

Assessment of Various Entities (Revision)

Assessment of Companies:

Tax on income from life insurance business: (Section 115B)

- Profits and gains derived from the business of life insurance computed in accordance with the First Schedule to the Income-tax Act, 1961,
- Income-tax payable (i) Life insurance business included - At the rate of 12½% and (ii) Balance - Regular Rate
- Not be subject to MAT.

Section 115A:

1. Where the income of a **non-corporate non-resident or a foreign company** consists of:

- (i) **dividends** (other than dividends referred to in section 115-O)
 - (ii) **interest** received from Government or from an Indian concern on monies borrowed or debt incurred by the Government or the Indian concern in foreign currency; or
 - (iii) **income** received in respect of units purchased in foreign currency of a **mutual fund**
- the same will be taxed at 20%.**

However, the following interest income would be subject to a **concessional rate of 5%** on gross interest:

- (i) Interest income received by a non-corporate non-resident or a foreign company from an **infrastructural fund**
- (ii) Interest received by a foreign company or a non-corporate non-resident, in respect of **borrowing made by an Indian company or business trust in foreign currency** from sources outside India between 1.7.2012 and 30.6.2017 or by way of issue of **long-term infrastructure bonds** between 1.7.2012 and 30.9.2014 or by way of issue of **long-term bonds** between 1.10.2014 and 30.6.2017. **(194LC)**
- (iii) Distributed income, taxable in the hands of **non-resident unit holders of a business trust. (194LBA)**

2. No deduction

3. Shall not furnish a return of their income if the total income consisted only of the income referred above, and the tax deductible at source has been deducted from such income.

4. Where the total income of a non-corporate non-resident or a foreign company includes **royalty or fees for technical services**, other than income referred to in section 44DA(1), received from Government or an Indian concern in pursuance of an agreement made, the same will be taxed @**10%**, subject to the following conditions:

- (a) such agreement must be made with an Indian concern ;
- (b) the agreement must be approved by the Central Government, or
- (c) where it relates to a matter included in the industrial policy for the time being in force.

Section 115AB: (1) Where the total income of an **overseas financial organisation (Off -shore Fund)** includes the following incomes namely:

- (a) **income** received in respect of units purchased in **foreign currency**, or
- (b) income by way of **long term capital gains** arising from the transfer of units purchased in foreign currency, the same will be taxed at **the rate of 10%.**

(No Deduction)

Section 115AC:

1. Where **the total income of a non-resident** includes the following types of income namely,
 - (a) income by way of **interest on bonds of an Indian company** issued in accordance with such scheme as may be **notified** by the Government or on **bonds of a public sector company**, sold by the Government, and purchased by him in foreign currency; or
 - (b) income by way of **dividends** (other than dividends referred to in section 115-O) on **Global Depository Receipts**
 - (c) income by way of **long-term capital gains** arising from the above bonds or GDRs.
- The income-tax will be at the **rate of 10%** on the above income.
 (No deduction) (No Indexation) (If only income & TDS, then NO ROI)

Section 115ACA: This section applies to **resident individuals who are employees of an Indian company engaged in specified knowledge based industry or service, or its subsidiary** engaged in specified knowledge based industry or service.

Income-tax payable shall be the aggregate of:

- (i) **10% of income by way of dividends** (other than dividends referred to in section 115-O) in respect of **Global Depository Receipts of an Indian company purchased in foreign currency in accordance with such employees' stock option scheme** as the Central Government may, notify,
 - (ii) **10%, in case of long-term capital gains** arising from the transfer of the aforesaid Global Depository Receipts.
- (No deduction) (No Indexation)

Section 115AD:

Foreign Institutional Investor, income-tax payable shall be the aggregate of the following:

- (1) **20% of the income** (other than income by way of dividends referred to in section 115-O)
 However, 194LD, **income-tax is payable@5% of gross income.**
 - (2) **30% of the short-term capital gains.**
 However, **111A is to be calculated at 15%.**
 - (3) **10% of long term capital gains.**
- (No deduction) (No Indexation)

Section 115BBD: Dividends received by Indian companies from specified foreign companies to be subject to a concessional rate of 15%

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

Section 47A: Section 47A provides that where the —transfer” of a capital asset between a parent company and its hundred per cent subsidiary company has been exempted from any charge to capital gains tax by virtue of provisions of section 47 such exemption will be revoked in either of the two under noted cases by an order of rectification under section 155(7A) of the Income-tax Act, 1961.

