sum on loan to someone. ⇨ Conversion of ₹ 1,000 currency note into one rupee coins to the extent amount is received in money form. However charges for such use or conversion taxable

Actionable claims:	Defined in Transfer of Property Act, any claim to a debt other than a secured debt or beneficial interest in any movable property not in possession. ⇨ Includes unsecured debts, lotteries ⇨ Not to include coupons and vouchers

8 Provision of service by an employee to the employer is outside the ambit of service

<table>
<tr><td rowspan="1">Are all services provided by an employer to the employee outside the ambit of services?</td><td colspan="2">No. Only services that are provided by the employee to the employer in the course of employment are outside the ambit of services. Services provided outside ambit of employment for a consideration would be a service. For example, if an employee provides his services on contract basis to an associate company of the employer, then this would be treated as provision of service.</td></tr>
<tr><td>Would services provided on contract basis by a person to another be treated as services in the course of employment?</td><td colspan="2">No. Services provided on contract basis i.e. principal-to-principal basis are not services provided in the course of employment.</td></tr>
<tr><td>Would amounts received by an employee from the employer on premature termination of contract of employment be chargeable to service tax?</td><td colspan="2">No. Such amounts paid by the employer to the employee for premature termination of a contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment. Hence, amounts so paid would not be chargeable to service tax. However any amount paid for not joining a competing business would be liable to be taxed being paid for providing the service of forbearance to act.</td></tr>
<tr><td rowspan="3">What is the status of services provided by casual workers or contract labour?</td><td>If…</td><td>Then,</td></tr>
<tr><td>Services provided by casual worker to employer who gives wages on daily basis to the worker</td><td>These are services provided by the worker in the course of employment</td></tr>
<tr><td>Casual workers are employed by a contractor, like a building contractor or a security services agency, who deploys them for execution of a contract or for provision of security services to a client</td><td>Services provided by the workers to the contractor are services in the course of employment and hence not taxable. However, services provided by the contractor to his client by deploying such workers would not be a service provided by the workers to the client in the course of employment. The consideration received by the contractor would therefore be taxable if other conditions of taxability are present.</td></tr>
</table>

8 Explanations to the definition of 'service'

Explanation:	Clarifies that 'service' does not cover functions or duties performed by Members of Parliament, State Legislatures, Panchayat, Municipalities or any other local authority, any person who holds any post in pursuance of the provisions of the Constitution or any person as a Chairperson or a Member or a Director in a body established by the Central or State Governments or local authority and who is not deemed as an employee.

Definition of person. ***Is it only a natural person or includes an artificial or a juridical person?***	**C**

'Person' is not restricted to natural person. 'Person' has been defined Section 65 B of the Act. The following shall be considered as persons for the purposes of the Act:

- ⇨ an individual
- ⇨ a Hindu undivided family
- ⇨ a company
- ⇨ a society
- ⇨ a limited liability partnership
- ⇨ a firm
- ⇨ an association or body of individuals, whether incorporated or not Government
- ⇨ a local authority, or
- ⇨ every artificial juridical person, not falling within any of the preceding sub clauses

Negative List	**Sec. 66D** **[Finance Act, 2012]**	**A**

Section 66D specified following services as non-taxable:

1. Services by Government or a Local Authority excluding the following services to the extent they are not covered elsewhere
   (i) services by the Department of Posts by way of speed post, express parcel, life insurance and agency services provided to a person other than Government;
   (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
   (iii) transport of goods or passengers; or
   (iv) support services, other than services covered under (i) to (iv) above, provided to business entities;
2. Services by the Reserve Bank of India;
3. Services by a foreign diplomatic mission located in India;
4. Services relating to agricultural produce by way of
   (i) agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;
   (ii) supply of farm labour;
   (iii) processes carried out at an agricultural farm including tending, cutting, harvesting (picking), drying, cleaning, trimming, sun draying, fumigating (cleaning), curing, sorting, grading, cooling or bulk packaging and like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
   (iv) renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
   (v) loading, unloading, packing, storage or warehousing of agricultural produce;
   (vi) agricultural extension services;
   (vii) services by any Agricultural produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;
5. Trading of goods;
6. Any process amounting to manufacture or production of goods;
7. Selling of space or time slots of advertisements other than advertisements broadcasts by radio or television;
8. Service by way of access to a road or a bridge on payment of toll charges;
9. Betting, gambling or lottery;
10. Admission to entertainment event or access to amusement facilities;
11. Transmission or distribution of by an electricity transmission or distribution utility;
12. Service by way of
   (i) pre-school education and education up to higher secondary school or equivalent;

(ii) education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force;
(iii) education as a part of an approved vocational education courses;

13. Service by way of renting of residential dwelling for use as residence;
14. Service by way of
    (i) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
    (ii) *inter se* sale or purchase of foreign currency amongst banks or authorized dealsers of foreign exchange or amongst banks and such dealers;
15. Services of transportation of passengers, with or without accompanied belongings, by
    (i) a stage carriage;
    (ii) railways in a class other than
        A. first class; or
        B. an air-conditioned coach
    (iii) metro, monorail or tramway
    (iv) inland waterways;
    (v) public transport, other than predominantly for tourism purpose, a vessel between places located in India; and
    (vi) metered cabs, radio taxis or auto rickshaws
16. Service by way of transportation of goods
    (i) by road except the service of
        A. a goods transportation agency; and
        B. a courier agency
    (ii) by an aircraft or a vessel from a place outside India upto the customs stations of clearance in India; or
    (iii) by inland waterways;
17. Funeral, burial, crematorium or mortuary services including transportation of the deceased.

Practical Questions

1. A service provider provides taxable services valuing ₹ 10,00,000. Compute the amount of Service Tax payable by him.

Solution:

Statement showing service tax payable by Mr. A

	Particulars	Calculations	Amt. (₹)
	Service tax payable @ 12%	$\left[10,00,000 \times \frac{12}{100}\right]$	1,20,000
Add:	Education cess @ 2%	$\left[1,20,000 \times \frac{2}{100}\right]$	2,400
Add:	Secondary & Higher Sec. Education Cess @ 1%	$\left[1,20,000 \times \frac{1}{100}\right]$	1,200
	Total Service Tax Payable		1,23,600

2. A service provider provides taxable services. The gross amount charged, is Rs. 10,00,000. Compute the amount of Service Tax payable by him, if the gross amount so charged in inclusive of Service Tax.

Solution: Service tax payable = $10,00,000 \times \frac{12.36}{112.36}$ = ₹ 1,10,003

2. POINT OF TAXATION RULES

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

2. POINT OF TAXATION RULES

Determination of point of taxation in case of normal situations — A

Particulars	Point of taxation
If invoice is issued within 30 Days of Completion of Service.	Date of invoice OR Date of payment } Whichever earlier
If invoice is not issued within 30 Days of Completion of service	Date of completion of service OR Date of payment } Whichever earlier
If any Advance received by Service Provider.	Date of Receipt of Advance (To the Extent of Receipt)

Date of payment means

Date on which payment is

Entered in the books of a/c *OR* Credited to the bank a/c of the person liable to pay tax	whichever is earlier.

Definition — **B**

Continuous supply of service — Rule 2(c) [POTR, 2011] — B

Continuous Supply of Service means any service –

(a) ***Recurrent services for a period exceeding 3 months with periodic payments:*** Which is provided, or to be provided continuously or on recurrent basis, under a contract, for a period exceeding 3 months with the obligation for payment periodically or from time to time, *OR*

(b) ***Notified services:*** The following notified services
- ⇨ Telecommunication service; *and*
- ⇨ Service portion in execution of a works contract.

Special point:

In case of continuous supply of services, date of completion of provision of service **shall be deemed to be date of** the completion of an event in terms of a contract, which requires the receiver of service to make any payment to service provider.

Determination of point of taxation in case of change in tax rate — B

Actual position with reference to Service/provision of service	*Invoice / payment status*	*Point of Taxation*
Taxable service has been provided before the change in effective rate of tax.	Invoice has been issued and payment received **after** the change in effective rate of tax	Date of payment **or** Issue of invoice } whichever is earlier
Taxable service has been provided **before** the change in effective rate of tax.	Invoice has been issued **before** the change in effective rate but payment is received **after** the change in effective rate.	Date of issuing of invoice
Taxable service has been provided **before** the change in effective rate of tax.	Payment has been received **before** the change in effective rate but invoice has been issued **after** the change in effective rate.	Date of payment

Taxable service has been provided **after** the change in effective rate of tax.	Payment is made **after** the change in effective rate but invoice has been issued **before** the change in effective rate.	Date of payment
Taxable service has been provided **after** the change in effective rate of tax.	Invoice has been issued and payment received **before** the change in effective rate.	Receipt of payment **or** Date of issue of invoice } whichever is earlier
Taxable service has been provided **after** the change in effective rate of tax.	Invoice has been issued **after** the change in effective rate but payment is received **before** the change in effective rate.	Date of issue of invoice

Effective rate of tax shall include a change in the portion of value on which tax is payable in terms of a Notification issued under the Act or Rules. To illustrate, assuming an **abatement** (Relief) of **67%** is granted and the same is changed to **70%**, that change in value would also be considered as an effective rate change for the purpose of application of Point of Taxation Rules.

Determination of point of taxation in case of copyrights, etc. B

In respect of royalties & 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 / benefit of these services, Service provider receive any payment.
- Then Point of Taxation: Date of invoice **or** Date of receipt of payment } whichever is earlier.

Determination of point of taxation in other cases **Rule 8A** **[POTR, 2011]** B

- Where the point of taxation cannot be determined as per these rules as the date of invoice or the date of payment or both are not available, then
- central Excise officer, may, require the concerned person to produce such accounts, documents or other evidence as he may deem necessary and
- after taking into account such material and the effective rate of tax prevalent at different points of time,
- shall, by an order in writing, after giving an opportunity of being heard, determine the point of taxation to the best of his judgment.

Determination of point of taxation in respect of small advance B

1. Whenever the provider of taxable services receives a payment upto ₹ 1,000 in excess of the invoice amount, then (at the option of the service provider) the POT with respect to such excess amount can be the **Date of Issue of the Invoice**
2. No separate invoice (on the basis of date of receipt of advance) need to be issued to this extent.

[Cases covered herein are the payments in respect of credit cards or telephone bills where the customer often pays some excess amount.]

Procedure for payment of service tax A

Assessee	*Payment*	*For services deemed to be provided (i.e. for service whose POT falls) in*	*Due date of payment*
⇨ Individual OR ⇨ Proprietary firm OR ⇨ Partnership firm OR	Quarterly	Quarter other than quarter ending March	⇨ 6th day of month following that **quarter if service tax is paid**

⇨ LLP	*(Jan. to Mar., April to June, & so on)*		**electronically through internet banking**; and ⇨ 5th day of the month following that quarter, in any other case
		Quarter ending March	31st day of March
Any other assessee	Monthly	Any month (except Match)	⇨ 6th day of next month **if service tax is paid electronically through internet banking**; and ⇨ 5th day of the next month, in any other case
		Month ending March	31st day of March

Special points:

Option to pay tax on receipt basis on services of upto ₹ 50 lakhs, if services provided last year are upto ₹ 50 lakhs: In case of –

⇨ Individuals and partnership firms / LLP
⇨ Whose aggregate value of taxable services provided from one or more premises is ₹ 50 lakhs or less in the previous financial year,

The service provider shall have the option to pay tax on taxable services provided or agreed to be provided by him

⇨ up to a total of ₹ 50 lakhs in the current financial year,
⇨ by the dates specified above
⇨ with respect to the quarter in which payment is received.

Practical Questions

Determination of Point of Taxation

1. Determine points of taxation in the following cases

Date completion of service	Date of invoice	Date of payment (As per Rule 2A)
April 10, 2012	**April 20, 2012**	**April 30, 2012**
April 10, 2012	**May 15, 2012**	**April 30, 2012**
April 10, 2012	**April 20, 2012**	**Date of entry in books: April 17, 2012** **Date of actual credit to bank a/c: April 15, 2012**
April 10, 2012	**May 16, 2012**	**April 5, 2012 (part)** **April 25, 2012 (remaining)**

Solution: The points of taxation in the aforesaid cases is determined below:

Point of taxation	Remarks
April 20, 2012	Invoice issued in 30 days and before receipt of payment
April 10, 2012	Invoice not issued within 30 days and payment received after completion of service
April 15, 2012	Invoice issued in 30 days but payment received before invoice. Date of payment as per Rule 2A means the date of entry of payment in books or ate of actual credit to Bank A/c. whichever is earlier.
April 5, 2012 & April 10, 2012 for respective amts.	Invoice not issued in 30 days. Part payment before completion, remaining later

Change in effective rate of service tax – Point of taxation

2. Determine the point of taxation in the following cases given that: Rate of service tax upto 31-5-2012 is 12%; while that on or after 01-06-2012 is 6% on account of a concessional exemption. Compute the amount of service tax payable:

Bill No.	Value of taxable services (₹)	Date of actual provision of service	Date of issue of invoice	Date of receipt of payment (as per Rule 2A)
A-1	11,00,000	01-04-2012	12-04-2012	01-06-2012
A-2	6,00,000	01-05-2012	01-05-2012	01-05-2012
A-3	12,00,000	31-05-2012	14-06-2012	24-06-2012
A-4	25,50,000	30-05-2012	13-06-2012	31-05-2012
A-5	40,00,000	01-06-2012	30-05-2012	31-05-2012
A-6	20,00,000	09-06-2012	31-05-2012	10-06-2012
A-7	15,00,000	18-06-2012	19-06-2012	31-05-2012
A-8	5,00,000	20-06-2012	20-06-2012	20-06-2012

Solution: The point of taxation under Rule 4 of the Point of Taxation Rules, 2011 and applicable rate of service tax under Rule 5B of the Service Tax Rules, 1994 along with computation of service tax is as follows:

Bill No.	Value (₹)	Point of taxation	Rule applied	Remarks	Rate of service tax applicable	Service tax (₹)
A-1	11,00,000	12-04-2012	Rule 4(a)(*ii*)	Service provided and invoice issued prior to change in rate of tax; only payment received after change	12%	1,32,000
A-2	6,00,000	01-05-2012	—	Service provided, invoice issued and payment received prior to change in rate of tax. No need to apply Rule 4.	12%	72,000
A-3	12,00,000	14-06-2012	Rule 4(a)(i)	Only service provided before change; both issue of invoice and receipt of consideration after change of rate.	6%	72,000
A-4	25,50,000	31-05-2012	Rule 4(a)(iii)	Service provided and payment received prior to change; only issue of invoice after change of rate of tax.	12%	3,06,000
A-5	40,00,000	30-05-2012	Rule 4(b)(ii)	Invoice issued and payment received prior to change of rate; only service provided after change of rate.	12%	4,80,000

A-6	20,00,000	10-06-2012	Rule 4(b)(i) [1]	Service provided and payment received after change of rate; only invoice issued prior to change of rate of tax.	6%	1,20,000
A-7	15,00,000	19-06-2012	Rule 4(b)(iii)	Service provided and invoice issued after change of rate; only payment received prior to such change.	6%	90,000
A-8	5,00,000	20-06-2012	—	Service provided, invoice issued and payment received after change in rate of tax. No need to apply Rule 4.	6%	30,000
	Service Tax Liability					13,02,000
Add:	Education cess @ 2%					26,040
Add:	Secondary & Higher Sec. Education cess @ 1%					13,020
Total Service Tax Payable						13,41,060

[[1]**Note:** *In Bill No. A-6, invoice has already been issued while the point of taxation is the date after issue of invoice. Hence, there may be a need for supplementary invoice as per Rule 9(1)(bb) CENVAT Credit Rules, 2004.*]

Computation of Service Tax

3. A service provider provided taxable services on 1-7-2012, the gross amount charged in respect of which is ₹ 10,00,000 (Excluding service Tax). The bill was raised on 28-07-2012 and payment was received on 29-07-2012. Compute the amount of Service Tax payable by him and when?(Assumed to be a Company)

Solution:

Statement showing service tax payable

	Particulars	**Calculations**	**Amt. (₹)**
	Gross amount charged		10,00,000
	Service tax payable @ 12%	$\left[10,00,000 \times \frac{12}{100}\right]$	1,20,000
Add:	Education cess @ 2%	$\left[1,20,000 \times \frac{2}{100}\right]$	2,400
Add:	Secondary & Higher Sec. Education Cess @ 1%	$\left[1,20,000 \times \frac{1}{100}\right]$	1,200
	Total Service Tax Payable		1,23,600

[1] Effective Date: *If invoice is issued within 30 days of the completion of service then the point of Taxation shall be the receipt of Payment or Issue of Bill, whichever is earlier.*

Date of completion:	1-07-2012 and
Invoice date:	28-07-2012. Hence, Invoice is issued within 30 days of completion.
Effective Date [1]:	28-07-2012 [28-07-12 or 29-07-12 whichever is earlier]
Due date:	On or before 05-08-2012

Determination of service tax liability

4. S & G Co., a partnership firm, gives the following particulars relating to the services provided to various clients by them, for the half year ended on 30-09-2012:

(a) Total bills raised are for ₹ 8,75,000, out of which a bill of ₹ 75,000 was raised on an approved International Organization, and payments of bills for ₹ 1,00,000 were not received till 30-09-12.

(b) An amount of ₹ 50,000 was received as an advance from SRK Ltd., on 25-09-12 to whom the services were to be provided in October, 2012.

You are required to work out the (i) Taxable value of services (ii) Amount of Service Tax payable.

Solution:

Computation of Taxable Value of Service and Tax Payable thereon

	Particulars		Amt. (₹)
	Total value of bill raised		8,75,000
Less:	Amt. raised on approved international organisation [Exempt]		(75,000)
Add:	Amt. of advance received from SRK Ltd.		50,000
(i)	**Taxable value of services**		8,50,000
	Service tax payable @ 12%	$\left[8{,}50{,}000 \times \frac{12}{100}\right]$	1,02,000
Add:	Education cess @ 2%	$\left[1{,}02{,}000 \times \frac{2}{100}\right]$	2,040
Add:	Secondary & Higher Sec. Education Cess @ 1%	$\left[1{,}02{,}000 \times \frac{1}{100}\right]$	1,020
(ii)	**Total Service Tax Payable**		1,05,060

5. In October 2010, Mr. Rajnikanth, a practicing Chartered Accountant, received 25% of the agreed professional consideration as advance from his client against a particular service which was to be rendered in the month of May 2011. He received the balance amount @ 75% in the month of June, 2011. The value of his bill is ₹ 400,000 dated 1st May 2011.

(a) What is the value on which service tax is payable

(b) What are the dates on which the service tax is payable

Solution:

(a) 25% of Rs. 4,00,000 is taxable because the value of taxable services received as advance in the month of October 2010.

The balance 75% of Rs. 4,00,000 is also taxable because, service provider has been received the same in the month of June 2011.

(b) Due date of service tax is 5th January 2011 for payment received in the month of October 2010 and 5th July 2011 for payment received in the month of June 2011.

Note: Individuals are liable to pay service tax on quarterly basis

6. Mr. Kamal, a practicing Chartered Accountant started profession in the year 2012-13, has been chosen the option to pay service tax on receipt basis in the current year. Details given as follows. Advise him.

(₹ in lakhs)

	1st Quarter	2nd Quarter
Service provided	**55**	**2**
Services to be provided	**Nil**	**Nil**

Solution:

(₹ in lakhs)

Particulars	1st Quarter	2nd Quarter
Service provided	55,00,000	2,00,000
Services to be provided *(i.e. in advance)*	Nil	Nil
Total Taxable Services	55,00,000	2,00,000

Service tax payable (12.36%)	**6,79,800**	**24,720**

Special points kept in mind:

1. *Since, ₹50 lakhs exceeds in the 1st quarter, services provided over and above ₹50 lakhs is taxable as per point of taxation rule 3.*
2. *Service tax is payable on ₹5 lakhs on provisional basis and balance ₹50 lakhs will be taxable on receipt basis.*
3. *From 2nd quarter onwards services are taxable based on point of taxation Rule 3.*

7. Mr. Amitabh, a practicing Chartered Accountant started profession in the year 2012-13, has been chosen the option to pay service tax on receipt basis in the current year. Details given as follows. Advise him.

(₹ in lakhs)

	1st Quarter	**2nd Quarter**
Service provided	**Nil**	**2**
Services to be provided	**55**	**Nil**

Solution:

(₹ in lakhs)

Particulars	**1st Quarter**	**2nd Quarter**
Service provided	55,00,000	2,00,000
Services to be provided *(i.e. in advance)*	Nil	Nil
Total Taxable Services	55,00,000	2,00,000
Service tax payable (12.36%)	**6,79,800**	**24,720**

Special points to be kept in mind:

Since, in the 1st quarter services to be provided for which advance received exceeds ₹50 lakhs, then the entire value on receipt basis taxable, and subsequently service provider is liable to pay service tax as per Point of Taxation Rule 3.

3. VALUATION OF SERVICE TAX AND ITS RULES

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

3. VALUATION OF SERVICE TAX AND ITS RULES

Value of service relevant for the purpose of payment of service tax	**B**

- ⇨ In terms of the charging provisions contained in Section 66B, service tax is levied @ 12% on the value of taxable services.
- ⇨ Therefore, value of service provided is relevant for determining the amount of service tax payable when a taxable service is provided by a person to another.

Valuation of taxable service for the charging of service tax	**Sec. 67**	**A**

Sec. 67 contains comprehensive provisions for valuation of taxable services for the purpose of levy of service tax. Accordingly, as per section 67(1), where service tax is chargeable on any taxable service with reference to its value, then, such value, such value shall be computed as follows.

If consideration consisting of

Case	Value shall be
(a) Where the provision of service is for a consideration in money	The gross amount charged by the service provider for such service provided or to be provided by him.
(b) Where the provision of service is for a consideration, not wholly or partly, consisting of money	Such amount in money, with the addition of Service Tax charged, as is equivalent to the consideration
(c) Where the provision of service is for a consideration, which is not ascertainable	The amount, as may be determined in the prescribed manner.

Some important points:

1. Consideration also includes any amount, which is payable for the taxable services provided or to be provided.
2. Money includes any currency, cheque, promissory note, letter of credit, draft, pay order, travellers' cheque, money order, postal remittance and other similar instruments, but does not include currency that is held for its numismatic value.
3. Gross amount charged include payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and book adjustment.
4. The first basic principle is that, Service Tax is payable on the gross amount, and not on the net amount.
5. The second principle, which also flows from Section 67, is that the amount charged has to be in relation to the services rendered.
6. **Valuation, where billing is inclusive of Service Tax:** The assessee is to calculate the Service Tax, based on reverse working.
7. **Payment through Suspense Account:** In case of transactions with associated enterprise, payments received towards the value of taxable services shall include any amount credited or debited, to any account, whether called 'Suspense Account' or by any other name, in the books of account of a person liable to pay Service Tax.
8. **Time of receipt of consideration:** Consideration for service provided may be received at any time, i.e., before, during or after, provision of service.
9. **Composite Service:** A service has to be pre-dominantly taxable service, for the levy of Service Tax. Where a composite service, consists of some part which is taxable and some part which is not taxable, Service Tax cannot be levied on non-taxable services.
10. **Service Tax not paid by recipient:** Service Tax liability will still be there, even if the Service Tax is not paid by the service recipient.
11. **TDS part of Taxable value:** Service Tax is to be paid on the value of taxable service, which is charged by a Service Tax assessee. Income Tax, deducted at source, is included in the charged amount. Service Tax is, therefore payable in the total amount, inclusive of the Income Tax, deducted at source.
12. **Payable, even if ST is not collected:** Failure to realize or failure to charge the Service Tax, at the prevailing rate, does not absolve the liability of the service provider to pay Service Tax.

Liability of the service provider to pay Service Tax subsists, even if it is not collected by him from his client.

Service tax (determination of value) Rules, 2006	**A**

Rule 3 Determination of Value when consideration is wholly or partly not in money

Where the consideration received is not wholly or partly consisting of money, the value shall be determined by the service provider, in the following manner:

(a) The value of such taxable service shall be equivalent to the gross amount charged by the service provider to provide similar service to any other person, in the ordinary course of trade and the gross amount charged is the sole consideration;

(b) Where the value cannot be determined in accordance with Clause (a), the service provider shall determine the equivalent money value of such consideration, which shall, in no case, be less than the cost of provision of such a taxable service.

