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DIRECT TAX REVISION BOOK

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- Finance Act, 2019
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Chapter 1 Tax Rates and Some basicConcepts

Tax Rates

Income Tax Slab Rate for AY 2020-21 for Individuals (resident or non-resident), who is of the age of less than 60 years on the last day of the relevant previous year+ HUF/AOP/BOI/Any other Artificial Juridical Person

Net income range	Income-Tax rate
Up to Rs. 2,50,000	Nil
Rs. 2,50,000- Rs. 5,00,000	5%
Rs. 5,00,000- Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

Resident senior citizen, i.e., every individual, being a resident in India, who is of the age of 60 years or more but less than 80 years at any time during the previous year:

Net income range	Income-Tax rate
Up to Rs. 3,00,000	Nil
Rs. 3,00,000 – Rs. 5,00,000	5%
Rs. 5,00,000- Rs. 10,00,000	20%
Above Rs. 10,00,000	30%

Resident super senior citizen, i.e., every individual, being a resident in India, who is of the age of 80 years or more at any time during the previous year:

Net income range	Income-Tax rate
Up to Rs. 5,00,000	Nil
Rs. 5,00,000- Rs. 10,00,000	20%

Above Rs. 10,00,000	30%

Section 87A Rebate

An assessee, being an individual resident in India, whose total income does not exceed 5,00,000, shall be entitled to a deduction, from the amount of income-tax as computed before allowing the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to hundred per cent of such income-tax or an amount of 12,500, whichever is less.

Note-This rebate is only for Resident

Individuals CBDT Circular

If a person is born on 1st April then he shall get slab benefit of Rs 3,00,000 / Rs 5,00,000 as the case may be in such Previous Year .

B.Companies

Domestic Companies	Tax rate shall be 30%
Domestic Companies if Turnover or gross receipt of the company does not exceed Rs. 400 crore in the previous year 2017-18.	Tax rate shall be 25%
115BAA Domestic Companies	In case existing companies without deductions, exemptions, set off, specified incentives ,additional depreciation and MAT Benefits ,Tax rates shall be 22%+ Surcharge 10% Flat.
115BAB Domestic Companies	In case of new manufacturing companies formed on or after 01-october-2019 with new plant and machinery and other conditions and without deductions, exemptions, set off, specified incentives, additional depreciation and MAT Benefit Tax rates shall be 15 %+ Surcharge 10% Flat.

Sec 115BA	If the certain conditions are satisfied,the company has an option to pay tax at the rate of 25% (+SC+EC+SHEC). This Option shall be exercised on or before the due date for furnishingthereturnsofincome,which the company is required to furnish under the Act

C. Firm/LLP/Local Authority- 30 %

D. Co-operative Society

Net income range	Income-Tax rate
Up to Rs. 10,000	10%
Rs. 10,000 to Rs. 20,000	20%
Above Rs. 20,000	30%

E. Foreign Company – 40%

Surcharge rates for different taxpayers

Taxpayer	Income limit	Surcharge Rate on the amount of income tax
Individual/HUF/AOP/BOI/ Artificial Judicial Person	Net income exceeds Rs.50 Lakhs but doesn't exceed Rs. 1 Crore	10%
Individual/HUF/AOP/BOI/ Artificial Judicial Person	Net income exceeds Rs.1 Crore but doesn't exceed Rs 2 crore	15%
Individual/HUF/AOP/BOI/ Artificial Judicial Person	Net income exceeds Rs.2 Crore but doesn't exceed Rs 5 crore	25%
Individual/HUF/AOP/BOI/ Artificial Judicial Person	Net income exceeds Rs.5 Crore	37%

Firm/LLP/Local authorities/Co-operative Society	Net income exceeds Rs.1 Crore	12%
Domestic Company	Net income exceeds Rs.1 Crore but doesn't exceed Rs.10 Crores	7%
Domestic Company	Net income exceeds Rs.10 Crores	12%
Foreign Company	Net income exceeds Rs.1 Crore but doesn't exceed Rs. 10 Crores	2%
Foreign Company	Net income exceeds Rs.10 Crores	5%

Note-1 In case of Individual/HUF/AOP/BOI/ Artificial Judicial Person For Long-term capital gain covered under Section 112A and Short-term capital gain covered under Section 111A Income more than `50 lakhs but less than or equal to `100 lakhs Surcharge rate is 10 % and If Income more than `100 lakhs then Surcharge rate is 15%.

Note-2 Surcharge in case of unexplained income chargeable to tax under Section 115BBE is 25%

Health and Education cess

In all cases where tax has been computed, the income tax compute above as increased by surcharge, if any and after allowing marginal relief shall be further increased by health & education cess at the rate of 4%.

Marginal Relief –Individual

Case 1: Where the total income* is more than Rs.50 Lakhs but does not exceed Rs.1 crore, the taxpayers have to pay a surcharge at the rate of 10% on the income tax computed.	Case 2: Where the total income is more than Rs.1 crore but less than Rs. 2 crore, a surcharge of 15% will be levied on the income tax payable.
A marginal relief will be provided to certain taxpayers up to the amount of the difference	A marginal relief will be provided to the taxpayer up to the amount of difference

between the excess tax payable (including surcharge) on the income above Rs.50 lakhs and the amount of income that exceeds Rs.50 Lakhs.	between the excess tax payable (including surcharge) on income above Rs.1 crore and the amount of income that exceeds Rs.1 crore.
Eg-an individual has a total income of Rs.51 Lakhs in an FY, he will have to pay taxes inclusive of a surcharge of 10% on the tax computed i.e., total tax payable will be Rs. 14,76, 750. But, if he would have earned only Rs.50 lakhs, then the tax liability would have been Rs.13,12,500 only. Isn't it unfair for the individual? For earning an extra Rs.1,00,000, he will end up paying income tax of Rs.1,64,250. The individual's tax liability should be reduced to avoid any such excess tax payable. The individual will get a marginal relief of the difference amount between the excess tax payable on higher income i.e (Rs.14,76, 750 minus Rs.13,12,500 = Rs.1,64,250) and the amount of income that exceeds Rs. 50 Lakhs i.e. (Rs.51,00,000 minus Rs.50,00,000 = Rs.1,00,000). The marginal relief will be Rs.64,250 (Rs.1,64,250 minus Rs.1,00,000).	Eg-If the total income of an individual is Rs.1.01 crore in any FY, he will have to pay tax inclusive of a surcharge of 15% on the tax computed i.e., total tax payable will be Rs.32,68,875. But, if he would have earned only Rs.1 crore, then the tax payable would have been Rs.30,93,750 only. For earning an extra Rs.1,00,000, he will end up paying income tax of Rs.1,75,125. Hence, the individual will get a marginal relief of the difference amount between the excess tax payable on higher income i.e (Rs.1,75,125) and the amount of income that exceeds Rs.1 crore i.e. (Rs. 1,00,000, in this case). The marginal relief will be Rs.75,125 (Rs.1,75,125 minus Rs.1,00,000).

Marginal Relief – Firm/LLP/Local authorities/Co-operative Society

Where the total income is more than Rs.1 crore, a surcharge of 12% will be levied on the income tax payable.

A marginal relief will be provided to such taxpayers having a total income of more than Rs.1 crore i.e., the income tax payable (including surcharge) on the higher income should not exceed the income tax payable on Rs.1 Crore by more than the amount of income that exceeds Rs.1 crore.

Eg- if the total income of a firm is Rs.1.01 crores, it will have to pay an income tax inclusive of a surcharge of 12% on the tax computed i.e., total tax payable will be Rs.32,24,000. But, if the total income would have been only Rs. 1 crore, then the tax payable would have been Rs.31,20,000 only.

For earning an extra Rs.1,00,000, it will end up paying income tax of Rs.1,04,000.

Hence, the firm will get a marginal relief of the difference amount between the excess tax payable on higher income i.e (Rs.1,04,000) and the amount of income that exceeds Rs.1 crore i.e. (Rs.1,00,000, in this case). The marginal relief will be Rs.4,000 (Rs.1,04,000 minus Rs.1,00,000).

Application Vs Diversion of Income

Application of Income	Diversion of Income
Application of Income means spending of Income after it is being earned by the assessee. Such amount shall not be excluded from total income of the assessee as it is merely application of earned income. In other words, applied income shall be taxable in the hands of the assessee.	Diversion of Income is the process of diverting income before it is earned by the assessee. Such amount shall be excluded from the Total Income of the assessee as the income is diverted to someone else before being earned by the assessee. In case of diversion of Income there is an over- riding title of any other person on such income. So the income before being earned by the assessee reaches such person and hence not chargeable to tax in hands of the assessee.

Capital and Revenue Receipt

A receipt is taxable if it is of the nature of income. But receipts which are of capital nature are generally not taxable. The basic scheme of income-tax is to tax income not capital, and similarly to allow revenue expenditure. But this general rule is subject to certain exceptions such as Sction 52(2)(xi).

Section 115BA: Tax at the rate of 25 % on income of certain domestic companies:

As per new section 115BA has been inserted with effect from assessment year 2017-18 that the domestic companies satisfy following conditions will eligible for tax rate of 25 per cent.

Conditions:

1. The Assessee is a domestic company and not opting for tax under section 115BAAand 115BAB
2. The company has been set-up and registered on or after 01.03.2016.
3. The company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to (or distribution of) such article or thing manufactured or produced by it.
4. Total income of the company is computed without claiming additional depreciation and

deduction under sec.10AA,32AC,32AD,33AB,33ABA.35(1)(ii)/(iia)/(iii)/35(2AA)/(2AB), 35AC, 35CCC, 35CCD and Section 80H to 80TT (not being sec-80JJAA).
5. Total income of the company is calculated without adjusting brought forward loss from any earlier year (if such loss pertains to any deduction under the aforesaid sections).Moreover,such loss will not be carried forward.

Option in the Hands of Assessee:
If the above conditions are satisfied,the company has an option to pay tax at the rate of twenty five per cent(+SC+EC+SHEC). This Option shall be exercised on or before the due date for furnishing the returns of income, which the company is required to furnish under the Act.
Once the company has exercised the option for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

115BAA 22% TAX on certain domestic companies.

(1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAB, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of twenty-two per cent, if the conditions contained in sub-section (2) are satisfied.

(2) For the purposes of sub-section (1), the following conditions shall apply subject to the condition that the total income of the company has been computed,—

(i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AD or section 35CCC or section 35CCD or under any provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA;

(ii) without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred to in sub-clause (i); and

(iii) by claiming the depreciation, if any, under section 32, other than clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.

(3) The loss referred to in sub-clause (ii) of sub-section (2) shall be deemed to have been already given full effect to and no further deduction for such loss shall be allowed for any subsequent year.

(4) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the returns of income for any previous year relevant to the assessment year commencing on or after the 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:

Provided that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

115BAB 15% Tax on income of certain new domestic manufacturing companies.

(1) Notwithstanding anything contained in this Act but subject to the provisions of this Chapter, other than those mentioned under section 115BA and section 115BAA, the income-tax payable in respect of the total income of a person, being a domestic company, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2020, shall, at the option of such person, be computed at the rate of fifteen per cent, if the conditions contained in sub-section (2) are satisfied.

(2) For the purposes of sub-section (1), the following conditions shall apply, namely:—

(a) the company has been set-up and registered on or after the 1st day of October, 2019, and has commenced manufacturing on or before the 31st day of March, 2023, and,—

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

Provided that this condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the person of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in the said section;

(ii) does not use any machinery or plant previously used for any purpose.

Explanation 1.—For the purposes of sub-clause (ii), any machinery or plant which was used outside India by any other person shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled, namely:—

(A) such machinery or plant was not, at any time previous to the date of the installation by the person, used in India;

(B) such machinery or plant is imported into India from any country outside India; and

(C) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the person.

Explanation 2.—Where in the case of a person, any machinery or plant or any part thereof previously used for any purpose is put to use by the company and the total value of such machinery or plant or part thereof does not exceed twenty per cent of the total value of the machinery or plant used by the company, then, for the purposes of sub-clause (ii) of this clause, the condition specified therein shall be deemed to have been complied with;

(iii) does not use any building previously used as a hotel or a convention centre, as the case may be.

Explanation.—For the purposes of this sub-clause, the expressions "convention centre" and "hotel" shall have the meanings respectively assigned to them in clause (a) and clause (b) of sub-section (6) of section 80-ID;

(b) the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it; and

(c) the total income of the company has been computed,—

(i) without any deduction under the provisions of section 10AA or clause (iia) of sub- section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub- clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AD or section 35CCC or section 35CCD or under any provisions of Chapter VI-A under the heading "C.— Deductions in respect of certain incomes" other than the provisions of section 80JJAA;

(ii) without set off of any loss carried forward from any earlier assessment year if such loss is attributable to any of the deductions referred to in sub-clause (i); and

(iii) by claiming the depreciation under section 32, other than clause (iia) of sub- section (1) of the said section, determined in such manner as may be prescribed.

(3) The loss referred to in sub-clause (ii) of clause (c) of sub-section (2) shall be deemed to have been already given full effect to and no further deduction for such loss shall be allowed for any subsequent year.

(4) Where it appears to the Assessing Officer that, owing to the close connection between the company and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the company more than the ordinary profits which might be expected to arise, the Assessing Officer shall, in computing the profits and gains of such company for the purposes of this section, take the amount of profits as may be reasonably deemed to have been derived therefrom:

Provided that in case the aforesaid arrangement involves a specified domestic transaction referred to in section 92BA, the amount of profits from such transaction shall be determined having regard to arm's length price as defined in clause (ii) of section 92F.

(5) Nothing contained in this section shall apply unless the option is exercised by the person in the prescribed manner on or before the due date specified under sub-section (1) of section 139 for furnishing the first

of the returns of income for any previous year relevant to the assessment year commencing on or after 1st day of April, 2020 and such option once exercised shall apply to subsequent assessment years:

Provided that once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

2.Certain Concepts related to IFOS

.

Income from Other Source

Any income which is not chargeable to tax under any other heads of income and which is not to be excluded from the total income shall be chargeable to tax as residuary income under the head **"Income from Other Sources".**

Income from Other Sources – which sections apply?

Section 56 lists down what can be taxed under the head of IFOS

Income chargeable to tax under the head "Income from other sources" shall include following:-

Dividends Note:
Dividend received from domestic company shall be exempt from tax under Section 10(34) if it is chargeable to dividend distribution tax under Section 115-O. However, as per section 115BBDA (Other than dividend referred to in section 2(22)(e)) dividend shall be chargeable to tax at the rate of 10% if aggregate amount of dividend received by specified assessee during the year exceeds Rs. 10,00,000.
"specified assessee" means a person resident in India other than,—
a domestic company; or
a fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or
a trust or institution registered under section 12A or section 12AA.

Income by way of winnings from lotteries, crossword puzzles, races including horse races, card games, gambling or betting of any form or nature whatsoever

Any sum received by an employer from his employees as contribution towards PF/ESI/ Superannuation Fund etc., if same is not deposited in the relevant fund and it is not taxable under the head 'Profits and Gains from Business or Profession'

Interest on securities, if not taxable under the head 'Profits and Gains of Business or Profession'

Income from machinery, plant or furniture belonging to taxpayer and let on hire, if income is not chargeable to tax under the head 'Profits and Gains of Business or Profession'

Composite rental income from letting of plant, machinery or furniture with buildings, where such letting is inseparable and such income is not taxable under the head 'Profits and Gains of Business or Profession'

Any sum received under Keyman Insurance Policy (including bonus), if not taxable under the head 'Profits and Gains of Business or Profession' or under the head 'Salaries'

9. If shares in a closely held company are received by a firm or another closely held company from any person without consideration or for inadequate consideration, the aggregate fair market value of such shares as reduced by the consideration paid, if any, shall be chargeable to tax.
Note: Nothing would be chargeable to tax if taxable amount doesn't exceed Rs. 50,000.

10.A Any compensation received by a person in connection with the termination of his employment or modification of terms and conditions relating thereto.

interest received on compensation or enhanced compensation

Any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset shall be charged to tax under this head, if:
Such sum is forfeited; and
The negotiations do not result in transfer of such capital asset.

Section 56 (2)(x) Where ANY PERSON receives, in any previous year, from person or persons This Provision is applicable even Resident gifted Money or Specified Assets to NR outside India
Money Without Consideration whole of the aggregate value of such money if it exceeds Rs50,000 then whole of such sum shall be taxable under IFOS
Immovable Property being land or Building
Without Consideration- Stamp duty value of property if it exceeds Rs. 50,000 , then whole of such sum shall be taxable under IFOS
witch Consideration and if the difference of stamp duty value of such property and the consideration is in excess of the higher of the following amounts, namely:-
The amount of Rs 50000; and
The amount equal to 5% of the consideration: FA 2018
Then, Stamp Duty Value –Purchase Price , shall be taxable under IFOS Note-
where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken. This provision shall apply in a case where the amount of consideration, or a part thereof, has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account or other mode as may be prescribed FA 2019, on or before the date of the agreement for the transfer of such immovable property.

Property being shares & Securities or Jewelry; or Archaeological Collections; or Drawings; or Paintings; Sculptures; or Any work of Art; or Bullion
Without Consideration- With Consideration (if FMV of such property exceeds the purchase0 price by more than Rs 50,000) , then whole of such sum shall be taxable under IFOS
witch Consideration - If FMV of such property exceeds the purchase price by more than Rs 50,000) , then whole of such sum shall be taxable under IFOS
Note -Section 56(2)(x) will have application to the property which is in the nature of a capital asset of the recipient and therefore would not apply to stock-in-trade, raw material and consumable stores of any business of such recipient.

Note- As per Sec 49(4) FMV/stamp duty value which has been taken into account for the purpose of section 56(2)(x) shall be COA in hand of Recipient.

Note-56(2)(x) shall not apply In following case-

Received From any relative (See Table)or
Received On the occasion of the marriage of the individual ; or
Received Under a will or by way of inheritance; or
Received In contemplation of death of the payer; or
Received. From any local authority as defined in section 10 (20); or
Received. From any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in section 10(23C);or 7 Received. Form any trust or institution registered under section 12AA ; or
Received By any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in section 10(23C); or
Receive Form an individual by a trust created or established solely for the benefit of relative of the individual.
Received By way or certain transactions not regarded as transfer under section 47 (See Table)
From such class of persons and subject to such conditions, as may be prescribed.(FA 2019)

section 47 Transactions which are not-subject to section 56(2)(x)	section 47 Transactions which are not- subject to section 56(2)(x)
Receipt of capital assets on the total or partial partition of a HUF; Receipt of a capital asset by amalgamated company from amalgamating company; Receipt of capital asset being shares in Indian company by foreign company on amalgamation of another foreign company; Receipt of capital asset by banking institution on amalgamation of banking company. Receipt of capital asset by resulting company being India company on demerger from demerged company; Receipt of capital asset being shares in India company by resulting foreign company on demerger of another foreign company; Receipt of capital asset by successor cooperative bank of business reorganization; Allotment of shares in successor cooperative bank in lieu of shares in predecessor co- operative bank in business re-organization; i. Receipt of shares from resulting company on demerger of undertaking by shareholders of demerged company;	a. Transfer of asset on conversion of partnership firm into company; b.Transfer of asset on conversion of partnership concern into company; c.Transfer of asset on conversion of company into LLP; d.Transfer of asset on conversion of Stock Exchange into company

Receipt of shares from amalgamated company being an India company by shareholders of amalgamating company; Finance Act, 2018- Receipt of capital asset by wholly owned Indian subsidiary company from its holding company. () Receipt of capital asset by holding company being Indian company from its wholly owned subsidiary company	

Note- Relative means

(A) In case of an Individual	(B) In case of HUF, any member thereof.
Spouse of the individual Brother or sister of the individual; Brother or sister of the spouse of the individual; Brother or sister of either of the parents of the individual; Any lineal ascendant or descendant of the individual; Any lineal ascendant or descendant of the spouse of the individual; Spouse of the person referred to in clauses (ii) to (vi).	There will be no tax implications were a HUF receives from any member of the HUF the gifts referred above or purchases such assets from its members at a price lower than stamp duty value /FMV.