- (i) Within a period of eight years from the date of the transfer the capital asset in question is converted by the transferee company into or as, stock -in-trade of its business; or
- (ii) within a period of eight years from the date of the transfer the parent company or its nominee or as the case may be, the holding company ceases to hold the whole of the share capital of the subsidiary company.

Minimum Alternate Tax on companies [Section 115JB]:

As per section 115JB(1), in case of company (domestic or foreign), if the income-tax payable on the total income computed under the Income-tax Act, 1961 is less than 18.5% of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of 18.5% (add surcharge & Cess as applicable).

Section 115JB requires companies to prepare their profit and loss account for the relevant previous year in accordance with the provisions of the Act governing such company.

For computing the book profit, the net profit shall be increased by the following amounts if debited to the profit and loss account:

(a) income-tax paid or payable, and the provision therefor; or

[It may be noted that income-tax includes:

(1) dividend distribution tax / tax on distributed income; (2) interest; (3) surcharge;

(4) education cess; and (5) secondary and higher education cess]

(b) amount carried to any reserves; or

(c) amounts set aside to provision for meeting liabilities other than ascertained liabilities; or

(d) amount of provision for losses of subsidiary companies; or

(e) amount of dividends paid or proposed; or

(f) amount of expenditure relatable to any income to which section 10 [other than section 10(38)] or 11 or 12 apply; or

(fa) amount of expenditure relatable to income, being share of the assessee in the income of an AOP or BOI, on which no income-tax is payable in accordance with the provisions of section 86; or

(fb) the amount or amounts of expenditure relatable to income accruing or arising to an assessee, being a foreign company, from:

(A) the capital gains arising on transactions in securities; or

(B) the interest, royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII,

if the income-tax payable thereon in accordance with the provisions of the Act, other than the provisions of this Chapter, is at a rate less than 18.5%; or

(fc) the amount representing notional loss on transfer of a capital asset, being share or a special purpose vehicle to a business trust in exchange of units allotted by that trust or the amount representing notional loss resulting from any change in carrying amount of said units or the amount of loss on transfer of such units; or

(g) the amount of depreciation; or

(h) the amount of deferred tax and provision therefor; or

(i) the amount set aside as provision for diminution in the value of any asset.

Further, the net profit shall also be increased by the amount standing in revaluation reserve relating to the revalued asset on the retirement or disposal of such asset, in case the same is not credited to the profit and loss account.

Also, when units of business trust are actually transferred, the amount of gain on such transfer has to be added to compute the book profit, since notional gains on transfer of share of a special purpose vehicle to a business trust in exchange for the units of the business trust and notional gains resulting from change in carrying amount of such units have been deducted earlier to compute book profit. The amount of gain has to be computed by taking into consideration the cost of shares exchanged with the units of the business trust, in a case where the shares are carried at cost. In a case where the shares

are carried at a value other than the cost through profit and loss account, the carrying amount of shares at the time of exchange would be taken into consideration for computing the amount of gain. The amount of gain on such transfer, if any, credited to profit and loss account will be reduced.

The net profit shall be reduced by the following amounts:

(i) amount withdrawn from any reserve or provision, if any, such amount is credited to the profit and loss account.

(ii) amount of income to which section 10 [other than section 10(38)] or 11 or 12 apply, if such amount is credited to the profit and loss account;

(iia) the amount of depreciation debited to the profit and loss account (excluding the claim of depreciation on account of revaluation of assets);

(iib) the amount withdrawn from the revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation on revaluation of assets; (iic) the amount of income, being the share of the assessee in the income of an AOP or BOI, on which no income-tax is payable in accordance with the provisions of section 86, if any such amount is credited to the profit and loss account; or

(iid) the amount of income accruing or arising to an assessee, being a foreign company, from:

(A) the capital gains arising on transactions in securities; or

(B) the interest, royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII,

if such income is credited to the profit and loss account and the income-tax payable thereon in accordance with the provisions of the Income-tax Act, 1961, other than the provisions of Chapter XII-B, is at a rate less than 18.5%; or

(iie) the amount representing:

(A) the notional gain on transfer of a capital asset, being a share of a SPV to a business trust in exchange of units allotted by the business trust;

(B) notional gain resulting from any change in carrying amount of said units; or

(C) gain on transfer of such units,

if any, credited to profit and loss account;