Rule 4 Rejection of value

- ⇨ The Central Excise Officer has the power to satisfy himself as to the accuracy of any information, furnished or document presented, for valuation.
- ⇨ Where the Central Excise Officer is satisfied that the value, so determined by the service provider, is not in accordance with the provisions of the Act or the rules.
- ⇨ He shall issue a notice to such a service provider to show cause why the value of such a taxable service for the purpose of charging Service Tax should not be fixed at the amount specified in the notice.
- ⇨ After providing a reasonable opportunity of being heard, the Central Excise Officer shall determine the value of such taxable service, in accordance with the provisions of the Act and these rules.

Rule 5 Inclusion in or exclusion from value of certain expenditure or costs

Where any expenditure or costs are incurred by the service provider, in the course of providing taxable service, all such expenditure or costs shall be treated as consideration, for the taxable service provided or to be provided and shall be included in the value for charging Service Tax on that service.

Expenditure or costs incurred as 'pure agent'[1] to be excluded: The expenditure or costs incurred by the service provider, as a pure agent of the recipient of service, shall be excluded from the value of the taxable service, if all the following conditions are satisfied:

1. The service provider acts as a pure agent of the recipient of service, when he makes payment to a third party for the goods or services procured;
2. The recipient of service receives and uses the goods or services, so procured by the service provider in his capacity as pure agent of the recipient of service;
3. The recipient of service is liable to make payment to the third party;
4. The recipient of service authorises the service provider, to make payment on his behalf;
5. The recipient of service knows that, the goods and services, for which payment has been made by the service provider, shall be provided by the third party;
6. The payment, made by the service provider on behalf of the recipient of service, has been separately indicated in the invoice, issued by the service provider, to the recipient of the service;
7. The service provider recovers, from the recipient of service, only such amount as has been paid by him to the third party; and
8. The goods or services, procured by the service provider, from the third party as a pure agent of the recipient of service, are in addition to the services he provides on his own account.

[1] **Pure agent:** Pure agent means a person who

- ⇨ enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs, in the course of providing taxable, service;
- ⇨ neither intends to hold nor holds any title to the goods or services, so as procured or provided as pure agent of the recipient of service;
- ⇨ does not use such goods or services so procured; and
- ⇨ receives only the actual amount incurred to procure such goods or services.

Value to include all components even if separately shown: The value of the taxable service is the total amount of consideration consisting of all components of the taxable service and it is immaterial that the details of individual components of the total consideration are indicated separately in the invoice.

Inclusions / Exclusions of certain items: Rule 6 of Valuation Rules specifies certain items to be included in or excluded from the value.

Service specific inclusions **B**

Rule 6(1) **Service Specific Inclusions**

The items to be included in the taxable value of service, which are specific to the concerned service are:

Service classification	Cost/expenditure/commission included
Stock broking service	Commission/brokerage, charged by a broker, on the sale or purchase of securities, including the commission or brokerage paid by the stock-broker, to any sub-broker.
Telecommunication service	Adjustments made by telegraph authority, from any deposits made by the subscriber, at the time of application for Telephone Connection / Pager/ Facsimile / Telegraph / Telex / Leased Circuit, etc.
Insurance Services (Life and General)	Amount of premium, charged by the insurer, from the policy holder;
Air Travel Agent	Commission received by the Air Travel Agent, from the airline;
Insurance Auxiliary Services	**Commission, fee or any other sum:** 1. Received by an Actuary or Intermediary or Insurance Intermediary or Insurance Agent, from the insurer; 2. Paid to such an agent, by the Insurer appointing such an agent, in relation to Insurance Auxiliary Services, provided by an Insurance Agent;
Authorized Service Station	Reimbursement received by Authorized Service Station, from the manufacturer, for carrying out any service of any motor car, light motor vehicle or two wheeled motor vehicle manufactured by such a manufacturer;
Rail Travel Agent	Commission or any amount received by the Rail Travel Agent, from the Railways or the Customer;
Clearing and Forwarding Agency	Remuneration or Commission, by whatever name it is called, paid to such an agent by the client engaging such an agent, for the services provided by a clearing and forwarding agent, to a client, rendering services of clearing and forwarding operations in any manner.

The amount realized as demurrage or by any other name whatever called for the provision of service beyond the period originally contracted or in any other manner relatable to the provision of service.

Services specific exclusions **B**

The value of any taxable service does not include the following:

1. Initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit
2. Airfare collected by the Air Travel Agent
3. Rail fare collected by Rail Travel Agent
4. Interest on loans
5. Amount collected for delayed payment of a telephone bill not treated as consideration charged for provision of telecom service and hence not a part of the value of taxable service.
6. Taxes levied by any Government on any passenger traveling by air, if shown separately on the tickets or in the invoice, issued for such ticket. (w.e.f. 27-02-2010)
7. Accidental damages due to unforeseen action not relatable to the provision of service;

8. Subsidies or grants disbursed by the Government, not in the nature of directly influencing

The value of materials sold, in provision of service, allowed as deduction		**B**
[1] Material Value:	***Excluded:***	If the service provider supplies goods and material while providing the service, value of goods and material will be excluded, for the purpose of payment of Service Tax.
	Value vs. cost:	The amount deductible is the value of the materials/goods supplied, and not the cost. Value refers to the worth of a thing in money, whereas cost is the payment required for acquiring such material.
	Example:	In case of commercial training and coaching institutes, deduction will be available only to the sale value of standard text books, which are priced. Any study material or written text, provided by the institute, will not be allowable as deduction.
[2] Treatment of materials consumed:	Materials consumed in providing a service cannot be reduced from value, for the purpose of measuring Service Tax payable. Deduction is available only for the value of goods and materials sold, subject to maintenance of documentary evidence of such sale.	
	Example:	Cost of materials used for cosmetics in beauty parlour or Soap oil in repair and maintenance service cannot be excluded from taxable value as they are consumed and not sold.

Manner of determination of value of service portion in execution of a works contract from the total contract		**A**
Where value of goods ascertainable:	As per Rule 2A the value of the service portion in the execution of a works contract is the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract.	
Where the value of goods not ascertainable:	*Where works contract is for*	*Value of the service portion shall be*
	A. Execution of original works	40% of the **total amount** charged for the works contract
	B. Maintenance or repair or reconditioning or restoration or servicing of **any goods**	70% of the **total amount** charged for the works contract
	C. In case of other works contracts, not included in serial nos. (A) & (B) above, including contracts for maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings.	60% of the **total amount** charged for the works contract

Illustration:

Mr. Abhishek providing services which is part of a works contract. From the following details, determine the value of service portion in execution of works contract.

	₹
Gross amt. received excluding taxed	*95,00,000*
Fair market value of goods supplied by the service receive receiver excluding taxes	*10,00,000*
Amt. charged by service receiver for such goods or service received by service provider	*5,00,000*

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The manner of arriving at the 'total amount charged' is explained with the help of the following example pertaining to works contract for execution of 'original works'.

	Notation	Amt. in ₹
	Gross amt. received excluding taxes	95,00,000
Add:	Fair market value of goods supplied by the service receiver excluding taxes	10,00,000
Less:	Amount charged by service receiver for Such goods or services received by service provide	5,00,000
	Total amt. charged	1,00,00,000
	Value of service portion (40% of total amt. charged)	**40,00,000**

Determination of value of service in relation to money changing **B**

Rule 2B **Determination of value of service in relation to money changing**

Subject to the provisions of Section 67, the value of taxable service provided, so far as it pertains to purchase or sale of foreign currency, including money changing, shall be determined by the service provider in the following manner:

[A] For a currency, when exchanged from, or to, Indian Rupees (INR ₹)

Value = Difference in the buying rate or selling rate and the RBI reference rate for that currency at that time × Total units of currency

Example 1: **Purchase of foreign currency by money-changer**

US$ 1,000 are sold by a customer at the rate of 45 per US$ RBI reference rate for US$ is ₹45.50 at that time.

The taxable value = (RBI Rate – Buying Rate) × No. of units of foreign currency bought
= (45.5 – 45) per US$ × 1000 US$
= **500**

Example 2: **Sale of foreign currency by money-changer**

INR 70000 is changed into Great Britain Pound (GBP). The exchange rate offered is 70, thereby giving GBP 1000. RBI reference rate at that time for GBP is 69.

The taxable value = (Selling rate – RBI Rate) × No. of units of foreign currency sold
= (70 – 60) per GBP × 1000 GBP
= **1,000**

If no RBI rate available, Value = 1% of INR: In case where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money

[B] In the where neither of the currencies exchanged is Indian Rupee (i.e. One foreign currency is exchanged for another foreign currency)

Value shall be computed as follows

Amt. 1:	Foreign Currency sold × RBI Reference Rate of that currency to Indian rupees at that time	……
Amt. 2	Foreign Currency Bought × RBI Reference Rate of that currency to Indian rupees at that time	
	Gross Indian Rupee (*minimum of Amt. 1 and Amt. 2*)	……
	Value = 1% of Gross Indian Rupee	……

Note:

Service tax payable @ 12.36% on value: The value as computed under (a) or (b) above shall be liable to service tax at the normal rate of 12.36%.

How is the value of service portion to be determined in supply of food or any other article of human consumption or any drink in a restaurant or as outdoor catering? **A**

The manner of determination of service portion in such an activity is very simple and is given in Rule 2C of the Service Tax (Determination of Value) Rules, 2006. In terms of the said rule value of the service portion shall be determined in the following manner:

Value of service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner	***Shall be .... per cent of the total amount charged:***
In restaurant	40
As part of outdoor catering	60

Practical Questions

<u>Value of taxable services</u>

1. Answer the following:

(1) Akshay contracts with Abhishek, a real estate agent, to sell his house and thereupon Abhishek gives an advertisement in television at a cost of ₹ 5 lakhs. Abhishek billed ₹ 15 lakhs to Akshay, including charges for television advertisement, showing them separately in the invoice. Mr. Abhishek says that, the value of taxable service in his case is ₹10 lakhs only, as he acted as a pure agent of Mr. Akshay, while taking advertisement. Compute the Service Tax to be billed.

(2) In the course of providing a taxable service, a service provider incurs costs such as traveling expenses, postage, telephone, etc., to the extent of ₹ 20,000. He charges ₹ 80,000 for his services and indicates the said costs separately in the invoice issued to the recipient of the service. Compute the amount of Service Tax, to be billed by the service provider.

(3) Salman contracts with Shahrukh, an architect, for building a house and Shahrukh's fees is fixed at ₹ 3,00,000. During the course of providing the taxable service, Shahrukh incurs expenses such as telephone charges, air travel tickets, hotel accommodation, etc., totalling ₹ 50,000, to enable him to effectively perform the provision of services to Salman. Compute the Service Tax liability of Shahrukh.

(4) Mohan clearing and forwarding agent charges ₹ 50,000 for his services, which includes octroi charges ₹ 10,000, paid on behalf of his client. Compute the value of taxable service and Service Tax liability.

(5) A cable operator charges ₹10,000 for his services, which includes entertainment tax ₹2,000, paid on behalf of his client. Compute the value of taxable service and Service Tax liability.

Solution:

(1) Since advertising service is an input service for the estate agent, in order to enable or facilitate him to perform his services as an estate agent, Mr. Abhishek doesn't act as an agent of Mr. Akshay in taking advertisement.
Hence, the Service Tax = ₹ 15 lakhs × 12.36% = **₹ 1,85,400**

(2) In this case, the service provider is not acting as an agent of the recipient of service, but procures such inputs or input service, on his own account, for providing taxable service. Such expenses do not become reimbursable expenditure, merely because they are indicated separately in the invoice issued, by service provider to the recipient of service.
Hence, the Service Tax = ₹ (80,000 + 20,000) × 12.36% = **₹ 12,300**

(3) Value of taxable service = ₹ 3,00,000 + ₹ 50,000 = ₹ 3,50,000, and
Service Tax @ 12.36% = **₹ 43,260**.

(4) The clearing and forwarding agent acts as a pure agent of the client while paying octroi charges.
Hence, the value of the taxable service = ₹ 50,000 – ₹ 10,000 = ₹ 40,000, and
Service Tax @ 12.36% = **₹ 4,944**

(5) The cable operator acts as a pure agent of the client, while paying entertainment tax.
Hence, the value of the taxable service = ₹ 10,000 – ₹ 2,000 = ₹ 8,000, and
Service Tax @ 12.36% = **₹ 988.80**

Pure agent

2. **Mr. Ajay, a custom house agent, charges ₹ 1,00,000 from a client. This sum includes ₹ 10,000 towards the payment of customs duty, on behalf of the client. Compute the Service Tax to be charged from the client.**

Solution:

Expenses incurred by the service provider in his capacity as a pure agent do not form the part of the value of taxable service. Here, the custom house agent, Mr. Ajay, has paid ₹ 10,000 towards customs duty on behalf of the client, which is an expenditure incurred by Mr. Ajay in his capacity as the 'pure agent'. Since the sum of ₹ 10,000 doesn't include any element of profit, the same will not form a part of the value of taxable service.

Hence, the value of taxable service = ₹ 1,00,000 – ₹ 10,000 = ₹ 90,000.

Service Tax to be charged = ₹ 90,000 × 12.36% = **₹ 11,124**

3. **Mr. Ranvijay, an architect, finds a client Mr. Raghu, who need the services of an architect, as well as interior decorator. Mr. Raghu asks Mr. Ranvijay to find an interior decorator on his behalf, decide the terms of his engagement and also his remuneration, make payment to him on his (Mr. Raghu's) behalf, and provide a consolidated bill, showing relevant break-ups, to him (Mr. Raghu). Mr. Ranvijay finds an interior decorator, Mr. Rajiv, whose remuneration is fixed at ₹ 2,00,000 (inclusive of all taxes). Mr. Ranvijay charges ₹ 8 lakhs towards the value of taxable service provided by him. Compute the amount of the Service Tax to be charged in the bill by Mr. Ranvijay if**
   - **(a) The bill amount includes an additional amount of ₹ 2,00,000, towards the cost of interior decorator ; OR**
   - **(b) The bill amount includes an additional amount of ₹ 2,50,000, towards the cost of interior decorator.**

Solution:

(a) In this case, the bill amount includes only the actual cost of interior decorator. Since Mr. Ranvijay has acted as the pure agent of Mr. Raghu, he will get deduction of such cost.

Therefore, the value of taxable service provided by Mr. Ranvijay = ₹ 10,00,000 – ₹ 2,00,000
= ₹ 8,00,000,

Service Tax = ₹ 8,00,000 × 12.36% = **₹ 98,880**.

(b) In this case, bill amount includes amount in excess of the actual cost of interior decorator. Hence, Mr. Ranvijay will not be the 'pure agent' of Mr. Raghu, and thus, he will not get any deduction of such cost.

Therefore, the value of taxable service provided by Mr. Ranvijay = ₹ 8,00,000 + ₹ 2,50,000
= ₹ 10,50,000,

Service Tax = ₹ 10,50,000 × 12.36% = **₹ 1,29,780**.

Gross amount charged and Value of taxable service

4. **Hotel TAJ Palace charges 10% of bill amount as service charges and the Department has asked them to pay Service Tax on it. The assessee has submitted that, the amount @ 10%, collected from the customers, is subsequently disbursed among the staff. Therefore, it is not the part of their income and cannot be included in gross amount charged by them. Examine the case and advise suitably.**

Solution:

As per Sec. 67, the value of taxable service shall be the gross amount charged by service provider for the taxable service provided or to be provided by him. Since the assessee was charging service charges (@ 10% of the bill amount) from its customers for providing the services, the said amount was liable to be included in the gross amount charged.

Therefore, service charges (@ 10% of the bill amount) charged by Hotel TAJ Palace, are includible in gross amount charged by them and will be liable to Service Tax.

Determination of liability - ST not charged separately

5. Ms. Anushka rendered a taxable service to a client. A bill for ₹ 40,000 was raised on 29-4-2012; ₹ 15,000 was received from the client on 1.5.2012 and the balance on 23.5.2012. No Service Tax was separately charged in the bill. The questions are:

(a) Is Ms. Anushka liable to pay Service Tax, even if the same has not been charged by her?

(b) In case, she is liable, what is the value of taxable service and the Service Tax payable?

Solution:

Service Tax is to be paid, even though the same is not charged separately in the bill.

Date	**Nature**	**Amt. received (₹)**	**Taxable service (₹)**	**Service tax @ 12%**	**Cess 3% (2%+1%)**	**Total liability (₹)**	**Due date**
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6) = [(5) × 3%]**	**(7)**	**(8)**
29.04.2012	Bill raised	—	40,000	4,272	128	4,400	05.07.2012
01.05.2012	Part amt.	15,000	15,000	—	—	—	—
23.05.2012	Blc. Amt.	25,000	25,000	—	—	—	—

Liability and extent of liability

6. Ms. Priyanka rendered taxable services to a client. A bill for ₹ 50,000 was raised on 27.04.2012; ₹ 25,000 was received from the client on 04.05.2012 and the balance on 25.05.2012. No Service Tax was separately charged in the bill. The questions are:

(a) Is Ms. Priyanka liable to pay Service Tax, even though the same has not been charged by her?

(b) In case she is liable, what is the value of taxable service and the Service Tax payable?

Solution:

(a) Principles of Law:

Payable, even if not collected: This liability is not contingent upon the service provider realizing or charging the Service Tax at the prevailing rate. The statutory liability does not get extinguished, if the service provider fails to realize or charge the Service Tax from the service receiver.

Conclusion: Hence, Ms. Priyanka is liable to pay Service Tax.

(b) Value of taxable services: Value of taxable services $= \frac{\text{Gross amt. charged}}{(100+\text{Effective rate})} \times 100$

Analysis & Conclusion:

(i) The rate of service tax payable = 12% + cess 3% = 12.36%

(ii) Value of taxable service = **₹ 44,500**

Service tax payable $= \frac{50,000}{112.36} \times 12.36$ = **₹ 5,500**

7. M/s. Renu consultants are a labour contractor of manpower to M/s. Sonu creations. They charge the principal employer, for the wages of their labour, which amounts to ₹ 1,20,000, plus their service charge of ₹ 12,000 for arranging the labour. The issue is, whether Service Tax is payable on the gross amount charged by them, or only their charges for labour. Examine the case and advise suitably.

Solution:

(a) Taxable Value: Section 67 states that value of any taxable service is the gross amount charged by the service provider, for the taxable services rendered by him.

(b) Analysis of given case: Value includes recovery of staff costs from the recipient, e.g., salary and other contributions. Even if the arrangement does not involve the recipient paying these staff costs to the supplier (because the salary is paid directly to the individual or the contributions are paid to the respective authority), these amounts are still part of the consideration and hence, for part of the gross amount.

(c) **Conclusion:** Service Tax is to be charged on the full amount of consideration, for the supply of manpower, whether full time or part time. Hence, the taxable amount is the entire amount i.e. ₹ 1,32,000.

Determination of liability of service tax

8. MM Ltd. has entered into a contract with OP Ltd. on 31.05.2012 for rendering services. The contract contains clear details of services. Consideration and Service Tax are charged separately. The following information is also available:

(a) Advances received in June 2012, from OP Ltd., towards all services : ₹ 1,20,000.
(b) Total value of services billed to OP Ltd. in August 2012 : ₹ 4,20,000.
(c) Non-taxable services billed to OP Ltd. [including in (b) above] : ₹ 1,40,000
Balance consideration for services is received in December 2012.

(i) How many times does the liability to pay Service Tax arise, in such a case and when?
(ii) What is the Service Tax liability in each case? What are the due dates for payment in each case?

Solution:

(i) Liability to pay Service Tax arises only on mercantile basis.

(ii) In the given case, liability to pay Service Tax is in respect of
(a) Receipt of advance money
(b) Balance portion of money received, in respect of taxable services

Month	Nature	Amt. recd. or due	Towards taxable service	Service tax @ 12%	Service tax liability	Cess @ 3%	Total liability	Due date
June, 2012	Advance	1,20,000	80,000 $\left(\frac{2}{3}\times 1,20,000\right)$	40,000 $\left(\frac{1}{3}\times 1,20,000\right)$	9,600	288	9888	5/7/12
Aug., 2012	Bill raised	Though not received, it was due as per PTR (4,20,000 *Less* 1,20,000)	2,00,000 $\left(\frac{2}{3}\times 3,00,000\right)$	1,00,000 $\left(\frac{1}{3}\times 3,00,000\right)$	24,000	720	24,720	5/9/12
Dec., 2012	Balance	3,00,000	—	—	—	—	—	—

9. Ms. Karina, a proprietress of Royal Security Agency, received ₹ 1,00,000 by an account payee cheque, as advance, while signing a contract for providing taxable service. She received ₹ 5,00,000 by credit card while providing the service and another ₹ 5,00,000 by a pay order, after completion of the service on 31st January, 2013. All three transactions took place, during the financial year 2012-13. She seeks your advice about her liability towards value of taxable service and the Service Tax payable by her.

Solution:

Principle: Gross amount charged means Gross amount charged by a service provider for the taxable service which is inclusive of Service Tax payable. It includes payment by cheque, credit card, deduction from account and any form of payment, by issue of credit notes or debit notes and book adjustment.

Conclusion: In the given case, Service Tax liability = $11,00,000\times\frac{12.36}{112.36}$ = **₹ 1,21,004**

10. Mr. Parekh is a well-known interior designer. He has recently designed a 10,000 sq. ft. office of an air conditioner manufacturing company. For this job, he has been paid by the recipient of service, ₹ 12,00,000. Besides, the recipient of service has gifted gold ornaments. Service Tax liability (if any) will be met by the recipient of service in addition to the aforesaid payment. Find out the Service Tax liability, under the following two different situations:

<u>Situation 1:</u> For a similar job, Mr. Parekh charges at a rate of ₹ 280 per sq. ft.

<u>Situation 2:</u> Mr. P has not provided similar service to any other manufacturing company. Equivalent money value of a jewellery is ₹ 9,20,000. The cost of provision of taxable services, provided by Mr. Parekh, in this case is ₹ 22,00,000

<u>Situation 3:</u> In situation 2, assume that cost of provision of taxable services provided by Mr. Parekh in this case is ₹ 7,00,000.

Solution:

Situation	Valuation	Taxable value of service (₹)	Tax Liability (₹)
1	For a similar job, Mr. Parekh charges at a rate of ₹ 280 per sq. ft. Therefore, for 10,000 Sq. ft. it is ₹ 28,00,000	28,00,000	3,46,080
2	Amt. recd. in cash 12,00,000 *Add:* Monetary value of consideration, in kind 9,20,000 Aggregate amt. 21,20,000 However, cost to Mr. P for providing service is ₹ 22,00,000	22,00,000	2,71,920
3	The aggregate of monetary consideration and consideration in kind is ₹ 21,20,000. Cost to Mr. Parekh for providing service is ₹ 7,00,000. Taxable value of service will be ₹ 21,20,000.	21,20,000	2,62,032

11. An interior decorator charges ₹ 5,50,000 from a client, for providing professional services. The break-up of the bill is:

Value of furniture sold to the client ₹ 2,50,000
Labour and facility charges ₹ 1,50,000
Labour and facility charges ₹ 1,50,000

Compute the amount of Service Tax to be charged from the client.

Solution:

(a) Principles:

- ⇨ Value of furniture sold to client will be exempt under subject to fulfillment of conditions specified therein.
- ⇨ Labour and facility charges are liable to Service Tax.
- ⇨ Value of materials consumed in providing the service forms intrinsic part of the value service, and is not deductible.

(b) <u>Analysis & Conclusion:</u>

Particulars	Computation	Amt. (₹)
Value of taxable service	₹ 1,50,000 + ₹ 1,50,000	3,00,000
Service tax to be charged @ 12.36%	₹ 3,00,000 × 12.36%	37,080

12. Ram Ltd manufactures Turbo Engines for manufacturing plants and also provides installation services. The value of Turbo Engines supplied to its customer including profit element, is ₹ 20,00,000. The installation charges towards labour is ₹ 1,00,000, the cost of consumables is ₹ 55,000 and the profit element on installation and consumables is ₹ 1,50,000. What is the value of taxable service?

Solution:
As per Rule 2 of the valuation rules, the value of taxable services does not include the value of material supplied to the workplace. In the given case, value of taxable service is calculated as under:

	Particulars	Amt. (₹)
	Cost of labour	1,00,000
Add:	Cost of consumables	55,000
Add:	Profit	1,50,000
	Taxable value of service	3,05,000

13. Amethyst, Fashion Designers, undertake fashion designing contracts to various events. Services provided to X Ltd. is for ₹ 1,00,000. X Ltd., the manufacturer of cosmetics, gave packs of cosmetics to Amethyst as gift. Find the taxable value of service, if:
(a) For similar services he charges ₹ 5,00,000.
(b) Consideration is not known.