Section 57 lists down the deductions available under the head IFOS Deductions [Sec. 57]:
The following expenditures are allowed as deductions from income chargeable to tax under the head 'Income from Other Sources':

S.N.	Section	Nature of Income	Deductions allowed
1.	57(i)	Dividend or Interest on securities	Any reasonable sum paid by way of commission or remuneration to banker or any other person for purpose of realizing

			dividend (other than dividends referred to in section 115-O) or interest on securities
2.	57(ia)	Employee's contribution towards Provident Fund, Superannuation Fund, ESI Fund or any other fund setup for the welfare of such employees	If employees' contribution is credited to their account in relevant fund on or before the due date
3.	57(ii)	Rental income letting of plant, machinery, furniture or building	Rent, rates, taxes, repairs, insurance and depreciation etc.
4.	57(iia)	Family Pension	1/3rd of family pension subject to maximum of Rs. 15,000.
5.	57(iii)	Any other income	Any other expenditure (not being capital expenditure) expended wholly and exclusively for earning such income
6.	57 (iv)	Interest on compensation or enhanced compensation	50% of such interest (subject to certain conditions)
7.	58(4) Proviso	Income from activity of owning and maintaining race horses.	All expenditure relating to such activity.

Section 58 lays down the amounts NOT deductible Expenses not deductible [Section 58]:

S.N.	Section	Nature of Income
1.	58(1)(a)(i)	Personal expenses
2.	58(1)(a)(ii)	Interest chargeable to tax which is payable outside India on which tax has not been paid or deducted at source
3.	58(1)(a)(iii)	'Salaries' payable outside India on which no tax is paid or deducted at source
4.	58(1A)	Wealth-tax

5.	58(2)	Expenditure of the nature specified in section 40A
6.	58(4)	Expenditure in connection with winnings from lotteries, crossword puzzles, races, games, gambling or betting

43CA: special provision for full value of consideration for transfer of assets other Than capital assets in certain cases

Where on sale of land or building or both as Stock in Trade, Sales consideration received or accruing is less than Value assessed or assessable by the stamp valuation authority for payment of stamp duty, then the value so assessed or assessable shall deemed to be the sales consideration.
Provided, where the value adopted or assessed or assessable by the stamp valuation authority does not exceed 105 per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration. FA 2018
Provided, Where assesse claims that value so assessed or assessable exceeds FMV of property; and The value so assessed or assessable has not been disputed in any appeal or revision before any authority / Court, A.O. may refer valuation of the capital asset to Valuation Officer . Where value ascertained by Valuation Officer is lower than stamp duty value then such Value ascertained by Valuation officer shall be taken as sales price , Where it Exceeds the stamp duty value then Stamp duty value shall only be taken as sales price.

Where Sale price is computed as per the provision of section 43CA By taking the value assessed or assessable by stamp valuation authority And subsequently such value is reduced in any appeal or revision, The A.O. shall amend the order of assessment and re-compute the capital gain by taking reduced value as per Section 154 and Period of 4 years for Section 154 shall be reckoned from the end of the previous year in which the order reducing the value was passed in that appeal or revision.

Where the date of agreement fixing the amount of consideration for th3e transfer of immovable property held as capital asset and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for computing the full value of consideration,Subject to condition that upto date of agreement ,Full or part amount of consideration has been paid by way of an account payee cheque or account payee bank draft or use of an electronic clearing system through a bank account or other mode as may be prescribed FA 2019.

56(2)(viia): gift received by firm or closely held company

56(2)(viib): share premium received by firm or closely held company

If closely held company Issue Shares to any Resident in PY and receive consideration in exceeds face value of such shares, then difference between Aggregate consideration received for such shares and FMV of the shares shall be taxable.
Section 56(2)(viib) shall not apply where consideration for issue of shares is received
By a venture capital undertaking from a venture capital company or a venture capital fund OR or a specified fund (FA 2019)
By a company from Notified person by CG (a resident Angel investors' funding to approved start-ups;)
By a widely held company even where shares are issued at a premium.

Note-"specified fund" means a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate which has been granted a certificate of registration as a Category I or a Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992 (FA 2019)

Note-**Provided further** that where the provisions of this clause have not been applied to a company on account of fulfilment of conditions specified in the notification issued under clause
(ii) of the first proviso and such company fails to comply with any of those conditions, then, any consideration received for issue of share that exceeds the fair market value of such share shall be deemed to be the income of that company chargeable to income-tax for the previous year in which such failure has taken place and, it shall also be deemed that the company has under- reported the income in consequence of the misreporting referred to in sub-section (8) and sub- section (9) of section 270A for the said previous year. (FA 2019)

Section 56(2) (xi) Compensation for termination of employment or modification of the terms and conditions thereto ,Anycompensationorotherpayment,duetoorreceivedbyanyperson,bywhatever name called, in connection with the termination of his employment or the modification of the terms andconditions relating thereto shall be chargeable to tax under the head "Income from other sources". Inserted by Finance Act, 2018

Conflict: Readers shall consider section 17(3) (i) which reads as under:
"The amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or the modification of terms and conditions relating thereto" – shall be termed as "profits in lieu of salary".

Taxability of Unexplained Cash Credit etc **Section 68, section 69, section 69A, section 69B and section 69C**

Taxability- See Table

Burden of Proof: – So far as section 68 is concerned, the onus is wholly upon the Assessee to explain the source of the entry. But in cases falling under section 69, 69A, 69B and 69C, the words used show that before any of these sections are invoked, the condition precedent as to existence of investment, expenditure, etc. must be conclusively established by material on record/ evidence.
Year of Taxability: – The sum as determined under the provision would be taxable in the Financial Year in which it is credited (Section 68), invested (Section 69, 69A, 69B) or incurred (Section 69C).

Rate of Taxability:

Section 115BBE provides that even if assesse has included unexplained cash credits and declared them in the Return of income or discovered by Assessing Officer ,he shall pay 60% tax on such income (+25% surcharge + cess in all cases.) ,without allowance of any expenditure and chapter VI-A deductions .Also, losses shall not be allowed to be set off against such deemed income.

Section 271AAC provides penalty of 10% of tax calculated as per section 115BBE. However, no such penalty shall pay 60% tax on such penalty shall be levied if assesse has included such income in Return of Income and paid tax on or before the end of Previous Year.

Opportunity of being heard: – The word "explanation" indicates that the assessee must be given an opportunity of being heard to prove the nature and source of cash credits, investments and expenses.

Comparison between section 68, section 69, section 69A, section 69B and section 69C: –

Particular	**Section 68**	**Section 69**	**Section 69A**	**Section 69B**	**Section 69C**
Finding	Where any sum is found credited in the books of an assessee **maintai ned** for any previous year, **and** the assessee offers no explanation about the nature and source thereof **or** the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited **may** be charged to income-tax as the income of the assessee **of that previous year**.	Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, **if any**, maintained by him for any source of income, **and** th e assessee offers no explanation about the nature and source of the investments **or** the explanation offered by him is not, in the opinion of the Assessing Officer,	Where in any financial year the assessee is found to be the owner of any money, bullion, jewelry or other valuable article and such money, bullion, jewelry or valuable article is not recorded in the books of account, **if any**, maintained by him for any source of income, **an d** the	Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewelry or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewelry or other valuable article exceeds the amount recorded in this behalf in the books of account **maintai ned** by the assessee for any source of income, **and** the assessee offers no explanation about such	Where in any financial year an assessee has incurred **any** expendit ure **and** he offers no explanation about the source of such expenditure or part thereof, **or** the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, **may be** deemed to be the income of the assessee for **such financial year**.Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a

		satisfactory, the value of the investments **m ay** be deemed to be the income of the assessee of **such financial year**.	assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewelry or other valuable article, **or** t he explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewelry or other valuable article **may** be deemed to be the income of the assessee	excess amount **or** the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount **may** be deemed to be the income of the assessee for **such financial year**.	deduction under any head of income.

			for **such financial year**.		
Maintenance of Books of Accounts	Compulsory	Not Compulsory as the word "if any" is used	Not Compulsory as the word "if any" is used	Compulsory	Not Compulsory
Explanation to AO	AO can ask for explanation only when the sum is credited in the Books of Accounts	AO can ask for explanation only if investment is not recorded in the Books of Accounts.	AO can ask for explanation only if Money, bullion, jewelry or any other valuable article is not recorded in the Books of Accounts.	AO can ask for explanation only if the investment, Money, bullion, jewelry or any other valuable article is recorded in the Books of Accounts and the value recorded is less than the amount spent in acquiring.	AO can ask for the source of "incurred expenditure.

3.Dividend and related Concepts

115BBD: tax on certain dividend received from foreign company

Where total income of an Indian company includes any income by way of dividends received from a foreign subsidiary company, then such dividends shall be taxable @ 15% (plus applicable surcharge and cess) on gross amount of dividends. No expenditure in respect of such dividends shall be allowed under the Act.
Foreign subsidiary company means a foreign company in which Indian company holds 26% or more equity share capital.
Following conditions must be fulfilled for application of Section 115BBD:
1. Benefit of Section 115BBD is available only to the Indian Company.
2. Indian Company must hold at least 26% in nominal value of the equity share capital ofthe foreign company.
3. Dividend received under section 2(22)(e) shall not be covered.
4. No other expense shall be claimed by the Indian Company in respect of dividend Received.

115-0(1): Tax on distributed profits of domestic companies

Where domestic company (Not Foreign Company) declared, distributed or paid Any amount by way of dividends (whether interim or otherwise), whether out of current or accumulated profits shall be charged to additional income-tax @ 15% (plus surcharge @ 12% and health & education cess @ 4%) subject to Sec 115(1B) CDT is to be grossed up and this tax rate worksout to be 20.555% . CDT shall be paid within 14 days from the date of declaration; or distribution; or payment, of any dividend whichever is earliest.

FA 2018 Provided that in respect of dividend referred to in section 2(22)(e), this sub-section shall have effect as if for the words "15%, the words "30%" had been substituted .No grossing-up in case of of dividend referred to in section 2(22)(e) i.e 30% + 12% surcharge + 4% cess a 34.944% . Section 115BBDA is not applicable to deemed dividend u/s 2(22)(e),Hence Exempted in hand of Shareholders u/s 10(34).

Note- Section 10(34): Dividend under section 115-0 is exempt from tax in hands of shareholder. However, exemption under section 10(34) is not available for dividend taxable under section 115BBDA, i.e.,. If dividend received exceeds Rs.10 lakha in certain cases, then such dividend is taxable in hands of shareholder @10% and the company also pays CDT under section 115-O on dividend.

Key Notes-
1. No CDT in certain case

a. where specified domestic company (SPV) distributes dividend to Business Trust, subject to conditions.
b. Total income of a company, being a unit of an International Financial Services Centre, deriving income solely in convertible foreign exchange, on any amount declared or Distributed or paid by such company, by way of dividends out of its current income or income accumulated as a units in IFSC (FA 2019)
2. CDT is not an allowable deduction under I.T. Act and also credit of CDT paid is not available to company or shareholder
3. Dividend includes deemed dividend under section 2(22)(a), (b), (c) , (d) & (e). But for sec 2(22)(e) DDT rate will be 34.944% without grossing up.

115-0(1A):Reduction in dividend distribution tax

A. If any domestic holding company receives during the financial year any dividend from its domestic subsidiary company on which the subsidiary company has paid DDT if payable under section 115-0, if any; or any dividend from its foreign subsidiary company on which the tax is payable by holding company under section 115BBD, then, such dividend shall be reduced from the dividend declared/ paid/ distributed by the domestic holding company during the financial year.

Note: Holding Company should hold more than 50% equity share capital of domestic subsidiary company and foreign subsidiary company. The same amount of dividend shall not be taken into account for reduction more than once. Subsidiary means only that subsidiary in which parent company holds more than 50% in equity share capital. Dividend received from other types of subsidiary i.e. subsidiaries having controlling composition of board etc. shall be not getting the benefit u/s 115-O(1A).

Note- Dividend on both preference shares and equity shares shall be considered.

Note-Benefit of reduction of dividend is available on year to year basis only i.e. i.e. dividend paid for
one FY can be claimed in the same FY only. carry forward of benefit is not allowed.Further benefit can be available irrespective of the fact that the dividend is paid for different FYs.
Note-Deemed dividend under section 2(22)(a)/(b)/(c)/(e) is also considered for taking the benefit under this section.
B. CASE-2:
The amount of dividend, paid to any person for, or on behalf of, the New Pension System Trust shall be reduced from the dividend referred to in section 1150(1).

115-0(1B): grossing up of dividend

Except Sec 2(22) (e)For the purposes of determining the tax on distributed profits payable in accordance with this section, any amount by way of dividends referred to in sub-section (1) as reduced by the amount referred to in sub-section (1A) [hereafter referred to as net distributed profits], shall be increased to such amount as would, after reduction of the tax on such increased amount at the rate specified in sub-section (1), be equal to the net distributed profits.

Penal consequences on nonpayment of dividend tax

Sec115p provided rate for for late payment @1% p.a interest for a month or part there of till it is paid .	Sec115q brands the principal officer and of such domestic company as assessees in default.	Joint Commissioner shall impose penalty, a sum equal to the amount of tax which such person failed to deduct or pay	

115BBDA: Tax on certain dividends received from domestic companies

Where any assessees (except Domestic company , Institutions referred to in section 10(23C) , Religious and Charitable Trust registered under section 12AA ,Non-residents and foreign companies), received dividend from domestic company and total dividends received by the assesece from all companies taken together, exceeds Rs.10 lakhs during the previous year, then such amount in excess of Rs.10 lakhs shall be taxed @ 10% (plus surcharge, if any and cess). No deduction in respect of any expenditure or allowance or set off of loss shall be allowed to the assessee under any provision of the Act in computing the income by way of dividends.
Note-dividend u/s 2(22)(e) is not subject to section 115BBDA.
Note-company shall also pay CDT under section 115-O on the dividend which is getting taxed under section 115BBDA in the hands of shareholders.

Deemed Dividend

Central India Industries Ltd. (SC)
When assets are distributed under section 2(22)(a)/(c)/(d), the market value of the asset on the date distribution has to be taken for computing the dividend.

Section 2(22) (a) to 2(22)(d)
Under these sections, the company will pay Dividend Distribution Tax u/s 115-O. Such dividend will be exempt in the hands of the shareholder u/s 10(34) subject to115BBDA.

FA 2018 Explanation 2A to section 2(22): Accumulated profits in case of Amalgamation
In the case of an amalgamated company, the accumulated profits, whether capitalised or not, or loss, as the case may be. shall be increased by the accumulated profits, whether capitalised or not, of the amalgamating company on the date of amalgamation.

Explanation 1, 2 and 2A of section 2(22)

(a) An accumulated profit does not include capital gains arising before April 1, 1946 and after March 31, 1948 but before April 1, 1956.
(b) In case of a company, which is not in liquidation, it includes all profits of a company upto the date of distribution or payment.
(c) In case of a company, which is in liquidation, it includes all profits of the company up tothe date of liquidation.
(d) In case of company, which is in liquidation consequent on the compulsory acquisition of a company's undertaking by the Government or a corporation owned or controlled by the Government, then accumulated profits do not include any profits of the company prior to the three successive years immediately preceding the previous year in which such acquisitiontook place
(e) In the case of an amalgamated company, accumulated profits or loss in the hands ofthe amalgamated company shall be increased by the accumulated profits of the amalgamating company (whether capitalized or not) on the date of amalgamation. FA 2018

(A) Based on decisions of various courts, accumulated profit includes	(B) Based on decisions of various courts, accumulated profit does not include
a. Balance of Profit and loss account b. Current Profit c. General Reserve d. Development Rebate Reserve e. Investment Allowance Reserve f. Any other free Reserve e.g. Building Reserve Fund g. Additions made by Assessing Officer on account of concealed income h. Exempt Incomes i. Capital Gain chargeable to tax	a. Balancing Charge computed under section 41(2) b. Capital Gain not chargeable to tax c. Additions made by Assessing Officer in respect of inadmissible expenses d. Depreciation Reserve / Fund e. Provisions for taxation f. Proposed Dividend

Note: - For determining accumulated profits, depreciation as per Income tax Act has to be considered.

2(22)(a): Any distribution of assets

Dividend includes any distribution of assets by company to its shareholders to theextent company possesses accumulated profits, whether capitalised or not.

Fair Market Value of the asset on the date of distribution will be considered to computedeemed dividend

2(22)(b): distribution of debentures, ETC.

Any distribution to its SHs by way of debentures or debenture stock or deposit certificate with or without interest.Any Distribution of bonus shares to its preference shareholders (not to equity shareholders) to the extent to which company possesses accumulated profits whether capitalised or not.

2(22)(c): distribution of assets in the event of liquidation

Any distribution made to the shareholders of a company on its liquidation, to the extent to which such distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not.

Section 46(1)where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company.

Section 46(2): Where a shareholder on the liquidation of a company receives any money or other assets from the company, then he shall be chargeable to income-tax under the head capital gains and the sales consideration shall be Specified amount (i.e Moneys Received Add: Market value of the assets received as on the date of distribution Less: Amount assessed as dividend under section 2(22)(c))
Note- Section 2(42A): For Holding Period computation, the period subsequent to the date on which the company goes into liquidation shall not be considered. And *Section 55* cost of acquisition of the asset will be the, FMV of the asset on the date of distribution

2(22)(d):reduction of share capital

Any distribution to its shareholders by a company on reduction of its capital to the extent to which the company possesses accumulated profits, whether capitalised or not.

2(22)(e): Loans & advances by closely held company deemed as dividend

Any payment by a closely held company of any sum by way of loan or advance to

a shareholder being the beneficial owner of shares and holding not less than 10% of voting power	any concern in which such a shareholder is a member or a partner and in which he has a substantial interest (20% voting power/share in profit at any time during the previous year.)	any person on behalf of or for the individual benefit of such a shareholder

Shall be treated as Dividend to the extent to which the company possesses accumulated profits, companies to pay DDT at the rate of 30% plus applicable surcharge and cess on transactions carried out on or after 1 April 2018. As a result, the shareholder doesn't have to pay any taxes on such receipts.. Accumulated profits shall include all profits upto the date on which lean or advance is given to the shareholder or concern or any other person referred to in section 2(22)(e). Accumulated profits get reduced by the amount deemed as dividend under section 2(22)(e) even if no adjustment is made in the books of account .
Note- loan or advance is repaid does not make a difference in the applicability of section 2(22)(e)
Note- Section 2(22)(e) is also attracted if company charges market rate of interest on the loans / advance given to the shareholder.
CBDT Circular -trade advances, which are in the nature of commercial transactions would not fall within the ambit of the word 'advance in section 2(22)(e).
-
Proviso to Sec2(22): dividend shall not include

1.Any advance or loan made to a shaleholder or a concern by n company in the ordinary course of its business where the money lending is substantial part of the business of the company.

2.Any dividend paid by a company which is set off by the company against the whole or any part of the loan which has been deemed as dividend under section (22)(e).

3. Any distribution made in accordance with section 2(22)(c)/(d) in respect of preference shares.

4. Any payment made in buy-back of shares in accordance with Companies Act.
5. Any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital inthe demerged company

PROVIONS ON BUY BACK OF SHARES-46A: capital gains on purchase by company of its own

LISTED SHARES

TAX IMPLICATION IN THE HANDS OF Company	TAX IMPLICATION IN THE HANDS OF

	SHAREHOLDER
(i) No Tax implication in the hands of listed company. There will be no deemed dividend and Consequently section 115-O shall not be attracted. (ii) Section 115QA shall ~~not~~ be attracted since the shares are listed. As per FA 2019 115QA is applicable in case of all shares Listed or Unlisted shares . However in respect of Listed share if public announcement has been made before 5th July 2019 then 115QA shall not be attracted. (iii) Apart from this there is no other implication in the hands of the company	(i) Sale consideration is amount received on buy back (ii) Cost of Acquisition = amount paid for acquiring shares (iii) Period of holding = Date of acquisition to date of buy back. (iv) Benefit of first proviso and second proviso to section 48 is available

shares 115QA: Tax on distributed income to shareholders

With effect from 05/07/2019, Section 115QA has been amended to levy additional tax on buy back of shares by listed companies as well. Consequently, Section 10(34A) has also been amended to exempt income arising in hands of shareholder on account of buy back of shares by listed companies.
Section 115QA and section 10(34A) shall apply when company buyback unlisted share /LISTED (FA 2019)from the shareholders. The Company shall pay Tax @ 20% + 12% surcharge+ HEC= 23.296% under section 115 QA on the amount of distributed income calculated as under :- Amount paid by company to shareholder on buyback of shares. (—) Amount received by company for issue of Shares including share premium if any SUBJECT TO Rule40BB .