(iif) the amount of loss on transfer of units acquired in exchange of shares of SPV computed by taking into account the cost of the shares exchanged with the units, where the shares are carried at cost. In case shares are carried at a value other than cost through profit and loss account, the amount of loss on transfer of such units has to be computed by taking into account the carrying amount of the shares at the time of exchange;

(iii) amount of brought forward loss or unabsorbed depreciation, whichever is less as per books of account. The loss shall not include depreciation; If either the figure of brought forward loss or unabsorbed depreciation is "NIL", no deduction will be allowed from the book profit of the relevant year;

(vii) amount of profits of a sick industrial company (BIFR company) commencing from the previous year in which the company became sick and ending with the assessment year during which the entire net worth becomes positive.

(viii) the amount of deferred tax, if any such amount is credited to the profit and loss account.

Set-off of credit of tax paid under section 115JB [Section 115JAA]:

(1) In any assessment year in relation to the deemed income under section 115JB(1), the excess of tax so paid over and above the tax payable under the other provisions of the Income-tax Act, 1961, will be allowed as tax credit in the subsequent years.

(2) The tax credit is, therefore, the difference between the tax paid under section 115JB(1) and the tax payable on the total income computed in accordance with the other provisions of the Act.

(3) The tax credit shall be allowed to be set off in a year in which tax becomes payable on the total income computed in accordance with provisions of the Act other than section 115JB.

Tax on distributed profit of domestic companies: Chapter XII D [Section 115-O]:**Flat rate of 15% + Surcharge (12%) + Cess (3%) [Gross up]**

A holding company receiving **dividend from its subsidiary company can reduce** the same from dividends declared, distributed or paid by it.

The **NPS Trust is exempted** from the applicability of dividend distribution tax in respect of dividend paid to any person for, or on behalf of, the NPS Trust.

This tax must be paid to the credit of the Central Government **within fourteen days** from the date of (a) declaration of any dividend or (b) distribution of any dividend or (c) payment of any dividend, whichever is earliest.

Simple interest @1% for every month or part thereof on the amount of such tax for the period beginning from the date following the date on which the tax was payable and ending with the date on which the tax is actually paid.

Section 115QA:

(1) Distributed income (i.e., consideration paid by the company for buyback of its own unlisted shares which is in excess of the sum received by the company at the time of issue of such shares) would be subject to additional income tax@20% (plus surcharge@12% and education cess@2% and secondary and higher education cess@1%) in the hands of the domestic company.

(2) 14 days

(3) Simple interest @1% for every month or part

Section 115VA:**Computation of profits and gains from the business of operating qualifying ships:**

1. It is **optional** for a qualifying company,
2. for the income from the business of operating qualifying ships,
3. to compute its income as per tonnage tax scheme, or
4. to compute its income as per normal provisions of the Act.

Section 115VC: Qualifying Company:

A company is a qualifying company if:

- (a) it is an Indian company;
- (b) the place of effective management (i.e., where decisions take place) of the company is in India;
- (c) it owns at least one qualifying ship; and
- (d) the main object of the company is to carry on the business of operating ships.

Section 115VD: Qualifying Ship:

A ship is a qualifying ship if:

- (a) it is a sea going ship or vessel of **15 net tones or more**;
- (b) it is a ship registered in India or having licence to operate in India; and
- (c) a valid certificate in respect of such ship indicating its net tonnage is in force,

but does not include,

- (i) a sea going ship or vessel if the main purpose for which it is used is the provisions of goods or services of a kind normally provided on land;
- (ii) fishing vessels; (iii) factory ship (iv) pleasure crafts (v) harbor and river ferries;
- (vi) offshore installations i.e. rigs oil; (vii) a qualifying ship which is used as a fishing vessel for a period of more than thirty days during a previous year.

Section 115VG: Computation of Tonnage Income:

Tonnage Income from each qualifying ship = Daily tonnage income x No. of days the ship is operated in the previous year

Qualifying ship having Net tonnage	Amount of Daily tonnage Income
Upto, 1, 000	Rs. 70 for each 100 tons
Exceeding 1, 000 but not more than 10, 000	Rs. 700 plus Rs. 53 for each 100 tons exceeding 1, 000 tons
Exceeding 10, 000 but not more than 25, 000	Rs. 5, 470 plus Rs. 42 for each 100 tons exceeding 10, 000 tons
Exceeding 25, 000	Rs. 11, 770 plus Rs. 29 for each 100 tons exceeding 25, 000 tons.