Solution:

Situation	Taxable value of service
(a) Similar services he charges ₹ 5,00,000	Taxable value of service = Gross amount charged by the service provider to provide similar service, to any other person, in the ordinary course of trade = ₹ 5,00,000
(b) Consideration is not known.	Taxable Value of service will be based on the cost plus reasonable profit. Such cost will have to be worked out, on the basis of usual costing principles, of normal costs and allocation of normal overheads, and including reasonable profit thereon.

14. Tulsiram, an excise agent, charges a sum of ₹ 74,000 from his client vide Bill No. 44, dated February 10th, 2013. This sum includes ₹ 45,000 towards the payment of excise duty, on behalf of his client. Compute the Service Tax to be charged from the client.

Solution:
⇨ Any expenditure incurred by a service provider in his capacity as a pure agent does not form the part of taxable services.
⇨ In the given problem, Tulsiram acts as a pure agent of his client, and ₹ 45,000 is paid to the excise department, on behalf of the client, which will not be liable for Service Tax.
⇨ Consequently, Service Tax to be charged = (₹ 74,000 – ₹ 45,000) × 12.36% = **₹ 3,584**

15. Vipul Kothari & Co., is a service provider. It received ₹ 19,80,000 during the Financial Year 2012-13, after the deduction of tax at source, under Section 194J of the Income-tax Act, 1961.
(a) The rate of tax deduction being 10% (i.e. after deduction of ₹ 2,20,000). Calculate the Service Tax liability of Vipul Kothari & Co.
(b) Can a multiple service provider use a single challan for payment of Service Tax, for various services rendered by it?

Solution:
(a) Service Tax is to be paid on the value of taxable service, which is charged by a Service Tax Assessee. TDS is included in the charged amount. Service Tax is, therefore, payable on the total amount of inclusive of Income tax, deducted at source.

Particulars	Computation	Amt. (₹)
Value of taxable service	₹ 19,80,000 + ₹ 2,20,000	22,00,000
Service tax to be charged @ 12.36%	₹ 22,00,000 × 12.36%	**2,71,920**

(b) Yes. A Multiple Service Provider can either use single GAR 7 Challan for making payment in respect of all services, or separate challans for each services.

16. Vijay has paid the amount of Service Tax for the quarter ending 30th June, 2012, by cheque. The date of presentation of cheque to the designated bank is 5th July, 2012, and it is realized

by the bank on 7th July, 2012. What is the date of payment of Service Tax in this case? Whether any interest and penalty is attracted in this case?

Solution:

Payment of cheque	**Date of deposit = Date of remittance:**	Where payment is made in Cheque: ⇨ It should be deposited with the bank on or before the due date, and ⇨ If it is realized in the normal course of banking, even after the due date, payment will be deemed to have been made before the due date.
	Dishonour of cheque:	If the cheque is dishonoured, Service Tax will not be deemed to have been paid.
Due date	*In case of individual:* 5th of the month following the quarter of collection, i.e. on or before 5th of July, 5th of October, 5th January and in case of March, 31st March itself.	
Conclusion	The date of payment of Service Tax is 5th July 2012, i.e. on the due date itself. Therefore no interest and penalty are attracted in this case.	

17. Reliance Ltd. gives the following particulars relating to the service provided by it to its various clients for the month ending 31.03.2013:

(1) Total bills raised for ₹ 17,50,000 out of which bill for ₹ 1,50,000 was raised on an approved International Organization and payments for bills for ₹ 2,00,000 were not received until 31.03.2013

(2) Amount of ₹ 1,00,000 was received as an advance from Birla Ltd. on 25.03.2013 to whom the services were provided in April 2013.

Compute: (a) Value of Taxable Services.
(b) Amount of Service Tax Payable.
(c) Last date of Service Tax payable.

Solution:

(a) Value of Taxable Services for the month ending 31.03.2013

	Particulars	**Amt. (₹)**
	Total bills raised during the month ending 31.03.2013	17,50,000
Less:	Bills raised on an approved International Organization due to Exemption granted.	(1,50,000)
	Bills in respect of which payment was not received until 31.03.2013: No adjustment is required because according to Rule 3 of point of Taxation Rules, 2011 where invoice is issued within 30 days from the date of completion of the service, the point of Taxation will be earlier of the following two dates: (a) Issue of Invoice for the service provided ; *OR* (b) Date of payment to the extent it is received In the absence of my specific information in the question, it is assumed that invoice has been issued within 30 days from the date of completion of the taxable service. Consequently, service Tax is required to be paid on the basis of issue of invoice even if no payment has been received until 31.03.2013	
Add:	Amount of advance received on 25.03.2013 is to be included in the taxable value of service because according to Explanation appended to rule 3 of point of Taxation rules, 2011 wherever any advance by whatever name known is received by the service provider towards the provision of taxable service, the point of taxation shall be the date of receipt of each such advance.	1,00,000
	Value of taxable service	17,00,000

(b) Amount of service tax

Particulars	Amt. (₹)
Value of taxable service	17,00,000
Service tax to be charged @ 12.36%	**2,10,120**

(c) Last date of service tax payable

Since the Service Tax is required to be paid for the month of March 2013, last date for making payment of Service Tax payable will be 31.03.2013 in accordance with second proviso to rule 6(1) of Service Tax Rules, 1994.

18. Ganesh, a Practicing Chartered Accountants provides the following particulars, for the Quarter ending 31.12.2012. All bills raised by G are Inclusive of Service Tax, if applicable.

Date	Particulars	Amt. (₹)
25.09.2012	**Bill no.1010 in r/o Statutory Audit Fee charged to R. Ltd.**	**3,00,000**
05.10.2012	**Bill no.1011 in r/o Internal Audit Fee charged to S. Ltd**	**2,40,000**
19.10.2012	**Amount Received from R Ltd. In respect of Bill No.1010**	**3,00,000**
22.10.2012	**Bill no. 1012 in r/o Appearance before Appellate Tribunal against notice issued to T Ltd.**	**2,60,000**
28.10.2012	**Amount received from T Ltd. in r/o Bill No.1012**	**1,60,000**
04.11.2012	**Amount received from S Ltd against bill no. 1011**	**1,60,000**
04.01.2013	**Balance Amount Received from S Ltd. against Bill No.1011**	**80,000**

You are required to compute the following for the quarter ending 31.12.2012

(a) Value of Taxable Service

(b) Amount of Service Tax payable

(c) Last date of Service Tax payable

[Note: Value of taxable services provided during the financial year 2011-12 = ₹ 40,00,000]

Solution:

(a) Value of taxable service

Date	Particulars	Calculation	Amt. (₹)
19.10.2012	Amount Received from R Ltd. in respect of Bill No. 1010	$3,00,000 \times \frac{100}{112.36}$	2,67,000
28.10.2012	Amount Received from T Ltd. in respect of Bill No. 1012	$2,60,000 \times \frac{100}{112.36}$	2,31,400
04.11.2012	Amount received From S Ltd. against Bill No.1011	$1,60,000 \times \frac{100}{112.36}$	1,42,400
	Total value of taxable service	—	6,40,800

(b) Amount of service tax payable

Particulars	Amt. (₹)
Value of taxable service	6,40,800
Service tax to be charged @ 12.36%	**79,202**

(c) Last date of service tax payable

Since the Service Tax is required to be paid for the quarter ending 31.12.2012, last date for making payment of Service Tax will be as under [depending upon the mode of making payment of Service Tax] in accordance with first proviso to rule 6(1) of Service Tax Rule, 1994.

Mode of making payment of Service Tax	***Last Date for Depositing Service Tax for the quarter ending 31.12.12***
Electronically through internet banking	06.01.2013
Any mode other than e-banking such as cash / Cheque / Credit card etc.	05.01.2013

19. Kirti Ltd. has entered into contract with H Ltd. on 05.07.2012 for rendering both taxable and non-taxable services for an aggregate amount of ₹ 31,50,000 consisting of ₹ 21,00,000 for taxable services and ₹ 10,50,000 for non-taxable services. Following further information is given in this respect:

(1) Advance of ₹ 9,00,000 [exclusive of service Tax] received on 05.07.2012 from H Ltd. towards both towards taxable and non-taxable Services

(2) The entire contract was completed on 24.08.2012 and invoice was issued on 02.09.2011 for above – mentioned contract amount of ₹ 31,50,000

(3) Balance payment of ₹ 22,50,000 [₹ 31,50,000 – ₹ 9,00,000] was, however, received on 19.03.2013.

From the above details, please determine the following:

(a) Point of Taxation as per point of Taxation Rules, 2011.

(b) Amount of Service Tax payable.

(c) Last date for making payment of Service Tax without any interest.

(d) Will there be any change in point of Taxation and last date for making payment of Service Tax without any interest if invoice is issued on 29.09.2012 instead of 02.09.2012.

Solution:

(a) Determination of point of taxation

Particular	**Point of taxation**	**Remarks**
Receipt of advance of ₹ 9,00,000 [exclusive of Service Tax] on 05.07.2012	05.07.2012	Explanation to Rule 3 of point of Taxation Rules, 2011 provides that wherever any advance by whatever name known is received by the service provider towards the value of provision of taxable service, the point of Taxation shall be the date of receipt of each such advance.
Issue of invoice for ₹ 31,50,000 on 02.09.2012 consequent upon completion of contract on 24.08.2012	02.09.2012	According to Rule 3 of point of Taxation Rules.2011 when the invoice is issued within 30 days from the date of completion of the service, point of Taxation will be earlier of the following two dates: **(i)** Issue of invoice for the service provided or to be provider *OR* **(ii)** Date of payment to the extent it is received. Since in the present case invoice has been issued within 30 days from the date of completion of invoice, point of Taxation shall be date of issue of invoice i.e.2.09.2012
Receipt of balance amount of ₹ 22,50,000 on 19.03.2013 after adjusting advance of ₹ 9,00,000		₹ 22,50,000 forms part of total contract of ₹ 31,50,000. Point of Taxation in r/o ₹ 31,50,000 has already been determined above in two stages i.e. on receipt basis in r/o advance and on issue of invoice basis in r/o remaining ₹ 22,50,000.Thus when outstanding payment of ₹ 22,50,000 is received, there will be no point of Taxation.

(b) Amount of service tax payable:

Since Taxable Services and Non-Taxable are to be provided for ₹ 21,000 for ₹ 10,50,000 respectively, the ratio of Taxable to Non-Taxable Services works out to be 2 : 1 Accordingly, the amount of Service tax payable has been calculated as under:

Total Amt.	Division of Total Amount into Taxable and Non-Taxable Portions		Calculation	Service tax payable
	Taxable	**Non-taxable**		
₹ 9,000,000	6,00,000	3,00,000	6,00,000 × 12.36%	74,160
₹ 22,50,000 [out of total of ₹ 31,50,000, above mentioned advance of ₹ 9,00,000 is to be deducted]	15,00,000	7,50,000	15,00,000 × 12.36%	1,85,400

(c) Last date for making payment of Service Tax without any Interest

Taxable amt. (₹)	Point of Taxation	Last date for making payment depending on mode of payment	
		Electronically through internet banking	***Any mode other than e-banking such as cash / Cheque / Credit card etc.***
6,00,000	05.07.2012	06.08.2012	05.08.2012
15,00,000	02.09.2012	06.08.2012	05.10.2012

(d) Consequence of issuing invoice on 29.09.2012

<table>
<tr><td>Point of taxation</td><td colspan="2">24.08.2012</td><td>According to Rule 3 of point of Taxation Rules. 2011 where invoice is not issued within 30 days from the date of completion of her service, point of Taxation shall be earlier of the following two dates:
i. Date of Completion of Service; OR
ii. Date of payment of Service to the extent it is received
Accordingly in the present case the date of completion of service will be point of Taxation.</td></tr>
<tr><td rowspan="3">Due date for payment of service tax</td><td colspan="2">Mode of payment</td><td rowspan="3">As Point of Taxation is 24.08.2012, last date for making payment of service Tax has been computed accordingly.</td></tr>
<tr><td>Electronically through internet banking</td><td>Any mode other than e-banking such as cash / Cheque / Credit card etc.</td></tr>
<tr><td>06.09.2012</td><td>05.09.2012</td></tr>
</table>

20. Raj Ltd. provides the following information for the half year ending 30.09.2012

(1) Total bills raised (exclusive of Service Tax) ₹ 68,00,000 which interalia include the following.

(i) Service provided for the official use of a foreign Diplomatic Mission in India = ₹ 6,00,000

(ii) Service rendered to a Developer of Special Economics Zone which are wholly Consumed with in SEZ for authorized operations = ₹ 4,00,000

(2) Amount of ₹ 30,00,000 (including ₹ 6,00,000 for service rendered to a Diplomatic mission) was received on 18.08.2012. These services were provided on 16.07.2012 and invoice was also raised on the same date.

(3) Amount of ₹ 32,00,000 (including ₹ 4,00, 000 for wholly –consumed service within SEZ) was received on 22.09.2012. These services were provided on 25.08.2012 & invoice was raised on 29.08.2012

(4) Advance of ₹ 6,00,000 [exclusive of Service Tax] was also received on 10.09.2012 against the services which will be provided on 11.10.2012

From the above details, determine the following:

(a) Point of taxation
(b) Value of Taxable Services and Amount of Service Tax Payable
(c) Last Date for depositing Service Tax without any interest.

Solution:

(a) Determination of point of taxation

Particular	Point of taxation	Remarks
Issue of invoice for ₹ 24,00,000 on 16.07.2012 consequent upon completion of Service on 16.07.2012. It is also worth highlighting that provision of Service to foreign Diplomatic Mission for official use in India has been specifically exempted from levy of Service Tax.	16.07.2012	According to Rule 3 of point of Taxation Rules, 2011 when the invoice is issued within 30 days from the date of completion of the service, point of Taxation will be earlier of the following two dates. **i.** Issue of invoice for the service provided or to be provided; OR **ii.** Date of payment to the extent it is received Since in the present case in voice has been issued within 30 days from the date of completion of service, point of Taxation shall be date of issue of invoice i.e., 16.07.2012.
Issue of invoice for ₹ 28,00,000 on 29.08.2012 consequent upon completion of service on 25.08.2012. It is also worth highlighting that provision of Services [which are wholly consumed in SEZ] to Developer of Special Economic Zone has been specifically exempted from levy of service Tax by virtue of Notification No. 17/2011 dated 01.03.2011	29.08.2012	Provisions of above-mentioned Rule 3 will apply in the present case also. Since in the present case also invoice has been issued within 30 days from the date of completion of service [25.08.2012], point of Taxation shall be Date of issue of invoice i.e. 29.08.2012.
Receipt of advance amount of ₹ 6,00,000 on 10.09.2012 against taxable services to be provided on 11.10.2012	10.09.2012	Explanation to Rule 3 of point of Taxation Rules, 2011 provides that wherever any advance by whatever name known is received by the service provider towards the value of provision of taxable service, the point of Taxation shall be the Date of receipt of each such advance. Since in the present case advance has been received on 10.09.2012, point of Taxation shall be receipt of such advance i.e.10.09.2012

(b) Value of taxable service

Value of taxable service (₹)	Point of taxation	Amt. of service tax payable @ 12.36% (₹)	Remarks
24,00,000	16.07.2012	2,96,640	Specific Exemption to service provided to foreign Diplomatic Mission in India as mentioned above.
28,00,000	29.08.2012	3,46,080	Specific Exemption to service provided to Developer of Special Economic Zone as mentioned above

6,00,000	10.09.2012	74,160	Taxable in accordance with Explanation to Rule 3 of point of Taxation Rules, 2011 as mentioned above.

(c) Due date for payment of service tax without interest

Taxable amt. (₹)	**Point of Taxation**	**Last date for making payment depending on mode of payment**	
		Electronically through internet banking	***Any mode other than e-banking such as cash / Cheque / Credit card etc.***
24,00,000	16.07.2012	06.08.2012	05.08.2012
28,00,000	29.08.2012	06.09.2012	05.09.2012
6,00,000	10.09.2012	06.10.2012	05.10.2012

21. Ajay Ltd. has agreed to render services to Mr. Guru. The following are the chronological events:
Contract for services entered into on 1-4-2012
Completion of provision of service on 1-5-2012

Advance received on 1st April, 2012 towards all services	**₹ 60,000**
Total value of services, billed on 25th May, 2012	**₹ 2,10,000**
Above includes non-taxable services of	**₹ 70,000**

Balance amount is received in June, 2012
When does the liability to pay service tax arise and for what amount? Contract contains details of services; consideration and service tax are charged separately, as mutually agreed upon. ***(CA-Inter, May 2007)***

Solution:

Invoice issued within 30 days from the date of completion of service. Part payment before completion, remaining later, hence, as per rule 3 of the Point of Taxation Rules, 2011, point of taxation is as follows:

Advance received towards taxable services on 1st April 2012 = $60,000 \times \frac{1,40,000}{2,10,000}$ = ₹ 40,000.

Service tax is payable on ₹ 40,000 for the month of April, 2012.
Service tax is ₹ 40,000 × 12.36% = ₹ 4,944, due date 5th May 2012.
Date of invoice is the point of taxation for the balance of amount.
Taxable services for the month of May 2012, on which service tax payable

= $\left(1,50,000 \times \frac{1,40,000}{2,10,000}\right)$ = ₹ 1,00,000

Service tax is = ₹ 1,00,000 × 12.36% = ₹ 12,360, due date 5th June 2012.

22. Ram, a software developer, has developed software for B Ltd. He has raised a bill of ₹ 2,50,000 (inclusive of service tax) on Beta Ltd. on 01-07-2012. A sum of ₹ 1,50,000 was received from Beta Ltd. on 15-08-2012 and the balance has not been received up to half year ended 30th September 2011. The questions are:

(a) Is the service provided by Ram liable to service tax? If yes, then whether Ram will be liable to pay service tax, even though the same has not been charged by him?

(b) Date of point of taxation

(c) In case Ram is liable to service tax, what is the value of taxable service and the service tax payable by him for the second quarter ended 30th September 2012?

Note: Previous year taxable services is ₹ 45 lakhs.

Solution:

(a) Yes, Ram is liable to pay Service tax, information technology and software services are taxable services with effect from 16.5.2008. Service tax is liable to pay even though the same has not been charged in the bill.

(b) Point of taxation: **15.08.2012**

(c) Service tax liability for the 2nd quarter ended 30th September 2012 is as follows:

Amount billed = ₹ 2,50,000

Service tax = $1,50,000 \times \frac{12.36}{112.36}$ = **₹ 16,501**

23. X & Co. a legal consultancy firm has been received the following amounts:

Date of receipt	Nature of receipt	Amt. (₹)	Time of providing service
20.04.2012	**For service**	**1,00,000**	**Service rendered in July, 2012**
30.06.2012	**Advance for service**	**5,00,000**	**Service were rendered in July and August, 2012**
05.08.2012	**For service**	**50,000**	**For service rendered in March, 2012**
10.09.2012	**Advance for service**	**3,50,000**	**A sum of ₹ 50,000 was refunded in October, 2012 after termination of agreement. For the balance Amount, service was provided in September, 2012.**

Compute:

(a) The amount of taxable service for the first two quarters of the Financial Year 2012-13

(b) The amount of Service tax payable.

Note: previous taxable services is ₹ 40 lakhs

Solution:

(a) Statement showing taxable services for the first two quarters of the Financial Year 12-13:

Particulars	1st Quarter: April, 2012 to June, 2012	2nd Quarter: July, 2012 to Sept., 2012
Taxable services received on 20.4.2012	1,00,000	—
Advance received on 30.06.2012	5,00,000	—
Taxable services received on 05.08.2012	—	50,000
Advance received on 10.09.2012	—	3,50,000
Total Received	**6,00,000**	**4,00,000**
(b) Service tax @ 12.36%	**74,160**	**49,440**

Note: Service tax paid on advance of ₹ 50,000 in the 2nd quarter (i.e., July 2012 to Sept. 2012) is ₹ 6,180 can be considered as excess paid in the 3rd quarter of the year. The sum of ₹ 6,180 can be adjusted against service tax payable or can claim refund. This is permissible only when the value of services and tax thereon is refunded to the person from whom it was received.

4. GENERAL PROCEDURES

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

4. General Procedures

Person liable to pay service tax	**Sec. 68**	**B**

- Section 68 of the act provides that every person providing taxable service to any person shall pay service tax in such manner and within such period as may be prescribed.
- Therefore, the person liable to say service tax is the 'provider of taxable service'.
- [Section 68(2)]: In respect of any taxable service notified by the central government, the service tax thereon shall be paid by such person and in such manner as may be prescribed and all the provisions of the act shall apply to such person as if he is the person liable for paying the service tax in relation to such service (reverse charge).

Person liable to pay service tax - person other than service provider	**Sec. 68(2)**

In respect of any taxable service notified by the central government, the service tax thereon shall be paid by such person and in such manner as may be prescribed and all the provisions of the act shall apply to such person as if he is the person liable for paying the service tax in relation to such service (reverse charge).

Requirements of registration under the service tax law	**Sec. 69**	**Rule 4**	**A**

Section 69 read with Rule 4 of the Service Tax Rules, 1994 lays down the provisions for registration, which are as under:

[1] Application

Every person liable to pay service tax must mandatorily make an application (in the Form ST-1) for registration to the designated Superintendent of Central Excise.

[2] Documents to be submitted

Copy of Permanent Account Number (PAN)
1. Proof of Residence
2. Constitution of the Applicant.
3. Power of Attorney in respect of authorised person(s)

Application to be rejected if documents not submitted within 15 days

The above documents must be submitted to the concerned authority within a period of 15 days from the date of filing of the application for registration. Failure to do so would lead to rejection of the registration application.

[3] Registration of special category of persons

1. An input service distributor; and
2. Any provider of taxable service whose aggregate value of taxable service in a financial year exceeds 9 lakhs.

[4] Time period for making an application

Cases	Person required to be take registration	Application for registration is to be made *within 30 day* from
New levy	Person liable of pay service tax, where service tax is levied on service provided by him for the first time	Date on which the service tax under Sec. 66B of Finance Act, 1994 is levied.
New business	A person commences the business of providing a taxable service after such service has been levied	Date of such commencement
ISD	Input Service Distributor	Date of commencement of business
Person claiming small service provider exemption if his aggregate value exceeds ₹ 9 lakh	Any provider of taxable service whose aggregate value of taxable service in a financial year exceeds ₹ 9 lakh	Date of exceeding aggregate value of taxable service of ₹ 9 lakh

[5] If the assessee provides more than one taxable service, a single application will suffice, mentioning therein all the taxable services.

[6] In case of assesses providing taxable service from more than one premises/offices

[A] Centralised Registration, if centralised billing/accounting system exists:

Where a person, liable for paying service tax on a taxable service

(a) Provides such service from more than one premises or offices; *OR*
Receives such service in more than one premises or offices; or,

(b) Has centralised billing system or centralised accounting system in respect of such service, and

(c) Such centralised billing or centralised accounting systems are located in one or more premises he may, at his option, register such premises or offices from where centralised billing or centralised accounting system are located.

Commissioner to grant centralised registration:

The centralised registration shall be granted by the Commissioner of Central Excise in whose jurisdiction the premises or offices, form where centralised billing or accounting is done, are located.

[B] Separate registrations, if no centralised billing/accounting system exists:

If the assessee does not have any centralized billing/accounting systems, he shall make separate application for registration in respect of each of such premises or offices to the jurisdictional Superintendent of Central Excise.

[7] Certificate

⇨ The Superintendent of Central Excise shall, after due verification, issue a certificate in Form ST-2 within 7 days** of the receipt of the application.

⇨ If the registration certificate is not granted within the said period, the registration applied for **shall be deemed to have been granted**.

[8] Change in information

⇨ Where there is a change in any information/details furnished by assessee in Form ST-1 at the time of obtaining registration or he intends to furnish any additional information or Assistant/Deputy Commissioner within a period of 30 days of such change.

⇨ The amended certificate of registration shall be granted within 7 days** of receipt of duly completed intimation.

⇨ If the registration certificate is not granted within the said period, the registration applied for shall be deemed to have been granted.

⇨ **** 7 days to be counted from receipt of duty complete application:** It is also clarified that the time limit of 7 days from date of receipt of application or intimation, within which the registration is to be granted, shall be reckoned from the date the application for registration is complete in all respects.

[9] In case of transfer of business, a fresh registration must be obtained by transferee, for which the application is to be made within 30 days from the date of transfer.

[10] Cancellation of certificate:

⇨ In case the registered assessee ceases to provide the taxable service for which he is registered, he must surrender the registration certificate immediately to the Superintendent of Central excise.

⇨ In that case, the Superintendent of Central Excise shall ensure that the assessee has paid all monies due to the Central Government under the provisions of the Act, and the rules and the notifications issued there under, and thereupon cancel the registration certificate.