Where a shareholder receives any amount on buyback of then such amount is exempt under 10(34A). Further In case of BB of unlisted shares No Capital Gain shall be chargeable in the hands of shareholder.
Section 115QA and 10(34A) shall apply to shares i.e. both preference unlisted as well as unlisted equity

<u>10(34A): exemption on by back of shares</u>

Any income arising to an assessee, being a shareholder, on account of buy back of shares by the company (whether listed or unlisted) as referred to in section 115QA is exempt from tax under section 10(34A). This exemption is available only in those cases where additional income-tax is payable on distributed income under section 115QA by the company opting for buy back of such shares.

Anarkali Sarabjai (SC): Redemption of listed preference shares amounts to transfer and will result in capital gains in the hands of the preference shareholder. If a company redeems unlisted /listed preference shares, then section 115QA and section 10(34A) shall apply. The

company will pay 23.296% (20% + 12%+ 4%) tax on distributed income under section 115QA and the amount received by the preference shareholder shall be exempt in his hands under section 10(34A)

DIVIDEND STRIPPING

Section-94(7) of the Income Tax Act, 1961, deals with the provisions related to the dividend stripping.

What does "dividend stripping" means?

Dividend stripping is a attempt to reduce the tax liability, by an investor who invests in *securities* (i.e. shares, stock or debentures etc.) and *units* (Mutual fund units or units of UTI), shortly before the record date and getting a tax free dividend/income, and exiting after the record date at a price lower than the price at which, such securities/units were purchased and incurring a short-term capital loss.

The strategy behind dividend stripping is a two way strategy wherein-

- Investor gets tax free dividend (i.e. exempted u/s 10(34)/10(35))
- Incurs Short term capital loss (i.e. allowed to be set off and carry forward)

Record date:- Date fixed by a company or mutual funds for the purpose of entitlement of holders of securities or units, to receive dividend or other income.

Hence, provisions of sec-94(7) come into force to curb the investors to gain double benefit, by way of dividend stripping. Sec 94(7) specified the conditions to be satisfied to attract the provisions of this section which are as follows:-

Conditions to be satisfied to attract provisions of *Dividend Stripping*

Conditions	**Securities**	**Units**
Buying or acquiring	Within a period of **3 months** prior to the record date	Within a period of **3 months** prior to the record date
Selling or transferring	Within a period of **3 months** after the record date	Within a period of **9 months** after the record date

Dividend or income during intervening period	Exempt	Exempt

Note: – All the conditions are required to be satisfied to attract the provisions of sec – 94(7) of Income Tax Act – 1961.

♣ Consequence if conditions related to *Dividend Stripping are satisfied*

If the above mentioned conditions are met, then the *short term capital loss*, if any, arising to the investor on purchase and sale of such securities or units, not exceeding the amount of dividend or income received/receivable on such securities or units, *shall not be considered while computing the total income chargeable to tax.*

Even, u/s 94(7) the short term capital loss arising, shall not be allowed to be set-off or carried forward, to the extent of dividend or income received.

Notes: – **1)** According to the provisions of **sec – 10(34)** of IT Act 1961, dividend received on shares is exempt in the hands of shareholders. And as per **sec -10(35)** dividend or any income received on units is exempt in the hands of unit holders.

2) According to the provisions of **sec-115BBDA**, (introduced by Finance Act, 2017) exemption u/s 10(34) is not available if the amount of dividend exceeds Rs. 10Lakhs. Hence, if dividend received exceeds Rs. 10Lakhs then, such excess amount shall be chargeable to tax @ 10% in the hands of shareholders.

3) Sec-94 covers the holding of securities/units both as capital assets and as stock-in-trade. Hence sec-94(7) would be applicable to both an investor and trader of securities/units.

4..Mutual Fund Taxations

I.Mutual Fund Units Taxation

Exemption in hand of MF and UTI
Any Incomes of all Mutual funds, specified company and administrator are exempt under section 10.
Exemption in hand of Unit holders
Any dividend/ interest declared by any mutual fund is exempt in hands of unit holder under section 10(35). Similarly, dividend / interest declared by specified company and administrator is exempt in the hands of unit holder.
Note-Unit Trust of India can be broken into Administrator of specified undertakings and Specified Company

Section 115R Tax on Income distributed by UTI / Mutual Fund
No tax on Distributed Income if distributed by the Administrator of the specified undertaking, to the unit holders but If any amount of income distributed by the specified company or a Mutual Fund to its unit holders shall be chargeable to tax and such specified company or Mutual Fund shall be liable to pay within 14 days from the date of distribution; or payment, of such income, whichever is earlier ,at the rate of:
a. 10 % in case of Equity Oriented Fund FA 2018
b. 30 % in case of other fund but restricted to 25 % if Receiver is I/HUF
c. 5% where any income is distributed by a mutual fund under an infrastructure debt fund scheme to a non-resident or a foreign company

Note: The above rate shall be increased by surcharge of 12% and health & education cess of 4% in all cases.

CAPITAL GAINS ON UNITS

Units of equity oriented mutual funds	Units of other mutual fund
Long term capital gain on equity oriented fund shall be taxable u/s 112A. STCG on unit of equity oriented fund shall be Taxable @ 15% on 111A	STCG shall be Taxable @ normal rate. LTCG shall be taxable @ 20% or 10% in some cases

5.Certain Concepts related to Salaries

ESOP

Meaning -Employee stock option Plan

Employer may offer stock options to his employee. Stock option means the right (not obligation) to subscribe to specified number of shares or securities of the employer-company at a specified price (called strike price which is less than the FMV of the shares or securities) on a future date upon fulfillment of vesting conditions.

Taxability of ESOP-.Perquisite U/s 17 (2) (vi) Perquisites include the value of any security or shares allotted, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assessee under ESOP. Perquisite shall be taxable in the hands of the employee only when shares are allotted to him under ESOP. The perquisite is not taxable when employee exercises his option to ESOP. However the perquisite shall be worked out on the basis of FMV of ESOP on the date when employee exercises his option to ESOP. The value of taxable perquisite shall be determined as under

[FMV of share or security on the date of exercise of option – strike price paid] * Number of shares or securities allotted.

RULE 3(8): Determination of FMV of perquisites in respect of equity shares allotted or transferred under ESOP

Case	Equity shares are listed on a single RSE	Equity shares are listed on more than one RSE	Equity shares are not listed on a RSE
FMV on the date of exercise of option	Average of opening sell price and closing sell price of shares on the DOE	Average of opening sell price and closing sell price of shares on the DOE on a RSE which records the highest volume in trading in the shares	Value on specified date as determined by a category I Merchant banker registered with SEBI
If there is no trading in shares on the DOE	closing sell price of shares on the DOE If on the DOE, there is no trading in shares, the FMV shall be the closing sell price of the share on RSE on a closest date immediately preceding the DOE	If on the DOE there is no trading in shares, the FMV shall be the closing sell price of the share on a RSE which records the highest volume of trading on the closest date immediately preceding the DOE	Specified date means: (a) The date of exercise of option or (b) any date earlier than the DOE not being a date which is more than 180 days earlier than the DOE

Rule 3(9) Computation of FMV of securities other than equity shares allotted under ESOP

The FMV of any specified security, not being an equity share in a company, on the date on which the option is exercised by the employee, shall be such value as determined by a merchant banker on the specified date.

If shares are subsequently sold by the employee

Whenever such shares are subsequently sold by the employee then as per Section 49(2AA) the Cost of acquisition of such shares will be the FMV which has been taken into account for computing taxable perquisite. The period of holding shall be counted from the date of allotment of such shares for computing CG.

Deduction to Employer

If the employer purchases the shares and then subsequently transfers such shares to its employees	If the shares are allotted' to the employees from the share capital of the company
Expenditure, so incurred is allowable as deduction in computing taxable income of the employer company.	No deduction is allowable in computing the taxable income of the company since no expenditure has been incurred by it

6.Clunning of Income

Section 60 Transfer of Income without transfer of assets

Where any person transfers only income where there is no transfer of assets, then such income shall be included in the total income of the transferor

Section 61 Irrevocable transfer of assets

All income arising to any person by virtue of a revocable transfer of assets shall be chargeable to tax as the income of transferor and therefore, it shall be included in his total income.

Note

Section 62 Irrevocable Transfer	section 61 shall continue to apply i.e Benefit of section 62 shall not be available	Section 63 Revocable Transfer
Section 62 Transfer shall be taken as irrevocable in following cases and accordingly provisions of section 61 shall not apply. (a) If the transfer is by way of trust which is not revocable during the lifetime of the beneficiary (b) If the transfer is otherwise than by way of trust which is not revocable during the lifetime of the transferee	(a) The transferor derives any direct or indirect benefit from the income of transferred assets (b) As and when the power to revoke transfer arises.	Transfer shall be deemed to be revocable if- (a) it contains any provision for the re-transfer directly or indirectly of the whole or any part of the income or assets to the transferor; or (b) it, in any way, gives the transferor a right to re-assume power, directly or indirectly, over the whole or any part of the income or assets.

Section 64(1)(ii) Income of Individual to include income of Spouse from a concern in which Individual has substantial interest

If following conditions are satisfied then, then the income derived by the spouse bay way of salary, commission, fees or any other form of remuneration shall be clubbed in the hands of taxpayer. (1) The taxpayer is an individual. (2) The taxpayer has a substantial interest in a concern. For this purpose, an individual shall be deemed to have substantial interest in a concern if he (individually or along with his one or more relatives) (a) beneficially holds equity shares carrying not less than 20 percent voting power in the case of a company or (b) is entitled to not less than 20 per cent of the profits, in the case of a concern other than a company, at any time during the previous year.	Exception: Such clubbing provision shall not apply in relation to any income arising to the spouse where (a) the spouse possesses technical or professional qualifications and (b) such income is solely attributable to

Note- section 2(41) "Relative", in relation to an individual, means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual- (3) Spouse of the individual derives, directly or indirectly, income by way of salary, commission, fees or any other form of remuneration whether in cash or in kind from such concern	the application of his or her technical or professional knowledge and experience.
Where both the husband and wife have substantial interest in the concern and both are in receipt of the remuneration from such concern without technical or professional qualification,Then in such case, the remuneration shall be clubbed in the total income of that spouse whose total income, excluding such remuneration, is greater. Once such income is included in the total income of the either spouse, any such income arising in any subsequent year cannot be included in the total income of the other spouse unless the Assessing Officer is satisfied, after giving that spouse an opportunity of being heard, that it is necessary so to do.	
The HUF is a partner in firm ABC through its karts Mr. X and has 25% share in the profits of the firm. Wife of Mr. X is employed by firm ABC. In these cases clubbing shall not apply because Mr. X is partner in representative capacity and not in his individual capacity. Clubbing applies where an individual is partner in his individual capacity and has substantial interest in firm and his spouse get remuneration from the firm.	

Where assets transferred without adequate consideration

Section 64(1)(iv) To Spouse	Section64(1)(vi) To son's wife
If following conditions are satisfied then, then any income from transferred asset shall be clubbed in the hands of transferor - (1) The taxpayer is an individual. (2) The taxpayer has transferred an asset (other than a house property), directly or indirectly, to the spouse. (3) Such transfer is made otherwise than (a) for adequate consideration, or (b) in connection with an agreement to live apart.	If following conditions are satisfied, then any income from transferred asset shall be clubbed in the hands of transferor - 1) The taxpayer is an individual. (2) The taxpayer has transferred an asset, directly or indirectly, to son's wife. (3) Such transfer is made otherwise than for adequate consideration.
In following cases, clubbing is not attracted if – (1) asset is transferred for an adequate consideration. (2) Asset is transferred in connection with an agreement to live apart. (3) Asset is transferred before marriage. (4) On the date of accrual of income, marriage does not subsist. (5) asset is acquired out of the saving from pin money (i.e. money given to the wife by her husband for household expenses)	In following cases, clubbing is not attracted if – (1) asset is transferred for an adequate consideration. (2) asset is transferred before son's marriage.
Manner of clubbing when asset transferred to a spouse are invested in any business (except capital contribution as a partner in the firm) --Where the assets transferred by an individual to his spouse are invested by the spouse in any business, then following amount shall be clubbed [Income from business × Amount invested in the business out of the transferred assets on the first day of the previous year] / Total investment in the business as on the first day of previous year.	Manner of clubbing when asset transferred to a son's wife are invested in any business (except capital contribution as a partner in the firm) -- Where the assets transferred by an individual to his son's wife are invested by the son's wife in any business, then following amount shall be clubbed

When transferred asset is invested in the firm as a capital contribution. Then in this case, interest on capital shall be clubbed.	[Income from business × Amount invested in the business out of the transferred assets on the first day of the previous year] / Total investment in the business as on the first day of previous year. When transferred asset is invested in the firm as a capital contribution. Then in this case, interest on capital shall be clubbed.
Where interest free loan is given by one spouse to another or individual to son's wife or individual to his HUF, and the person to whom the loan is given purchases an asset out of the loan, then Income from such asset shall not be clubbed in the hands of the person who has given the loan. This is because giving a loan is not a transfer of assets. Clubbing applies when assets are transferred for inadequate consideration.	
Clubbing will take place even if the assets are indirectly transferred or transferred through cross transfers.	

Income of individual to include income of any person or AOP to which assets are transferred

Section64(1)(vii) for the benefit of spouse	Section64(1)(viii) for the benefit of son's wife
If following conditions are satisfied, then any income from transferred asset (to the extent of benefit to spouse) shall be clubbed in the hands of transferor. (1) The taxpayer is an individual (2) The taxpayer has transferred an asset, directly or indirectly, to a person or an association of persons. (3) Such transfer is made otherwise than for adequate consideration. (4) Such transfer is for the immediate or deferred benefit of his/her spouse. (5) Clubbing will take place even if the assets are indirectly transferred or transferred through cross transfers.	If following conditions are satisfied, then any income from transferred asset (to the extent of benefit to son's wife) shall be clubbed in the hands of transferor. (1) The taxpayer is an individual. (2) The taxpayer has transferred an asset, directly or indirectly, to a person or an association of persons. (3) Such transfer is made otherwise than for adequate consideration. (4) Such transfer is for the immediate or deferred benefit of his/her son's wife. (5) Clubbing will take place even if the assets are indirectly transferred or transferred through cross transfers

Section 64(1A) Income of minor child--In computing total income of any individual, all income which arises or accrues to the minor shall be clubbed.

Manner of Clubbing	(a) Where the marriage of parent subsists:-The income of minor shall be included in the income of that parent whose total income [excluding the income includible under section 64(1A)] is greater (b) Where the marriage of the parents does not subsist: The income of the minor will be includible in the income of that parent who maintains the minor child in the relevant

	previous year. Where any such income is once included in the total income of either parent, any such income arising in any succeeding year shall not be included in the total income of the other parent unless the Assessing Officer is satisfied, after giving that parent an opportunity of being heard, that it is necessary so to do
clubbing provision of section 64(1A) is not applicable	(1) Income of minor child suffering from any disability of the nature specified under section 80U. (2) Income accrues or arises to minor child on account of any manual work. (3) Income accrues or arises to minor child on account of any activity involving application of his skill, talent or specialized knowledge and experience.
section 10(32) Exemption	In case the income of individual includes the income of his minor child in terms of section 64(1A), such individual shall be entitled to exemption of a maximum of Rs. 1,500, in respect of each minor child.
Trust is created for the benefit of a minor child	Where a trust is created for the benefit of a minor child, then the income of the trust shall be clubbed with the income of parent under section 64(1A). This shall apply even if the trust deed provides that the income shall be accumulated by trust and shall be given to minor child when he attains majority. Clubbing provisions under section 64(1A) shall apply since the income accrues for the benefit of minor child although it may be given on attaining majority.

Section 64(2) Conversion into HUF Property

Applicability of clubbing	(a) Where an individual, being a member of a Hindu undivided family, converts his self-acquired property into property belonging to the family through the act of impressing such property with the character of joint family property or throws such property into common stock of the family. (b) Where an individual transfers his self-acquired property, directly or indirectly, to the family otherwise than for adequate consideration
Clubbing of income before partition	Income from the abovementioned property shall be chargeable to tax in the hands of the transferor.
Clubbing of income after partition	If the property converted or transferred by an individual is subsequently transferred amongst the members of the family, the income derived from such converted property, as is received by the spouse of the transferor will be included in the income of the transferor.
Note- Property includes any interest in property, movable or immovable, the proceeds of sale thereof and any money or investment for the time being representing the proceeds of sale thereof and where the property is converted into any other property by any method, such other property.	

Common Provisions for Clubbing

(i) The negative income is also liable to be clubbed, Income Includes loss also. Therefore, losses are also to be clubbed.
(ii)While clubbing the income, the deductions available under the five heads of income shall be allowed and the income after such deduction shall be clubbed
(iii) Clubbed Income shall be retained under the same head in which it is earned.
(iv)) Income arising to the transferee from accretion of property or from accumulated income is not liable to be clubbed in the hands of transferor ,It means Income arising out of income earned on transferred assets has not to be clubbed.
(v) The clubbing shall continue to apply even if the transferee has converted transferred assets to some other form. If the transferee sells the transferred assets, then capital gains shall also be clubbed with the income of the transferor

Section 65 Recovery of tax from the transferee

As discussed above provisions contained in section 60 to 64, incomes belonging to other persons (recipient of income) shall be clubbed in the total income of the assessee. Similarly, under section 27(i), a person is 'deemed' as owner of a house property and therefore, liable to tax in respect of house property income earned by other persons(recipient of income).) By virtue of section 65 of the Act, the assessing officer may serve a notice of demand to the recipient of income to pay proportionate tax attributable in respect of income included in the income of assessee.

Section27 Deemed owner of house property

Section 27 of the Act provides that the word "owner" includes a legal owner as well as deemed owner for the purpose of head "Income from House Property. Following is the list of deemed owner

Transfer to a spouse or minor child.	) Transfer to a spouse or minor child. If following conditions should are satisfied, then the individual who has transferred property shall be deemed to be the "owner". (1) The taxpayer is an individual (2) He or she transfers a house property. (3) The property is transferred to his/her spouse (not being a transfer in connection with an arrangement to live apart) or to his/her minor child (not being a married daughter). (4) The property is transferred without adequate consideration
Holder of impartible estate	The holder of impartible estate is deemed as owner of the property.
Property held by a member of housing co-operative society	A member of co-operative society, company or other association of persons to whom a building is allotted under the house building scheme of the society, company or association, is treated as deemed owner of such property.

Holding possession of immovable property under part performance of contract	If a person has acquired a property under a "power of attorney transaction" by satisfying the conditions of section 53A of the Transfer of Property Act, he is deemed as owner of the property, although he may not be the "registered owner" of the property. Section 53A of the Transfer of Property Act requires the following conditions: (1) There is an agreement in writing between the purchaser and the seller. (2) The purchaser has paid the part (or full) consideration to the seller. (3) The purchaser has taken the possession of the property from the seller though conveyance deed (sale deed) is not executed in favour of purchaser. If the aforesaid three conditions are satisfied, the purchaser becomes the deemed "owner" of the property for the purpose of income-tax, even if he is not the registered owner of the property.
Lease rights of a property	If a person acquires a right in a building by virtue of a transaction which is referred to in section 269UA(f), then he is deemed as owner of the property. Section 269UA(f) covers the case of giving a property on lease for a term of not less than 12 years (whether fixed originally or there is a provision for extension of term and the aggregate period is not less than 12 years). However, lease rights are given on month to month basis or for a period not exceeding one year then leasee shall not be considered as deemed owner.