Tonnage shall be rounded off to the nearest multiple of 100 tons

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

Section 115VO: Exclusion from Provisions of section 115JB**Conversion of an Indian branch of foreign company into an Indian subsidiary company [Chapter XII-BB] [Section 115JG]:**

If the conditions notified by the Central Government in this behalf are satisfied, then capital gains arising from such conversion would not be chargeable to tax in the assessment year relevant to the previous year in which such conversion takes place.

Tax on distributed income of mutual funds [Chapter XII-E]: 115R

Type of Fund	Person to whom income is distributed	Rate of tax
Equity-oriented fund	Any person	Nil
Other Funds		
Money market mutual fund or liquid fund	Individual or HUF	25%
	Any other person	30%
Fund other than MMMF or liquid fund	Individual or HUF	25%
	Any other person	30%
Infrastructure Debt Fund set up as a Mutual Fund	Non-corporate non-resident or a foreign company	5%

[+ Surcharge (12%) + Cess (3%)] [Gross up] [14 Days] [Simple Interest 1% Per Month or part thereof]

Clarification regarding scope of additional income-tax on distributed income under section 115R [Circular No. 6/2014, dated 11.2.2014]:

(i) Redemption of units or repurchase of units would not attract levy of tax under section 115R(2) as such income is not in the nature of income “distributed” to the unit holders and hence, lies outside the purview of this section.

(iii) Since issue of bonus units is not akin to distribution of income by way of dividend, the same would not be subject to additional income tax under section 115R.

Levy of additional income-tax on income distributed by securitization trusts [Chapter XII EA] Related Provisions: [115TA, 115TB and 115TC]

Section 10(23DA) exempts any income of a securitization trust from the activity of securitization.

	Category of investors to whom income is distributed	Rate	Effective rate of tax
(1)	Persons, in whose case, income, irrespective of its nature and source, is exempt from tax under the Income-tax Act, 1961 [for example, mutual funds exempt under section 10(23D)]	Nil	Nil
(2)	Individuals and HUFs	25%	28.84%
(3)	Other Investors [i.e., investors other than mentioned in (1) and (2) above]	30%	34.608%

[+ Surcharge (12%) + Cess (3%)] [14 Days] [Simple Interest 1% Per Month or part thereof]
Computation of additional income-tax payable under section 115TA

Scheme for taxation of Real Estate Investment Trust (REIT) and Infrastructure Investment Trust (Invit) [Chapter XII-FA – Section 115UA]:

	Transaction	Section	Tax and TDS implications ⁹
(1)	Transfer of listed units of the business trust by the unit holders	2(42A) 10(38) 111A	<u>Tax implications in the hands of unit holders:</u> ➤ STT leviable on trading of listed units on a recognized stock exchange; ➤ The period of holding of units of business trust to qualify as “long-term capital assets” is “more than 36 months”; ➤ Long-term capital gains would be exempt in the hands of the unit-holders; ➤ Short-term capital gains would be subject to concessional rate of tax@15% (plus surcharge, if applicable, and cess@3%).

(2)	Exchange of shares in SPV by sponsor for units of Business Trust	47(xvii) 10(38) & 111A 49(2AC) 2(42A)	<u>Tax implications in the hands of the sponsor:</u> ➤ Such exchange is not treated as a transfer. Hence, taxability of capital gains on such transfer deferred to the time of disposal of units by the sponsor; ➤ <i>the sponsor would get the same tax treatment on offloading of units under an Initial offer on listing of units as it would have been available had he offloaded the underlying shareholding through an IPO. STT shall be levied on sale of such units of business trust which are acquired in lieu of shares of SPV, under an initial offer at the time of listing of units of business trust in the like manner as in the case of sale of unlisted equity shares under an IPO. The benefit of concessional tax regime of tax @15% on STCG and exemption of LTCG under section 10(38) shall be available to the sponsor on sale of units received in lieu of shares of SPV subject to levy of STT.</i> ➤ For computing capital gains in the hands of the sponsor, cost of acquisition of units would be deemed to be the cost of acquisition of shares to the sponsor; ➤ For computing capital gains in the hands of the sponsor, the period of holding of units to include the period of holding of shares for determining whether the capital gains is long-term or short-term.
(3)	Interest income of business trust from SPV	10(23FC) 194A(3)(xi) 115A(1) (iiac)	<u>Tax implications in the hands of the business trust & unit holders and TDS implications in the hands of the SPV & business trust:</u> ➤ Pass-through status for interest received by business trust from SPV: ▪ Interest income is not taxable in the hands of the business trust; and ▪ SPV is not required to deduct tax at source on interest paid to business trust. ➤ Tax consequences on distribution of such income by the business trust to the unit-holders: ▪ Interest income taxable in the hands of the unit holders – ○ @5%, in case of unit holders, being non-