Service Tax Code (STC) Number **B**

[1] STC is a **15 digit alpha-numeric code**, obtained by the service provider, on an application made to the Jurisdictional Superintendent of the Central Excise.

[2] It is combination of :

Particulars	No. of digits
Permanent Account Number (PAN)	10
Alpha-code (ST)	2
Permission code – Numeric	3

Example: $\underbrace{\text{AABBCC5588K}}_{\text{PAN}}$ – ST – 001

Alpha-code (ST) Permission code-Numeric

[3] STC will be allotted within 3 working days, from the date of application, in the prescribed format, by the Assistant Commissioner / Deputy Commissioner.

[4] It is mandatory to quote the STC number, on all documents relating to Service Tax.
[5] In respect of e-filing of Service Tax Returns, STC is referred to as STP code, without which, e-filing is not possible.

Procedure for payment of service tax **A**

[1] Rounding off:

Service tax to be paid shall be rounded off to nearest multiple of a rupee.

[2] Mode of payment:

- ⇨ Service tax is to be deposited through GAR-7 Challan with the bank designated by the CBEC.
- ⇨ If assessee deposits service tax by a cheque, then the date of presentation of cheque to the designated bank shall be the date on which service tax is treated as paid, provided cheque is realized, not dishonoured.

[3] Service tax to be paid electronically if gross service tax liability is 10 lakh or more:

Where an assessee has paid a total service tax of 10 lakh or more including the amount paid by utilization of CENVAT credit, in the preceding financial year, he shall deposit the service tax liable to be paid by him electronically, through internet banking.

[4] CENVAT Credit of service tax paid in case of service not provide, or, renegotiation of invoice:

Where

- ⇨ An assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason or
- ⇨ Where the amount of invoice is renegotiated due to
  - ☞ deficient provision of service, or
  - ☞ any terms contained in a contract,

The assessee may take the credit of such excess service tax paid by him, if the assessee

(a) Has refunded the payment or part thereof, so received for the service provided to the person from whom it was received; or
(b) Has issued a credit note for the value of the service not so provided to the person to whom such an invoice had been issued.

[5] Option to pay service tax in advance & adjust it against future service tax liability, or, advance payment of service tax:

Every person liable to pay service tax, may, on his own volition, pay an amount as service tax in advance and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period. However, the assessee shall-

(a) Intimate the details of the amount of service tax paid in advance, to the jurisdictional superintendent of central excise within 15 days from the date of such payment, and
(b) Indicate the details of the advance payment made, and its adjustment, if any in the subsequent return to be filed under Section 70 of the Act.

[6] Adjustment of excess payment of service tax:

Where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month / quarter

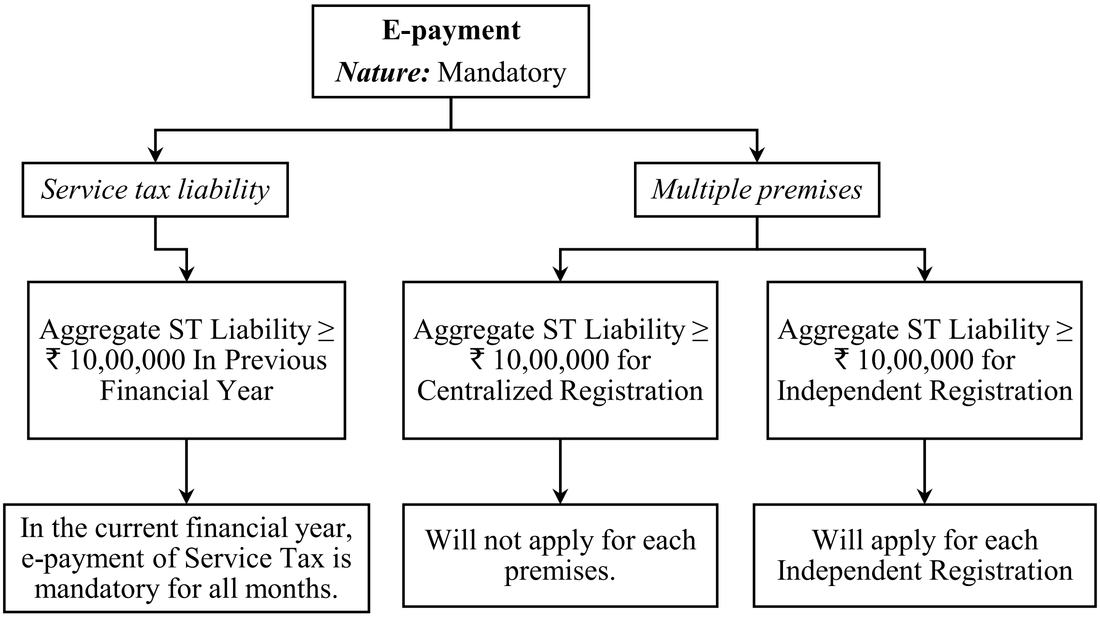
- ⇨ The assessee may adjust such excess amount paid by him against his service tax liability for the succeeding month / quarter,
- ⇨ Subject to the condition that the excess amount paid is on account of reasons not involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.

Interest @ 18% on delayed payment of service tax:

(a) Every person, liable to pay the service tax in accordance with the provisions of section 68 or rules made there under, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest @ 18% for the period by which such crediting of the tax or any part thereof is delayed.
(b) However, in the case of a service provider, whose value of taxable services provided in a financial year does not exceed 60 lakh
  - ☞ 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 3% p.a. i.e. the aforesaid rate of interest shall be 18% – 3% = 15% p.a. *[Amendment by the Finance Act, 2011 w.e.f 8-4-2011]*

E-payment of service tax C



Name:	The System is called "Electronic Accounting System in Central Excise and Service Tax" (EASIEST).	
Applicability:	Assessees, who have paid a Service Tax of ₹ 10 lakhs or more during the preceding financial year.	
Due date:	⇨ ***Individuals*** ⇨ ***Proprietary Firm*** ⇨ ***Partnership Firm***	6th of the month, following the quarter of services provided. In case of quarter ending in March, the tax should be paid on or before 31st March itself.
	Other person	6th of the month, following the month of services provided. In case of month ending in March, the tax should be paid on or before 31st March itself.
Qualifying limit:	***Many registered premises:***	₹ 10 lakhs would apply to each of the premises individually, if each such premises is separately registered for payment of Service Tax.
	Service recipient paying tax:	The limit of ₹ 10 Lakhs includes Service Tax paid under Rule 2(1)(d), i.e. tax borne by the service recipients on taxable services, received by him.
	Large Taxpayer Unit:	Cumulative Service Tax, paid by all registered premises of such large taxpayer, will be taken into account for the criterion of payment of Service Tax amount of ₹ 10 Lakhs.
	Amount paid by CENVAT:	₹ 10 lakhs limit includes total of Service Tax paid, i.e. by cash and by way of CENVAT Credit.
	Penalty:	Upto ₹ 10,000

Give a brief account of various composition schemes for payment of service tax. Write a note on option of the 'person liable to pay service tax' to discharge liability of service tax at specified percentage of the gross/consolidated price. **B**

The various composition schemes for payment of service tax are as follows:

[1]	**Option to Air Travel Agent [0.6% of domestic fare & 1.2% of international fare]**	**Rule 6(7)** [Service Tax Rules, 1994]

The person liable for paying the service tax in relation to the services provided by an air travel agent, shall have the option, to pay an amount calculated
(a) @ 0.6% of the basic fare in the case of domestic bookings, and
(b) @ 1.2% of the basic fare in the case of international bookings,
"Basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

[2]	**Life Insurance Business [3% of gross premium in 1st year and 1.5% in others]**	**Rule 6(7A)** [Service Tax Rules, 1994]

An insurer carrying on life insurance business shall have the option to pay tax:
(a) On the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of policy holder, if such amount is intimated to the policy holder at the time of providing of services;
(b) **In all other cases, 3% of the premium charged from policy holder in the 1st year and 1.5% of the premium charged from policy holder in the subsequent years; [w.e.f. 1-4-2012]** towards the discharge of his service tax liability instead of paying service tax at the rate specified in Section 66 of the Finance Act, 1994.
However, such option shall not be available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance.

[3]	**Promotion or marketing etc. of lottery [Optimal Composition Payment]**	**Rule 6(7C)** [Service Tax Rules, 1994]

The distributor or selling agent (including distributor or selling agent authorised by the lottery organizing State), liable to pay service tax for the taxable service of promotion, marketing, organizing or in any other manner assisting in organizing lottery, shall have the option to pay service tax as follows instead of paying service tax at normal rate-

Case	Service tax (as amended w.e.f. 01/04/2012)
1. If the lottery or lottery scheme is one where the guaranteed prize payout is more than 80%	**₹ 7,000** on every ₹ 10 Lakh (or part of ₹ 10 Lakh) of "aggregate face value of lottery tickets" printed by the organising State for a draw
2. If the lottery or lottery scheme is one where the guaranteed prize payout is less than 80%	₹ 11,000 on every ₹ 10 Lakh (or part of ₹ 10 Lakh) of "aggregate face value of lottery tickets" printed by the organising State for a draw

Aggregate face value in case of online lottery:
In case of online lottery, the aggregate face value of lottery tickets shall be taken as the aggregate value of tickets sold.

Option to be exercised within one month & not with drawable:
The distributor or selling agent shall exercise such option within a period of one month of the beginning of each financial year and such option shall not be withdrawn during the remaining part of the financial year. In case to new service provider, the option shall be exercised within one month of providing of taxable service.

Procedure of issuance of Bill / Invoice / Challan *[May 2006, 1 Mark]* B

The provisions of Rule 4A and Rule 4B of the service tax rules, 1994 for issuance of bill / invoice / challan are as follows:

[1] Invoice to be issued mandatorily

Every person providing taxable service shall issue an invoice / bill / challan signed by such person or a person authorised by him in respect of such taxable service provided or to be provided.

[2] Time limit for issue of invoice / bill / challan (as amended w.e.f. 1-4-2012)

The invoice / bill / challan shall be issued not later than 30 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.

****In case of banking and other financial services - Time limit of 45 days:**
- ⇨ The time limit for issue of invoice shall be 45 days instead of 30 days as aforesaid

⇨ The invoice / bill / challan may not be serially numbered and may not contain the address of the person receiving taxable service, but, must contain other information as specified above.

[3] Contents

Such invoice /bill / challan shall be serially numbered and shall contain the following

1. The name, address and the registration number of such person
2. The name and address of the person receiving taxable service
3. Description, classification and value of taxable service provided or to be provided, and
4. The service tax payable thereon.

Maintenance of records and its preservation under the service tax law Rule 5 A

[1] Computerised Records acceptable:

The records (including computerized data) shall be acceptable.

[2] Details to be given with first return:

Every assessee shall furnish to the Superintendent of central excise at the time of filing of return under Sec. 70 for the first time, a list in duplicate, of

A. All records prepared or maintained by the assessee for accounting of transactions in regard to
  (a) Providing of any service, whether taxable or exempted
  (b) Receipt or procurement of input services and payment for such input services
  (c) Receipt, purchase, manufacture, storage, sale or delivery, as the case may be, in regard of inputs and capital goods
  (d) Other activities, such as manufacture and sale of goods, if any

B. All other activities financial records maintained by him in the normal course business.

[3] Records to be preserved for 5 years:

All such records shall be preserved at least for a period of five years immediately after the financial year to which such records pertain.

Provisions relating to filing of returns under the service tax law A

The provisions relating to filing of returns as given under section 70 of the Finance Act, 1994 and Rules 7, 7B and 7C of the Service Tax Rules, 1994 are as follows:

[1] Person liable for filling return:

Every person liable to pay service tax and also an input service distributor is liable to file service tax return

[2] Filing of return:

The returns are to be filed as follows:

Assessee	Authority to whom	Duration of return	Form	No. of copies	Time of filing return
All assessee	Superintendent	Half-yearly	ST-3 *OR* ST-3A	Triplicate	By 25th of the month following the end of the said half yearly
Input Service distributor	Superintendent	Half-yearly	ST-3	Single	By the last day of the month following the half-year period.

Mandatory e-filing:

Every assessee shall submit such return electronically.

**When the due date for filing return of service tax is a public holiday, then, the return may be filed on the succeeding working day.

Extension of time-limit: Rule 7(4)

The Central Board of Excise and Customs may, by an order extend the aforesaid time-limit for filing return by such period as deemed necessary under circumstances of special nature to be specified in such order.

[3] Contents of the return:

The service tax return contains the following major details

1. Particulars of assessee viz. name, registration number, address, etc.
2. Particulars of taxable services viz. nature, classification, etc.

3. Particulars of period viz. financial year, half year period (April-September or October-March),
4. Particulars of value of taxable services viz. amount received, advance received, details of exempted services, abatement/ exemption claimed, etc.
5. Particulars of service tax viz. service tax & education cess payable, details of payment, interest or penalty paid, payment of excess collection of service tax, if any, etc.
6. Particulars of CENVAT Credit viz. opening balance, availed, utilized, closing balance, etc.

[4] Documents to be submitted along with return:

The return shall be accompanied by

1. Copies of GAR-7 challans by which service tax was deposited for the period covered by return
2. **In case where assessee had opted for provisional assessment:** A memorandum in form ST-3A giving full details of the difference between the amount of provisional amount of tax deposited and the actual amount for each month ;
3. **In case of first return:** A list of all accounts maintained by him in relation to service tax including memoranda received from his branch office.

[5] Manner of filing of return:

In case of multiple service providers:	If an assessee provides more than one taxable service, filing of a single return would suffice. However, in each of the columns of the Form ST-3, the details have to be furnished separately for each of such taxable service. Thus, instead of showing a lump sum figures for all the services together, service-wise details should be provided in the return.
Nil return:	Service tax return is to be filed by every person liable to pay service tax even if he has not actually provided any service during a particular and no service tax is, therefore, payable by him. Therefore, even if no service has been provided during a half year and no service tax is payable, the assessee has to file a nil return within the prescribed time limit.
E-filing of service tax return:	E-filing is a faculty for electronic filing of service tax returns by the assessee from his office, residence or any other place of choice, through internet, by using a computer. It is a facilitation, simplification and modernization initiative by the Department. It is an alternative to the manual filing of return. This facility is available to all service providers. For this purpose, the assessees have to obtain a user name and password from Department.

[6] Revision of Return — Rule 7B

An assessee may submit a revised return, in forms ST-3, in triplicate, to correct a mistake or omission, within 90 days from date of submission of original return. Where under Sec. 73 of the Act shall be date of submission of such revised return.

[7] Fees for delayed furnishing of returns — Rule 7C

Where the return in prescribed form is furnished after the due date for its submission, the person liable to furnish such return shall pay to the credit of the Central Government a fees such delayed submission, computed as follows:

Period of delay in furnishing return	Fees to be paid
15 days from the due date	₹ 500
Beyond 15 days but upto 30 days from the due date	₹ 1,000
Beyond 30 days from the due date	₹ 1,000 + ₹ 100 for every day from the 31st day till the date of furnishing of return subject to a maximum of ₹ 20,000**

[**increased from Rs.2,000 section 70(1), as amended by Finance Act, 2011 w.e.f. 8-4-2011]

Proceedings to be deemed to be concluded if fees paid as above:

Where the assesses has paid the amount as given above for delayed submission of return, the proceedings in respect of such delayed submission of return will be deemed to be concluded.

Reduction/Waiver of fees if service tax is Nil:

Where the grass amount of service tax payable is nil, the Central Excise officer may, on being satisfied that there is sufficient reason for not filling the return, reduce or waive the penalty.

Liability of a service provider, in case of excess collection of tax	Sec. 73A-73B	B

1. The service provider shall not collect tax in excess of what he pays to the Government.
2. In case his collection is more than his payment, he shall promptly deposit the excess with the Government or refund the amount collected in excess to the customer.
3. Any delay in this regard attracts payment of interest @ 18% p.a.

Service Tax (Provisional Attachment of Property) Rules, 2008	B

These rules, introduced by Notification No.30/2008 ST dated 01.07.2008, with effect from 01.07.2008, provides as follows:

- ⇨ The Assistant or the Deputy Commissioner of Central Excise, after due verification of the facts and circumstances of the case, may forward a proposal for provisional attachment of property belonging to a person, on whom a notice has been served under Section 73(1)/73A(3) of the Act, to the Commissioner, in the format prescribed in these Rules.
- ⇨ The Commissioner may serve a show cause notice on such person who can make a submission, in this regard, within 15 days of service of the notice.
- ⇨ Upon consideration of submission, the Commissioner may pass an order, to attach the property, provisionally.
- ⇨ Value of property attached shall be of value, as nearly as, may be equivalent to that of the amount of pending revenue, against such person.
- ⇨ The movable property of such person shall be attached, only if, the immovable property available for attachment is not sufficient to protect the interest of revenue.
- ⇨ The said person or his representative shall not mortgage, lease, transfer, deliver or deal with the attached property, in any manner except with the previous approval of the Commissioner of Central Excise.
- ⇨ Every such provisional attachment shall cease to have its effect, after the expiry of a period of six months from the date of the service of the order passed.
- ⇨ However, the Chief Commissioner of Central Excise may grant an extension, for a maximum period of two years.

Service Tax Return Preparers Scheme		C
Definitions:	**Service Tax Return Preparer:**	It refers to an individual, who has been authorized to act as a "Service Tax Return Preparer", under a scheme framed under this section.
	Specified Classes of persons:	It refers to persons specified in the scheme, who are required to furnish a return, required to be filed under Section 70.
Power of Board:	The CBEC is empowered to frame a scheme, for furnishing return of income, by any specified classes, through a Service Tax Return Preparer.	
Duty of Service Tax Return Preparer:	Every Service Tax Return Preparer should assist the specified classes of persons, to prepare and furnish the Service Tax Return, in the manner specified in the scheme.	
Structure of the Scheme:	The scheme, framed by the Board, may provide for the following ⇨ Manner, in which and the period for which the Service Tax Return Preparer shall be authorized, ⇨ Educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person, to act as a Service Tax Return Preparer, ⇨ Code of Conduct, for the Service Tax Return Preparer, ⇨ Duties and Obligations of the Service Tax Return Preparer, ⇨ Circumstances, under which the authorization given to a Service Tax Return Preparer may be withdrawn, ⇨ Any other matter, which is required to be specified by the Scheme for the purposes of this section	

Show cause notice	Sec. 73	C

1. Where any Service Tax has not been levied or paid, or has been short levied or short paid or erroneously refunded, then the Central Excise Officer can issue a show cause notice, requiring, as to why the person should not pay the amounts specified in the notice.
2. The show cause notice can be issued, even if the non-levy etc. was on the basis of any approval, acceptance or assessment, relating to rate of the Tax or valuation.
3. The show cause notice has to be issued within one year from the relevant date.
4. Where the tax has not been levied or paid or short levied or short paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement, suppression of facts, or contravention of any of the provisions of the Act or Rules made there under, with an intention to evade payment of tax, the show cause notice can be issued, within five years from the relevant date.
5. Where the service of the show cause notice is stayed by an order of a court, the, period of stay shall be excluded, while computing the limitation period.
6. The officer, after considering the representation, if any, made by the person on whom the notice is served, shall determine the amount of tax, which shall not be in excess of the amount specified in the notice.
7. Where any notice has been served by the Central Excise Officer,
   (a) If the demand is on account of fraud, suppression, collusion, willful misstatement or contravention of the act or rules with an intention to evade the payment of tax, etc., where it is possible to do so, the officer shall determine the amount, within a period of one year from the date of service of notice.
   (b) In any other case, where it is possible to do so, officer shall determine the amount within a period of six months, from the date of service of notice.

Self-assessment	C
Applicability	All assessee
Assessment	Assessee should assess the tax due, on the services provided by him.
Form	The half-yearly return, in Form ST-3, is both a return and a self-assessment form.
Submission	The return should be furnished to the Superintendent of the Central Excise in the prescribed manner (i.e. in Form ST 3, before 25th April or 25th October, as the case may be).

Conditions for provisional assessment		B
Circumstance for Provisional Assessment:	Provisional Assessment is made, when	
	Situation:	The assessee is not in a position to correctly calculate the tax payable for the month or quarter
	Time:	On the date of deposit of tax
Condition	***Request to AC / DC:***	The assessee should make a request to the jurisdictional AC / DC, for making provisional assessment.
	Reasons:	Request should be supported by reasons, for payment of Service Tax, on provisional basis.
	Granting of Permission:	AC / DC, on receipt of such request, may allow payment of Service Tax on provisional basis. He shall specify the value to be considered, for provisional assessment.
Filing of memorandum:	***Memorandum:***	The assessee, who has opted for provisional assessment, has to file a memorandum in Form ST-3A along with the half yearly return in Form ST-3.
	Contents of Memorandum:	ST-3A provides the details of the difference between the Service Tax deposited and Service Tax liable to be paid for each month or quarter.
	Calling for Documents:	AC / DC can call for documents etc., to verify the details of Form ST-3A.

	Order of Assessment:	AC / DC shall pass the final assessment order, within 6 months from the date of communication of provisional assessment.	
Tax Payable / Refundable on Final Assessment:	***Order of Assessment:***	The Final Assessment Order may - ⇨ Require the assessee to pay Service Tax in addition or ⇨ Entitle him to refund of excess tax paid, if any, any	
	Interest on Tax Payable:	*Situation:*	Additional Service Tax payable on final payment.
		Rate of interest:	18% p.a.
		Amt. on which payable:	Additional Service Tax payable.
		Period of interest:	From the first day of the month, succeeding the month for which such amount is determined, till the date of payment thereof.
	Interest on Tax Refundable:	*Situation:*	Assessee is entitled for refund, as per final assessment order.
		Rate of interest:	6% p.a.
		Amount on which interest determined:	Amount of refund due.
		Period of interest:	From the first day of the month, succeeding the month for which refund is determined, till the date of refund.

The penal provisions under service tax law. Whether penalty for failure to pay tax and penalty for suppression of value of taxable service can be imposed simultaneously? **B**

The penal provisions under the service tax law are as under:

Sec.	Reason for penalty	Quantum of penalty (in addition to tax and interest)
Sec. 76*	Any person, liable to pay service tax I accordance with the provisions of Sec. 68 or the rules made there under, who fails to pay such tax	***Whichever is higher of:*** (a) ₹ 100 per day of failure, or (b) 1% p.m. of service tax, [Starting with the first day after due date till the date of actual payment of outstanding amount of service tax, Subject to maximum of 50% of tax not paid.]
Sec. 77*	The provisions of this section are as follows	
	1. Failure to take registration as per provisions of Sec. 69 or rules made under this chapter	***Whichever is higher of:*** (a) ₹ 200 for every day during which such failure continues starting with the first day after the due date, till the date of actual compliance, or, (b) ₹ 10,000
	2. Failure to keep, maintain or retail books of account and other documents as required by this law	Penalty which may extend to ₹ 10,000.
	3. Failure to (1) Furnish information called by an officer in accordance with the provisions this chapter or rules made there under; or (2) Produce documents called for by a Central Exercise Officer in accordance with the provisions	***Penalty which may extend to whichever is higher of:*** (a) ₹ 200 for every day during which such failure continues starting with the first day after the due date, till the date of actual compliance, or (b) ₹ 10,000

	of this chapter or rules made there under; or (3) Appear before the Central Excise Officer, when issued with a summon for appearance to give evidence or to produce a document in an inquiry.	
	4. Failure to pay tax electronically, through internet banking, though required to pay tax electronically	Penalty which may extend to ₹ 10,000.
	5. Issuing invoice in accordance with the provisions of the Act or rules made there under, with incorrect or incomplete details or failure to account for an invoice in his books of account	Penalty which may extend to ₹ 10,000.
	6. Contravention of any of the provisions of this chapter or any rules made there under for which no penalty is separately provided	Penalty which may extend to ₹ 10,000.
Sec. 78*	Non levy / payment, or, short levy / payment or Erroneous refund of service tax due to fraud, solution, suppression or wilful misstatement or contravention of provisions with intent to evade payment of tax	Penalty, if true and complete details of the transactions are available in the records (including computerized data or invoices) [first proviso to Sec. 78(1)] = 50% of the service tax sought to be evaded penalty (in other cases) = 100% of the service tax evaded

*** Penalty not to be imposed in certain cases [Section 80]:**
Notwithstanding anything contained in the provisions of Section 76, Section 77 or first provision to Section 78(1), no penalty shall be imposable on the assessee for any failure referred to in the said provisions if the assessee proves that there was reasonable cause for the said failure.