7. Taxation under head PGBP

Business" is defined u/s 2(13) in an inclusive manner to include trade, commerce, manufacture or any adventure in the nature of trade, commerce, manufacture.

The profits and gains must be revenue in nature i.e. all revenue receipts are chargeable to tax. Any trading receipt incidental to business will be chargeable under PGBP only.Profits & gains may arise from legal or illegal business. Profits may arise in cash or kind but Profits must be Real Profits i.e. not notional, not anticipated i.e. its should not be arrived by applying by deeming fiction UNLESS otherwise specified.

Section 145 Method of Accounting

Section 145(1)-Income to be computed either on the basis of cash or mercantile system of accounting , regularly employed by the assessee.

Section 145(2)-Central Government empowered to notify i.e Notification No. 87/2016 income computation and disclosure standards .

Section 145(3)-Assessing Officer empowered to make assessment in the manner provided under section 144 in following case-

a) Where the Assessing Officer is not satisfied about the correctness or completeness ofthe accounts of the assessee or

b) Where the method of accounting provided in section 145(1) has not been regularlyfollowed by the assessee, or

c) Where income has not been computed in accordance with the standards notified under section 145(2), the Assessing Officer may make an assessment in the manner provided in section 144.

Sec. 145A Method of accounting in Certain Cases

1. The valuation of inventory shall be made at lower of actual cost or net realizable value computed in the manner provided in ICDS.

2.The valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date ofvaluation.

3. Inventory (being securities not listed, or listed but not quoted, on a recognised stock exchange) shall be valued at actual cost initially recognised in the manner provided inICDS.

4. Inventory (being securities held by a scheduled bank or financial institution) shall be valued in accordance with ICDS after taking into account extant guidelines issued by the RBI.

5. Inventory (being listed securities) shall be valued at lower of actual cost or net realisable value in the manner provided in ICDS and for this purpose the comparison of actual costand net realisable value shall be done category-wise.

6.Any tax, duty, cess or fee, by whatever name called, under any law for the time being in force, shall include all such payment notwithstanding any right arising as a consequence of such payment for the purposes of the said section

Section28 Business Incomes Taxable under the head of PGBP

profits and gains of any business or profession;

any compensation or other payments due to or received by any person specified in section 28(ii);

income derived by a trade, professional or similar association from specific services performed for its members;

the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession;

any profit on transfer of the Duty Entitlement Pass Book Scheme;

any profit on the transfer of the duty free replenishment certificate;

export incentive available to exporters;

any interest, salary, bonus, commission or remuneration received by a partner from firm ;

any sum received for not carrying out any activity in relation to any business or profession or not to share any know-how, patent, copyright, trademark, etc.;

fair market value of inventory as on the date on which it is converted into, or treated as, a capital asset determined in the prescribed manner;FA 2018

any sum received under a Keyman insurance policy including bonus;

any sum received (or receivable) in cash or kind, on account of any capital asset (other than land or goodwill or financial instrument) being demolished, destroyed, discarded ortransferred, if the whole of the expenditure on such capital asset has been allowed as a deduction under section 35AD; and Income from speculative transaction.

Section 115BBG Carbon Credits and Its Taxability

where the income of any person includes any income from transfer of carbon credits, the same would be subject to taxation of 10 percent, with no deduction being allowable for expenditures made for the same.

Note- Carbon Credits is an incentive given to an industrial undertaking for reduction of the emission of GHGs (Green House Gases), including carbon dioxide which is done through several ways such as by switching over to wind and solar energy, forest regeneration, installation of energy efficient machinery, landfill methane capture, etc.

29: income from P/G/B/P/, how competed

The income referred to in section 28 shall be computed in accordance with the provisions contained in sections 30 to 43D.

30: rent, rates, taxes, repairs and insurance of building

In respect of rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business or profession, profession, the following deductions shall be allowed:

where the premises are occupied by the assessee:

as a tenant — the rent paid for such premises; and further if he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs;

Otherwise than as a tenant — the amount paid by him on account of current repairs to the premises;

Any sum paid (whether as owner or tenant) on account of land revenue, local rates or municipal taxes;

Any insurance premium paid (whether as owner or tenant) in respect of insurance against risk of damage or destruction of the premises.

Explanation 1 to Section 32(1) Capital expenditure on repairs by tenant/ lessee is deemed as building owned by tenant/ lessee and depreciation is allowed to the tenant/ lessee on such deemed building

31: repairs and insurance of machinery, plant and furniture

In respect of machinery, plant or furniture used for the purpose of business, the following deductions are allowable:

amount paid on account of current repairs,

Any insurance premium paid in respect of insurance against risk of damage or destruction of the plant and machinery or furniture.

Note- Section 43 (3) "plant" includes ships, vehicles, books, scientific apparatus, and surgical equipment used for the purposes of the business or profession but does not include tea bushes or livestock OR BUILDINGS OR FURNITURE AND FITTINGS even if specifically designed.

32(1)(ii): depreciation

In order to claim depreciation, an assessee has to fulfil the following conditions:

1.The asset should be owned by the assessee. Where, however, an assessee carries onbusiness or profession in a building not owned by him but taken on lease, he is entitled to depreciation in respect of the capital expenditure incurred on the construction of any structure or any work in relation to the building by way of improvement, renovation or extension.

2.The asset, in respect of which depreciation is claimed, must have been used for the purpose of business. Where, however, the asset is partly used for business or profession and partly used for private and personal purposes, a reasonable proportion of the depreciation attributable to the business user of the asset is allowed [Section 38].

3.Under the Income-tax Act, one can claim depreciation in respect of the following assets—

a)Tangible Assets – Building, Machinery, Plant and Furniture

b)Intangible Assets acquired. - Know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

4.Co-owners can claim depreciation to the extent of the value of the assets owned by each co-owner.

5.You cannot claim depreciation on the cost of land.
6. Explanation 5 to Section 32(1)-Depreciation is mandatory from A.Y. 2002-03 and shall be allowed or deemed to have been allowed as a deduction irrespective of a claim made by a taxpayer in the profit & loss account.

7. Proviso to Section 32(1)- Depreciation restricted to 50% to if put to use for less than 180days in the yeas of acquisition. Restriction applies only in the year of acquisition i.e. put to use for less than 180 days in to the for < 180 days in the year of acquisition.

8. Proviso to Section 32(1)- In the case of amalgamation or demerger, the aggregate depreciation allowance shall be apportioned between the amalgamating and the amalgamated company, or the demerged and the resulting company. The aggregate depreciation would be computed as if the amalgamation or demerger had not taken place. It shall be apportioned based on the number of days the assets were used by such companies.

Succession means: (i) Firm into Company [under section 47(xiii)]

(ii) Proprietorship into Company [under section 47(xiv)]

(iii) Company into LLP (under section 47(xiiib))

(iv) Any other succession except death

7. Depreciation is calculated on the WDV of a Block of assets. Block of assets is a group of assets falling within a class of assets at following specified rate-

RATES OF DEPRECIATION	(%)
(I) Buildings:	
(a) Buildings which are used mainly for residential purposes except for hotels and Boarding House	5
(b) Buildings which are not used mainly for residential purposes and other than mentioned in a & c	10
(c) Buildings acquired on or after 1-9-2002 for installing P&M forming part of water supply project; or water treatment system and put to use for the purpose of providing infrastructure facilities u/s. 80-IA(4)(i) of the Act	40

(d) Purely temporary erections such as wooden structures	40
Note: "Buildings" include roads, bridges, culverts, wells and tube wells. A building shall be deemed to be a building used mainly for residential purposes if the built-up floor area thereof used for residential purposes is not less than 66.67 % of its total built-up floor area and shall include any such buildings in the factory premises. Water treatment system includes a system for desalination, demineralization, and purification of water.	
(II) Furniture and fittings including electrical fittings	10
Electrical fittings include electrical wiring, switches, sockets, other fitting and fans, etc.	
(III) Machinery and plant: Plant has been held to include : Movable partitions Sanitary & pipeline fitting Ceiling and pedestal fans Wells Hospital However, w.e.f. A.Y. 2004-05, it shall not include buildings, furniture, and fittings.	
1) Machinery & plant other than those covered by sub-items 2,	15

3 and 8 below: Machinery and plant includes pipes needed for delivery from the source of supply of raw water to the plant and from the plant to the storage facility	
2) Motor-cars (other than those used in the business of running them on hire) acquired or put to use on or after 1st April 1990 **Notification No. 69/2019-Income Tax Dated-** 20th September, 2019 Motor cars, other than those used in a business of running them on hire, acquired on or after the 23rd day of August, 2019 but before the 1st day of April, 2020 and is put to use before the 1st day of April, 2020.	15 30
3) Motor-cars (other than those used in the business of running them on hire) acquired on or after 23rd August 2019 but before 1st April 2020 and is put to use before 1st April 2020 **Notification No. 69/2019-Income Tax Dated-** 20th September, 2019 Motor buses, motor lorries and motor taxis used in a business of running them on hire, acquired on or after the 23rd day of August, 2019 but before the 1st day of April, 2020 and is put to use before the 1st day of April, 2020.	30 45
4) (i) Aero plane- Aero engines	40
(ii) Motor buses, Motor lorries, and Motor used in a business of running them on hire	30
(iii) Motor buses, Motor lorries, and Motor used in a business of running them on hire acquired on or after 23rd August 2019 but before 1st April 2020 and is put to use before 1st April 2020	45
(ix) Moulds used in rubber and plastic goods factories	30

(x) Air pollution control equipment	40
(xi) Water pollution control equipment	40
(xii) Solid waste control equipment	40
(xiii) Machinery and plant used in semiconductor industry	30
(xiv) Lifesaving medical equipment	40
6) Computers (including computer software) "Computer Software" means any computer programme recorded on any disc, tape, perforated media or other information storage device.	40
8) Machinery and plant acquired and installed on or after the 1-9-2002 in a water supply project or a water treatment system and which is put to use for the purpose of business of providing infrastructure facility under 80-IA(4)(i)	40
9) (i) Books owned by assessees carrying on a profession Annual publications Other books	40 40
(ii) Books owned by assessees carrying on business in running lending libraries	40
(IV) Ships "Speedboat" means a motorboat driven by a high-speed internal combustion engine capable of propelling the boat at a speed exceeding 24 kilometers per hour in still water and so designed that when running at a speed, it will plane, i.e., its bow	20

will rise from the water.	
(V) Intangible Assets Know-how patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature acquired on or after 1-4-1998.	25

32(1)(iia): additional depreciation

In the case of any new machinery or plant other than ships and aircraft on which has been acquired and installed by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation, transmission or distribution of power{If WDV opt u/s 32(1)(ii)}, additional depreciation @20% of actual cost shall be allowed as deduction.

Provided, Higher additional depreciation @ 35% is available if an undertaking is set up on or after 1.4.2015 in notified backward areas of Bihar, Andhra Pradesh, Telangana or West Bengal and new plant & machinery acquired and installed during the period 1.4.2015 to 31.3.2020 for manufacture or production of any article or thing, Additional Depreciation is not available for plant & machinery used in business of generation or transmission or distribution of power. In case of plant & machinery used in business of generation or transmission or distribution of power rate of additional depreciation shall be restricted to 20%.

No deduction shall be allowed in respect of—

(a) any second-hand machinery or plant whether Indian or Imported; or

(b) any machinery or plant installed in any office premises or any residential accommodation or guest house; or

(c) any office appliances or road transport vehicles; or

(d) any machinery or plant, the whole of the actual cost of which Is allowed as a deduction in any one

previous year by way of depreciation or under section 35(1)(iv).

Provided, Additional depreciation is allowed in the year in which the asset is installed and put to use.

Additional depreciation shall be restricted to 50% in case the plant & machinery is put to use for less than 180 days in the year of acquisition. If additional depreciation has been restricted to 50% on account of assets being used for less than 180 days, then the balance 50% additional depreciation shall be allowed in the immediately succeeding previous year.

CBDT Circular: The business of printing or printing and publishing amounts to manufacture

or production of an article or thing and is accordingly eligible for additional depreciation under section 32(1)(iia) of the Act..

43(6): written down value of block of assets

Written Down value of Block of Asset	W.D.V. of the block at the beginning of Previous Year
Add:	Actual Cost of the assets falling within this block acquired during the Previous Year
Less	Moneys payable (sale price and insurance compensation) in respect of assets falling in this block which are sold, discarded, demolished or destroyed during the Previous Year and the amount of scrap value. Note- Moneys payable shall be deducted while computing the WDV even if it is due and not received. Note- Actual sale price of the asset sold is to be deducted and not the FMV of asset sold.
Less:	WDV of assets transferred in slump sale (compute WDV of asset assuming this is the only asset in Block)
	W.D.V. of block for the Assessment Year

Note- Above reduction shall be restricted to the written down value of Block ofassets.Hence, Reduction of moneys payable shall only be to the extent that W.D.V. becomes NIL.

50: special provisions for computation of capital gains in case of depreciable assets

If a depreciable asset is transferred, capital gain (or loss) will arise only in the following two cases i.e In no other case capital gain is chargeable to tax, when a depreciable asset is transferred –

I. When on the last day of the previous year written down value of the block of assets is 0 (zero) [sec. 50(1)- Where the total sales consideration arising as a result of transfer of one or more capital asset forming part of the block of assets exceeds the aggregate of the following:

(a) Expenditure incurred wholly and exclusively in connection with transfer;

(b) W.D.V. of the block Of assets at the beginning of the Previous Year; and

(c) Actual cost of any asset falling within the block of assets acquired during the previous year.

II. When the block of assets is empty on the last day of the previous year [sec. 50(2)]- (2) Where any block of assets ceased to exist for the reason that all the assets in that block are transferred during the Previous year, then the following shall be deemed to STCG:

Sales consideration in respect of transfer of assets Less:

(i) W.D.V of block of assets at the beginning of Previous year

(ii) Actual cost of block of assets at the beginning of Previous Year

(iii) Expenditure incurred wholly and exclusively in connection with the transfer.

Note- This rule is equally applicable whether depreciation is allowed in the current year (or any of earlier years). On transfer of depreciable assets gain (or loss) is always short-term capital gain (or loss). It can never be treated as long-term capital gain (or loss).

Note-In the above two cases, cost of acquisition shall be the aggregate of the following–

Step 1 : Find out written down value of block of assets at the beginning of the previous year.

Step 2 : Add: Actual cost of any asset(s) falling within that block of asset acquired by the assessee during the previous year (whether put to use or not).

Note-Insurance compensation in respect of asset destroyed shall be deducted from WDV of block under section 43(6) even if the same has not been actually received. However, if STCG arises under section 50 because of insurance compensation, then such STCG shall be taxable in the previous year in which insurance compensation is actually received as per section 45(1A).

Note-Assessee can claim exemption under section 54, 54EC & 54F on amount of capital gain arising on transfer of depreciable assets held for more than 36 months i.e. a long-term capital asset, through the same is deemed as capital gain arising on transfer of short-term capital asset by virtue of section 50.{ Rajiv Shukla (Delhi HC)}.

43(1): determination of actual cost in special cases

Actual Cost means the actual cost of the asset to the assessee, reduced by that portion of the cost which has been directly or indirectly met by any other person or authority.

Provided, Where the assessee incurs any expenditure for acquisition of any asset or part thereof in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque/ draft / Electronic clearing system/Other mode as may be prescribed (FA 2019) exceeds Rs- 10,000, such expenditure shall be ignored for the purpose of determination of actual cost.

Note- interest is paid or is payable as interest in connection with the acquisition ofan asset--As per Explanation 8 to section 43(1) provides that where any interest is paid or is payable as interest in connection with the acquisition of an asset, so much of the amount as is relatable to any period after such asset is first put to use shall not be included in the actual cost of the asset and shall be allowed as revenue expenditure.

Section 36 (1) (iii) provides that while computing the income under the head P/G/B/P, deduction shall be allowed for the amount of interest paid in respect of capital borrowed for the purposes of business or profession.
However, the amount of the interest paid, in respect of capital borrowed for acquisition of an asset (whether capitalized in the books of account or not); for any period beginning form the date on which the capital was borrowed for acquisition of the asset till date on which such asset was first put to use, shall not be allowed as deduction .

Note- Waiver of loan given to the assessee by the Government of India, will be reduced to arrive at the actual cost as per section 43(1) for computing depreciation under section 32.

Expl to sec 43(1) ---

Explanation To Section 43(1) number	CIRCUMSTANCE	ACTUAL / NOTIONAL COST
1	Asset is used for normal business purpose after is ceases to be used for scientific research.	Actual Cost less deduction allowed u/s 35.
1A	**Where the inventory is converted into capital asset and is used for the purposes of business or profession.** **FA 2018**	**Then, the actual cost of such asset to the assessee shall be the fair market value which has been taken into account for the purposes of the conversion.**
2	Asset acquired by way of gift or inheritance.	WDV to the previous owner at the time of transfer.
3	Asset acquired by assessee from any other person (who has used the asset for his business or profession), to reduce his tax liability by claiming excess depreciation on enhanced cost.	Actual cost as determined by Assessing Officer with prior approval of Joint Commissioner.
4	Asset once belonged to the assesse which was used by him for business & is transferred and reacquired by him	WDV at the time of earlier transfer or actual price for which the asset is reacquired, whichever is less.
4A	Asset acquired by an assessee (suppose, Mr. B) from another person (suppose, Mr. A) who had claimed depreciation on such asset and the asset is leased back to such other person (suppose, Mr. A). [i.e. Sale & Lease-back Transaction]	The written down value of the asset to the transferor (suppose, Mr. A) at the time of transfer to the assessee (suppose, Mr. B).

5	Building previously held as property and subsequently brought into use business purpose.	The Actual cost of the building as reduced by the notional depreciation that would have been allowable since the date of its acquisition by using depreciation rate as applicable to year of bringing such building into business use.
Explanation 6* to Section 43(1) and Explanation 2# to Section 43(6)	Asset* / Block of assets# transferred by a Holding Company to its 100% Subsidiary Company or by a 100% Subsidiary Company to Holding Co., Provided the Transferee Co. should be an Indian Company.	Actual Cost* / WDV# to the transferor Company will be taken as the actual cost to the transferee company.
Explanation 7* to Section 43(1) and Explanation 2# to Section 43(6)	Asset* / Block of assets# transferred in a scheme of amalgamation by amalgamating company to Indian amalgamated company.	Actual Cost* / WDV# to the amalgamating company will be taken as the actual cost to the amalgamated company
Explanation 7A* to Section 43(1) and Explanation 2B# to Section 43(6)	Asset* / Block of assets or part their of # transferred by a demerged company to the Indian resulting Company.	Actual Cost* / WDV# to the demerged company will be taken as the actual cost to the resulting company.
8	Payment of interest in connection with acquisition of asset. Note- Similarly, by virtue of Proviso to section 36(1)(iii), if interest paid relates to a period beginning from the date on which the amount was borrowed for acquisition of asset till the date on which such asset was first put to use, shall not be allowed as deduction u/s 36(1)(iii). Additionally that may be added / included in the actual cost of the asset	Interest relating to the period after the asset is first put to use shall not be included in actual cost. Additionally that may be claimed as← revenue expense u/s 36(1)(iii).
9	If excise duty or additional customs duty is leviable on asset acquired in respect of which CENVAT Credit is claimed and allowed	The amount of duty in respect of which a claim of credit has been made and allowed shall be reduced from the actual cost of asset.
10	Asset acquired where a portion of the cost is	Such subsidy shall be

	met directly or indirectly by Government or any other person in the form of a subsidy or grant or reimbursement. Note- Section 2(24)(xviii): − Assistance in the form of − a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) − by the Central Government / a State Government / any authority / body / agency − in cash or kind to the assessee − will be taxable as income. Exceptions: (i) the subsidy or grant or reimbursement which is being considered for determination of actual cost under Explanation 10 to section 43(1),or (ii) the subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government. FA 2018 Subsidy shall be deemed to be income of PY in which RECEIVED if it has not been charged to tax in earlier PY. EXPLANATORY REMARK: Press Release dated 5-5-2015-LPG or other welfare subsidy received by an individual in his personal capacity and not in connection with his business or profession carried on by him will not be taxable	reduced from the actual cost of such asset in respect of which it is received. If subsidy is with reference to the various assets: then proportionate subsidy shall be reduced, from the actual cost of each particular asset, which will be calculated asset-wise in the following manner: Actual Cost of that particular asset Proportionate = Total Subsidy x Actual Cost of that particular asset/ Total cost of all assets with reference to which such subsidy has been received
11	Asset acquired outside India by a Nonresident and brought into India for use in his business or profession.	Actual cost as reduced by the amount of notional depreciation calculated at the rate in force as if the asset was used in India since the date of acquisition.
12	Any capital asset acquired by company from AOP/BOI (RSE) under a scheme of corporation of a recognised stock exchange in India, approved by SEBI.	Amount which would have been regarded as actual cost, had there been no such corporatisation (i.e. Actual cost to the transferor AOP/BOI).
13	Actual cost of capital asset has been allowed as deduction u/s 35AD.	The actual cost of such asset shall be Nil: (a) For

		same assessee. (b) For transferee in a case where such asset is transferred by way of transactions referred to in section 47
Explanation 2C to Section 43(6)	Block of assets transferred by company to LLP under conversion of such company into LLP [as covered u/s 47(xiiib)]	WDV of such block of assets as on the date of conversion will be treated as actual cost for LLP.
Explanation 7 to Section 43(6)	In the case of 'composite income' (i.e where partly income is exempt and remaining part is taxable by virtue of Rule 8, 7, and 7B)	To calculate depreciation for current year, opening WDV will be computed on the assumption that total depreciation would have been allowed in earlier years.