		194LBA	corporate non-residents or foreign companies; and ○ at normal rates of tax, in case of resident unit holders. ▪ Business trust to deduct tax at source on interest component of income distributed to unit holders: ○ @5%, in case of unit holders, being non-corporate non-residents or foreign companies; and ○ @10%, in case of resident unit holders.
(4)	Interest payments to non-resident lenders on ECBs by the business trust	194LC	<u>TDS implications in the hands of business trust:</u> ➤ TDS@5% on interest payments to non-resident lenders on ECBs by the business trust [Such interest would attract tax in the hands of the non-resident lenders@5% as per section 115A]. ➤ The above concessional rate of TDS is applicable to moneys borrowed by the business trust in foreign currency from a source outside India, with the approval of the Central Government – (a) Under a loan agreement at any time before 1.7.2017; (b) By way of issue of long-term bonds at any time on or after 1.10.2014 but before 1.7.2017.
(5)	Dividend received by the business trust from SPV	115-O & 10(34) 10(23FD)	<u>Tax implications in the hands of the SPVs, business trust and unit holders:</u> ➤ Since the SPV would be subject to dividend distribution tax u/s 115-O, the dividend received by the business trust would be exempt in its hands; ➤ The dividend component of income distributed by the trust to unit holders will also be exempt from tax in the hands of unit holders.
(6)	Capital gains on disposal of assets by the Business Trust	115UA(2)	<u>Tax implications in the hands of the Business Trust and Unit holders:</u> ➤ Capital gains is chargeable at the applicable rates in the hands of the Business Trust: ▪ In case of long-term capital gains, the provisions of section 112 would apply; ▪ In case of short-term capital gains on sale of listed shares, the provisions of section 111A

		10(23FD)	would apply; ▪ Short-term capital gains, other than the gains subject to tax under section 111A, would be subject to maximum marginal rate. ➤ If such capital gains are further distributed to unit-holders, the component attributable to capital gains would be exempt in the hands of the unit holders.
(7)	Rental income arising to REIT from real estate property directly held by it	10(23FCA) 115UA(3) 194LBA (from 1.6.2015) 194-I (from 1.6.2016)	➤ Rental income of REIT from directly owned real estate asset Any income of a business trust, being a REIT, by way of renting or leasing or letting out any real estate asset owned directly by such business trust is exempt in the hands of the business trust ➤ Distributed income received by unit holder The distributed income or any part thereof, received by a unit holder from the REIT, which is in the nature of income by way of renting or leasing or letting out any real estate asset owned directly by such REIT is deemed as income of unit holder. ➤ Distribution by REIT to unit holders of rental income from real estate assets directly owned by it ▶ TDS@10% in case of distribution to a resident unit holder. ▶ TDS at rates in force in case of distribution to a non-resident unit holder. ➤ Rental income received or credited to a REIT Where the income by way of rent is credited or paid to a business trust, being a REIT, in respect of any real estate asset, owned directly by such business trust, tax is not deductible at source.
(8)	Income of business trust [Other than interest and dividend from SPV and capital gains subject to tax u/s 112/ 111A]	115UA(2) 10(23FD)	<u>Tax implication in the hands of the Business Trust and Unit holders:</u> ➤ Any other income of the trust is chargeable to tax at the maximum marginal rate (i.e., @33.99%). ➤ Such income distributed to unit holders would be exempt in their hands.