Practical Questions

Basic Question Based on Theory

1. Mr. Bharat is a registered service provider. He transfers his business to Mr. Rakesh on 31st July, 2011. Explain the requirement to be complied with, by Mr. Bharat and Mr. Rakesh on such a transfer under the provisions of Service Tax.

Solution:

Bharat's Duty: Where the assessee transfers his business to another person, he should surrender the Certificate (if he does not provide any other taxable service). In the given case, Mr. Bharat should surrender the Certificate of Registration.

Rakesh's Duty: Mr. Rakesh, to whom the business is being transferred, has to apply for registration. In the given case, the business is transferred on 31st July, 2011. Assuming that Mr. Rakesh commences the newly acquired business on the same date, he should apply for registration before 30th August, 2011.

2. Yatin & Co. seeks your advice, for the following, in the context of Service Tax: It wants to file revised Service Tax Return even though the original return was filed belatedly.

Solution:

Filing of revised Service Tax Return: Service Tax Return can be revised within 90 days, from the date of filing of the original return. This rule is applicable, even if the original return was submitted belatedly.

3. Suyogya Consultancy Services (SCS) is engaged in providing Management Consultancy Service during the financial year 2011-12. Examine, whether SCS shall be liable to pay the

late fee for delay in furnishing the return for the half - yearly period ending 30th September 2011 in the following cases:

(a) It files its return of Service Tax on 26th October, 2011 (25th October was declared as a public holiday)

(b) It files its return on 15th November 2011.

Solution:

Due Date for half - yearly period ending 30th September, 2011 is 25th October, 2011.

Date of filing return	Reason	Late fee
26th Oct., 2011	Since October 25th is a public holiday, the assessee can file the return on the next immediately succeeding working day i.e., October 26th, 2011	No late fee
15th Nov., 2011	Period of delay is 21 days (26th Oct to 15th Nov. 2011)	₹ 1,000

4. Mr. Saravanan has collected a sum of ₹ 15,000, as Service Tax from a client mistakenly, even though no Service Tax is chargeable for such a service. Should the amount so collected be remitted to the credit of the Central Government?

Solution:

Extension of time-limit: **Sec. 73A**

The assessee who has collected an amount in excess of the amount required to be collected, under Service Tax Law, should deposit such an amount with the Government. If not paid, the Central Excise Officer (CEO) shall serve a show cause notice.

Interest on Amount collected in Excess **Sec. 73B**

Where excess amount has been collected from the recipient of services, the person liable shall pay the excess amount together, with interest at the rate of not less than 10% and not exceeding 24%. It shall be payable from the 1st day of the month succeeding the month in which amount should have been paid till the date of actual payment.

Conclusion: Mr. Saravanan should deposit ₹ 15,000 collected as Service Tax with the Government which can be adjusted against Service Tax Liability at a later point of time.

Life Insurance Services

5. A life insurance company provides the following information for the month of May, 2012. Compute the service tax payable by it:

A. Variable Insurance Policies issued: Premiums collected ₹ 100 lakhs (11% of the premiums charged under variable insurance policies are towards mortality, commission and expenses). The premium receipt issued to policyholder shows his break-up.

B. Risk Cover Policies: Premiums collected ₹ 25 lakhs (the entire premium is only for risk cover).

C. Other policies: Premiums collected ₹ 200 lakh (Savings Plan). The break-up of amount invested is not shown separately in the premium receipt. Out of this, ₹ 50 lakhs is towards the insurance policies issued in the current year and balance towards insurance policies issued in earlier years.

Compute the service tax payable by the company assuming that the life insurance company has opted for option under Rule 6(7A) of the Service Tax Rules, 1994.

Solution:

Computation of service tax payable by the insurance company

	Particulars	Taxable value (₹)	Tax Rate	Service tax (₹)
	Variable Insurance Policies: It is given that the break-up of amounts charged towards mortality, commission and expenses is given separately @ 11%. Thus, the balance amount invested is 89%. Since the break-up is shown in the premium receipt i.e. at the time of providing of service, the company has the option to pay service tax on Premium charged Amount allocated towards investment i.e. 89%. Thus, the taxable value shall be 11% and tax rate shall be normal rate of 12%	11,00,000	12.00%	1,32,000
Add:	***Risk Cover Policies:*** Since the entire premium is for risk cover, hence, the option under Rule 6(7A) is not available. Normal tax rate of 12% applies.	25,00,000	12.00%	3,00,000
Add:	***Other Insurance Policies:*** Since the break-up as to amount allocated towards investment is not shown separately, hence, the said sum shall liable to service tax at follows			
	First year (policies issued in current year)	50,00,000	3.00%	1,50,000
	Subsequent years (policies issued upto previous year)	1,50,00,000	1.50%	2,25,000
	Total			8,07,000
Add:	EC 2% + SHEC 1%		3.00%	24,210
	Total Service tax payable			**8,31,210**

Lottery Service – Optional payment

6. M/s Chaman Lotteries is a distributor of lotteries organized by State of Rajasthan. On account of festivals, two schemes of lotteries were announced as under:

	Dhan laxmi scheme	Uphar laxmi scheme
Total No. of tickets proposed under the scheme	**43,50,000**	**95,000**
Face Value per ticket	**₹ 10**	**₹ 250**
Value of guaranteed prize payouts	**75%**	**85%**
Actual No. of tickets sold	**32,50,000**	**92,500**
Mode of conducting the scheme	**Printed (43,50,000)**	**Online**

Though M/s. Chaman Lotteries receives commission, however, it has learnt that there is some composition scheme under scheme under service tax law to discharge its service tax liability. It wishes to opt therefore and asks you to compute its service tax liability there under. Assume schemes were announced on 1-10-2012.

Solution:

M/s Chaman Lotteries can very well opt for the composition scheme for payment of service tax under Rule 6(7C) of the Service Tax Rules, 1994. The service tax liability shall be as under:

	Particulars		Dhan laxmi scheme	Uphar laxmi scheme
	Total No. of tickets *(In case of Dhanlaxmi scheme, the total no. of tickets printed shall be taken; while in case of Uphar Laxmi, since the lottery is conducted online, hence, the actual no. of tickets sold shall be taken)*	(A)	43,50,000	92,500
	Face value per ticket	(B)	₹ 10	₹ 250
	Aggregate face value of lottery tickets	$(C = A \times B)$	₹ 4,35,00,000	₹ 2,32,25,000
	Value of guaranteed prize payouts		75%	85%
	Service Tax payable (for every ₹ 10 lakhs or part thereof)	(D)	₹ 11,000	₹ 7,000
	No. of Units of 10 lakhs or part thereof *[Any part of 10 lakhs shall be fully covered]*	$\left(E = \frac{C}{10\text{ lakhs}}\right)$	₹ 44	₹ 24
	Service tax payable	$(F = D \times E)$	₹ 4,84,000	₹ 1,68,000
	Total Service Tax Payable		₹ 6,52,000	
Add:	EC 2% and SHEC 1% (Cess: 3%)		₹ 19,560	
	Total service tax liability		**₹ 6,71,560**	

Fee for late filing of service tax returns

7. SM Ltd. filed its service tax returns for the half years ending on March 2011 and September 2011 on 25-502011 and 11-03-2012 respectively. Is any late fee/fine payable by SM Ltd.? If yes, what is the quantum of such fee in both the cases?

Given that the due date for the half-year ending September 30, 2011 has been extended to 20-1-2012. Will your answer be different in the following independent cases?

(a) If SM Ltd. files a nil return for the half-year ending on September 2011: or

(b) If SM Ltd. files the return for the half-year ending 30th September,2011 on 30th August, 2012?

Solution:

Fees for late filing of return is provided in Rule 7C of the Service Tax Rules, 1994. Accordingly, the fee payable in the various cases listed above is as follows:

Return of half-year ended	Service tax (₹)	Due date	Return filed on	Delay (days)	Particulars	Penalty
March, 2011	2,00,000	25-04-2011	25-05-2011	30	—	1,000
Sept., 2011	1,00,000	20-01-2012	11-03-2011	51	*Minimum of* (a) ₹ 1,000 + ₹ 100 per day for 21 days, being days in excess of 30 = ₹ 3,100 or (b) ₹ 20,000	3,100
Sept., 2011	Nil	20-01-2012	11-03-2012	51	*Minimum of* (a) ₹ 1,000 + ₹ 100 per day for 21 days, being days in excess of 30 = ₹ 3,100, or	3,100

					(b) ₹ 20,000 *However, in this case of NIL service tax, the Central Exercise officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty.*	
Sept., 2011	Nil	20-01-2012	30-08-2012	223	*Minimum of:* (a) ₹ 1,000 + ₹ 100 per day for 193 days, being days in excess of 30 = Rs.20,300, or (b) ₹ 20,000	20,000

Penalty for failure to pay tax

8. Govind, an assessee, fails to pay service tax of ₹ 10 lakhs payable by 06-03-2012. X pays the amount on 16-3-2012. Compute the amount of penalty payable by Govind under Sec. 76.

Solution:

In this case the default of failure to pay service tax has continued for 10 days. Hence, the penalty payable by Govind shall be the *higher of*

1% of the amount of default for 10 days = $1\% \times 10{,}00{,}000 \times \frac{10}{31}$ = ₹ 3,225.80; *OR*

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

Hence, the penalty liable to be paid by Govind = ₹ 3,226.00.

9. Aman, an assessee, fails to pay service tax of ₹ 8,000 payable by 5-5-2012.Compute the amount of penalty payable by Aman under Sec. 76 if actual date of payment is 15-03-2013.

Solution:

The penalty will computed as follow:

	Service tax payable	[A]	₹ 8,000
	Due date for payment of service tax	[B]	05-05-2012
	Date of actual payment	[C]	15-03-2013
	Period of default = 10 months and 10 days i.e. No. of days	[D = C – B]	315
Limit:	(a) Penalty calculated @ ₹ 100 per day	[E = D × 100]	₹ 31,500
Limit:	(b) 1% p.m. of service tax	[F = A × 1% × (10 months + 10 days/31days]	₹ 825.81
	Higher of above two limits	[H = 50% of Service tax i.e. 50% of (A)]	₹ 4,000
	Penalty imposable under Sec. 76	[I = G or H, whichever is higher]	**₹ 4,000**

5. NEGATIVE LIST AND SSP

[SMALL SERVICE PROVIDER]

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

5. NEGATIVE LIST & SSP

Negative List of Services	Sec. 66D	A

Section 66D specifies services which are not taxable. The list of services is referred to as Negative list. Thus, all the services except the **services specified in Sec. 66D are taxable from 01-07-2012**.

Section 66D specified following services as non-taxable:

1. Services by Government or a Local Authority excluding the following services to the extent they are not covered elsewhere
- **(i)** services by the Department of Posts by way of speed post, express parcel, life insurance and agency services provided to a person other than Government;
- **(ii)** services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
- **(iii)** transport of goods or passengers; or
- **(iv)** support services, other than services covered under (i) to (iv) above, provided to business entities;

2. Services by the Reserve Bank of India;

3. Services by a foreign diplomatic mission located in India;

4. Services relating to agricultural produce by way of
- **(i)** agricultural operations directly related to production of any agricultural produce including cultivation, harvesting, threshing, plant protection or seed testing;
- **(ii)** supply of farm labour;
- **(iii)** processes carried out at an agricultural farm including tending, cutting, harvesting (picking), drying, cleaning, trimming, sun draying, fumigating (cleaning), curing, sorting, grading, cooling or bulk packaging and like operations which do not alter the essential characteristics of agricultural produce but make it only marketable for the primary market;
- **(iv)** renting or leasing of agro machinery or vacant land with or without a structure incidental to its use;
- **(v)** loading, unloading, packing, storage or warehousing of agricultural produce;
- **(vi)** agricultural extension services;
- **(vii)** services by any Agricultural produce Marketing Committee or Board or services provided by a commission agent for sale or purchase of agricultural produce;

5. Trading of goods;

6. Any process amounting to manufacture or production of goods;

7. Selling of space or time slots of advertisements other than advertisements broadcasts by radio or television;

8. Service by way of access to a road or a bridge on payment of toll charges;

9. Betting, gambling or lottery;

10. Admission to entertainment event or access to amusement facilities;

11. Transmission or distribution of by an electricity transmission or distribution utility;

12. Service by way of
- **(i)** pre-school education and education up to higher secondary school or equivalent;
- **(ii)** education as a part of curriculum for obtaining a qualification recognized by any law for the time being in force;
- **(iii)** education as a part of an approved vocational education courses;

13. Service by way of renting of residential dwelling for use as residence;

14. Service by way of
- **(i)** extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount;
- **(ii)** *inter se* sale or purchase of foreign currency amongst banks or authorized dealsers of foreign exchange or amongst banks and such dealers;

15. Services of transportation of passengers, with or without accompanied belongings, by
- **(i)** a stage carriage;

- **(ii)** railways in a class other than
  - **A.** first class; or
  - **B.** an air-conditioned coach
- **(iii)** metro, monorail or tramway
- **(iv)** inland waterways;
- **(v)** public transport, other than predominantly for tourism purpose, a vessel between places located in India; and
- **(vi)** metered cabs, radio taxis or auto rickshaws

16. Service by way of transportation of goods
- **(i)** by road except the service of
  - **A.** a goods transportation agency; and
  - **B.** a courier agency
- **(ii)** by an aircraft or a vessel from a place outside India upto the customs stations of clearance in India; or
- **(iii)** by inland waterways;

17. Funeral, burial, crematorium or mortuary services including transportation of the deceased.

Conditions to be satisfied for availing the basic exemption limit of ₹ 10 lakhs (SSP)	**A**

[A] Eligible small service providers

This exemption applies to a "small service provider". Small service provider means a service provider, the "aggregate value" of taxable services rendered by whom, form one or more premises, does not exceed 10 lakhs in the preceding financial year.

Aggregate value:	**Explanation (B)** **[Amended on 01-04-2012]**

Aggregate Value means
(1) The sum total of value of taxable services charged in the first consecutive invoices issued or required to be issued, as the case may be, during a financial year
(2) But does not include value charged in invoices issued towards such services which are exempt from whole of service tax leviable thereon under any other notification.

[B] Quantum of exemption

A small service provider is entitled to 100% exemption from service tax during the current financial year. Exemption shall be operative only for "aggregate value" not exceeding 10 lakh in any financial year. If the "aggregate value" in any financial year exceeds 10 lakhs, then such excess over 10 lakhs shall be chargeable to service tax.

[C] Nature of exemption

(1) The exemption benefit is optional, and the service provider can choose not to opt for this exemption.
(2) However, the option once exercised, shall not be withdrawn, during the remaining part of the financial year.

[D] Conditions as to CENVAT Credit

(1) Service provider shall not avail the CENVAT Credit of:
- ⇨ Service Tax paid on any input services, used for providing the taxable service, for the exemption limit.
- ⇨ Duty paid on capital goods received, during the period of exemption

(2) Eligible Credit: The service provider can claim CENVAT credit, only in respect of inputs/input services received after the exemption period (i.e., after the receipts exceeds Rs.10 lakhs, during the financial year).

[E] No basic exemption for following persons

(1) Brand/Trade Name Users:	Persons using Brand Name / Trade Name of another person cannot avail benefit of threshold exemption in respect of the services provided, under such Brand / Trade name.
(2) Service receiving paying tax:	Service receivers, who are liable to pay Service Tax in terms of Rule 2(1)(d) cannot avail the benefit of threshold exemption, i.e. Importers of

	Services, Specified Consignors/Consignees in respect of Goods Transport Agency, etc.

Principles of interpretation of specified descriptions of services | **Sec. 66F** | **A**

[1] Reference to main service not to include incidental service: **Sec. 66F(1)**

As per Section 66F(1), unless otherwise specified, reference to a main service shall not include reference to a service which is used for providing main service.

Example: Construction services are exempt in specific cases. For construction of building, incidental services like services of architects, consulting engineers are essential. However, as per Section 66F(1), services of architects and consulting engineers cannot be covered under construction service which is the main service and shall not be eligible for exemption.

[2] Specific description shall be preferred over a general description: **Sec. 66F(2)**

As per Section 66F(2), where a service is capable of differential treatment for any purpose based on its description, the most specific description shall be preferred over a more general description. For instance, differential treatment can arise as for some of the services where tax is payable by service recipient and not the service provider.

Bundled services and principles for classification of bundled service | **B**

Bundled service: A bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services.

Example: Air transport services provided by airlines wherein, an element of transportation of passengers is combined with an element of provision of catering service on board.

Taxability of bundled service

[1] Natural bundle of Service:

Classified as service which gives it the essential character: If various elements of such service are naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which gives such bundle its essential character.

Example: A hotel provides a 4 Days / 3 Nights package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. **The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.**

[2] Artificial bundle of service:

Classified as one which attracts the highest tax liability: If various elements of such service are not naturally bundled in the ordinary course of business, it shall be treated as provision of the single service which results in highest liability of service tax.

Example: A house is given on rent, one floor of which is to be used as residence and the other floor for printing press. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Therefore, if a single rent deed is executed, it will be treated as a service comprising entirely of such service which attracts highest liability of service tax.

In this case, renting for use as residence is a negative list service not chargeable to tax, while renting for non-residence use is chargeable to tax. **Since the latter category attracts highest liability of service tax amongst the two services bundled together, thus, the entire bundle would be treated as renting of commercial property.**

Practical Questions

Basic Questions

1. An unregistered "Service provider" provides following details in respect of taxable services provided for the half year ended 30-9-2012.

Date of receipt of amt.	Particulars	Amt. (₹)
30.06.2012	**Advance received from costumer**	**1,00,000**
30.06.2012	**Part payment received against a bill of ₹ 9,50,000 raised on a customer (bill dated 1-10-2012)**	**5,00.000**
31.07.2012	**Money received against taxable services provided during July 2012**	**3,00,000**
31.08.2012	**Taxable services rendered during August, 2012**	**1,00,000**
31.08.2012	**Taxable services provided during August, 2012**	**2,00,000**

The service tax provider complies with the provisions of registration and collection of service tax as per service tax laws. He gets registered during the year. Compute the service tax liability of service provider for the half year ended 30-09-2012 considering the rate of service tax @ 12.36%.

Solution:

Calculation of service tax liability for the half year ended 30-9-2012		**₹**
	Advance received on 30.6.2012	1,00,000
	Part payment received upto 30-9-2012	5,00,000
	Money received against taxable services during July 2012	3,00,000
	Money received against the bills raised during the months August 2012	3,00,000
		12,00,000
Less:	Exemption limit	(10,00,000)
	Value of taxable services	2,00,000
	Service tax liability: ₹ 2,00,000 × 12.36%	**24,720**

2. Mrs. Kapoor is a practicing chartered accountant rendering taxable services w.e.f. 1-5-2012. The following information is made available to you:

Particulars	Amt. (₹)
(1) Amount received on 10.6.2012 for services provided in May, 2012	**2,00,000**
(2) Advance received form one client on 10.6.2012	**1,39,000**
(3) For balance services of Rs.7,00,000 bill was raised on 12.7.2012 and the amount due was received from the above client on 15.7.2012	
(4) Other taxable services billed and received during 1.9.2012 to 30.09.2012	**4,00,000**
(5) Value of free services rendered in July, 2012.	**1,50,000**

Solution:

Statement showing taxable services and service tax liability for the two quarters of the year 2012-13:

Particulars	1st Quarter	2nd Quarter	Workings
Amt. received	3,39,000	Nil	Fully exempted, since exemption limit of ₹ 10 lakhs not exceeded.
Amt. billed and received	Nil	11,00,000	Service tax @ 12.36% will be attracted on ₹ 4,39,000 since, value of taxable services exceeded ₹ 10 lakhs.
Service tax @ 12.36%	Nil	54,260	4,39,000 × 12.36%

3. AB Corp. raised bills and received the following amounts during half year ended 30-09- 2012:

Particulars	Amt. (₹)
(1) For services performed prior to the date of levy of service tax (Assume service tax was levied from a specified date by change of law)	**3,50,000**

(2) Advance amount received in April 2012 (No service)	**75,000**
(3) For free service rendered to customers, amount reimbursed by the manufacturer or such product	**50,000**
(4) Amounts realized and on which service tax is payable (excluding the items (1) & (2) above)	**14,26,000**

Calculate the service tax liability duty considering the threshold limit.
[Note: all the above values inclusive of service tax @ 12.36%]

Solution:

Statement showing service tax liability of AB Corp. for the half year ended 30-09-2012

Particulars	Workings	Amt. (₹)
(1) For services performed prior to the date of levy of service tax	Non-taxable service	—
(2) Advance amount received in April 2012	Taxable service	75,000
(3) Fee received indirectly	Taxable service	50,000
(4) Amt. realised	Taxable service	14,26,500
Service rendered		15,51,000
Less: Exemption limit		(10,00,000)
Taxable Service		5,51,500
Service tax liability	$\left(5{,}51{,}500 \times \frac{12.36}{112.36}\right)$	**60,667**

Small Service Provider Exemption

4. Satyam Co. Ltd. provided services valuing ₹ 8 lakhs during the financial year 2011-12. During 2012-13, it has provided taxable service valuing ₹ 9 lakhs. It also received services in the nature of transport of goods by road valuing ₹ 50,000, in respect of which it is the person liable to pay service tax. Compute the amount of service tax, if any, payable by Satyam Co. Ltd. for the financial year 2012-13. It is given that goods transport service is exempt to the extent of 75% of value thereof.

Solution:

Satyam Co. Ltd. is eligible for small service provider exemption during the financial year 2012-13, as the value of taxable services provided during financial year 2011-122 doesn't exceed ₹ 10 lakhs.

For the value of taxable services provided during the financial year 2011-12, no tax liability would arise, as the services provided/invoices raised do not exceed ₹ 10 lakhs.

However, for goods transport agency services received, in respect of which Satyam Co. Ltd. is the person liable to pay service tax, the company cannot claim small service provider exemption.

Therefore, it will have to pay Service Tax = 50,000 × 25% × 12.36% = **₹ 1,545**

5. M/s. PQR Ltd., a provider of taxable service, received the following amounts during 2012-13 towards the value of taxable services (before tax)

		₹
10-05-2012	**Sums received out of that billed in the last financial year**	**1,00,000**
15-09-2012	**Services provided, sums billed and received**	**6,00,000**
10-12-2012	**Services provided, sums billed and received (Wholly exempt services)**	**50,000**
11-03-2013	**Services provided, sums billed and received (Person liable to pay service is the recipient of service i.e., a person other than M/s. PQR Ltd.)**	**60,000**
31-03-2013	**Service provided, sums billed and received**	**4,00,000**

Compute service tax payable during the financial year 2012-13 claiming small service provider exemption if any, available and also determine whether M/s. PQR Ltd. Is eligible for exemption under Not. No. 6/2005-ST (small service provider exemption) during 2013-14 (assuming same law prevails)?

Given that the value of services provided during the year 2011-12 was ₹ 9 lakhs.

Solution:
Since the value of taxable services provided by M/s. PQR Ltd. during 2011-12 was ₹ 9 lakhs i.e., not exceeding ₹ 10 lakhs, hence, M/s. PQR Ltd. is eligible for small service provider exemption under Not. No. 6/2005-ST during F.Y. 2012-13 upto the aggregate value of Rs.10 lakhs as follows:

Date	Particulars	Exemption under Not. No. 6/2005	Bal. exemption under Not. No. 6/2005	Taxable value
10-05-2012	Sums received out of that billed in the financial year (Exemption operates on aggregate value i.e., invoices raised or required to be raised. Since the invoices were raised last year, there is no question of taxability and/or exemption in the current year. It would have been taxed/exempted last year)	—	10,00,000	—
15-09-2012	Services provided, billed & received	6,00,000	4,00,000	—
10-12-2012	Service provided, sums billed and received (Service wholly exempt under other notification, not considered in computing exemption limit under Not. No. 6/2005)	—	4,00,000	—
11-03-2013	Services provided, sums billed and received (Since the person liable to pay service tax is a person other than the assessee M/s. PQR Ltd., hence, the value thereof shall not be included in computing the exemption limit of 10 lakh. Further, the same shall be liable to tax in the hands of the service receiver, not the assessee M/s. PQR Ltd.)	—	4,00,000	—
31-03-2013	Service provided, sums billed and received	4,00,000	0	0
	Total	10,00,000		0
	Service tax @ 12.36%			0

Eligibility towards exemption in financial year 2013-14: The value of taxable services provided during the financial year 2012-13 was 6,00,000 + 60,000 + 4,00,000 = ₹ 10,60,000 lakh. The value of exempt services of ₹ 50,000 provided in 2012-13 shall not form the part of the value of taxable services. Since the taxable services provided ₹ 10,60,000 lakhs exceeds the eligibility limit of ₹ 10 lakhs, hence, M/s. PQR Ltd. is not eligible for small service provider exemption under not. No. 6/2005-ST during the financial year 2013-14.