Note- # In all the aforesaid cases, wherever term WDV occurs will include Notional WDV (which will be relevant in case of transfer of part of block of asset.

Note- f Explanation 8 of section 43(1) and Proviso to section 36(1)(iii): Interest upto first put to use of an asset: will be added with actual cost and Interest after the first put to use of an asset: may be claimed as revenue expense←

<u>32(2): set-off and carry forward of unabsorbed depreciation</u>

Current Year Depreciation shall be allowed to be set off against any income assessable for that AY. Depreciation to the extent not set off shall be carried forward to the next AY and set off against the income under any head. The unabsorbed depreciation can be carried forward indefinitely even if the return is filed after the due date of filing of return or return is not filed.. Depreciation shall be allowed to be carried forward even if business has been discontinued.

Note-Depreciation can be carried forward only if the assessee is the same, i.e., the assessee who claimed depreciation and the assessee who wants to carry forward the depreciation must be the same except section 72A/ 72AA/ 72AB where depreciation can be carried forward even when the assessee has changed.

Note-Priority of set-off (i) Current Year Depreciation. (ii) Brought forward Business Losses and (iii) Brought forward Depreciation.

38(2): depreciation on assets not exclusively used for business purpose

Where any building, machinery, plant or furniture is not exclusively used for the purposes of the business or profession, then the deduction under section 30 (repairs & insurance premium of the building),deduction under section 31 (repairs and insurance premium of machinery, plant and furniture) and the deduction under section 32 shall be restricted to a fair proportionate part there of which the A.O. may determine having regard to the use of such building, machinery, plant or furniture for the purpose of business or profession.

BOT Project -Arrangements for development of roads / highways.

In any BOT arrangement it is general practice possession of land is handed over to the assessee by the

Government /notified authority for the purposes of construction of the project without any actual transfer of ownership and such assessee has only a right to develop and maintain such

asset. It also enjoys the benefits arising from use of asset through collection of Toll for a specified period without having actual

Ownership over such asset. Therefore, the rights in the land remain vested with the Government or its

Agencies. Thus, as assessee does not hold any rights in the project except recovery of toll fee to recoup the expenditure incurred, it cannot therefore be treated as an owner of the property, either wholly or partly, for purposes of allow ability of depreciation under section 32 (1)(ii) of the Act. Thus, present provisions of the Act do not allow claim of depreciation on Toll ways due to non-fulfillment of ownership criteria in such cases. In view of above, CBDT has clarified that the cost of construction on development of infrastructure facility of roads/ highways under BOT projects may be amortized and claimed as allowable business expenditure under the Act after excluding the time taken for creation of the such facility.

Depreciation allowed on standby equipments CBDT circular

Idle machine can also be considered as used as it may be required as and when need arise. It is not necessary that the asset should have been used for the purpose of business or profession throughout the previous year. Hence, Depreciation allowed on standby equipments.

32(1)(i): depreciation for power generating undertakings

An assessee in the business of generation or generation and distribution of power will be allowed depreciation In respect of Tangible and intangible assets, Owned wholly or partly by the assessee And used for the purposes of business, At the prescribed rates on actual cost of each asset on straight line method or Written down value method on block of Assets(At the option of assessee)depreciation. Total depreciation under section 32(1)(i) shall not exceed the actual cost of the asset.

Note-- Additional depreciation under section 32(1)(iia) is not available to power generating undertakings but Restriction of 50% of depreciation shall apply if the asset is put to use for less than 180 days in the year of acquisition.

Note- SLM under section 32(1)(I)is sold during the P/Y then.-

If S.P.> W.D.V.	If S. P. < W.D.V

S.P. –W.D.V. is taxable as P/G/B/P under section 41(2). Note-Section 50A If asset on which depreciation is allowed under SLM under section 32 (1)(i) is sold during the previous year, and sale price of such assets exceeds the actual cost of the asset, then,Sale Price – Actual cost = STCG	W.D.V. – S. P. is allowed as terminal depreciation under section 32

Section 41 Deemed PGBP Income

Section 41(1)(a) Recovery by the Same Assessee

Section 41(1)(b) Recovery by the Successor in Business or Profession

Section 41(2) Balancing Charge on Assets of an undertaking engaged in Generation or Generation and Distribution of Power

Section 41(3) Profit on Sale of Capital Assets used for Scientific Rresearch

Section 41(4) Recovery out of Bad Debts Allowed as a Deduction

Section 41(4A) mount withdrawn from Special Reserve Created and Maintained by certain Financial Institutions

Section 41(5) Adjustment of Loss

32AC: investment in new plant or machinery-Deleted

32AD: investment in new plant or machinery in notified backward areas in certain stares

If an undertaking is set up in the notified backward areas in Andhra Pradesh, Bihar, Telangana and West Bengal by a company, it shall be eligible to claim investment allowance 15 % of actual cost {as per

section 43(1)}of “new asset” in the year in which the new asset is installed, subject tofollowing conditions-

The assessee may be a company or any other person.

He/it sets up an undertaking/enterprise for manufacture or production of any article or thing on or after April 1, 2015.

Such undertaking must be set up in any backward area (notified by the Central Government) in Andhra Pradesh, Bihar, Telangana and West Bengal.

He/it acquires and installs (for the purposes said undertaking) a "new asset".

The new asset should be acquired and installed after March 31, 2015 but before April 1, 2020. Both 'acquisition' and 'installation' of the new asset (i.e., new plant and machinery) are required to be made after March 31, 2015 but before April 1, 2020

Lock- in Period of 5 Years: If any new asset acquired and installed is sold or otherwise transferred, within a period of five years from the date of its installation, the amount of deduction allowed under section 32D shall be deemed to be the income of otherwise transferred, in addition to taxability of gains, arising on account of transfer of such new asset. However No violation in following three case if any asset is sold or transferred-

a. In a scheme of amalgamation; or demerger; or

b. By a proprietor to a company and conditions of section 47(xiv) are satisfied; or

c. By a company to LLP and conditions of section 47(xiiib) are satisfied.

Note- This deduction is in addition to the depreciation and additional depreciation.

Note-"New asset" for this purpose is a new plant or machinery. But it does not include second hand machinery, machinery installed in office/ residential accommodation/guest house, vehicle, ship or aircraft or any plant and machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing business income of any previous year.

33AB: tea development account, coffee development account and rubberdevelopment account

Income derived from the Manufacture and sale of

Rule 7A Rubber	Rule 7B Coffee		Rule 8 Tea
Income derived from the sale of rubber obtained from rubber plants grown by the seller in India	Income derived from the sale of coffee Grown and	Income derived from the sale of coffee grown, cured roasted and grounded by the seller in	Income derived from the sale of tea frown and manufactured by the seller in India

	cured by the seller in India	India, with or without mixing chicory or other flavoring ingredients,	
35% of such income shall be liable to tax under PGBP	25% of such income shall be liable to tax under PGBP	40% of such income shall be liable to tax under PGBP	40% of such income shall be liable to tax under PGBP

Now, we will discuss deduction u/s 33AB

All assesses engaged in the business if growing and manufacturing tea, coffee or rubber in India shall before setting off the brought forward losses get deduction of a) Amount deposited in NABARD or Deposit Account b) 40% of "P/G/B/P of such business before deduction under section 33AB subject to following conditions-

1.Assessee must deposit before six months from the end of the previous year or before the due date of furnishing return of income whichever is earlier: (i) An account with NABARD (under an scheme approved by Tea Board or the Coffee Board or the Rubber Board); or (ii) A deposit account in under the scheme framed by Tea Board or the Coffee Board or the Rubber"

2. Deduction under section 33AB is given from business of growing and manufacturing tea /coffee/ rubber i.e. composite of exempt & non-exempt income. It is not given from the non-exempt portion.

3. If the amount is withdrawn for the purpose of scheme and is fully / partly not utilized as per Scheme (Revenue or Capital i.e P&M) in the same PY in which withdrawn , then amount not utilized shall be consider as income under PGBP. In certain cases it is not taxable-

Taxable under the head P/G/B/P	Not Taxable
Closure of business Dissolution of firm	Death of an assessee Partition of HUF Liquidation of company

4.Where amount withdrawn from NABARD / Deposit account is used as per the scheme for purchase of any plant & Machinery, then depreciation shall be allowed on such plant & machinery

5. Where amount in the NABARD / Deposit Account is released during any previous year by NABARD or withdrawn by the assessee and is utilized for the purchase of :

a) any plant or machinery to be installed in any office premises / residential accommodation (including guest house)

b) Any office appliances (Other than computers)

c) Any plant or machinery, the whole of actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in any one previous year.

Then the whole of such amount shall be taxable as profits and gains of that previous year.

6. Where any asset acquired in accordance with thescheme is sold or otherwise transferred in any p[previous year by the assessee to any person at any time before the expiry of 8 years from the end of the previous year in which it was acquired, such part of the cost of the asset as is relatable to the deduction under section 33AB shall be deemed to be the P/G/B/P of the previous year in which asset is sold / transferred.

7. The assessee must get its accounts audited by a Chartered Accountant and furnish the report of such audit in Form No. 3AC, along with the return of income.

35: expenditure on scientific research-

I. Scientific Research (In house research Related to Business)

A. Before Commencement of Business

Section 35 (1)(i): Revenue Expenditure Incurred Expenditure incurred on salary(excluding perquisite) and on purchase of material used in research within the 3 year immediately preceding the year of commencement of business, shall be allowed as a deduction in the year of commencement

Section 35(1)(iv): 100% deduction of capital expenditure (excluding land) on scientific research related to business carried on by the assessee. Capital expenditure incurred on scientific research within 3 years immediately preceding the commencement of business shall be allowed as deduction in the year in which business is commenced.

B. After Commencement of Business

i. Company- Section 35(2AB) Companies engaged in the business of bio-technology or in manufacture or production of any other article or thing other than those specified in Eleventh Schedule. Research and development facility should be approved by prescribed authority. Deduction allowed only if company has entered into an agreement with prescribed authority for co-operation in such research & development facility andfor audit of accounts maintained for such facility

Revenue Exp- 150% deduction shall also be allowed for expenditure incurred on clinical drug trails &obtaining approvals form regulatory authority and for filing an application for a patent under the Patent Act in case of a company doing scientific research in drugs and pharmaceuticals.

Capital Exp-

Cost of land in not allowed as deduction	Cost of building shall be allowed under section 35(1)(iv)@ 100%.	In other case 150%

ii. Other- Section 35 (1)(i):100% of revenue & Capital expenditure laid out or expendedon scientific research related to the business carried on by the assessee.

Note-It is not necessary that the assessee should carry out the research himself. If research is carried out by some other person for the business of the assessee, payment made to such other person will be treated as expenditure on research.

Note- If land and building agreement, then the cost of the land and building, then the cost of the land
and building shall be bifurcated on the basis of their FMV.

I. Scientific Research/Social & Statical Research (Contribution to Outsiders)

A. University, college or other institution- Research is not related to business of assessee

scientific research Section 35(1)(ii): An amount equal to 150% of any sum paid to a research association which has as its object the undertaking of scientific research or to a university,

college or other institution to be used for research provided such association / university / college / institution is approved by Central Government.

social science or statistical research- Research is not related to business of assessee Section 35 (1)(iii): An amount equal to 100% of any sum paid to a university, college, or other approved institution to be used for research in social science or statistical research provided such university / college / institutions is approved by Central Government.

Note: The deduction for the sum paid under section 35(1)(ii)/ 35(1)(iii) shall not be denied if

the approval of research institute has been withdrawn after payment by the assessee.

B. Section 35(2AA) National Laboratory, University, IIT or specified person- 150% of sum paid to a National Laboratory, University, IIT or specified person approved by prescribed authority with a specific direction that it shall be used for scientific research under an approved research programmer. [Research is related to business of assessee.]

Note: Deduction shall not be denied if the approval granted to National Laboratory, or in research program

is withdrawn after payment has been made by the assessee.

C. Section 35(1)(iia) Amount Paid to an Approved Scientific Research Company-100% OF Capital and Revenue expenses subject to condition-

1. The taxpayer is any person (maybe an individual, HUF, firm, company or any other person).

2The taxpayer has paid any sum to an Indian company (hereinafter referred as “payee-company”) to be used by the payee for scientific research.

3The scientific research may or may not be related to the business of the taxpayer.

4 The payee-company has as its main object the scientific research and development.

5The payee-company is for the time being approved by the prescribed authority (i.e., the Chief Commissioner of Income-tax having jurisdiction over the applicant). An application shall be submitted online for this purpose in Form No. 3CF-III.

6The payee-company fulfils such other conditions as may be prescribed. These conditions are given in rule 5F.

Note- No depreciation shall be allowed in respect of asset for which deduction has been claimed
under section 35.

Note- The set off and carry forward of unabsorbed research capital expenditure is in the same manner as that of depreciation.

Note-If Assets cease to be used for Scientific Research

Sold after using for the purpose of business	Sold without using for the purpose of business
Explanation 1 to section 43(1) shall apply. Actual cost shall be taken as NIL.	Section 41 (3) shall apply; Lower of (i) Sale Price, and (ii)Deduction allowed under section 35 (1)(iv) Shall be taxable as P/G/B/P
Section 43(6) and section 50 shall apply to the sale of asset, for the purpose of computation of capital gains.	Capital Gains shall arise if Sales Price exceeds the cost of the asset

<u>35ABB: expenditure for obtaining License to operate Telecommunication services/35ABA: expenditure for obtaining right to use spectrum for Telecommunication services.</u>

The payment/exp will be allowed as deduction in equal installments over the period starting from the year in which such payment has been made and ending in the year in which the license comes to an end.

It may be noted that the deduction starts from the year in which actual payment of expenditure is made irrespective of the previous year in which the liability for the expenditure is incurred according to the method of accounting regularly employed by the assessee.

If all the below conditions are satisfied, then only one can claim deduction under section 35ABB. If, however, these conditions are not satisfied, then deduction under section 35ABB is not available [one may claim deduction under section 37(1)]-

1: The expenditure is capital in nature.

2 : It is incurred for acquiring any right to operate telecommunication services.

3 : The expenditure is incurred either before the commencement of business or thereafter at any time during any previous year.

4:The payment for the above has been actually made to obtain licence

Note-Where deduction is claimed and allowed under section 35ABB, no deduction will be available in respect of the same expenditure under section 32. No further deduction under section 35ABB shall be available in the year of transfer or subsequent previous years.
Note-Capital Gains shall arise if the sale price of the Licence is more than the cost of the Licence. No capital gains shall arise if sale price of the Licence is less than the cost of Licence.
Note-Where under a scheme of amalgamation/demerger, a telecom licence is transferred to an Indian company, then the provisions of section 35ABB shall continue to apply to the transferee-company.

Tax treatment when license is transferred-
I. When sale price exceeds the unamortized license fees (Whole/Part License Transferred)
a. Sale price - unamortized licence fees b. Deduction allowed till date under section 35ABB, whichever is lower shall be taxable as PGBP in the year of sale

II. sale price is less than unamortized license fees.

Whole licence is transferred	Part licence transferred
Unamortized licence fees Less: Sale price, Deduction under section 35ABB in the year of transfer	Unamortized licence fees – Sale price The Residual Period i.e Deduction under section 35ABB shall be allowed as under for the period beginning with the PY in which licence is transferred to the PY in which the licence expires

Section 35CCA payment to Associations and Institutions for carrying out Rural Development Programme

Any assessee who is carrying on a business/profession shall be allowed a deduction of the amount of the expenditure incurred by way of payment of any sum to the following :

1. any association or institution to be used for carrying out any programme of rural development approved before March 1, 1983;
2. an association or institution which has its object the training of persons for implementation of a rural development programme approved before March 1, 1983;
3. the National Fund for Rural Development; and
4. notified National Urban Poverty Eradication Fund.

35CCC: expenditure on agricultural extension project

Deduction shall be allowed on account of any expenditure incurred by the assessee on agricultural extension project notified by the Board in this behalf in accordance with the guidelines as may be prescribed

Quantum of Deduction :

150% of such expenditure incurred during the previous year,

The following points should be noted -

1. Project shall be undertaken by an assessee for training, education and guidance of farmers.
2. Project shall have prior approval of the Ministry of Agriculture.
3. Expenditure (not being cost of land/building) exceeding Rs. 25 lakh is expected tobe incurred for the project.
4. For getting approval for the purpose of claiming weighted deduction under section 35CCC, an application in Form No. 3C-O should be submitted to the Member (IT), CBDT.
5. Application shall be accompanied by –
    a. a detailed note on the agricultural extension project;
    b. details of the expenditure expected to be incurred and expected date of completion; and
    c. approving letter of Ministry of Agriculture.
6. No Deduction Under any Other Section. Where such expenditure is claimed and allowed under this section for any assessment year, no deduction shall be allowed in respect of such expenditure under any other provisions of the Income Tax Act for the same or any assessment year.

35CCD: expenditure on skill development project

Deduction shall be allowed on account of any expenditure (not being expenditure in the nature of cost of any land or building) incurred by the company on skill development project notified by the Board in this behalf in accordance with the guidelines as may be prescribed

Quantum of Deduction:

150% of such expenditure incurred during the previous year

Important Points: The following points should be noted -

1. A company engaged in manufacture/ production of any article/thing (not beingalcoholic spirits and tobacco products) or a company engaged in providing specified services (31 services have been notified for this purpose) can claim the benefit of weighted deduction under section 35CCD.
2. Expenditure should be incurred on notified skill development project.

3. The project should be undertaken in separate facilities in a training institute set up by Government, local authority or in an institute affiliated to National Council for Vocational Training or State Council for Vocational Training.
4. For the purpose of claiming weighted deduction, an application should be submitted in Form No. 3CQ to National Skill Development Agency (NSDA).
5. A copy of Form No. 3CQ should be sent to the Commissioner of Income-tax.
6. Form No. 3CQ to be accompanied by detailed note on skill development project, expected expenditure and expected completion date, letter of concurrence from the training institute.

Section35DDA Amortization of Expenditure under Voluntary Retirement Scheme

Where an assessee incurs any expenditure in any previous year by way of payment of any sum to an employee in connection with his voluntary retirement, in accordance with any scheme or schemes of voluntary retirement, 1/5th of the amount so paid shall be deducted in computing the profits and gains of the business for that previous year, and the balance shall be deducted in equal instalments for each of the four immediately succeeding previous years.

No deduction shall be allowed in respect of such expenditure under any other provision of the Income-tax Act.