Special Taxation Regime for Investment Funds [Sections 115UB & 10(23FB)]:

The total income of the investment fund is chargeable to tax as follows:

Investment Fund

A company or a firm

Rate of tax

Rate or rates specified in the Finance Act of the relevant year (30% for A.Y.2016-17)

Other than a company or a Firm

Maximum marginal rate

	Particulars	Investment Fund	Unit holder
(i)	Income under the head "Profits and gains of business or profession" of the Investment Fund	Taxable	Exempt
(ii)	Income, other than profits and gains of business or profession	Exempt. Tax to be deducted @ 10% on such income distributed to unit-holders.	Taxable, as if he had directly made the investment.
(iii)	Any loss incurred by the investment fund	To be carried forward for set-off as per Chapter VI at the Fund level	Not passed on to investors
(iv)	Dividend distribution tax and tax on distributed income	Chapter XII-D and XII-E not to apply to income paid to unit holders.	-

Levy of Alternate Minimum Tax (AMT) on all persons claiming profit-linked deductions, other than companies [Chapter XII-BA–Sections 115JC to 115JF]:

- AMT @ 18.5% of adjusted total income.

- Any person other than a company, who has claimed deduction under any section (other than section 80P) included in Chapter VI-A under the heading "C – Deductions in respect of certain incomes" or under section 10AA would be subject to AMT.

- The provisions of AMT would, however, not be applicable to an individual, HUF, AOP, BOI, whether incorporated or not, or artificial juridical person, if the adjusted total income of such person does not exceed Rs. 20 lakh.

- Investment-linked tax deduction claimed under section 35AD also falls within the scope of alternate minimum tax.

"Adjusted total income" would mean the total income before giving effect to Chapter XII:BA as increased by the deductions claimed, if any, under:

(1) any section (other than section 80P) included in Chapter VI -A under the heading "C – Deductions in respect of certain incomes";

(2) section 10AA; and

(3) section 35AD, as reduced by the depreciation allowable under section 32, as if no deduction under section 35AD was allowed in respect of the asset for which such deduction is claimed.

Tax credit for AMT [Section 115JD]: AMT paid in excess of the regular income-tax payable under the provisions of the Income tax Act, 1961 for the year would be eligible for credit to be carried forward and set off against income-tax payable in the later year to the extent of excess of regular income-tax payable under the provisions of the Act over the AMT payable in that year.

AMT credit can be carried forward for set-off upto a maximum period of 10 assessment years succeeding the assessment year in which the credit becomes allowable.

Assessment of a Individuals:

Section 115BB: Gross winnings from lotteries, crossword puzzles, races including horse races (other than income from the activity of owning and maintaining racehorses), card games and other games of any sort or from gambling or betting of any nature whatsoever shall be chargeable to income-tax at a **flat rate of 30% on** the gross winnings.

Section 115BBA: Total income of an assessee, (a) being a sportsman (including an athlete), who is not a citizen of India and is a nonresident, includes any income received or receivable by way of participation in any game or sport or advertisement or contribution of articles in relation to any game or sport in India in newspapers, magazines, journals.

(b) being a non-resident sports association or institution, includes any amount guaranteed to be paid or payable to such association or institution in relation to any game or sport played in India.

(c) being an entertainer, who is not a citizen of India and is a non-resident, includes any income received or receivable from his performance in India.

The income-tax payable on above: 20%

(No deduction) (No ROI if above only income & TDS)

Special provisions relating to certain incomes of non-residents - Chapter XII A:

- Concessional method of taxation of certain specified income of non-residents Indian.

- 'Foreign exchange asset' means any "specified asset" which the assessee has acquired, purchased with or subscribed to in convertible foreign exchange. Such specified assets' are as follows:

(a) shares in an Indian company.

(b) debentures issued by an Indian company which is not a private company as defined in the Companies Act, 1956.

(c) deposits with a non-private Indian company.

(d) any specified securities of Central Government.

(e) units of the Unit Trust of India.

Section 115E:

Income-tax on investment income at the rate of 20%;

Income-tax on long-term capital gains at the rate of 10%

Section 115F: Where the non-resident Indian transfers the original foreign exchange asset and within a period of six months of such a transfer deposits or invests the whole or part of the net consideration in: (a) any specified asset or

(b) any notified savings certificates referred to in section 10(4B)

then, the capital gains arising on such a transfer will be dealt with as follows :

If the cost of the new asset, referred to in (a) or (b) above, is not less than the net consideration in respect of the original asset the whole of such capital gain shall be exempt.

If such cost is less than the net consideration, the exemption will be limited to:

Total capital gain x Cost of new asset
Net Consideration

Where the new asset is transferred or converted (otherwise than by transfer) into money, within a period of three years from the date of its acquisition, the capital gain, exempted as above, shall be chargeable as long term capital gain of the previous year in which the new asset is transferred or converted.