Clubbing of the value of services provided under Not. 6/2005-ST

6. Mr. Patel has provided the following services during the financial year 2012-13. Determine whether Mr. Patel is eligible for exemption under Not. No 6/2005-ST during the financial year 2013-14:

Name of service	Premises from where service provided	Whether service is taxable or not	Value (₹)
Beauty treatment	**Shop no. 19**	**Taxable**	**4,50,000**
Dry cleaning	**Shop no. 20**	**Taxable**	**2,00,000**
Other service	**Shop no. 21**	**Taxable**	**3,00,000**
	Shop no. 22	**Non-taxable**	**6,00,000**

It is learnt that Shop No. 21 is held by Mr. Patel in joint ownership with Mr. Pathak who had provided taxable services valuing Rs. 1,00,000 from that place.

Solution:
Notification No. 6/2005-ST provides that where a taxable service provider provides one or more taxable services from one or more premises, this exemption shall apply to the aggregate value of all such taxable services and from all such premises and not separately for each premises or each services. Thus, the notification postulates clubbing of all taxable service from all premises of a service provider. However, there is no such clubbing provisions to club value of service provided by other service providers from the same premises as that of the service provider.
Accordingly, the value of taxable service provided by Mr. Patel during the financial year 2012-13
= 4,50,000 + 2,00,000 + 3,00,000 = ₹ 9,50,000; which doesn't exceed eligibility limit of ₹ 10 lakhs.
Mr. Patel is eligible for exemption under Not. No. 6/2005-ST, during the financial year 2013-14.

●●●

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APPENDIX

[REVERSE CHARGE MECHANISM]

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

REVERSE CHARGE MECHANISM

(As per Notification No. 30-2012 dated 20-06-2012 & Notification No. 45-2012 dated 07-08-2012)

Sr. No.	Following service provided or agreed to be provided	Service provided by following persons called service provider	Conditions	Services Received by following persons called Service Receiver (SR)								Service Tax Liability	
						Business Entity having turnover exceeding Rs.10 Lakhs in preceding FY							
				Individual	*HUF*	*Proprietary Firm who is not registered under Excise*	*Proprietary Firm who is registered under Excise*	*Partnership firm*	*AOP*	*Company*	*LLP*	% of Liability of Service Provider (SP)	% of Liability of Service Receiver (SR)
(w.e.f. 01-07-2012)													
1	Transport of goods by road	Goods Transport Agency (GTA)	Recipient should be person; (1) liable to pay freight, and (2) located in taxable territory				●	●	●	●	●	Nil	100%
2	Sponsorship service	Any person	Recipient should be located in taxable territory					●		●	●	Nil	100%
3	Arbitral Services	Arbitral tribunal **(Note 1)**					●	●	●	●	●	Nil	100%
4	Legal consultancy service	Indi. OR Part. Firm of advocate **(Note.2)**					●	●	●	●	●	Nil	100%
5	Support service	Govt. or local authority					●	●	●	●	●	Nil	100%
6	Renting of motor vehicle (abated value)	Indi. OR HUF OR Part. Firm OR AOP	Recipient should be person; (1) liable to pay freight, and (2) located in taxable territory							●	●	Nil	100%
7	Renting of motor vehicle (non-abated value)									●	●	60%	40%
8	Supply of manpower		Recipient should be located in taxable territory							●	●	25%	75%
9	Service portion in execution of works contract		Recipient should be located in taxable territory & has option to choose valuation method							●	●	50%	50%
10	Any service	Person located in Non-Taxable Territory	Recipient should be located in taxable territory				●	●	●	●	●	Nil	100%

Sr. No.	**Following service provided or agreed to be provided**	**Service provided by following persons called service provider**	**Conditions**	**Services Received by following persons called Service Receiver (SR)**								**Service Tax Liability**	
						Business Entity having turnover exceeding Rs.10 Lakhs in preceding FY							
				Individual	***HUF***	***Proprietary Firm who is not registered under Excise***	***Proprietary Firm who is registered under Excise***	***Partnership firm***	***AOP***	***Company***	***LLP***	**% of Liability of Service Provider (SP)**	**% of Liability of Service Receiver (SR)**
(w.e.f. 01-08-2012)													
11	Services	Director of company	Recipient should be company of which person is director							●		Nil	100%
12	Security services	Indi. OR HUF OR Part. Firm OR AOP	Recipient should be located in taxable territory							●	●	25%	75%

Note 1: Services provided by arbitral tribunal (i) to any person other than business entity, and (ii) to business entity with turnover upto Rs. 10 Lakhs in preceding FY year are not covered under reverse charge.

Note 2: Services provided by individual as an advocate or partnership firm of advocates (i) to any person other than business entity, (ii) to business entity with turnover upto Rs. 10 Lakhs in preceding FY, and (iii) to advocate, or partnership firm of advocates are not covered are not covered under reverse charge.

PART C: VAT

FOR MAY/NOV. 2013 EXAMINATIONS

PART B: VALUE ADDED TAX (VAT) [25 Marks]

1. INTRODUCTION TO VALUE ADDED TAX

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

1. INTRODUCTION TO VALUE ADDED TAX

Define Value Added Tax and explain the basis, on which the various state laws are enacted.			**A**
Meaning:	Value Added Tax ⇨ is a multi-point tax on value addition, i.e. increase in value. ⇨ which is collected at different stages of sale, and ⇨ with a provision for set off for tax paid at the previous stage/tax paid on inputs, against the tax collections on sales, before remitting to the Government's account.		
Basis:	***Basic Design:***	The Empowered Committee of State Finance Ministers brought out a White Paper, which provided a base for the preparation of various state VAT legislations.	
	State Dependent:	Since VAT is a state subject, the State has the freedom for appropriate variations, ***consistent with the basic design***, as agreed upon at the Empowered Committee.	
Purpose:	The purpose of introduction of VAT is to bring harmonization in the tax structure of various States and rationalize the overall tax burden.		

*[**Note:** 'C' denote the importance from exam point of view, topics divided into ABC Analysis]*

Operation of VAT and different stages of VAT	**A**

The operation of VAT is explained with the help of the following illustration:

Particulars	VAT on purchase	Stage I	VAT on purchase	Stage II	VAT on purchase	Stage III
Sales		A to B		B to C		C to consumer
Input from previous dealer		Nil		40,00,000		1,00,00,000
Cost of material purchased inc. CST paid (inter-state)		10,00,000		10,40,000		Nil
Deposit of duty paid on the above		1,25,000		Nil		Nil
Cost of material purchased excl. VAT paid (intra-state)	2,90,000	20,00,000	2,90,000	20,00,000	Nil	Nil
Other exp. (incl. profit margin)		8,75,000		29,60,000		40,00,000
Sale price of the goods		40,00,000		1,00,00,000		1,40,00,000
VAT on above		5,80,000		14,50,000		20,30,000
Sales incl. VAT		45,80,000		1,14,50,000		1,60,30,000
Invoice amt. paid by		B		C		Consumer

Particulars	Supplier of RM	A	B	C	Consumer
Sales value at the current stage	20,00,000	40,00,000	1,00,00,000	1,40,00,000	1,60,30,000
VAT on sales	2,90,000	5,80,000	14,50,000	20,30,000	No further sales
Input credit from current stage		(2,90,000)	(2,90,000)	Nil	

Input credit from previous stage		Nil	(5,80,000)	(14,50,000)	
Net VAT liability	2,90,000	2,90,000	5,80,000	5,80,000	
Recovery	From A	From B	From C	From consumer	
Cumulative VAT paid	2,90,000	5,80,000	14,50,000	20,30,000	

Note: *The Supplier of the Raw Material would have remitted ₹ 2,90,000 to the respective State Government. Thereby, the entire VAT liability is recovered in the respective way.*

Comparison between Sales Tax System and VAT ***[May '09, Nov. '09]***
Can it be said that the entire burden falls on the final consumer? **C**

Sales tax and VAT system can be denoted in the following manner:

Particulars	10% Sales Tax		10% VAT	
	Price	Govt. Revenue	Price	Govt. Revenue
Mr. A sells goods to Mr. B	200		200	
Sales Tax @ 10%	20	20	20	20
Total cost to Mr. B	220		220	
Mr. B processes then and creates final products with the additional labour and capital and sells them to Mr.C, a wholesaler with 100% mark-up	440		400	
Sales Tax / VAT	44		40	40-20=20
Total cots to Mr. C	484		440	
Mr.C sells to Mr.P, a retailer at a 25% mark-up	605		500	
Sales Tax / VAT	60.5	60.5	50	50-40=10
Total cost to Mr. P	665.5		500	
Mr. P sells it to consumer at 100% mark-up	1,331		1,000	
Sales Tax / VAT	133	133	100	100-50=50
Cost to final consumer	**1,464**		**1,100**	
Total revenue of Govt.		257.50		100

Inference:

⇨ Price of the final product is more, under the sales tax system

⇨ The VAT due to Government is collected in various stages with the facility to set off the VAT paid in the earlier stage. Hence, it cannot be said that entire burden falls on the final consumer.

Note: It is assumed that no mark-up in respect of VAT component.

What are the objectives for introducing VAT? **B**

The objectives for introducing VAT are-

1. To avail Credit on inputs, leading to cost efficiency.
2. Ensure equitable distribution of tax impact amongst the dealers.
3. Easy compliance through transparent and easy procedures existing under it and only 3 rates are there.
4. Easy computation of tax.
5. Avoids double taxation through input credit (i.e. avoidance of cascading effect of taxes)
6. Prevents distortions in trade and economy, through uniform tax rates.

What are the features of VAT, as indicated in the white paper? **C**

The White Paper on VAT was released by the then Finance Minister, on 17.01.2005. It reflects the consensus of the State Finance Ministers on the basic design of the State Level Value Added Tax. The features of VAT, as indicated in the White Paper, is as follows:

General:

1. All tax paid goods, purchased on or after 01.04.2004 and still in stock as on 01-04-2005, would be eligible to receive input tax credit, subject to submission of requisite documents.

<table>
<tr><td></td><td>
2. VAT would be levied on the goods when sold on or after 1.4.2005 and Input Tax Credit would be given for the Sales Tax already paid in the previous year. This tax credit would be available over a period of 6 months, after an interval of 3 months.
3. registration of dealers with Gross Annual Turnover above Rs. 5 Lakhs would be compulsory
4. Small dealers with Gross Annual Turnover not exceeding Rs. 5 Lakhs will not be liable to pay VAT, but State can extend upto Rs. 10 Lakhs
5. Small dealers, with Annual Gross Turnover not exceeding Rs. 50 Lakhs, who are otherwise liable to pay VAT, can opt for a composition scheme, with the payment of tax at a small percentage of gross turnover.
6. Dealers opting for composition scheme will not be entitled to Input Tax Credit.
7. There would be a Tax Payer Identification Number (TIN)
</td></tr>
<tr><td>VAT liability:</td><td>VAT Liability of a dealer is to be calculated by deducting input tax credit from tax collected on sales during the payment period.</td></tr>
</table>

<table>
<tr><th colspan="3">In relation to VAT, define the following terms –
Dealer, Sales, Turnover, Inputs, Input tax</th><th>C</th></tr>
<tr><td>Dealer</td><td colspan="3">Dealer means any person
⇨ who carries on the business of buying, selling, supplying or distributing goods,
⇨ directly or otherwise,
⇨ whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration</td></tr>
<tr><td>Sales</td><td colspan="3">Sales means
⇨ every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge)
⇨ by one person to another
⇨ in the course of business for cash, deferred payment or other valuable consideration</td></tr>
<tr><td rowspan="3">Turnover</td><td>Meaning</td><td colspan="2">The aggregate amount for which goods are
⇨ bought or sold, or delivered, or supplied or otherwise disposed off in any of the ways referred to in Sec. 2(33),
⇨ by a dealer, either directly or through another, on his own account or on account of others
⇨ whether for cash or for deferred payment or other valuable consideration</td></tr>
<tr><td>Includes</td><td colspan="2">Any sums, charged for anything done by the Dealer, in respect of the goods sold at the time of, or before the delivery thereof.</td></tr>
<tr><td>Excludes</td><td colspan="2">⇨ Proceeds of the sale by a person of agricultural or horticultural produce, other than tea and rubber (natural rubber, latex and all varieties and grades of raw rubber) grown within the state by himself or on any land in which he has an interest whether as owner, usufructuary Mortgagee, Tenant or otherwise
⇨ Any cash or other discount on the price allowed in respect of any sale
⇨ Any amount refunded in respect of articles returned by customers
⇨ Any amount realized by a Dealer by way of sale of his business as a whole
⇨ Any amount charged by a dealer by way of tax separately without including the same in the price of the goods sold</td></tr>
<tr><td>Inputs</td><td colspan="3">Inputs are goods meant for re-sale or use in manufacture, processing of other goods or packing of goods manufactured.</td></tr>
<tr><td>Input Tax</td><td colspan="3">Input Tax means the
⇨ tax paid or payable under this act</td></tr>
</table>

- ⇨ by a registered dealer to another registered dealer on the purchase of goods
- ⇨ including capital goods in the course of business

What are the variants of VAT? **A**

Gross Product Variant	Income Variant	Consumption Variant
Tax is levied on all sales and deduction for tax paid on inputs excluding the capital inputs is allowed.	Tax is levied on all sales with set-off for tax paid on inputs & only depreciation on capital goods.	Tax is levied on all sales, with deduction for tax paid, on all business inputs (including capital goods.)

Gross product variant	***Principal***	The gross product variant allows deductions for taxes on ***all purchase of raw materials and components. No deduction is allowed for taxes on capital inputs***.
	Limitation	⇨ Capital goods are taxed twice i.e., at the time of purchase and at the time of sale of goods produced, using those capital goods. ⇨ Modernization and upgrading of plant and machinery is delayed due to this double tax treatment.
Income variant	***Principal***	⇨ The income variant of VAT allows for deductions on purchase of raw materials and components, as well as the depreciation on capital goods. (i.e.) Credit on capital purchases are allowed in the ratio of depreciation, over the life of the capital asset. ⇨ This method provides incentives to classify purchases as current expenditure, to claim set off.
	Limitation	There are difficulties connected with the specification of any method of measuring depreciation, which basically depends on the life of an asset, as well as on the rate of inflation.
Consumption variant	***Principal***	⇨ Consumption variant of VAT allows for deduction on all business purchases, including capital assets. ⇨ Gross investment is deductible in calculating value added. ⇨
	Merits	⇨ It does not affect the decisions regarding investment, because the tax on capital goods is also set off against the VAT liability. Hence, the system is tax neutral, in respect with the techniques of production (labour or capital intensive). ⇨ Convenient from the point of administrative expediency, as it simplifies tax administration by obviating the need to distinguish between purchases of intermediate and capital goods on the one hand, and consumption goods on the other hand.
	Limitation	The system is tax neutral from the view point of Government as it leads to loss of revenues to the Government.

What are the methods for computation of VAT? **A**

Methods of computation of VAT

Addition method	Invoice method	Subtraction method	
		Direct Subtraction method	*Intermediate subtraction method*
Aggregating all the factor payments and profit	Deducting tax on inputs from tax on sales	Deducting aggregate value of purchases, exclusive of tax, from the aggregate value of sales, exclusive of tax.	Deducting tax inclusive value of purchases from the sales and taxing difference between them.

Addition method	***Suitability***	This method is mainly used with income variant of VAT.
	Demerits	⇨ This method does not easily accommodate exemptions of intermediate dealers. ⇨ It does not facilitate matching of invoices for detecting evasion. ⇨ There is no benefit of input tax credit.
	Computation	**Step 1:** Aggregate all the factor payments, including profits, to arrive at the total value addition. **Step 2:** Apply the rate on Step 1 to calculate the tax.
Invoice method	***Suitability***	Under Central Excise Law, this method is followed.
	Salient features	⇨ The most important aspect of this method is that, at each stage, tax is to be charged separately in the invoice. ⇨ This method is also called the "Tax Credit Method" or "Voucher Method".
	Merits	⇨ In this method the beneficiary is the trade and Industry, because the tax collection at all stages is very much lesser than the tax received by the State, due to of the availability of set-off of tax paid. ⇨ The possibility of tax evasion is reduced to minimum, because credit can be claimed only when the purchase invoice is produced.
	Computation	**Step 1:** Compute the tax to be imposed at each stage of sales, on the entire sale value. **Step 2:** Set-off the tax paid at the earlier stage. (i.e., at the stage of purchases in set-off). **Step 3:** The differential tax is paid.
Subtraction method	***Suitability***	This method is normally applied, where the tax is not charged separately.
	Salient features	⇨ Tax is charged only on the value added at each stage of the sale of goods ⇨ There is no tax credit, as the total value of goods sold is not taken into account.
	Methods of determination of value added	⇨ **<u>Direct Subtraction method</u>** Value added = Total value of sales, exclusive of tax ***Less*** Total value of purchases, exclusive of tax. ⇨ **<u>Intermediate subtraction method</u>** Value added = Total value of sales, inclusive of tax. ***Less*** Total value of purchases, inclusive of tax.
	Computation	**Step 1:** Compute the value added under either of the above methods. **Step 2:** Apply the rate of tax on the amount calculated in Step 1.

What are the advantages of VAT? **B**

VAT, being a broad based tax levied at multiple stages, is generally perceived as an explicit replacement of State sales tax, for raising additional revenue for the Government. The purpose of a tax system is to bring in revenues to the Government. Tax revenues can be raised in many ways. However, the main characteristics of a good tax system should be:

1. The tax system should be fair or equitable;
2. It should cause the least possible harmful effects to the economy and to the extent possible; it should promote growth of the economy.
3. It should be simple, both for its compliance by the payer and for its administration by the Government.
4. It should be income elastic.

Keeping in view the above objectives, VAT is being implemented in various states, in the place of the local sales tax payable by the seller. VAT is also expected to be more effective and efficient for every person, including the Government, the manufactures, the traders and the consumers and hold the following advantages:

Easy to Administer & Transparent:	This system of charging tax is easy to administer because of its simplicity. It also reduces the cost of compliance by the dealers and is transparent, as tax is to be charged in every bill and there will be no local statutory forms.
Less Litigation:	There will be no litigation, with respect to allowability of items, as under VAT no items will be specified in the registration certificate of the dealer. The dealer will be allowed to purchase any of the items of his choice, in which he intends to deal. He will also be allowed to purchase any item he requires as raw material, for the purpose of manufacturing or for packing.
Tax Credit on purchase of Capital Goods:	The dealer will be allowed to purchase capital goods for manufacturing, after paying the sales tax and will be entitled to get set off of sales tax paid on such purchases, from his sales tax liability, which will arise on the sales made by him.
Abolition of Statutory Forms:	There are no forms under VAT. Therefore, all problems related to forms get resolved automatically.
Self-assessment:	Dealers are not required to appear before the Assessing Authority, for their yearly assessments, as under VAT there is provision for self-assessment. All the cases will be accepted by the department as correct and only a few will be selected for audit, as is being done by Income Tax Department and Excise Department at present.
Deterrent against Tax Avoidance:	It will act as deterrent against tax avoidance. Under the present system, tax is charged either on first point basis or at last point basis, hence the incentive to evade tax is high, because the dealer saves the whole amount of tax due on such transaction; whereas under VAT, the incentive to evade tax is low because the dealer saves only a part of tax i.e. tax amount, which he is liable to pay, less the amount of tax he has already paid on his purchases.
No Cascading Effect:	It does not have cascading (tax on tax) effect, due to the system of deduction or credit mechanism. Since VAT does away with cascading, it avoids distorting business decisions; the need for vertical integration is dictated only by the market forces or technical considerations, and not by the tax structure.
Effective Audit & Enforcement Strategies:	The input credit method, by generating a trail of invoices, is argued to be a system that encourages better compliance, since the purchaser seeks an invoice to get input tax credit. Further, this trail of invoices supports effective audit and enforcement strategies.
Minimum Exemptions:	The system will be more effective because of minimum exemptions.
Removal of Anomaly of First Point Taxation:	VAT eliminates the limitations of single point tax, either at first point or last point. In the case of last point goods, the temptation to evade tax is high. Firstly, the quantum of tax at one point is high. Secondly, as the exemption is available against statutory forms, possibility of misuse of forms cannot be ruled out. Similarly, under first point tax system, tax avoidance, by way of selling the goods at first point to their sister concerns at lower rates and thereafter increasing the price of the goods because of subsequent sales was possible being exempt as tax paid. This anomaly is also being taken care of under VAT, without introducing cascading.

What are the limitations of VAT? **B**

India, being a Federal Republic country has state level administration of the local sales tax, which is being replaced by VAT, and had been the reason for deferment of its implementation, time and again. Inherently there are certain limitations of VAT due to which it being opposed by some of the trade associations. Moreover VAT undoubtedly has many advantages but without taking note of the limitation of VAT, one is just looking only at one side of the coin. The limitations of VAT are discussed here under.

Detailed Records:	Like any other system VAT is also not free from all evils. Though on record it is said to be the simplest method, however, it is more complicated than a simple first point tax. Many small dealers maintain only primitive accounts and it is very difficult for them to keep proper and detailed records required for VAT purposes.
Cause Inflation:	It is also argued that VAT causes inflation. Its impact will depend on various factors such as inventory holding period, demand supply position of that particular product, number of intermediaries etc. Investment in stock is bound to increase, as tax will be paid at the time of purchase. Hence, one will have to carry tax paid stock.
Refund of Tax:	Credit of tax paid on inputs/capital goods is available to be utilized against tax liability, which will be calculated on the sale of final product. VAT credit cannot be availed, if no tax is payable on final product being exempt or taxable at lower rate.
Functional Problems:	The functional problem of VAT is that, input tax credit is allowed on the basis of the invoices issued by the dealer. In respect of invoices, where tax at the earlier stage is charged and collected, but not remitted to the State by the concerned dealer, the dealer who has paid the tax and who is entitled to take credit for the tax paid, should not be made to suffer. Provisions to protect the interest of the dealers, who have paid the tax should be made.
Increase in Investment:	Dealer will be making purchases after paying tax, therefore investment in stock will go up to the extent of tax paid. Under old system, the dealer was making purchases against statutory forms, hence, was not liable to pay tax on its purchases.
Not Credit for Tax paid on Inter-state Purchases:	The biggest problem of the introduction of VAT is, the non-availability of credit for tax paid on interstate purchases, in initial years. It will also result in some cascading effect, which goes against the basic spirit of VAT.
Audit under VAT:	Most of the states introduced VAT on 1.4.2005 and they have incorporated audit provisions in the Legislation itself. Audit under VAT is important for better and effective implementation of the VAT system.

Practical Questions

1. **X, a manufacturer sells goods to Mr. B, a distributor, for ₹ 2,000 (excluding of VAT). Mr. B sells goods to Mr. K, a wholesale dealer, for ₹ 2,400. The wholesale dealer sells the goods to a retailer for ₹ 3,000, who ultimately sells to the consumers for ₹ 4,000. Compute the Tax Liability, Input credit availed and tax payable by the manufacturer, distributor, wholesale dealer and the retailer, under Invoice Method assuming VAT @ 14.5%.**

Solution: Amt. in ₹

Particulars	Invoice	VAT	Input VAT credit	Net
Sale by X to B	2,000	2,000 × 14.5% = 290	—	290
Sale by B to K	2,400	2,400 × 14.5% = 348	290	58
Sale by K to Retailer	3,000	3,000 × 14.5% = 435	348	87
Sale by D to E	4,000	4,000 × 14.5% = 580	435	145

2. **Compute the VAT liability of Mr. P. Kapoor, for the month of October, 2012, using 'Invoice method' of Computation of VAT.**

Particulars	Amt. (₹)
Purchases from the local market (includes VAT @ 4%)	**65,000**
Storage Cost incurred	**750**

Transportation cost	**1,750**

Goods sold at a margin of 5% on the cost of such goods
VAT rate on Sales 14.5%

Solution:

Computation of VAT liability of Mr. P. Kapoor for October, 2012 (Invoice Method)

	Particulars	Amt. (₹)
	Purchase price of the inputs (inclusive of VAT)	65,000
Less:	VAT paid on purchases @ 4% $\left(\frac{65{,}000 \times 4}{104}\right)$	2,500
	Purchase price of the inputs (excluding VAT)	62,500
Add:	Storage cost	750
Add:	Transportation cost	1,750
	Cost price of the goods	65,000
Add:	Profit @ 5% of Cost Price (65,000 × 5%)	3,250
	Sale price before VAT	68,250
	VAT @ 14.5% (68,250 × 14.5%)	9,896
Less:	VAT paid on purchases	2,500
	VAT liability of Mr. P. Kapoor	**7,396**

3. **Rahul and Co., a manufacturer of cricket ball, sold its goods to a distributor at ₹ 11,250, inclusive of tax. The distributor sold the goods to wholesaler for ₹ 13,500. The wholesaler sold the goods to a retailer for ₹ 16,875. The retailer sold the goods to consumer at ₹ 22,500. All the sales were inclusive of VAT a 14.5%. Compute the total VAT payable under the subtraction method.**

Solution:

Statement showing VAT payable by Rahul and Co. (Subtraction Method)

Particulars	Invoice	Purchase price	Value added	VAT $\left(\frac{\text{Value added} \times 14.50}{114.50}\right)$
Sale by manufacturer to distributor	11,250	9,825	—	1,425
Sale by distributor to wholesaler	13,500	11,250	2,250	285
Sale by wholesaler to retailer	16,875	13,500	3,350	427
Sale by retailer to consumer	22,500	16,875	5,625	712
Total VAT payable				**2,849**

4. **Inputs used for the production of Output 'M' are 'X' and 'Y' respectively. The following are the details of inputs**

Input	VAT Rate	Invoice Price (inclusive of VAT)
Product X	**14.5%**	**₹ 45,000**
Product Y	**4.0%**	**₹ 26,000**

The following are the details of Sales and the rate of VAT applicable for the Output 'M' is 14.5%:

Description	A to B	B to C	C to D	D to E	E to consumer
Invoice price (₹)	**76,500**	**1,12,500**	**1,80,000**	**2,25,000**	**2,70,000**

From the above details, calculate the VAT collected at each stage and the VAT finally remitted, using the two different methods i.e. (a) Invoice Method, (b) Subtraction Method.