The following points should be noted—

1. The above rule is applicable even if the scheme of voluntary retirement has not been framed in accordance with guidelines prescribed under section 10(10C).
2. Where voluntary retirement payment is made by predecessor and before completion of 5 years it is succeeded in a scheme of business reorganization (like amalgamation/merger of Indian companies or co-operative banks, conversion of firm/proprietary concern/private or unlisted company into company/LLP), the deduction for the remaining years will be available to the successor from the year in which the conversion takes place.

Section 35E Amortization of Expenditure on Prospecting etc., for Development of Certain Minerals

Section 35E provides for the amortization of expenditure incurred wholly and exclusively on any operation relating to prospecting for the minerals or group of associated minerals or on the development of a mine or other natural deposit of any such minerals or group of associated minerals specified in the Seventh Schedule.

Amount and Period of Deduction -

The amortization of qualifying expenditure is allowed in equal installments over a period of 10 years. The amount deductible for each year is 1/10 th. of “qualifying expenditure”; or Income

(before section 35E deduction) of the previous year arising from commercial exploitation of any mine or deposit of minerals of any other nature, whichever is less

Who can Claim Deduction - Deduction under section 35E is allowed only in the case of Indian companies and resident assessees other than companies.

Qualifying Expenditure - When it should be incurred -

The qualifying expenditure should be incurred during the “year of commercial production” and four years immediately preceding that year.

Qualifying Expenditure - What does it include -

Expenditure incurred wholly and exclusively on any operations relating to prospecting for any mineral (or group of associated minerals) specified in the Seventh Schedule or on the development of a mine or other natural deposit of any such mineral or group of associated minerals, is “qualifying expenditure”. However, a few expenses (like expenses met by any other person, expenditure on acquisition of site, capital expenses on acquiring building, plant, machinery and furniture) are excluded.

Note- Unabsorbed amount of amortizable expenditure is to be carried forward to subsequent year and added to year’s installment and so on for succeeding previous year. Such carry forward is allowed
only up to and including tenth previous year from the date of commercial production.
Note- If the assessee is a person, other than a company/co-operative society, then books of account of the relevant year(s) in which the expenditure is incurred should be audited.

Note- In the case of amalgamation/demerger of Indian companies, the above benefit for the unexpired period will be available to the transferee.

<u>35D: Amortization of certain preliminary expenses</u>

Assessees who can claim deduction-Indian Company, or a person other than a company who is resident in India.Expenditure in respect of which deduction is available expenditure incurred before the commencement of business; or expenditure incurred after the commencement of business in connection with the extension of existing undertaking or in connection with setting up a new unit.
Expenses qualifying for deduction.

The following expenses qualify for deduction:

1. Expenditure incurred in connection with:

i. preparation of a feasibility report;
ii. preparation of a project report;
iii. conducting market survey or any other survey necessary for the business of the assessee;
iv. engineering services relating to the business of the assessee;

2. legal charges for drafting any agreement between the assessee and any other person relating to the setting up or conduct of the business of the assessee;
3. where the assessee is company, also, expenditure—
   i. by way of legal charges for drafting the Memorandum and Articles of Association of the company;
   ii. on printing of the Memorandum and Articles of Association;
      a. by way of fees for registering the company under the provisions of the Companies Act, 1956;
      b. in connection with the issue, for public subscription, of shares in or debentures of the company, being underwriting commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus;
4. such other items of expenditure (not being expenditure eligible for any allowance or deduction under any other provisions of this Act) as may be prescribed.

Amount Qualifying for Deduction:

The aggregate of the expenditure referred to in clauses (1) to (4) above shall not exceed 5% of the cost of the project in case of all assessees other than companies.

In the case of a company, it cannot exceed 5% of—

1. the Cost Of the Project, or
2. the Capital Employed in the Business of the Company, whichever is beneficial to the company.

Cost of Project-It means the actual cost (or additional cost incurred after commencement of business in connection with extension or setting up an undertaking) of fixed assets, namely, land, buildings, leaseholds, plant, machinery, furniture, fittings and railway sidings (including expenditure on development of land and buildings), which are shown in the books of the assessee as on the last day of the previous year in which the business of the assessee commences.

Capital Employed in the Business of a Company -

It is the aggregate of the issued share capital, amount outstanding as share premium† account, debentures and long-term borrowings, as on the last day of the previous year in which the business of the company commences (in the case of an existing company only capital,

debentures and long-term borrowing issued or obtained in connection with the extension of the undertaking or the setting up of the new unit of the company, shall be considered).

Amount of Deduction:
1/5 th. of the Qualifying Expenditure is Allowable as Deduction in each of the 5 (five) successive years beginning with the year in which the business commences, or as the case may be, the previous year in which extension of the undertaking is completed or the new unit commences production or operation.

Compulsory Audit of Accounts:
No deduction shall be admissible under this section in case of assessees other than a company or cooperative society unless the accounts of the assessee for the year or years for which the expenditure specified above is incurred have been audited by a chartered accountant and the assessee furnishes alongwith his return of income for the first year in which the deduction under this section is claimed, the report of such audit in the prescribed form i.e. Form 3B duly signed by such Chartered Accountant.

35DD: Amortization of amalgamation demerger expenses

Where an assessee, being an Indian company, incurs any expenditure, wholly and exclusively for the purpose of amalgamation or demerger of an undertaking, the assessee shall be allowed a deduction of an amount equal to 1/5th of such expenditure for each of 5 (five) successive previous years beginning with the previous year in which the amalgamation or demerger takes place.

35DDA: Amortization expenditure incurred under voluntary retirement scheme Deduction

Where an assessee incurs any expenditure in any previous year by way of payment of any sum to an employee in connection with his voluntary retirement, in accordance with any scheme or schemes of voluntary retirement, 1/5th of the amount so paid shall be deducted in computing the profits and gains of the business for that previous year, and the balance shall be deducted in equal installments for each of the four immediately succeeding previous years.

No deduction shall be allowed in respect of such expenditure under any other provision of the Income-tax Act.

The following points should be noted—

1. The above rule is applicable even if the scheme of voluntary retirement has not been framed in accordance with guidelines prescribed under section 10(10C).
2. Where voluntary retirement payment is made by predecessor and before completion of 5 years it is succeeded in a scheme of business reorganization (like amalgamation/merger of Indian companies or co-operative banks, conversion of firm/proprietary concern/private or unlisted company into company/LLP), the

deduction for the remaining years will be available to the successor from the year in which the conversion takes place.

35AD: Deduction under

100% Deduction shall be allowed an account of any expenditure of capital nature incurred wholly and exclusively for the purpose of the above specified business carried on by such assessee during the previous year in which such expenditure in incurred by him. Revenue Expenditure will also be allowed as 100% deduction.

Meaning of Specified Business-

i) Setting up and operating a cold chain facility. "Cold chain facility" means a chain of facilities for storage or transportation of agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce.

ii) Setting up and operating a warehousing facility for storage of agricultural produce.

iii) Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network.

iv) Building and operating, anywhere in India, a hotel o two star or above category.

v) Building and operating, anywhere in India, a hospital with at least one hundred beds for patients.

vi) Developing and building a housing project under a scheme for slum redevelopmentor rehabilitation framed by government.

vii) Developing and building a housing project under a scheme for affordable housing framed by the government

viii) Production of fertilizer in India. Such business should commence its operations in anew plant or in newly installed capacity in existing plant for production of fertilizer.

ix) Setting up and operating an inland container depot or a container freight station notifiedor approved under the Customs Act, 1962.

x) Bee-Keeping and production of honey and beeswax.

xi) Setting up and operating a warehousing facility for storage of sugar.

xii) Laying and operating a slurry pipeline for the transportation of iron ore.

xiii) Setting up and operating a semi-conductor wafer fabrication manufacturing unitnotifiedby the Board in accordance with such guidelines as may be prescribed.

xiv) Developing OR maintaining and operating or developing, maintaining and operating a new infrastructure facility.

However, this is subject to the following Propositions—

1. Expenditure incurred on the acquisition of any land or goodwill or financial instrument is not eligible for any deduction under section 35AD.
2. Deduction under section 35AD is not available (with effect from the assessment year 2018-19) pertaining to any expenditure in respect of which payment (or aggregate of

payments) made to a person in a day (otherwise than by an account payee cheque/draft/use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed) exceeds Rs. 10,000.(FA 2019)

3. Expenditure incurred prior to the commencement of operation, wholly and exclusively, for the purpose of any specified business, shall be allowed as deduction during the previous year in which the assessee commences the operation of his specified business, if the amount is capitalized in the books of account of the assessee on the date of commencement of operation.

This section applies to the specified business which fulfils all the following conditions:

1. It is not set up by splitting up, or the reconstruction, of a business already in existence;
2. It is not set up by the transfer to the specified business of machinery or plant previously used for any purpose, except (i) imported old Plant & Machinery; (ii) 20 % total Plant & Machinery can be old.
3. where the business is of laying and operating a cross country natural gas or crude or petroleum oil pipelines network it should satisfy the following conditions also:

a. it is owned by a Indian or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act;
b. it has been approved by the Notified Petroleum and Natural Gas Regulatory Board;
c. it has made such proportion of its total pipeline capacity available for use on common carrier basis by any person other than the assessee or an associated person as prescribed by the Petroleum and Natural Gas Regulatory Board; and
d. any other condition as may be prescribed.

4. any asset in respect of which a deduction is claimed and allowed under section 35AD, shall be used only for the specified business for a period of eight years beginning with the previous year in which such asset is acquired or constructed.
5. Any expenditure of capital nature shall not include any expenditure incurred on Acquisition of any land; or Goodwill; or Financial instrument

Note-If such asset is used for any purpose other than the specified business during the period of 8 years specified in section 35AD(7A), otherwise then by way of a mode referred to in section 28(vii), the total amount of deduction so claimed and allowed in any previous year in respect of such asset, as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction had been allowed under section 35AD, shall be deemed to be income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which the asset is so used. In such a case the actual cost of asset under section 43(1) shall be the actual cost to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used for the purposes of business since the date of its acquisition.

Note- “Infrastructure facility” means

i)A road including toll road, a bridge or a rail systemic) A highway project including housing or other activities being an integral part of the highway project ;iii) A water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system iv) A port, airport, inland waterway, inland port or navigational channel in the sea.

Note-Deduction under sections 80-IA to 80RRB and section 10AA shall not be allowed in respectof business for which deduction in claimed under section 35AD.However, deductions unde section 80C, 80D, 80E, 80G, 80TTA, 80U etc.shall be allowed.

Note-Capital expenditure which is allowed as deduction under section 35AD is not eligible for depreciation

Carry forward and Set-off of loses Loss of specified business of section 35AD can be set-off incurrent year and future year only against the profit of any specified business referred to in section 35AD.

Note-Loss of specified business referred in 35ADcarried forward indefinitely.

Note-lf asset on which section 35AD is allowed is sold /destroyed, then the entire sale price / insurance compensation taxable as P/G/B/P.

Note-No capital gains shall arise even if sale price/ insurance compensation exceeds the cost of assets.

Note-If asset on which section 35AD is claimed is sold in slump sale, then for computing net worth under section 50B, its cost shall be taken as NIL.

Note-If asset on which deduction under section 35AD is claimed is transferred under the circumstances referred to in section 47, its actual cost to transferee shall be taken as NIL.

<u>Section 36 Other deductions which are specified</u>

Section 36(1)(i)- Insurance premium is deductible in the following cases –

1. Any premium paid in respect of insurance against risk of damage or destruction of stocks or stores, used for the purposes of business or profession.
2. Insurance premium paid by a federal milk co-operative society on the lives of cattle, owned by the members of a primary milk co-operative society affiliated to it.

36(1)(ib)Health insurance premium of employees paid by employer by any mode other than cash.

36(1)(ib)Bonus or Commission paid to Employees
Bonus or commission paid to an employee is allowable as deduction subject to certain conditions:

Admissible only if not payable as profit or dividend -One of the conditions is that the amount payable to employees as bonus or commission should not otherwise have been payable to them as profit or dividend. This is provided to check an employer from avoiding tax by distributing his/its profits by way of bonus among the member employees of his/its concern, instead of distributing the sum as dividend or profits.

Deductible on payment basis -Bonus or commission is allowed as deduction only where payment is made during the previous year or on or before the due date of furnishing return of income under section 139

36(1)(iii)Interest on Borrowed Capital
Interest on capital borrowed is allowed as deduction if the following conditions are satisfied —

1. The assessee must have borrowed money.
2. The money so borrowed must have been used for the purpose of business.
3. Interest is paid or payable on such borrowing.

Assessee must have Borrowed Capital -

Interest in respect of capital borrowed for the purpose of business/ profession is a permissible deduction. Interest on own capital is not deductible. In other words, interest shall be paid to another person. Interest paid by one unit of the assessee to another unit is not deductible.

The following Propositions should also be kept in view –

1. Deduction of interest on borrowed capital cannot be denied only because the borrowed capital produces nontaxable income.
2. Guaranteed interest paid to shareholder on paid-up capital is not deductible.
3. Interest paid to wife and daughters on money allotted to them on partition, is deductible.
4. Interest paid by a firm to partners is deductible according to the provisions of section 40(b) [i.e., @ 12 per cent per annum simple interest]. However, interest paid by an association of persons to its members is not deductible.

Capital must be used for the Purpose of Business -

Capital should have been borrowed for the purpose of business or profession.

Interest on capital borrowed for acquiring a capital asset -

Interest liability pertaining to the period beginning from the date on which capital is borrowed by an existing concern for the acquisition of an asset till the date, when such asset is first put to use, should be capitalised and it cannot be claimed as deduction under section 36. Only interest on capital borrowed to purchase a capital asset for business purposes pertaining to the period after the asset is put to use, is deductible on year to year basis under section 36.

Other Points -

The following proposition taken from different judicial pronouncements should also be kept in view:

1. If borrowed money is utilised in earning non-assessable income, no deduction is allowed for interest paid on such borrowing.
2. It is not for the income-tax department to examine whether there was no need to borrow money because the assessee had ample fund of his own.
3. A taxpayer who is engaged in the business of trading in paper can claim deduction in respect of interest on capital borrowed for the setting of a garment business (even if the new business generates negative income).
4. It is not open to the Assessing Officer to reject the claim of the assessee in respect of the interest paid on that capital merely because the use of the capital is unremunerative.
5. Interest on money originally borrowed for business purposes would be disallowable in a subsequent year in which the money is used for non-business purposes.
6. Interest paid by the assessee on money borrowed for payment of dividends is an allowable deduction.
7. Where the assessee-partner borrows money for investing as capital in partnership, interest paid by the assessee on borrowed money is allowable as deduction.
8. Interest on money borrowed to pay income-tax is not allowable as deduction. Interest for late payment/nonpayment of income-tax/advance tax/tax deducted or collected at source or for late filing of return, is not allowable as deduction. Similarly, where interest is paid for meeting tax liability of partners, such interest is not deductible.

36 (1)(iiia)Discount on zero Coupon Bond

Any discount on issue of zero coupon shall be allowed on a pro rata basis having regard to the period of life of such bond calculated in a manner as may be prescribed.

1. What are Zero Coupon Bonds -

According to section 2(48), zero coupon bond is a notified bond issued by any infrastructure capital company (or infrastructure capital fund or public sector company or scheduled bank). In respect of such bond, no payment/benefit is received (or receivable) by a bondholder before maturity/redemption.

2. Meaning of Discount:

   Discount means the difference between the amount received or receivable at the time of issuing the bond and the amount payable by on maturity or redemption of such bond;

3. Meaning of Period of Life of the Bond:

   Period of life of the bond means the period commencing from the date of issue of the bond and ending on the date of the maturity or redemption of such bond.

Note- In hand of Bond Holder

Section 2(47) Maturity / redemption of zero coupon bonds will amount to transfer , section 2(42A) If period of holding is morethan 12 months, such bonds would be long-term capital asset and LTCG would be taxable @ 10% (Plus surcharge plus Education Cess) without indexation under section 112.

In the hands of company issuing such bonds-Discount is deductible on pro rate basis under section 36(1)(iiia) over the life of Zero Coupon Bond and No TDS under section 194A by the payer company

Concept of Deep Discount Bond

A bond on which no interest is paid intervals, but on maturity lump sum amount is received. TDS will be deducted only at the time of redemption of such bonds, on the difference of the face value and redemption value, Irrespective of whether the income from the bonds has been declared by the bond holder on accrual basis from year to year or is declared only in the year of redemption. However, the investor can take an exemption certificate from A.O. under section 197 if he has declared income on bonds on year to year basis. Alternatively, he can file declaration under section 197A

Tax Treatments	Particular
In the year of purchase	Market value of bond as on 31st March of current financial year (-)Purchase Price shall be Taxable as Taxable as Interest Income from other source / PGBP
Every year when bonds are held	Market value of bond as on 31st March of current financial year (-)Market value of bond as on 31st March of last financial, shall be Taxable as Taxable as Interest Income from other source / PGBP

On Transfer	Before maturity Sale consideration (-) Market value of bond as on 31st March of last financial year, shall be Taxable as STCG / PGBP. Period of Holding shall be reckoned from the date of purchase /subscription, or the last valuation date in respect of which the transferor has offered income to tax, whichever is later.	On Redemption Redemption price (-)Market value of bond as on 31st March of last financial year, shall be Taxable as Taxable as Interest Income from other source / PGBP

36 (1)(iv)Employer's Contribution to PF and Superannuation Fund
Any sum paid by the assessee as an employer by way of contribution towards a recognized provident fund or approved superannuation fund or any other approved welfare scheme of employee is allowed as a deduction subject to such limits as may be prescribed for the purpose of recognizing the provident fund or approving the superannuation fund, etc. as the case may be

36(1)(iva)Employer's Contribution toward pension scheme
ny sum paid by the assessee as an employer by way of contribution towards a pension scheme, as referred to in section 80CCD on account of an employee to the extent it does not exceed 10% of the salary of the employee in the previous year shall be allowed as deduction.
36(1)(v)Employer's Contribution towards Gratuity Fund
Any sum paid by the assessee as an employer by way of contribution towards approved gratuity fund, created by him for the exclusive benefit of his employees under an irrevocable trust, shall be allowed as a deduction subject to the provisions of section 43B.

36(1)(va)Employees' Contribution to Welfare Fund
Certain employers were deducting amounts from the salaries of the employees towards certain welfare schemes like PF, ESI, etc. but were not crediting it to the employees' accounts even after long periods. This Section was introduced to check such malpractices. Sum deducted from the salary of the employee as his contribution to any provident fund or superannuation fund or ESI or any other fund for the welfare of such employee is now treated as an income of the employer as per section 2(24)(x). However, if such contribution is actually paid on or before the due date mentioned below the deduction will be allowed for the same under this clause.

36(1)(vi)Animals used in Business otherwise than as Stock-in Trade
Expenditure incurred on the purchase of animals otherwise than as stock in trade which are used for the purpose of business or profession is a capital expenditure. However, no

depreciation is allowed on such capital expenditure. Such capital expenditure will be written off as a loss in the year in which the animal dies or becomes permanently useless for such business or profession. If any amount is realised on sale of the carcasses or the animals, such amount recovered shall be deducted from the capital expenditure which was incurred for the purchase of the animal and the balance amount shall be allowed as a deduction under this section.

36(1)(vii) Bad Debts

The amount of any bad debt or part thereof, which has been written off as irrecoverable in the accounts of the assessee for the previous year, shall be allowed as a deduction subject to the provisions of section 36(2) which are as under:—

1. Such debt or part thereof must have been taken into account in computing the income of the assessee of the previous year or of an earlier previous year, or
2. It represents money lent in the ordinary course of the business of banking or money-lending which is carried on by the assessee.

In order to claim deduction under section 36(1)(vii), one must keep in view the following points:

1. There must be a Debt -

Before claiming an amount as a debt, it must be shown that it is a proper debt. In other words, a bad debt presupposes the existence of a debt and relationship of a debtor and creditor. Unless, therefore, there is an admitted debt it cannot be allowed as bad debt when it becomes irrecoverable.

2. Debt must be Incidental to the Business or Profession of the Assesee -

The debt which is claimed as bad debt under section 36(1)(vii) must be incidental to the business or profession carried on by the assessee. In other words, debts not connected with business or profession carried on by the assessee or not arising out of the operation of business or profession carried on by the assessee, are not admissible as bad debts even if other conditions are satisfied.