(No ROI if above only income & TDS)

Assessment of Hindu Undivided Families:

HUF consists of all males lineally descended from a common ancestor and includes their wives and daughters. The relation of a HUF does not arise from a contract but arises from status. Some members of the HUF are called co-parceners. A Hindu Coparcenary includes those persons who acquire an interest in joint family property by birth. It may be noted that only the coparceners have a right to partition. However, other female members of the family, for example, wife or daughter -in-law of a coparcener are not eligible for such coparcenary rights.

The income of a HUF is to be assessed in the hands of the HUF and not in the hands of any of its members. This is because HUF is a separate and a distinct tax entity.

Partition of HUF – There are two types of partition. They are:

(1) Total partition – is a partition by which the entire family property is divided amongst the coparceners. After the total partition, the HUF ceases to exist as such. When a claim of total partition of HUF has been made by any member of the HUF on behalf of the HUF, the Assessing Officer shall inquire into such claim.

If partition has been effected in the previous year, the total income of the HUF for the previous year up to the date of partition shall be assessed as income of the HUF. Every member of the HUF is jointly and severally liable for payment of tax on such assessed income of the HUF. The several liability of a member would be proportionate to the share of joint family property allotted to him on such partition.

(2) Partial partition – is a partition which is partial as regards either the persons constituting the joint family or as regards the properties belonging to the joint family or both. However, partial partitions are not recognized for tax purposes. Such family will continue to be assessed as if no such partial partition has been effected. Every member of the HUF, immediately before such partial partition, and the HUF shall be jointly and severally liable for any sum payable under the Act. The several liability of a member would be proportionate to the share of joint family property allotted to him on such partial partition.

Where the funds of a HUF are invested in a company or a partnership firm, the dividends or share of profits are generally taxable as the income of the family. In such a case the fee, salary, commission or other remuneration received by the Karta, or any member of the family, in his capacity as director or partner would also be taxable as income of the family.

The reasons for this treatment are as follows:

- (1) The income is earned by the detriment to the joint family funds.
- (2) It is earned with the aid of joint family funds.
- (3) There is real and sufficient connection between the investment of the joint family funds and the income by way of remuneration earned.

However, where the income is earned by the karta or any other member of the family by the exercise of the personal skill the income should be assessed in their individual hands even if some detriment is caused to the family funds, say, by way of loan, guarantee etc. whose role is only secondary.

Salary paid to Karta for managing the family's business: If remuneration is paid to the Karta of Hindu undivided family under a valid agreement which is bona fide and in the interest of and expedient for the business of the family and the payment is genuine and not excessive, such remuneration would be an expenditure laid out wholly and exclusively for the purpose of the business of the family and would be allowable as an expenditure.

Salary paid to member: A Hindu undivided family can be allowed to deduct salaries paid to member of the family if the payment is made as a matter of commercial or business expediency, but the service rendered must be to the family.

Assessment of firms/LLPs and their partners:

Partnership Firm Assessed As Such (PFAS) [Section 184]:

Conditions to be fulfilled:

- (i) Firm should be evidenced by an "instrument".
- (ii) Individual shares of partners must be specified in the instrument.
- (iii) Certified copy of the instrument should accompany the first return of income of a firm. Instrument shall be certified in writing by all partners other than minors.
- (iv) If there is any change in the constitution of the firm or profit-sharing ratio during any previous year, a certified copy of the revised instrument of partnership should be filed along with the return of income of the relevant assessment year.

Section 167C: In case of liquidation of an LLP, where tax due from the LLP cannot be recovered, every person who was a partner of the LLP at any time during the relevant previous year will be jointly and severally liable for payment of tax unless he proves that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the LLP.

Conversion of company into a LLP:

Section 47(xiii b) provides that:

- (1) any transfer of a capital asset or intangible asset by a private company or unlisted public company to a LLP; or
- (2) any transfer of a share or shares held in a company by a shareholder on conversion of a company into a LLP in accordance with section 56 and section 57 of the Limited Liability Partnership Act, 2008, shall not be regarded as a transfer for the purposes of levy of capital gains tax under section 45, subject to fulfillment of certain conditions. Further, the successor LLP would be allowed to carry forward and set-off the business loss and unabsorbed depreciation of the predecessor company [Section 72A(6A)].