Solution:

(a) Invoice Method Amt. in ₹

Particulars	Invoice	Material value $\left(\frac{\text{Invoice}\times 100}{114.5}\right)$	VAT (14.5%)	Input tax credit	Net
Inputs of A					
Product X (@ 14.5%)	45,000	39,801	5,699	—	5,666
Product Y (@ 4%)	26,000	25,000	1,000	—	1,000
Sale by A to B	76,500	66,812	9,688	6,699	2,989
Sale by B to C	1,12,500	98,254	14,246	9,688	4,558
Sale by C to D	1,80,000	1,57,205	22,795	14,246	8,549
Sale by D to E	2,25,000	1,96,507	28,493	22,796	5,698
Sale by E to Consumer	2,70,000	2,35,808	34,192	28,493	5,699
Final	2,70,000	2,35,808	34,192	—	**34,192**

(b) Subtraction Method

Particulars	Invoice	Purchase price	Value added	VAT (14.5%) $\left(\frac{\text{Value added}\times 14.50}{114.50}\right)$
On input	71,000	—	—	6,699
Sale by A to B	76,500	71,000	5,500	696
Sale by B to C	1,12,500	76,500	36,000	4,559
Sale by C to D	1,80,000	1,12,500	67,500	8,548
Sale by D to E	2,25,000	1,80,000	45,000	5,699
Sale by E to Consumer	2,70,000	2,25,000	45,000	5,699
Final	2,70,000	—	—	31,900

5. Compute the invoice value to be charged and amount of tax payable under VAT, by a dealer, who had purchased goods for ₹ 1,20,000, and after adding for expenses of ₹ 10,000, and of profit Rs.15,000 had sold out the same. The rate of VAT on purchases and sales is 14.5%.

Solution:

Computation of Invoice Value

	Particulars	Amt. (₹)
	Cost of Goods Purchased	1,20,000
Add:	Additional expenses	10,000
Add:	Profit Share	15,000
	Total Invoice Value	1,45,000

Computation of VAT Payable

	Particulars	Amt. (₹)
	VAT on invoice value @ 14.5%	21,025
Less:	Input tax credit – VAT on purchase @ 14.5% (1,20,000 × 14.5%)	(17,400)
	VAT payable	**3,635**

6. Compute the VAT liability of Mr. S. Banerjee, for the month of January 2013, using "invoice method" of computation of VAT, from the following particulars:

Particulars	Amt. (₹)
Purchase price of the inputs, purchased from the local market (incl. VAT)	**26,000**
Storage cost incurred	**250**
Transportation cost	**950**

VAT rate on purchase 4%.
Goods sold at a margin of 5% on the cost of such goods
VAT rate on Sales 14.5%

Solution:

	Particulars	Amt. (₹)
	Purchase price of the inputs (inclusive of VAT)	26,000
Less:	VAT paid on purchases @ 4% $\left(\frac{26{,}000\times4}{104}\right)$	1,000
	Purchase price of the inputs (excluding VAT)	25,000
Add:	Storage cost	250
Add:	Transportation cost	950
	Cost price of the goods	26,200
Add:	Profit @ 5% of Cost Price (65,000 × 5%)	1,310
	Sale price before VAT	27,510
	VAT @ 14.5% (68,250 × 14.5%)	3,989
Less:	VAT paid on purchases	1,000
	VAT liability of Mr. S. Banerjee	**2,989**

7. Mr. Goenka, is a trader, who sells raw materials to a manufacturer of finished products. He imports his stock in trade as well as purchases the same from the local markets. Following transaction took place, during the financial year 2012-13. Calculate the VAT and Invoice value charged by him to a manufacturer. Assume the rate of VAT @ 14.50%.

(a) Cost of imported materials (from other state) including tax: ₹ 1,00,000.
(b) Cost of local materials including VAT: ₹ 2,25,000
(c) Other expenditure includes storage, transport, interest and loading and unloading and profit earned by him: ₹ 87,500

Solution:

	Particulars	Amt. (₹)
	Cost of imported material (from other state)	1,00,000
Add:	Cost of local materials excluding VAT $\left(\frac{2{,}25{,}000\times100}{114.50}\right)$	1,96,507
Add:	Other expenditure	87,500
	Total cost	3,84,007
Add:	VAT @ 14.5% (3,84,007 × 14.5%)	55,681
	Total Invoice Value	4,39,688
Add:	Credit on local material available $\left(\frac{2{,}25{,}000\times14.50}{114.50}\right)$	28,493
	Net VAT Liability	**27,188**

8. Compute VAT amount payable by Mr. A, who purchases goods from a manufacturer, on a payment of ₹ 2,25,000 (including VAT) & earns 10% profit. VAT rate on purchase and sale is 14.5%.

Solution:

	Particulars	Profit (₹) 10% on sale	Profit (₹) 10% on cost
	Total purchase value (including VAT @ 14.5%)	2,25,000	2,25,000
Less:	VAT on purchase $\left(\frac{2{,}25{,}000\times14.50}{114.50}\right)$	(28,493)	(28,493)
	Net purchase cost	1,96,507	1,96,507
Add:	10% Profit on sale = $\frac{1}{9}$th cost = $\frac{1{,}96{,}507}{9}$	21,834	19,650
	10% Profit = $\frac{1}{10}$th cost = $\frac{1{,}96{,}507}{10}$		
	Sale price before VAT	2,18,341	2,16,157
Add:	VAT @ 14.5%	31,659	31,343
	Total Bill Value	2,50,000	2,47,500

	VAT collection on Sales	31,659	31,343
Less:	VAT on Purchases (Input Tax Credit)	21,834	19,650
	Net VAT Payable	**3,166**	**2,850**

9. Calculate the Total VAT liability, under the State VAT law, for the month of October 2012.

Particulars	**₹**
Inputs purchased within the state	**1,70,000**
Capital goods used in the manufacture of the taxable goods	**50,000**
Finished goods sold within the state	**2,00,000**

Applicable tax rates are as follows:

(a) VAT rate on capital goods: 14.5%
(b) Input tax rate within the state: 14.5% and
(c) Output tax rate within the state: 4%.

Solution:

Computation of the VAT liability for the month of October 2012

Particulars		**₹**
Inputs purchased within the state		1,70,000
Capital goods used in the manufacture of the taxable goods		50,000
Input tax credit (including capital goods)	(₹ 24,650 + ₹ 7,250)	31,900
Output sold in the month (within the State)		2,00,000
Output tax @ 4%		8,000
VAT liability = Output tax – Input tax credit	(₹ 8,000 – ₹ 31,900)	Nil
Excess credit carried forward to subsequent period		23,900

Try Yourself

P purchases raw material from Suppliers Q and R, for manufacturing chemicals. P sells goods to a Wholesale Dealer A. A sells goods to a Retailer B. B sells the goods to the consumers. Calculate the amount of VAT, which will be ultimately collected by the Government. The following information is available:

(a) Q charges VAT at 14.5%. All others charges VAT at 4%
(b) Amount of Bills without VAT is given below:

Transaction	*Raw Material supplied to X (₹)*	*Sale of manufactured goods (₹)*
Sale by Q to P	*3,00,000*	
Sale by R to P	*2,00,000*	
Sale by P to A		*12,00,000*
Sale by A to B		*14,00,000*
Sale by B to Consumer		*16,30,000*

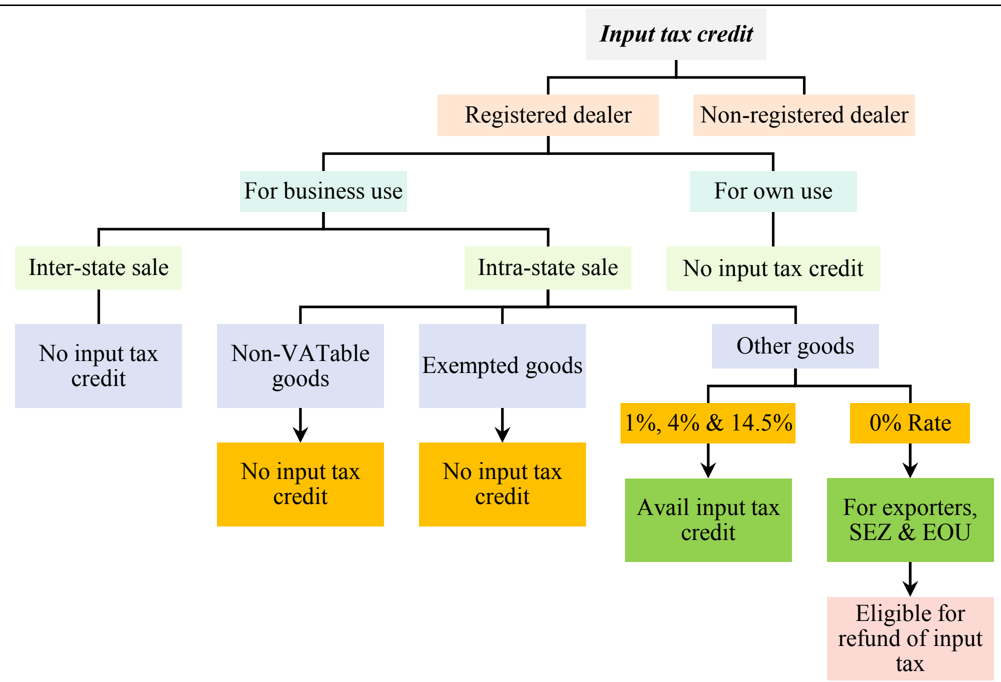
2. INPUT TAX CREDIT UNDER VAT

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

2. INPUT TAX CREDIT UNDER VAT



[Chart showing concept of input tax under VAT]

Concept of input tax and output tax	**B**

- ➪ Input tax is the tax paid, or payable, in the course of business, on purchases of any goods, made from a registered dealer of the State.
- ➪ Output tax means, the tax charged or chargeable under the Act, by a registered dealer, for the sale of goods, in the course of business.

Explain the input tax credit in the context of VAT	**A**

1 Eligibility

Dealer:	A 'Dealer' is the one who is registered, or is required to be registered, under the respective state laws on VAT, is entitled to an input tax credit (i.e. VAT Credit)
Eligible purchases:	Tax paid on purchases, which are meant for sale or for utilization in the process of production, for such sale.

2 Tax Payment

The VAT liability of the dealer is calculated, by deducting VAT Credit from Tax payable on sales, during the tax payment period.

3 VAT Credit for stock Transfer

- ➪ VAT Credit is given to a Dealer for purchase of inputs / supplied in a state, meant for sales within the state, as well as in other states.
- ➪ Even for stock transfer / consignment sale of goods out of the state, the input tax paid in excess of a certain percentage, is eligible for VAT Credit.

4 Carry forward of VAT Credit and refund

- ➪ If the VAT Credit exceeds the tax payable on sales in a month, the excess credit may be carried over to the future month (s), and the unadjusted VAT credit at the end of the specified period, is eligible for refund.
- ➪ Exporter / Units in SEZ / Deemed Export can claim refund.

5 Exempt and zero rated Goods

Exempted goods	Goods, on which VAT credit cannot be claimed, and
Zero rated sales:	VAT Credit can be claimed, in respect of purchase for such sale.

6 Non-availability of input tax credit *[Nov. '08]*

The following are not eligible for input tax credit:

1. Purchases from unregistered dealers,
2. Purchases from other states / countries,
3. Purchases of goods used in manufacture of exempted goods,
4. Purchase of capital goods (credit is available in installments),
5. Purchase of goods used as fuel in power generation,
6. Purchase of goods to be dispatched as branch transfers, outside states,
7. Purchase of goods used in manufacture of goods, to be dispatched outside any state as branch transfer / consignments,
8. Purchase of goods, where the dealer does not have invoices showing amounts of tax charged separately, by the selling dealer,
9. Purchase of non-creditable goods, and
10. Purchases from a dealer, who has opted for composition scheme.

7 VAT credit on

Opening Stock:	⇨ All tax paid goods still in stock and purchased upto 1 year prior to the date, on which VAT becomes applicable, are eligible for input tax credit. However, the VAT credit available on opening stock is available over a period of 6 months, after an interval of 3 months, needed for verification. ⇨ Capital Goods, included in the opening stock, are not eligible for input tax credit.
Capital Goods	VAT Credit on all capital goods, except a few included in the negative list in respective state laws, may be adjusted over a maximum period of 36 Equal Monthly Instalments (this period may be reduced by the state).

Examples for input tax credit

Input worth ₹ 1,00,000 is purchased and sales are worth ₹ 2,00,000/- in a month, input tax rate and output tax rate are 4% and 14.5% respectively, then input tax credit/set-off and calculation of VAT will be as shown below:

			₹
(a)	Input purchase within the month		1,00,000
(b)	Output sold in the month		2,00,000
(c)	Input tax paid	(4%)	4,000
(d)	Output tax payable	(14.5%)	29,000
	VAT payable during the month after set-off / input tax credit [(d) – (c)]		**25,000**

Subject to the provisions relating to the credit for input tax, the net tax payable by a taxable person for a tax period can be calculated on the basis of the following formula:

Total of the tax, payable in respect of taxable supplies made by the taxable person, during the tax period

Less: Total input tax credit allowed to the taxable person, for the tax period

In short, net tax payable is total tax liability minus input tax credit i.e. net tax is the difference between output tax and tax credit.

The following example illustrates how excess VAT credit can be availed:

		₹
Tax paid on purchases made in the State, within a month	(input tax)	10,000
Tax charged for sales in the State, within a month	(output tax)	4,500
Central Sales Tax Charged for inter-State sales, within a month		15,000
Input tax credit		10,000
VAT liability	(4,500 – 10,000)	Nil
Excess credit		5,500
CST to be paid to Govt.	(15,000 – 5,500)	9,500

In the present case, CST to be paid to Govt. is ₹ 9,500 (CST of ₹ 15,000 will be reduced by excess VAT Credit of ₹ 5,500/-)

Eligible purchases for availing input tax credit	A

For the purpose of claiming input tax credit, the taxable goods should be purchased for any one of the following purposes:

Particulars	Examples
Sale or re-sale within state	Computers purchased and sold in Gujarat.
Sale to other parts of India in the course of inter-state trade or commerce.	Computer purchased in Gujarat and sold in Mumbai.
To be used as ⇨ Containers or packing materials, ⇨ Raw materials, ⇨ Consumable stores, required for the purpose of manufacture of taxable goods, or in the packing of such manufactured goods intended for sale in the state, or in the course of interstate trade or commerce.	Purchase of carton boxes and other packing materials within Gujarat, and used in connection with the packing of the manufactured computer, which is sold in Gujarat, or to a dealer in Mumbai.
For being used in the execution of a works contract.	Cement and steel, purchased by a construction company within the state of Gujarat, for usage in the execution of a civil works contract.
To be used as capital goods, required for the purpose of manufacture or resale of taxable goods.	Plant and machinery installed in a factory, which manufactures taxable goods.
To be used as ⇨ Raw materials, ⇨ Capital goods, ⇨ Consumable stores, ⇨ Packing materials or containers, for manufacturing or packing goods, to be sold in the course of export, out of the territory of India.	Manufactured or traded goods from Gujarat being exported to Singapore.
For making zero – rated sales other than those referred to in column above.	

Note:

⇨ Where the purchased goods are used partially for the above specified purpose, and partially for other purposes, input tax credit shall be allowed proportionate to the extent, to which, purchases are used for the purposes specified above.

⇨ Taxable goods means, goods other than goods which are specified in the Schedule for Tax Free Goods.

Concept of input tax credit on capital goods	B

⇨ Normally, under VAT system, the dealer should get full credit for tax paid on such purchases, more particularly, when the basic principle is to avoid the cascading effect. These assets are used for the business, and while fixing sale price of the business products, the dealer has to include some portion towards the cost of the acquisition of these assets, as part of the sale price. If the input credit is not allowed in full then certainly, to the extent of disallowance, the principle of VAT gets defeated.

⇨ **Procedural requirements for claim of set-off:** Barring the items covered by the negative list and subject to retention rules, the dealers are entitled to set off on capital goods like any other purchases. Thus, the dealer will have to bifurcate their purchase into capital goods eligible for set off and capital goods not so eligible.

⇨ In respect of eligible capital goods the dealer will be required to follow the procedural requirements for claiming set off successfully. For example, dealers will be required to support

purchase of capital goods with tax invoice. In the absence of such tax invoice set off will be disallowed.
- ⇨ Once a dealer is entitled to set off he has to further comply with the relevant provisions in respect of allowability. If it is subject to certain installments, the dealer will be required to claim set off accordingly in his returns. If the set off is subject to prior permission, the same should be duly obtained.

VAT invoice A

Invoice is a document listing goods sold with price, tax charged and other details as may be prescribed and issued by a dealer authorized under the Act.

The whole structure of the VAT, with input tax credit, is founded on the documentation of a tax invoice, a cash memo or a bill. The White Paper mainly provides for the following provisions, which are mandatory, and any failure to comply with these attracts penalty:

1. Every registered dealer, whose turnover of sales exceeds the specified amount, shall issue to the purchaser a serially numbered tax invoice, cash memo or bill, with the prescribed particulars.
2. The tax invoice shall be dated and signed by the dealer or his regular employee, showing the required particulars.
3. The dealer shall keep a counterfoil or duplicate of such tax invoice, duly signed and dated.
4. ***Exception:*** Composition scheme dealer cannot issue a tax invoice.

Importance of VAT Invoice:

- ⇨ Helps in determining the input tax credit,
- ⇨ Prevents cascading effect of taxes,
- ⇨ Facilitates multi – point taxation on the value addition,
- ⇨ Promotes assurance of invoices,
- ⇨ Assists in performing Audit and investigation activities effectively.
- ⇨ Checks evasion of tax.

Contents of VAT invoice:

VAT legislations of all States provide for the contents of the tax invoice. By and large, there would be no need for a separate tax invoice, a regular invoice can also be termed as tax invoice, if it has the prescribed contents. Generally, the various legislations provide that the tax invoice should have the following contents:

1. The words ‘tax invoice' in a prominent place;
2. Name and address of the selling dealer;
3. Registration number of the selling dealer;
4. Name and address of the purchasing dealer;
5. Registration number of the purchasing dealer (may not be required under all VAT legislations);
6. Pre-printed or self-generated serial number;
7. Date of issue;
8. Description, quantity and value of the goods sold;
9. Rate and amount of tax charged, in respect of taxable goods;
10. Signature of the selling dealer, or his regular employee, duly authorized by him for such purpose.

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Practical Questions

1. Show the format of VAT invoice.

Solution:

No prescribed statutory format is given for tax invoice in any State VAT Act. A proforma might look as below:

Tax invoice (Original) – Buyer's Copy

Seller's name	: ______________	Tax invoice No.	:	______________
Address	: ______________	Date	:	______________
Phone No.	: ______________	Challan no. and date	:	______________
VAT Reg. No.	: ______________	Buyer's name and address	:	______________
CST Reg. No.	: ______________	Buyer's VAT Reg. No. (if any)	:	______________

Sr. No.	Quantity	Description of the goods	Price p.u.	Value (₹)	VAT Rate	Tax Amt.	Total (₹)

Figures in Rupees
E & OE

Signature
(Selling Dealer or his authorized Employee)

2. Compute net VAT liability of Rishi, from the following information:

	Particulars		**₹**
	Raw materials from foreign market (Includes duty paid imports @ 20%)		**1,20,000**
	Raw material purchased from local market		
	Cost of Raw Material	**2,50,000**	
Add:	**Excise duty @ 16%**	**40,000**	
		2,90,000	
Add:	**VAT @ 4%**	**11,600**	**3,01,600**
	Raw material purchased from neighbouring state (Including CST @ 2%)		**51,000**
	Storage and Transportation Cost		**9,000**
	Manufacturing expenses		**30,000**

Rishi sold goods to Madan and earned profit @ 12%, on the cost of production. VAT rate on sale of such goods is 4%.

Solution:

	Particulars	**Amt. (₹)**
	Raw Material from foreign market	1,20,000
Add:	Raw Material purchased from local market (cost portion only)	2,90,000
Add:	Raw Material purchased from neighbouring state	51,000
Add:	Storage and Transportation cost	9,000
Add:	Manufacturing expenses	30,000
	Cost of production	5,00,000
Add:	Profit margin @ 12%	60,000
	Sale value	5,60,000
	VAT on sale value @ 4%	22,400
Less:	VAT on purchases (2,90,000 × 4%)	11,600
	Net VAT Payable	10,800

Note: *Excise duty is eligible for CENVAT credit and hence not included in the cost.*

3. Calculate the VAT liability for the period January 1, 2013 to January 31, 2013 from the following particulars:
Inputs worth ₹ 1,00,000 were purchased from within the State, ₹ 2,00,000 worth of finished goods were sold within the State and ₹ 1,00,000 worth of goods were sold in the course of inter-State trade. VAT paid on procurement of Capital Goods worth ₹ 1,00,000 during the month was at 14.50%. If the input and out tax rate in the State are 14.50% and 4% respectively, and the Central Sales Tax Rate is 3%, show the total tax liability, under the State VAT law and under the Central Sales Tax Act.

Solution:

Calculation of Tax Liability

Particulars			Amt. (₹)
Under VAT Law:	VAT payable on output sales	(2,00,000 × 4%)	8,000
Under CST Law:	CST payable on inter-state sales	(1,00,000 × 3%)	3,000

Calculation of Input Tax Credit Available

	Particulars		₹	Amt. (₹)
	VAT paid on input	(1,00,000 × 14.5%)	14,500	
	VAT paid on capital goods	(1,00,000 × 14.5%)	14,500	29,000
Less:	Set-off against VAT liability			(8,000)
	Excess credit available			21,000
Less:	Set-off against CST liability			(3,000)
	Credit carried forward			18,000

Note: It is assumed that the respective State provides for-

⇨ Claim of complete credit, in respect of the Capital Goods purchased, immediately.

⇨ Claim of Credit against the CST Payable on Inter State Sales.

4. Compute the total value of purchases, eligible for input tax credit, from the following particulars:

	₹
Inputs purchased from a registered dealer, who opts for composition scheme, under the VAT Act	**10,000**
Inputs purchased for being used in the execution of a works contract	**10,000**
Raw material purchased from unregistered dealers	**70,000**
High seas purchases of inputs	**1,00,000**
Goods purchased for sale to other parts of India, in the course of Inter-State trade or commerce	**20,000**

Solution:

Computation of purchases eligible for input tax credit

	Particulars	Amt. (₹)
	Eligible Purchases	
	Input purchased for being used in the execution of a works contract	1,00,000
Add:	Goods purchased for sale to other parts of India in the course of Inter- State trade or commerce	20,000
	Purchases eligible for input tax credit	1,20,000
	Ineligible Purchases	
	Inputs purchased from a registered dealer who opts for composition scheme under the VAT Act	10,000
	Raw material purchased from unregistered dealers	70,000
	High Seas purchases of Inputs	1,00,000
	Purchases not eligible for input tax credit	1,80,000

Note: *For the purpose of computation of value of purchases eligible for input tax credit, the following have not been included:*

⇨ Inputs purchased from a registered dealer, who opts for composition scheme, under the provisions of the Act, of worth ₹ 10,000.
⇨ Raw material purchased from unregistered dealers, of worth ₹ 70,000.
⇨ The inputs imported from outside the territory of India, commonly known as high seas, purchased of worth ₹ 1,00,000.