3. Debt must have been taken into Account in computing Assessable Income -

No deduction on account of bad debt is admissible unless the amount of debt is taken into account in computing the total income of the assessee of that previous year or of an earlier year. This condition is however, not relevant, if bad debt represents money lent in the ordinary course of money-lending or banking business.

4. Debt must have been Written Off in the Books of Account of the Assessee -

No deduction in respect of bad debt is allowable under section 36(1)(vii) unless it is written off as irrecoverable in the books of the assessee in the previous year in which claim for deduction is made††. It is not necessary to establish that debt has become bad during the relevant previous year. For this purpose, transfer to “provision for bad and doubtful debts account” shall

not be taken as bad debts written off. Deduction shall not be allowed if “Bad debts written off Account” is debited and “Provision for bad& doubtful debts Account” is credited. To claim deduction the debtor must be written off by name.

Note- If assessee by following percentage completion method as per ICDS, recognizes revenue and offers such revenue to taxation in the return of income (without recording the same in the books
of account) and subsequently in any previous year the said revenue which has been offered to taxation becomes irrecoverable, then such debt will be allowed as deduction as bad debt in the previous year in which it becomes irrecoverable. There is no question of writing off the debt in the books of account since it was not recorded in books of account. It shall be deemed that such debt has been written off as irrecoverable in the accounts of the assessee. Therefore, such bad debt shall be allowed as deduction even if it has not been written off as irrecoverable in books of accounts

5. Deduction in the case of an Assessee who is also eligible for Deduction under Section 36(1)(viia) -

Deduction relating to a bad debt (or part thereof) in the case of an assessee to which section 36(1)(viia) applies is limited to the amount by which such debt exceeds the credit balance in the provision for bad and doubtful debts account made under that section.

6. Adjustment at the time of Recovery -

A deduction on account of bad debt is based upon a mere estimate and it is allowed as deduction on the basis of amount written off in the books of account of the taxpayer. Therefore, in a case where debt ultimately recovered is less (or more) than the amount of debt left after writing off bad debt, some adjustment is required.

7. Debts of a Discontinued Business Not Deductible -

No allowance can be claimed in respect of bad debts of a business which has been discontinued before the commencement of the previous year. Such bad debt cannot be deducted even from profits of a separate existing business.

8. Allowable in the hands of Successor -

In some cases (e.g., one of the partners taking over business of the firm with all assets and liabilities or conversion of firm into company by taking over all assets and liabilities), the successor can claim the benefit of deduction of bad debt if the successor carries on the business of the predecessor and bad debt is written off in the books of account of the successor.

9. Where a deduction has been allowed in respect of a bad debt and the bad debt is subsequently recovered, then the amount so recovered shall be deemed to the income ofthe previous year in

which the amount is so recovered. This shall apply even if the business or profession is not in existence in the previous year in which recovery is made.

10. There is no need to establish / prove that the debt has become bad/ irrecoverable.

36(1)(viia) The deduction for provision for bad and doubtful debt is allowed under section 36(1)(viia) provided the provision is debited to Profit & loss A/C.The amount of deduction in respect of provision for bad and doubtful debts is given below-Amount deductible in respect of provision for bad and doubtful debts

5% of total income (Total Income means total income computed before deduction under this section and before deduction under Chapter VI-A	8.5%of total income + 10% of Aggregate Average Advances made by rural branches
In case of Public Financial or State Financial Corporation or State Industrial Investment Corporation	In the case of an Indian Bank

No deduction is allowed under section 36(1)(vii) in respect of actual bad debts,The actual bad debts should be debited to the provision for bad and doubtful debts made under section

36(1)(viia). Where the actual bad debt exceeds the credit balance is the Provision for bad and doubtful debt account, then deduction under section 36(1)(vii) shall be allowed for such excess.

36(1)(viii) Transfer to Special Reserve- Deduction shall be allowed to Eligible Assessee at lower of following –

The amount transferred during the previous year to the special reserve account created for the purpose of section 36(1)(viii); OR	20% of the profits derived from the business activities Mentioned above, which is computed under section 28 to 44D but before claiming deduction under section 36(1)(viii); OR	200% of paid up-share capital and general reserve as on the last day of the previous year minus the balance of the special reserve account on the first day of the previous year.

Note-Any amount withdrawn from reserve shall be taxable under section 41(4A) as business income.

Eligible Assessee means				
Financial Corporation	Financial Corporation	c) Banking Company including co-operative	Housing finance company	Any other financial

specified in section 4A of Companies Act (ICICI, IDBI, IFCI, etc.)	which is a public- sector company (PFC, REC, TBC, etc.)	banks engaged in the business of providing long term finance for for Industrial or agricultural development or Development of infrastructure facility in India, or Development of housing in India	engaged in business of providing long term finance for construction or purchase of houses in India for residential Purposes.	corporation including a public company engaged in the business of providing long term finance

Section 36(1)(ix) Family Planning Expenditure

This deduction is allowed only to company assessees. Any expenditure bona fide incurred by a company for the purpose of promoting family planning amongst its employees is allowable as deduction in the year in which it is incurred. Where such expenditure or part thereof is of a capital nature, 1/5th of such expenditure shall be deducted for the previous year, in which it was incurred and the balance shall be deducted in four equal installments during the subsequent four years.

The following points should be considered —

1. No deduction is available under section 36(1)(ix) in the case of a non-corporate assessee. A non-corporate assessee may claim deduction under sections 32 and 37(1)if the relevant conditions are satisfied.
2. Any family planning expenditure which is not allowed as deduction due to inadequacyof profit, shall be set off and carried forward as if it is unabsorbed depreciation.

Securities Transaction Tax and Commodities Transaction Tax

Section 36(1)(xv) Securities Transaction Tax	Section 36(1)(xvi) Commodities Transaction Tax
An amount equal to the securities transaction tax paid by the assessee in respect of the taxable securities transactions entered into in the course of his business during the previous year, if the income arising from such taxable securities transactions is included in the income computed under the head "Profits and Gains of Business or Profession".	An amount equal to the commodities transaction tax paid by the assessee in respect of the taxable commodities transactions entered into in the course of his business during the previous year shall be allowable as deduction, if the income arising from such taxable commodities transactions is included in the income computed under the head "Profits and gains of business or profession".

Section 36(1)(xvii) Expenditure by Co-Operative Society for purchase of Sugarcane

The amount of expenditure incurred by a cooperative society engaged in the business of manufacture of sugar for purchase of sugarcane at a price which is equal to or less than the price fixed or approved by the Government shall be allowed as a deduction.

Section 37(1) General Or Allowable Deductions

Section 37(1) says that any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head, "Profits and Gains of Business or Profession"

Conditions for Allowance of General Deduction from Business Income Under Section 37(1)

1. Expenditures should not be covered by Section 30 to 36

2. Expenditure should Not be of Capital Nature.

3. The expenditure should not be of a Personal Nature

4. The expenditure should have been incurred during the previous year

5. The expenditure should have been incurred wholly or exclusively for the purpose of the Business or Profession

6. Expenses should be in respect the Business carried on by the Assessee

Explanation 1 To Section 37(1) Illegal Expenditure

Any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by any law shall not be deemed to have been incurred for the purpose of the business or profession and no allowance or deduction shall be made in respect of such expenditure. Unlawful expenditure is not allowable as deduction. These provisions apply only to 'business expenditure' and not to 'business loss' and, hence, loss arising as a result of seizure and confiscation of illegal stock-in-trade is allowable as a business loss against income from illegal business.

Explanation 2 To Section 37(1)

Corporate Social Responsibility Expenses- Any expenditure incurred by an assessee on the activities relating to corporatesocial responsibility referred to in section 135 of the companies Act, 2013 shall not be deemed to be expenditure incurred by the assessee for the purpose of the business or profession and shall not be allowed as deduction under section 37(1).

37(2B): payments made to political party
Any expenditure on advertisement in any souvenir, brochure, pamphlet or like published by a political party shall not be allowed as deduction.Also Donations to political party and electoral trust are disallowed (only 80GGB and 80GGC under CH VIA after GTI) since such donation cannot be said to be expenditure incurred for the purpose of business or profession.

Amount specifically not deductible under-The following expenses given by sections 40, 40A and 43B are expressly disallowed by the Act while computing income chargeable under the head "Profits and gains of business or profession".

1. Interest, Royalty, Fees for Technical Services Payable Outside India or Payable to a Non-Resident [Section 40(a)(i)] -
2. Disallowance of Expenditure in respect of any Payment / Credit to a Resident [Section 40(a)(ia)]
3. Default pertaining to Non-Deduction / Non-Deposit of Equalization Levy [Section 40(a)(ib)] -
4. Disallowance of royalty, license fees, etc., in case of State Government Undertakings [Section 40(a)(iib)] -
5. Salary Payable outside India without Tax Deduction [Section 40(a)(iii)]
6. Tax on Non-Monetary Perquisite paid by the Employer [Section 40(a)(v)] -
7. Amounts Not Deductible in respect of Payment to Relatives [Section 40A(2)]
8. Amounts Not Deductible in respect of Expenditure exceeding Rs. 10,000 (Rs. 35,000 if an assessee makes payment for Plying, Hiring or Leasing Goods Carriages) [Section 40A(3)]-
9. Disallowance in respect of Provision for Unapproved Gratuity Fund [Section 40A(7)]:
10. Amount Not Deductible in respect of contributions to Non-Statutory Funds [Section 40A(9)] -
11. Certain Deductions to be allowed only on Actual Payment Basis [Section 43B]

40(a)(i): non-compliance of provision of TDS where payment is made toNon-resident

If TDS default is committed in respect of payment/credit given to a foreign company/non-resident, the expenditure is disallowed in the hands of payer under section 40(a)(i). These provisions are given below –

Case-1 : TDS is Deductible but not Deducted : 100 % of such expenditure is disallowed in the current Year-If tax is deducted in any subsequent year, the expenditure (which is disallowed in the current year) will be deducted in the year in which TDS will be deposited by the assessee with the	Case-2 : Tax is deductible (and is so deducted) during the current financial year but it is not deposited on or before the due date of submission of return of income under section 139(1) : 100 % of such expenditure is disallowed in the current year If tax is deposited with the Government after

Government	the due date of submission of return of income, the expenditure (which is disallowed in the current year) will be deductible in that year in which tax will be deposited

If the following three conditions are satisfied, the assessee (i.e., the payer) is supposed to deduct tax at source (TDS) under section 195—

1. The amount paid is interest, royalty, fees for technical services or any other sum (not being salary).
2. The aforesaid amount is chargeable to tax in India in the hands of the recipient.
3. The aforesaid amount is paid/payable to a non-resident. If the above three conditions are satisfied, the assessee (the payer) is supposed to deduct tax at source and deposit the same with the Government.
4. However where the assessee (deductor) is not deemed to be an assessee in default as per 1st proviso to Sec 201(1) , then the TDS will be deemed to be deducted and deposited on the **date the payee (Non resident)** files the return and discloses such income as part of the Return

Sec 201(1): assessee in default for non deduction or non deposit after deduction

1st Proviso: specified that the deductor shall not be deemed to be an assessee in default if he failed to deduct tax on a payment made to a resident or NR, if such resident or NR had furnished his return of income under section 139, disclosed such payment for computing his income in his return of income, paid the tax due on the income declared by him in his return of income and furnished an accountant's certificate to this effect

Sec 201(1A): Interest for delay in deduction or deposit of TDS

1st Proviso any person liable to deduct fails to do so, but is not deemed to be an assessee in default under the *first proviso to sub-section (1),* the interest under at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date of furnishing of return of income by such resident or NR

40(a)(ia):non-compliance of provision of TDS where payment is made To A resident: 30% of the expenses is disallowed.

TDS Default	Case 1 - TDS is deductible but not deducted.	Case 2- TDS is deductible (and is so deducted) during the current financial ear but it is not deposited on or before the due date of submission of return of income under section 139(1)

Is such Expenditure Deductible in the Current Previous Year	30 % of such expenditure is disallowed in the current year	30% of such expenditure is disallowed in the current year
Is such Expenditure Deductible in any Subsequent Previous Year	If tax is deducted in any subsequent year, the expenditure (which is disallowed in the current year) will be deducted in the year in which TDS will be deposited by the assessee with the Government	If tax is deposited with the Government after the due date of submission of return of income, the expenditure (which is disallowed in the current year) will be deductible in that year in which tax will be deposited

Note-First proviso to section 201(1)
Where assessee has failed to deduct TDS in accordance with chapter of TDS and he is not treated as an assessee in default under the first proviso to section 201(1) then, for the purpose of section 40(a)(ia) it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee and deduction of such expenditure shall be allowed accordingly.If the deductor fails to deduct the whole or any part of tax in accordance with the Chapter of TDS. On the sum paid to a resident; or On the sum credited to the account of a resident, Then such deductor shall not be deemed to be an assessee in respect of such TDS if:
i) ~~Resident~~ payee has furnished his return of income under section 139;
ii) ~~Resident~~ payee has taken into account such sum for computing income in such return of income; and
iii) ~~Resident~~ payee has paid the tax due on income declared by him in such return of income. The deductor has to furnish a certificate to this effect from a Chartered Accountant in the prescribed form. These amendments are applicable only if payee is a resident.

<u>Sec 201(1): assessee in default for non deduction or non deposit after deduction</u>
1st Proviso: specified that the deductor shall not be deemed to be an assessee in default if he failed to deduct tax on a payment made to a resident or NR, if such resident or NR had furnished his return of income under section 139, disclosed such payment for computing his income in his return of income, paid the tax due on the income declared by him in his return of income and furnished an accountant's certificate to this effect

<u>Sec 201(1A): Interest for delay in deduction or deposit of TDS</u>
1st Proviso any person liable to deduct fails to do so, but is not deemed to be an assessee in default under the *first proviso to sub-section (1),* the interest under at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date of furnishing of return of income by such resident or NR

40(a)(ib): equalization levy (finance Act, 2016)

Any consideration paid or payable (to a non-resident for a specified service on which equalisation levy is applicable) will be disallowed from the assessment year 2017-18 in the following cases—

1. Equalisation levy is deductible and such levy has not been deducted.
2. Equalisation levy is deductible (and it is so deducted) but it is not deposited [on or before the due date of submission of return of income under section 139(1)].

If, however, equalisation levy is deducted/deposited in a subsequent year, the aforesaid consideration shall be allowed as a deduction in computing the income of the previous year in which such levy has been paid.

EQUIALISATION LEVY

1) Charge of Equalisation Levy (Sec – 165)

Sec – 165 deals with the provisions related to the charge of equalisation levy. Equalisation levy shall be charged @ 6% of the amount of consideration payable, for any specified service received or receivable from a non-resident, by –

i. A person resident in India carrying on any business or profession; or

ii. A non-resident having permanent establishment in India.

"Specified Service" means online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement, or includes any other service as may be notified by the central government in this behalf.

♠ Equalization levy under sub-section (1) shall not be charged in the following cases: –

The non-resident providing specified service has a permanent establishment in India and the specified service is connected with such permanent establishment; or

The specified service is not for the purpose of carrying out business or profession (i.e. for personal purpose); or

The aggregate amount of consideration payable for the specified service received or receivable does not exceeds Rs. 1 Lakh.

2) Collection and recovery of Equalisation levy (Sec – 166)

Sec- 166 deals with the provisions related to the collection and recovery of equalisation levy. As per these provisions, every person, who is responsible to deduct the equalisation levy shall pay the amount of equalisation levy so deducted, to the credit of central government with in a period of 7 days from the end of the month, in which such levy was so deducted.

For example: – For the month June 2018, the amount of equalisation levy shall be credited to the central government, by 7th of July, 2018.

3) Furnishing of equalisation Levy statement (Sec -167)

Sec- 167 deals with the provisions related to the furnishing of equalisation levy statement. Due date of furnishing of equalisation Levy Statement is 30th June, hence the statement is required to be filed on or before 30th June from the end of relevant financial year. The statement is an annual statement and shall be filed in Form-1.

For example: – Mr. A make the payment of consideration for specified service in the month of December, then he shall have to deposit the tax by 7th of January, 2018 and file the annual statement in Form -1 on or before 30th June, 2018.

4) Processing of equalisation Levy statement (Sec- 168)

Sec -168 deals with the provisions related to the processing of statement filed u/s 167 by the assessee. Where any statement filed by the assessee u/s 167, the same shall be processed to-

Determine the amount of interest, if any payable on the basis of sum deductible as computed in the statement; or

– Determine the amount payable, or refund due to the assessee, if any

An Intimation shall be generated and send to the assessee specifying the amount payable or refund due to, the assessee. However, no intimation shall be send after the expiry of 1 year form the end of financial year in which such statement is filed.

5) Rectification of mistake (Sec- 169)

Sec-169 deals with the provisions related to the rectification of any mistake apparent from the records. The Assessing officer is empowered to amend any intimation, to rectify any mistake apparent from record, either on suo moto basis or any mistake brought to his notice by the assessee, within a period of 1 year from the end of financial year in which such intimation, which is sought to be amended, was issued.

Before any amendment, the assessing officer shall give a notice to the assessee of his intention, and shall also give the assessee a reasonable opportunity of being heard.

6) Interest on delayed payment of equalisation levy (Sec – 170)

Sec -170 deals with the provisions related to the interest on delayed payment of equalisation levy. Every assessee, who fails to pay the amount of equalisation levy or any part thereof, to the credit of central government, within such a period as may be specified u/s 166, then he shall be liable to pay simple interest @ 1% of such levy for every month or part of month, by which such credit to the central government is delayed.

7) Penalty for failure to deduct or pay equalisation levy (Sec – 171)

Sec- 171 deals with the provisions related to the penalty for failure to deduct or pay equalisation levy which are as follows:-

Liability of	Failure	Penalty
Assessee	Failure to deduct the equalisation levy	In addition, to paying the amount of equalisation levy or interest, Penalty of amount equivalent to the equalisation levy.
	Failure to pay the deducted amount of equalisation levy	In addition, to paying the amount of equalisation levy or interest, Penalty of Rs. 1000/- per day, during which such failure continues, subject to a maximum of the amount of equalisation levy, which he failed to pay

8) Penalty for failure to furnish statement of equalisation Levy (Sec – 172)

Sec-172 deals with the provisions related to the penalty for failure to furnish the equalisation levy statement. Every assessee who fails to furnish the equalisation levy statement, within the time period as specified u/s 167, shall be liable to a penalty of Rs. 100/- per day during which such failure continues.

9) Penalty not to be imposed on certain cases (Sec -173)

Sec -173 deals with the provision related to certain cases, in which penalty should not be imposed. Penalty u/s 171/172 shall not be levied, if the assessee proves to the satisfaction of the assessing officer that there was a reasonable or sufficient cause for such failures.

10) Appeal to Commissioner of Income – tax (Appeals) (Sec -174)

Sec-174 deals with the provisions related to an appeal to Commissioner of Income – Tax (Appeals). Every assessee, who is aggrieved by an order imposing penalty by assessing officer, may prefer an appeal to CIT (A) within a period of 30days from the date of receipt of order.

Appeal to CIT (A) shall be made in such a form as specified and accompanied with fees of Rs. 1000. (Other provisions of sec- 249 to 251 of IT Act shall be applicable).

11) Appeal to Appellate Tribunal (Sec – 175)

Sec-175 deals with the provisions related to an appeal to appellate tribunal. Every assessee, who is aggrieved by an order of CIT (A), may prefer an appeal to appellate tribunal, within a period of 60days from the date on which the order sought to be appealed against, received by the assessee.

Appeal to appellate tribunal shall be made in such a form as specified and accompanied with fees of Rs. 1000. (Other provisions of sec- 253 to 255 of IT Act shall be applicable).

12) Punishment for false statement of equalisation Levy (Sec – 176)

Sec- 176 deals with the provisions related to the punishment for false statement.