These conditions are as follows:

- (1) the total sales, turnover or gross receipts in business of the company should not exceed Rs. 60 lakh in any of the three preceding previous years;
- (2) the shareholders of the company become partners of the LLP in the same proportion as their shareholding in the company;
- (3) no consideration other than share in profit and capital contribution in the LLP arises to the shareholders;
- (4) the erstwhile shareholders of the company continue to be entitled to receive at least 50% of the profits of the LLP for a period of 5 years from the date of conversion;

(5) all assets and liabilities of the company become the assets and liabilities of the LLP; and
 (6) no amount is paid, either directly or indirectly, to any partner out of the accumulated profit of the company for a period of 3 years from the date of conversion.

However, if subsequent to the transfer, any of the above conditions are not complied with, the capital gains not charged under section 45 would be deemed to be chargeable to tax in the previous year in which the conditions are not complied with, in the hands of the LLP or the shareholder of the predecessor company, as the case may be [Section 47A(4)].

The tax credit under section 115JAA for MAT paid by the company under section 115JB would not be allowed to the successor LLP [Sub-section (7) of section 115JAA].

The aggregate depreciation allowable to the Predecessor Company and successor LLP shall not exceed, in any previous year, the depreciation calculated at the prescribed rates as if the conversion had not taken place. Such depreciation shall be apportioned between the predecessor company and the successor LLP in the ratio of the number of days for which the assets were used by them [Section 32(1)].

Computation of total income of AOP/BOI and PFAOP [Section 67A]:

In computing the total income, salary, bonus, commission, remuneration or interest paid to partners/members will not be allowed.

However in the case of payment of interest the following provisions will apply:

Explanation 1: If interest is paid by an AOP/BOI to any member who was also paid interest to the AOP/BOI then only that amount of interest paid by the AOP/BOI will be disallowed in its assessment which is in excess of the interest paid by the member to the AOP/BOI.

Explanation 2: If an individual is a member of an AOP/BOI in a representative capacity, then interest paid by the AOP/BOI to such individual in his personal capacity the interest payment will be allowed.

Explanation 3: If interest is paid to a member who is member in a personal capacity but such interest is received by him in representative capacity, the interest payment will be allowed.

Computation of tax where shares of members in AOP/BOI are unknown [Section 167B]:

Tax on the total income would be computed as follows:

- If individual share of any partner is not known, tax will be levied at the maximum marginal rate, or at a higher rate.
- If individual share of a partner is known but total income of any member/partner exceeds the basic exemption limit, then the firm will pay tax at the maximum marginal rate.
- If individual share of a partner is known and no member/partner has total income exceeding the basic exemption limit, the firm will pay tax at the rates applicable to an individual.

Computation of member's/partner's share in the total income of association of persons/AOP firm [Section 67A]: A member's share in the income of an association of persons/AOP firm (wherein the shares of members are determinate/known) will be computed as follows:

(a) Any interest, salary, bonus, commission, remuneration, etc. paid to a member/ partner during the previous year will be deducted from the total income of the association, and the balance will be apportioned among the members in proportion to their respective shares.

(b) If the amount apportioned to a member/partner as per (a) is a profit, any interest, salary, etc. paid to him by the association or AOP firm during the previous year will be added to

that amount and the aggregate sum will be such member's/partner's share in the income of the AOP/AOP firm.

(c) If the amount apportioned to a member/partner as per (a) is a loss, any interest, salary, etc., paid to him by the association or AOP firm will be deducted from the amount of loss and the balance sum will be such member's/partner's share in the income of the AOP/AOP firm.

The share of a member in the income/loss of the AOP/AOP firm will, for the purposes of assessment, be apportioned under the various heads of income in the same manner in which income/loss of the association has been determined under each head.

Any interest paid by a member on capital borrowed by him for the purpose of investment in the AOP/AOP firm will be allowed as deduction from share while computing his income under "Profits and gains of business or profession."

Assessment of share in the hands of member/partner [Section 86]:

- A member's/partner's share in the total income of an association of persons/AOP firm will be treated as follows:

- If an AOP/AOP firm has paid tax at the maximum marginal rate, or a higher rate, the partner's share in the total income of the firm will not be included in his total income and will be exempt.

- If the AOP/AOP firm has paid tax at regular rates applicable to an individual, the member's/partner's share in the income of the association/AOP firm will be included in his total income for rate purposes only. In other words, the member/partner will be allowed rebate at the average rate in respect of such share.

If the AOP/AOP firm has not paid tax on its total income, the member's/partner's share in the total income of the association/AOP firm will be included in his total income and taxed at regular rates.