5. Mr. Rajesh is a registered dealer and gives the following information. You are required to compute the net tax liability and total sales value, under Value Added Tax:
(a) Rajesh sells his products to dealers in his state and in other states.
(b) The profit margin in 15% of the cost of production and VAT rate is 14.5% of sales.
(c) Intra State purchases of raw material costs ₹ 2,50,000 (excluding VAT at 4%)
(d) Purchases of raw material from an unregistered dealer for a cost of ₹ 80,000 (including VAT at 14.5%)
(e) High seas purchases of raw material are for ₹ 1,85,000 (excluding the custom duty, at 10% of ₹ 18,500)
(f) Purchases of raw materials from other states (excluding CST at 2%) ₹ 50,000.
(g) Transportation charges, wages and other manufacturing expenses, excluding tax, amounts ₹ 1,45,000.
(h) Interest paid on bank loan is ₹ 70,000.

Solution:

	Particulars		Amt. (₹)
	Intra-state purchases		2,50,000
Add:	Purchases from unregistered dealers		80,000
Add:	High seas purchases	(1,85,000 + 18,500)	2,03,500
	(Including Customs Duty paid will be considered)		
Add:	Purchase from other states	(50,000 + 1,000)	51,000
	(Including CST paid will be considered)		
Add:	Transportation charges, wages and other manufacturing expenses		1,45,000
	Cost of Production		7,29,500
Add:	Profit margin @ 15%		1,09,425
	Sale Value		8,38,925
	VAT on sale value @ 14.5%		1,21,644
Less:	VAT on Purchases	(2,50,000 × 4%)	(10,000)
	Net VAT Liability		**1,11,644**

Note:
1. *Interest paid will not form part of cost of production.*
2. *VAT paid on raw materials purchased from unregistered dealers, are not eligible for input credit, and hence added with cost.*

6. A dealer purchases goods for ₹ 2,50,000 (exclusive of VAT). He incurs ₹ 35,000 on the goods and sells them at a profit of ₹ 15,000. Compute the invoice value to be charged and the amount of tax payable under VAT. The rate of VAT on purchases and sales is 4%.

Solution:

Computation of Invoice Value

	Particulars	₹	Amt. (₹)
	Cost of goods purchased		2,50,000
Add:	Expenses	35,000	
	Profit margin	15,000	50,000
	Product sale value		3,00,000
Add:	VAT @ 4%		12,000
	Invoice Value		**3,12,000**

Computation of tax payable (VAT)

	Particulars	Amt. (₹)
	VAT charged on sales	12,000
Less:	Input credit of VAT paid on purchases @ 4% on 2,50,000	(10,000)
	VAT liability	2,000

7. Compute the net VAT liability of Rishabh, using the information given as follow.

	₹
Raw material purchased from the foreign market (Including duty paid on imports @ 20%)	**12,000**
Raw material purchased from local market (Including VAT charged on the material @ 4%)	**20,800**
Raw material purchased from neighbouring state (Including CST paid on purchases @ 2%)	**7,140**
Storage, transportation cost and interest	**2,500**
Other manufacturing expenses incurred	**600**

Rishabh sold the goods to Rajul and earned profit @ 10%, on the cost of production. VAT rate on sale of such goods is 14.5%.

Solution:

Computation of Sale Price

	Particulars		Amt. (₹)
	Raw material purchased from the foreign market	(Note 1)	12,000
Add:	Raw material purchased from the local market (₹ 20,800 – ₹ 800)	(Note 2)	20,000
Add:	Raw material purchased from the neighbouring state	(Note 3)	7,140
Add:	Storage, transportation cost and interest		2,500
Add:	Other manufacturing expenses incurred		600
	Cost of production		42,240
Add:	Profit @10% on Rs. 42,240		4,224
	Sale Price		46,464
	VAT @ 14.5% on sales (46,464 × 14.5%)		**6,737**

Computation of VAT Payable

	Particulars	Amt. (₹)
	VAT charged on sales	6,737
Less:	Set-off of VAT on purchases	
	On imports	Nil
	On local purchase	(800)
	Net VAT payable	**5,937**

Notes:

1. Since the duty paid on imports is not a State VAT, it will form part of cost of input.
2. VAT charged by the local suppliers is ₹ 800. Since the credit of this would be available, it shall not be included in the cost of input.
3. Credit/set-off for tax paid on inter-State purchases (inputs) is not allowed.

8. Compute the VAT amount payable by X, who purchased goods from a manufacturer on payment of ₹ 4,16,000 (including VAT), and earned 20% profit on purchase price. VAT rate on both purchases and sales is 4%.

Solution:

Computation of VAT Payable

Particulars		Amt. (₹)
Cost of goods purchased (excluding VAT)	$\left(4,16,000 \times \frac{100}{104}\right)$	4,00,000

Add:	Profit margin @ 20%		80,000
	Sale Value		4,80,000
	VAT on sales		19,200
Less:	Input credit	$\left(4{,}16{,}000\times\frac{4}{104}\right)$	(16,000)
	Net VAT liability		**3,200**

9. X, is a trader who sells raw materials to a manufacturer of finished products. He imports his stock in trade, as well as purchases the same from the local markets. Following transaction took place during the financial year 2010-11. Calculate the VAT and invoice value charged by him to a manufacturer. Assume the rate of VAT @ 14.50 percent.

Solution:

	Particulars		**If raw material imported from other State is subject to CST @ 2% (₹)**
	Cost of material imported from other State		1,00,000
Add:	CST on the above		2,000
Add:	Cost of local material, excluding VAT	$\left(4{,}16{,}000\times\frac{4}{104}\right)$	1,96,507
Add:	Other expenditure, including storage, interest, loading / unloading expenditure, and the profit margin		87,500
	Total		3,86,007
Add:	VAT @ 14.5%		55,971
	Total		**4,41,978**

X can claim an input VAT credit to the extent of ₹ 25,000

Cost of local raw material: $\left(2{,}25{,}000\times\frac{14.5}{114.5}\right)$

10. X, a dealer in Mumbai, dealing in consumer goods, submits the following information, pertaining to the month of March, 2013.

Exempt goods A purchased for ₹ 2,00,000 and sold for ₹ 2,50,000. Goods B purchased for ₹ 2,25,000 (including VAT) and sold at a margin of 10% profit on purchases (VAT rate: 14.5%)

Goods C purchased for ₹ 1,00,000 (excluding VAT) and sold for ₹ 1,50,000 (VAT rate: 4 %)

His unutilized balance in VAT input credit on March 1, 2013 was ₹ 1,500. Compute the turnover, input VAT, output VAT and net VAT payable by Mr. X.

Solution:

Computation of turnover and VAT payable by X

Nature of Goods	**Turnover ₹**	**Output VAT ₹**	**Input VAT ₹**	**Net VAT payable ₹**
Goods A (exempt Goods)	2,50,000	—	—	—
Goods B $\left[10\%\text{ of}\left(2{,}25{,}000\times\frac{100}{114.50}\right)\right]$	2,16,157	31,343	28,493	2,850
Good C	1,50,000	6,000	4,000	2,000
Total	**6,16,157**	**37,343**	**32,493**	**4,850**

Try Yourself

1. *Purchases by S & Co. for the month of December are as follows:*
   (1) Rs. 1,00,000 at 4% VAT
   (2) Rs. 5,00,000 at 14.5% VAT
   Sales of S & Co. for the month of December are as follows:
   (1) Sales of Rs. 3,00,000 at 4% VAT
   (2) Sales of Rs. 3,00,000 at 14.5% VAT
   Compute eligible input tax credit and VAT payable for the month.

2. *Determine the taxable turnover, input tax credit and net VAT payable by a works contractor, from the details given below, on the assumption that the contractor maintains sufficient records to quantify the labour charges. Assume output VAT at 14.5%.*

	₹ (in lakhs)
Total contract price (excluding VAT)	*100*
Labour charges paid for execution of the contract	*35*
Cost of consumables used, not involving transfer of property in goods	*5*
Material purchased and used for the contract, taxable at 14.5% VAT (VAT included)	*45*

3. *Determine the value of purchases, eligible for Input Credit in the case given below:*

	₹
Inputs purchased from a Registered Dealer (However, the Dealer has opted for the Composite Scheme under the VAT)	*9,00,000*
Raw material purchased from Unregistered Dealer	*2,00,000*
Inputs used for being used in the execution of Works Contract	*80,000*
High Seas purchase of Inputs	*75,000*
Goods purchased for sale to other parts of India in course of Inter-state trade or commerce	*5,00,000*

3. SMALL DEALERS & COMPOSITION SCHEME

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

3. Small Dealers & Composition Scheme

Explain the composition scheme available for small dealers, under the VAT Act	A

1 Eligibility

(1) Every registered dealer, who is liable to pay tax under the respective state acts, and whose turnover does not exceed ₹ 50 lakhs in the last financial year, is generally entitled to avail this scheme

(2) The following are not eligible for the composition scheme:
- ⇨ A manufacturer or a dealer, who sells goods in the course of inter state trade or commerce, or
- ⇨ A dealer, who sells goods in the course of import into or export out of territory of India,
- ⇨ A dealer, transferring goods outside the state, otherwise than by way of sale or for execution of works contract

2 Conditions

(1) A dealer who intends to avail the composition scheme shall exercise the option by intimating the commissioner in writing, for a year or part of the year, in which he gets himself registered.

(2) The dealer should not have any stock of goods, which were brought from outside the state, on the day he exercises his option to pay tax, by way of composition and shall not use any goods brought from outside the state, after such date.

(3) The dealer should also not claim input tax credit, on the inventory available on the date, on which he opts for composition scheme.

(4) The dealers, opting for composition scheme, will not be entitled to input tax credit.

(5) The dealer shall not be authorized to issue tax invoices.

3 Rate of tax

(1) The composition tax can be levied on the taxable turnover, instead of Gross annual turnover, at the rate denoted by the state governments.

(2) The empowered committee has permitted the states to reduce the rate of composition tax to 0.25%.

(3) The state governments may also provide for different types of composition schemes, notified for different classes of retailers.

4 Advantages

(1) Lower tax: Tax will be payable at a lower rate.

(2) Savings in effort: It saves a lot of labour and effort, in keeping records.

(3) Easy calculation: It also simplifies the calculation of tax liability of a dealer.

(4) Statutory Records: If a dealer avails the scheme, he need not maintain any statutory records prescribed under the act. Only the records for Purchases, Sales and Inventory should be maintained.

(5) Saving in labour: It saves a lot of labour and effort of keeping records.

(6) Simplifies tax calculation: It simplifies calculation of tax liability of a dealer.

5 Disadvantages / Break in VAT chain: VAT chain under composition scheme

Loss of seller:	⇨ If the composition scheme is availed by a dealer, then such dealer cannot avail input credit, in respect of input tax paid. ⇨ Hence, the dealer will lose the input tax credit, on purchases made by him, and he will not be able to pass, on the benefit of input tax credit, which will add to the cost of goods
Loss of purchaser:	⇨ The purchaser shall not get any tax credit, for the purchases made by him from the dealer operating under the composition scheme.

- Therefore, as soon as a dealer opts for the composition scheme, VAT chain will be broken, and benefit of tax paid earlier will not be passed on to the subsequent buyers.
- Hence, the dealers who have desired to avail input tax credit on their purchases, may not prefer to buy from composition dealers.

4. VAT PROCEDURES

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

4. VAT PROCEDURES

Who are liable for registration?	A

1 Registration

Meaning	Registration is the process of obtaining Certificate of Registration (RC), from VAT authorities, under the respective State Act.
Registered Dealer	A dealer registered under VAT act, is called the Registered Dealer. A dealer who is liable to pay tax cannot carry on business, within the state, unless he holds a valid registration certificate, under VAT Act.

2 Person Liable

The following persons are liable for Registration:

1. Dealers, whose total turnover exceeds prescribed limit, in respect with the purchases and sales in the state, as per the state VAT, act are to get registered under the act.
2. Casual traders, agent of non-resident dealer and dealers in jewellery, irrespective of quantum of turnover, shall obtain registration.
3. Dealers, who intend to commence the business, on option, may obtain registration.

Exceptions	**<u>Small dealers:</u>** ⇨ Registration under the VAT act will not be compulsory for the dealers, with gross annual turnover, not exceeding ₹ 5 lakhs ⇨ However, the empowered committee of state finance ministers subsequently allowed the states to increase the threshold limit for the small dealers to ₹ 10 lakhs, with the condition that, the concerned states would bear the revenue loss, on account of the increase in limit beyond ₹ 5 lakhs.

How to apply for registration?	A

1 Application

New dealer should file an application in the specified form, along with fee to the registering authority, in whose jurisdiction his principle place of business is situated, with a sufficiently stamped self-addressed envelope, with necessary documents required in the application form.

2 Time Limit

A new dealer will be allowed 30 days of time, from the date of liability, to get registered.

3 Compulsory Registration

⇨ If an Assessee fails to obtain registration under the VAT act, he may be registered compulsorily by the Commissioner.

⇨ The Commissioner may assess the tax due from such person, on the basis of evidence available with him, and the assessee shall to forthwith pay such amount of tax.

Consequences on failure: The dealer, on his failure to get registered, shall be liable to pay penalty and forfeiture of eligibility, to set off all input tax credit related to the period, prior to the compulsory registration.

4 Voluntary Registration

A dealer, otherwise not eligible for registration, may also obtain registration, if the commissioner is satisfied that the business of the applicant requires registration. The commissioner may also impose any terms or conditions, that he thinks fit.

What are the circumstances in which the registration will be cancelled?	B

The registration can be cancelled, in any of the following situations:

1. Discontinuance of business,
2. Disposal of business,
3. Transfer of business to a new location,
4. Annual turnover of a manufacturer/ a trader, dealing in designated goods/ services, falling below the specified amount.

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What is meant by TIN and what are the uses of TIN?	B
TIN:	Tax payer's Identification Number, is the registration number of the dealer. It is a code to identify the tax payer.
Representation of characters:	The Taxpayer's Identification Number will consist of 11 digit numerals, throughout the country. First two characters represent the state code, by the union ministry of home affairs. The set-up of the next nine characters will be different in different states.
Uses:	⇨ TIN facilitates computer applications, such as detecting stop filers and delinquent accounts. ⇨ TIN also helps in cross check of information on tax payer's compliance. E.g. Selective cross checking of sales and purchases among VAT taxpayers.

Explain the return filing procedure under VAT law?	B
Objective of return filing	⇨ Reducing the compliance costs, incurred by the business, in completing and filing their returns. ⇨ Encouraging business to comply with their obligations, to file returns and pay VAT through the application of penalties, in case of late payment of VAT and late filing of returns. ⇨ Ensuring the efficient processing of the data included in the returns.
Procedures for return filing	**1.** Returns are to be filed monthly / quarterly / annually, along with the requisite details, as per the provisions of the state acts or rules. Returns should be filled along with the payment challans. If the state has devised return cum challans, then the returns along with the payment can be filed with the treasury. **2.** **Revised return:** The returns filed can also be revised. **3.** **Scrutiny:** Every return furnished shall be scrutinized within the prescribed time limit from the date of filling the return. If any technical mistake is detected on scrutinizing, the dealer shall be required to pay the deficit appropriately.

Write short notes on demand assessment? **B**

⇨ There is no compulsory assessment at the end of each year, under VAT systems.
⇨ The VAT liability is self-assessed by the dealer himself, at the time of filing the returns.
⇨ If no specific notice is issued proposing for audit of the books of account of the dealer within the limit specified in the act, the dealer will be deemed to have been self assessed, on the basis of the returns submitted by him.
⇨ Scrutiny may be done in cases, where a doubt arises of under-reporting of transaction or evasion of tax.

Explain the system of cross checking. **A**

⇨ A cross checking computerized system is being worked out, on the basis of coordination between the tax authorities of the state government and the authorities of Central Excise and Income Tax. Under VAT, systems of cross checking are essential, since more emphasis has been laid on self-assessment.
⇨ The system constantly compares the tax returns and set off documents of VAT system of the states and those of Central Excise and Income-Tax. Dealers may be asked to submit the list of sales or purchases above a certain monetary value or to give the dealer wise list, from whom or to whom the goods have been purchased or sold, for values exceeding a prescribed monetary ceiling.

Advantages:	⇨ The comprehensive cross-checking system will help to reduce tax evasion & also lead to significant growth of tax revenue. ⇨ This system helps in protecting the interests of tax-complying dealers, against the unfair practices of tax-evaders. ⇨ The system will also bring in more equal competition, in the sphere of trade and industry.

What is the need for audit of the tax paid under VAT Act?	B

- ⇨ The VAT act provides for self-assessment of tax (i.e.,) the tax liability is calculated and paid by the payers through their periodical returns. There will not be regular assessment of all returns and only a few returns will be scrutinized. Hence, there is a need to ensure, that the tax payers discharge their tax liability properly, while filing the returns.
- ⇨ If no audit is prescribed under the VAT law, the chances of evasion of VAT will increase, causing decrease in revenue for the government. Therefore, it is essential that the audit of the VAT system is attempted on a regular basis. However, it is not possible to conduct the audit of all VAT dealers. Criteria for audit can be the amount of turnover or the class of dealer dealing in specified commodities.

Tax rates under VAT	A

Under the VAT system, there are only two basic VAT rates of 4% and 14.5%, plus a specific category of tax-exempted goods and a special VAT rate of 1 % for gold and silver ornaments, etc. Thus the multiplicity of rates in the sales-tax system has been done away with under the VAT system.

4% VAT category	14.5% category	Non-VAT goods	Stock transfer
Under 4% VAT rate category, there are largest number of goods, common for all the States, comprising of items of basic necessities such as medicines and drugs, all agricultural and industrial inputs, capital goods and declared goods. The schedule of commodities is attached to the VAT Acts of the States.	The remaining commodities, common for all the States, fall under the general VAT rate of 14.5%. 1% Category: The special rate of 1% is meant for precious stones, bullion, gold and silver ornaments etc.	Petrol, diesel, ATF (Aviation Turbine Fuel), other motor spirit, liquor and lottery tickets are kept outside VAT. The States may or may not bring these commodities under VAT laws. However, it is agreed that all these commodities will be subjected to 20% floor rate of tax.	Inter-State transfers do not involve sale and, therefore they are not subjected to sales-tax.

The same position continues under VAT.
However, the tax paid on:
(1) inputs used in the manufacture of finished goods, which are stock transferred; or
(2) purchases of goods, which are stock transferred will be available as input tax credit, after retention of 4% of such tax, by the State Governments.

Practical Questions

State with reasons in brief, whether the following statements are correct or incorrect, with reference to the provision of Value Added Tax.
(a) It is permitted to issue 'tax invoice' inclusive of VAT (i.e., aggregate of sales price and VAT).
(b) A registered dealer is compulsorily required to get its books of account audited under VAT of different States, irrespective of limit of turnover.
Solution:
VAT – The first statement is correct. The VAT invoice should show the sales price and the amount of VAT separately in the bill. If it is not shown separately, input tax credit cannot be availed by the purchaser. The second statement is incorrect. Audit of books of account of all dealers is not necessary. The selection of cases for auditing has to be made in accordance with the criteria of the size of the dealer. In the States of Maharashtra and Rajasthan, only those dealers who are reporting annual turnover exceeding ₹ 40 lakhs, are required to get their books of account audited, in respect of such year. Hence, registered dealers are not required to get their books audited in some states, when the annual turnover does not exceed ₹ 40 lakhs.

5. VAT IN SPECIAL TRANSACTIONS

FOR MAY/NOVEMBER 2013 EXAMINATIONS

FOR ASSESSMENT YEAR 2013-14

PREPARED BY BHAVIN PATHAK

5. VAT IN SPECIAL TRANSACTION

VAT and works contract — A

The works contract is a deemed sale, which involves the transfer of property in goods (whether as goods or in some other form), involved in the execution of a works contract. Earlier, the judicial decisions took a view that, in the case of composite contracts, involving sale of goods and execution of works, no sales tax could be levied at all.

Guidelines to ascertain Works Contract:

To ascertain whether a transaction is a works contract, as contemplated in Article 366 (29A) (b), the following points should be kept in mind:

- There must exist an individual works contract; divisible contracts are out of the scope.
- Goods must be involved in the execution of the works. Transfer of property in goods does qualify as works contract, when it is incorporated in the works.
- Transfer of property in goods must pass as goods or in some other form. Form of goods has no relevance (may have a relevance for determination of rate of tax).
- Property in goods must pass, during the execution of works, not before or after the execution of works.
- Some work has to be done on the property of the contractee, by the contractor.
- In the works contract, transfer of property must be an integral part of its execution.
- Pure labour contracts or service contracts are out of the purview of the sales tax/VAT law.
- If, during the execution of works contract, goods are consumed and their identity is lost, then no transfer of property occurs in those goods.
- There must be a dominant intention to affect the transfer of property in goods, in execution of works contract. However, even if the dominant intention of the contract is rendering of a service, and in that process, if there is a transfer of property in goods, the contract will amount to a works contract.

Taxable Turnover For Works Contract:

The entire contract price cannot be subjected to VAT but only value of the goods in which the property would pass during execution of works contract can be taxed. Therefore, turnover for imposition of VAT in relation to the transfer of property in goods (whether as goods or in some other form), involved in execution of a works contract, shall mean sale price of goods, in which there is transfer of property. The amount representing labour and other service charges, incurred for such execution, should be excluded.

Tax Rates:

The principle schemes of levy of sales tax on works contracts have been retained in the VAT regime as well. The VAT legislations provide the following two broad schemes, for levy of VAT, on Transfer of property, involved in the execution of the work's contract:

Schedule Rate:	Where the value of each item of material transferred in the course of execution of a work's contract is identifiable, tax is charged on the value of individual items of materials, as provided under the schedules to the concerned State VAT legislation.
Composition Rate:	In such cases, generally the contractor is not entitled to avail of input tax credit on goods procured from within the State. However, in some States (e.g. Maharashtra) partial input tax credit is granted.

VAT and Lease Transactions — B

A lease is a special type of transaction, under which a party, who owns the asset (called the 'lessor'), provides that asset for use, over a certain period of time, to another party (called the 'lessee'), for consideration (called 'rentals'). The legal ownership of the asset remains with the lessor, but the lessee retains the possession and uses the asset, over the period of the lease.

Characteristics of a lease

- There must be a lessor and a lessee, both competent to contract;
- There must be an asset to be leased;

- ⇨ Actual possession and control on the asset must be transferred;
- ⇨ There must be an acceptance of the lease property;
- ⇨ There must be transfer of right of enjoyment, by the lessor to the lessee;
- ⇨ There must be a consideration.

Taxable Event:	Taxable event is the transfer of the right, to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration. Thus, a transfer, which is gratuitous, is not taxable. Also, transfer of the right to use immovable property, like renting a house or factory, is not taxable.
Taxable Turnover:	Normally, the sale price means the amount of valuable consideration, paid or payable, for any sale made, during the given period. It also includes some other charges before delivery thereof. However, certain States have provided for the deduction of interest or finance charges, for the purpose of determination of sale price/taxable turnover.

VAT and Hire Purchase Transactions C

This Act defines a hire purchase as "an agreement, under which goods are let on hire and under which, the hirer has an option to purchase them, in accordance with the terms of the agreement and includes an agreement under which;

- ⇨ The owner delivers possession of goods thereof to a person, on condition that such person pays the agreed amount in periodic instalments.
- ⇨ The property in the goods is to pass to such person on the payment of the last of such installments, and
- ⇨ Such person has a right to terminate the agreement at any time, before the property so passes".

Physical Delivery:	Delivery of goods, under hire-purchase or instalment sale, has to be a physical or actual delivery of goods, in contradistinction to constructive or symbolic delivery of goods, as the goods are intended to be delivered for use, by the hirer/customer. Consequently, the taxable event takes place in the State, in which the goods are actually delivered, and hence, subject to tax, under the VAT law of such State.
Taxable Event:	In the case of hire-purchase, property passes in the goods, when the hirer exercises his option to purchase the goods, subject to the fulfilment of the terms of the agreement and then the transaction fructifies into a concluded (normal) sale.
Input Tax Credit:	The hire purchase transaction is at par with normal sale transaction. Therefore, normal provisions, relating to input tax credit, will apply. However, some States have provided for prorata credit.