Liability of	Furnishing of information	Punishment

Assessee	Furnishes any false statement, delivers any false statement or account, which he knows or believes to be false.	Imprisonment for a term, which may extend to 3 years and with fine

13) Institution of Persecution (Sec – 177)

Sec-177 deals with the provision related to the institution of prosecution which provides that no prosecution shall be instituted against the assessee for offence u/s 176, except with the prior approval of Chief Commissioner of Income Tax.

Notes:-

1) Acc. To the provisions of sec – 40(a)(ib) of IT Act – 1961, Any consideration paid or payable to the non-resident, for the specified service, which is subject to equalisation levy, and if such equalisation levy has not been deducted or deducted but not paid on or before the due date of furnishing of return (specified u/s 139), shall not be allowed while computing the income under the head PGBP. Further, such sum shall be allowed in the year in which such sum is paid.

2) Any income arising to the non-resident, by providing the specified service, which is subject to equalisation levy, shall be exempt from tax in the hands of such non-resident.

40(a)(ii): income tax Income Tax including:

(a) Tax paid in foreign country for which relief/ credit is available under DTAA under section 90/ 90A. (b) Tax paid in foreign country for which credit is available under section 91.

40(a)(iib): Disallowance of royalty, licence fees, etc., in case of State Government Undertakings

The following shall not be allowed as deduction from the assessment year 2014-15 –

1. Any amount paid by way of royalty, licence fee, service fee, privilege fee, service charge or any other fee or charge (by whatever name called), which is levied exclusively on a State Government undertaking by the State Government.
2. Any amount which is appropriated (directly or indirectly) from a State Government Undertaking by the State Government.

What is State Government Undertaking -

For the above purpose, a State Government undertaking includes the following–

i. a corporation established by (or under) any Act of the State Government;
ii. a company in which more than 50 per cent of the paid-up equity share capital is held by the State Government;

iii. a company in which more than 50 per cent of the paid-up equity share capital is held by the above two entities (whether singly or taken together);
iv. a company or corporation in which the State Government has the right to appoint the majority of the directors or to control the management or policy decisions, directly or indirectly, including by virtue of its shareholding or management rights or shareholders agreements or voting agreements or in any other manner;
v. an authority, a board or an institution or a body established or constituted by or under any Act of the State Government or owned or controlled by the State Government.

40(a)(iii): TDS on salary payable outside Indian or to A non resident

Section 40(a)(iii) is applicable if salary is paid outside India or paid to a non-resident and tax has not been paid to the Government nor deducted at source under the Income-tax Act.

40(a)(v): payment of tax on behalf of employee

The provisions of section 40(a)(v) are given below –

1. The employer provides non-monetary perquisites to employees.
2. Tax on non-monetary perquisites is paid by the employer.
3. The tax so paid by the employer is not taxable in the hands of employees by virtue of section 10(10CC).
4. While calculating income of the employer, the tax paid by the employer on non-monetary perquisites is not deductible under section 40(a)(v).

40(a)(ba): payment of interest, salary ,bounds , commission or remuneration Made by AOP/BOI to its members

If an individual is a member in a representative capacity in an AOP/ BOI and the receives remuneration from the AOI/ BOIin his individual capacity, then the same will be disallowed under section 40(ba).

40A: Expenses not deductible under certain circumstances

40A(2): payments to specified persons not deductible under certain Circumstances

For an amount to be disallowed under this Section, three conditions have to be fulfilled:

1. the payment is in respect of any expenditure;

2. the payment has been made or is to be made to a specified person in respect of such expenditure;
3. the payment for the expenditure is considered excessive or unreasonable having regard to:
    i. The fair market value of the goods, services or facilities; or
    ii. the legitimate business needs of the assessee's business or profession; or
    iii. The benefit derived by or accruing to the assessee from the payment.

If the above conditions are fulfilled, the Assessing Officer can disallow the expenditure to the extent he considers it excessive or unreasonable by the above objective standards or otherwise

Note :

Section 40A(2) is applicable in the following cases (list is not complete, only important cases are given) –

1. Payment made by an individual to his or her relative.
2. Payment made by a company to a director of the company or any relative of the director.
3. Payment made by a firm/AOP/HUF to a partner/member or a relative of partner/member.
4. Payment made to an individual who has a substantial interest in the business of the payer or a relative of such individual.
5. Payment made to a company who has a substantial interest in the business of the payer, any director of such company or relative of such director.
6. Payment made to a firm/AOP/HUF who has a substantial interest in the business of the payer or partner/ member of such person or relative of partner/member.

40A(3) Amounts Not Deductible in respect of Expenditure exceeding Rs. 10,000 (Rs. 35,000 if an assessee makes payment for Plying, Hiring or Leasing Goods Carriages

Disallowance is attracted under section 40A(3) if the following conditions are satisfied —

1. The assessee incurs any expenditure which is otherwise deductible under the other provisions of the Act for computing business/profession income (e.g., expenditure for purchase of raw material, trading goods, expenditure on salary, etc.). The amount of expenditure exceeds Rs. 10,000 (Rs. 35,000 if an assessee makes payment for Plying, Hiring or Leasing Goods Carriages).
2. A payment (or aggregate of payments made to a person in a day) in respect of the above expenditure exceeds Rs. 10,000 (Rs. 35,000 if an assessee makes payment for Plying, Hiring or Leasing Goods Carriages).
3. The above payment is made otherwise than by an account payee cheque or an account payee demand draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed.(FA 2019)

Exceptions - The above rule i.e. Section 40A(3) is not applicable to a few cases given below –

1. Payment made to a bank (including private sector banks, co-operative bank, credit societies), LIC, etc.
2. Payment made to Government.
3. Payment through banking system.
4. Payment made by book adjustment by an assessee in the account of the payee against money due to the assessee for any goods supplied or services rendered by him to the payee.
5. Payment made to a cultivator, grower or producer in respect of the purchase of agricultural or forest produce or product of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming or fish or fish products or products of horticulture or apiculture (even if these products have been subjected to some processing provided the processing has been done by the cultivator, grower or the producer of the product).
6. Payment made to a producer in respect of the purchase of the products manufactured or processed without the aid of power in a cottage industry.
7. Payment made to a person who ordinarily resides or carries on business in a village not served by any bank.
8. Payment of terminal benefits, such as gratuity, retrenchment compensation, etc., not exceeding Rs. 50,000.
9. Payment made by an assessee by way of salary to his employee after deducting tax and when such employee is temporarily posted for a continuous period of 15 days or more in a place other than his normal place of duty or on a ship and does not maintain any account in any bank at such place or ship.
10. Payment required to be made on a day on which the banks were closed either on account of holiday or strike.
11. Payment made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person.
12. Payment made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

40A(3A): payments made otherwise payee Cheque or account payee Bank draft

where an expense payable has been allowed and in any subsequent year the assessee makes payment in respect thereof, otherwise than by an account payee cheque drawn on bank or account payee bank draft or use of electronic clearing system through a bank account OR othter Specified mode as may be prescribed , the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income-tax as income of the subsequent year if the payment or aggregate of payments made to a person in a day, exceeds Rs-10,000.

40A(4): payments made by account payee cheque in violation of A contract

Notwithstanding anything contained in any other law for time being in force or in any contract, Where any payment in respect of any expenditure has to be made by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account in order that such expenditure may not be disallowed as deduction under section 40A(3), Then such payment may be made by such cheque or draft or electronic clearing system, and where the payment is so made, No person shall be allowed to raise, in any suit or proceeding a plea on the ground that the payment was not made in case or in any other manner.

40A(7): employer's contribution to gratuity fund

Gratuity is a liability which normally arises according to the length of the service of the employees' of the assessee. The liability would generally accrue year after year. However, due to practical difficulties in computing the deduction allowable on accrual basis, it has been provided under section 40A(7) that deduction on account of provision for gratuity shall be allowed only when:—

1. the amount of gratuity has actually become payable during the previous year to the employees' (provided deduction has not been claimed under clause (b) below); or
2. when a provision has been made for payment of a sum by way of anycontribution towards an approved gratuity fund.

Therefore, no deduction shall be allowed in respect of any provision made for the payment of gratuity to the employees, even though the assessee may be following the mercantile system of accounting, unless it is a provision for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund.

In other words, any provision for unapproved gratuity fund (for meeting future liability) is not deductible.

The following points should be noted—

1. An employee retires during the current year. The employer does not maintain any gratuity fund. Gratuity is paid to him during the current year. It is deductible during the current year.
2. An employee retires during the current year. Gratuity is payable to him. A part of the amount is paid during the current year and the balance will be paid in the next year. A provision is made towards gratuity in the books of account of the current year for making payment in the next year. The entire amount is deductible during the current year (if no deduction was claimed earlier). In this case, deduction is available during the current year even if provision is made for gratuity fund, which is unapproved.
3. A company has 50 employees. To meet future liability to pay them gratuity at the time of retirement, a gratuity fund is created and the employer makes contribution every

year. Employers' contribution to this fund is deductible only if the fund is an approved gratuity fund.

4. Table showing the Amount Deductible in different Cases : -

Cases	Deductible Amount
CASE-1 : X retires from the service of Y Ltd. on May 31, 2018. The company pays gratuity of Rs. 1,60,000, according to the provisions of the Payment of Gratuity Act, 1972. Y Ltd. does not maintain any provision for gratuity account.	Where gratuity is paid during the previous year or where gratuity has become payable during the previous year, it is deductible if no deduction has been claimed on the basis of provisions earlier. Consequently, Rs. 1,60,000 is allowed as deduction for the assessment year 2019-20.
CASE-2 : Z Ltd. maintains an approved gratuity fund. A sum of Rs. 1,00,000 being the employer's contribution towards the gratuity fund, is debited to the profit and loss account for the year ending March 31, 2019.	Where any provision is made for the purpose of payment of a sum by way of any contribution towards an approved gratuity fund, it is allowed as deduction. It is assumed that provisions of section 43B are satisfied .

40A(9): employer's contribution to approved gratuity fund, recognized provident Superannuation fund or 80CCD pension scheme

Any sum paid by the assessee as an employer by way of contribution towards Recognised Provident Fund, or Approved Superannuation Fund or an Approved Gratuity Fund, is Deductible to the extent it is required by any law.

What is not Deductible -

If the following conditions are satisfied, then contribution or payment is not deductible by section 40A(9) —

1. The contribution/payment is made by an assessee as an employer.
2. It is paid towards setting up (or formation of) any trust, company, association of persons, body of individuals, society or it is paid by way of contribution to anyfund.
3. The contribution or payment is not required by any law.

<u>Sec 269ST Receive Rs. 2 lacs or more in Specified mode Only</u>

No person shall receive an amount of Rs. 2 lakhs:

a) In aggregate from a person in day; or

b) In respect of transaction relating to one event or occasion from a person

c) In respect of transactions relating to one event or occasion from a person

Otherwise than by an account payee cheque or an count payee bank draft or use of electronic clearing system through a bank account OR other mode as may be prescribed
Section 27DA Failure to comply with provision of this section would attract penalty equal to the amount of such receipt.
This Provision is not applicable in the following case-

A. Received BY the following not covered Govt./Banks/Post Office
B. loans/Deposits for the Sec 269SS & 269T
C. any other notified persons/receipt (Some notified case are given below)
i. Receipt by any person **from any banking company,** post office savings bank co-operative bank
Ii receipt by a **business correspondent** on behalf of a banking company or cooperative bank, in accordance with RBI guideline.
iii.receipt by a **white label ATM label ATM operator** from retail outlet sources on behalf of a banking company or co-operative bank , in accordance with the authorization issued by RBI under the payment and settlement Systems Act,
iv receipt from an **agent by a issuer of pre-paid payment instruments, in** accordance with authorization issued by RBI
v. receipt company by a **company or institution issuing credit cards against** bills raised in respect of one or more credit cards
vi. Awards received from central or state Government.

269SS Acceptance of loans or advances of specified sum > 20,000	269T Repayment of loans or advances of specified sum > 20,000
Subject to specified exception, a person shall not take or a accept loan/deposits/any specified sum from other person otherwise than by the prescribed baniking channels i.e A/C payee cheque or account payee bank draft or by use of electronic clearing system or other Specified mode as may be prescribed (FA 2019)so that the aggregate from such person is Rs. 20,000/- or more.	**Any loan / deposit / specified advance** (together with interest payable theron) shall not be repaid by any person (including a banking company) (whether held in his own nake or jointly with any other person), otherwise than by an **Account payee cheque** or bank draft or online transfer or other Specified mode as may be prescribed (FA 2019), if the amount of loan or deposit or specified advance is **Rs. 20,000 or more.**
EXCEPTIONS : this section is not applicable to any loan/ deposit/specified sum taken or accepted from/accepted by (a) the Government;	**EXEPTIONS :** Section 269T is not applicable to repayment of any loan or deposit or specified

(b) Any banking company; post office saving bank or co-operative bank; (c) any corporation established by a Central, State or Provincial Act' (d) any Government company (e) where the lenderof such loan / deposit /specified sum and the recipient of such loan/deposit/specified sum are having agricultural income and neither of them has any taxable income under the act.	sum **taken or accepted from :-** (i) Government; (ii) any banking company, post office saving bank or co-operative bank' (iii) any corporation established by a Central, State or Provincial Act; (iv) any Government company
(i) "loan or deposit" means loan or deposit of money; (ii) "specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property (To be held as capital asset or as stock- in-trade), whether or not the transfer takes place.	"**Loan or Deposit**" means any loan or deposit of money, which Is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature. **"Specified advance"** means any sum of money in the nature of advance, by whatever name called, in relation to **transfer of an immovable property, whether or not the transfer takes place,**
SECTION 271D If a person takes or accepts any loan or deposit or specified sum in contravention of the provision of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of loan deposit or specified sum taken or accepted.	**SECTION 271 E :**If a person repays any loan or deposit or specified sum referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit or specified sum so repaid.

Sec 269SU: Mandating acceptance of payments through prescribed electronic modes

ANY person, carrying on business (Not Proffession), shall provide facility for accepting payment through the prescribed electronic modes, in addition to the facility for other electronic modes of payment, if any, being provided by such person, if his total sales, turnover or gross receipts, as the case may be, in business > 50 crore rupees during the immediately preceding previous year.Section 27IDB provided that the failure to provide facility for electronic modes of payment prescribed under section 269SU shall attract penalty of a sum of 5,000, for every day during which such failure continues. However, the penalty shall not be imposed if the person proves that there were good and sufficient reasons for such failure. Any such penalty shall be imposed by the Joint Commissioner.

Marked to market loss or other expected loss FA 2018

Section 36(1)(xviii) Marked to market loss or other expected loss computed in accordance with the ICDS notified u/s 145(2) shall be allowed as deduction. As per Section 40A (13) No deduction or allowance shall be allowed in respect of any marked to market loss or other expected Loss EXCEPT as allowable under section 36(1)(xviii).

Specified assesses are required to mandatorily follow Accounting Standards and Ind. AS. As a result, they have to provide for certain EXPECTED LOSSES AND MTM.

As per Government, these EXPECTED LOSSES AND MTM LOSSES are accounting adjustments and are not allowable as per Income tax Act. Only the expected Loses and MTM Losses which are computed as per provisions of ICDS will be allowed as deduction in Income tax

Examples

EXPECTED LOSSES AND MTM Not allowed	EXPECTED LOSSES AND MTM Losses allowed
MTM Losses as per ICDS Cost of current investment write down to market value where market value is lower than cost (Except inventory). II) Impairment losses on fixed assets and other assets. III) Losses accounted in case of derivative settled. IV) Financial assets or liability for which fair value measurement policy has been adopted by an entity. V) Losses recognized on fair value of biological assets. Expected Losses as per ICDS i) Losses because of possible unfavorable outcome of pending cases. ii) Sudden change in the market condition or Government policy which may have unfavorable effect on cash flow realization. iii) Guarantees provided by an entity to subsidiary or any other person which may result in liability of an entity. iv) Expected losses in sale transaction with condition of buy back. v) Provision for future / anticipated losses in construction contract vi) In lease back transaction, where it turns out to be a finance lease – deficiency in sales value and carrying cost is mortised over the lease term. vii) Sale and lease back transaction where it turns out to be operation lease – any profit or loss shall be recognized immediately	ICDS provides that for the purpose of determining the income chargeable under the head "Profits and gains of business or profession", - 1) The valuation of inventory shall be made at lower of actual cost or net realized value. 2) Inventory being securities not listed, or listed but not quoted regularly on a recognized stock exchange, shall be valued at actual cost initially recognized. 3) Inventory being listed securities, shall be valued at lower of actual cost or net realizable. Note-ICDS allows certain foreign exchange fluctuation loss (Sec 43A and 43AA)

41(1): Recovery of expenditure & remission and cassation of trading liability Principles governing remission or cessation of trading liability

Where an allowance or deduction has been made in the assessment for any year in respect of

i. loss,
ii. expenditure or
iii. trading liability incurred by the assessee

and subsequently, during any previous year, he (the same assessee) has obtained, whether in cash or in any other manner, whatsoever—

i. any amount in respect of such loss or expenditure; or
ii. some benefit in respect of such trading liability by way of remission or cessation thereof,

then, the amount obtained by the assessee or the value of benefit accruing to him shall be deemed to be profit and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year.

It may be mentioned that the business or profession, in respect of which the allowance or deduction has earlier been made, may or may not be in existence in the previous year in which such amount is obtained or the benefit accrued to him.

Foreign exchange fluctuations

Section 43AA Taxation of foreign exchange fluctuation Inserted by Finance Act, 2018)

Section 43AA provides that any gain or loss arising on account of any change in foreign exchange rates Shall be treated as income (or loss) and such income (or loss) shall be computed in accordance with ICDS
Notified under section 145(2).
It further provides that gain (or loss) arising on account of the effects of change in foreign exchange rates shall be in respect of all foreign currency transactions including those relating to

(a) Monetary items and non-monetary items;

(b) Translation of financial statements of foreign operations;

(c) Forward exchange contracts;

(d) Foreign currency translation reserves.

Remark: The above provisions (of section 43AA) shall not be applicable where provisions of section 43A are applicable.

43A And 43AAspecial provision consequential to changes in rate of exchange of currency

Assets acquired from a country outside India by:
(i) Taking a Loan in foreign currency
(ii) Taking supplier's Credit form supplier's outside India.
(iii) Interest on above i.e. (i) and (ii) till the date of asset is actually put to use, THEN
Transaction to be recorded at the foreign exchange rate prevailing on the date oftransaction i.e. (i) Date of taking Loan (ii) Date of supplier's credit (iii) Date of accrual of interest income
2. If the above are translated at the rate prevailing on 31st March, then no treatment to exchange Loss/gain. The impact of the same has to be nullified from profit and Loss Account while preparing Income tax return.
3. The exchange difference arising on actual payment of above has to be added to / subtracted from WDV of the block of asset.
4. If forward exchange rate cover has been taken, the no treatment required for forward exchange rate cover. The exchange rate fluctuations at the time of actual payment shall be computed w.r.t. rate specified in the cover and the exchange rate difference to be added/subtracted from WDV of block of assets.
5.Foreign currency transactions to be recorded at the rate prevailing on the date of transaction.
6. If settlement takes place during the previous year, the Profit/Loss on account of exchange fluctuations will be treated as business income / allowed as business expense.
7. If not settled, then convert them on the exchange rate prevailing on the last day of the previous year. The profit / loss on account of conversion on the last day of previous year is business income/allowed as business expense
8. Transaction to be recorded at the foreign exchange rate prevailing on the date of transaction
9. Non-Monetary items shall not be converted at the exchange rate prevailing at the exchange rate prevailing at the end of the previous year except inventory.
10. If Non-monetary items are converted at then exchange rate prevailing at the end of the previous year, then the foreign exchange fluctuation gain shall not be taxable and foreign exchange fluctuation loss shall not be allowed as deduction
11. Inventories carried on net realizable value denominated in foreign currency, shall be valued using the exchange rate on the date when NRV was determined. For example, inventories in foreign country are valued on 31st March 2019, on the basis of NRV prevailing on 25th March 2019 / 5th April , 2019, the exchange rate on 25th March 19/5th April 2019 shall be used and exchange gain/loss shall be business profit / business expense.
12. Resultant profit is taxable/ Loss is allowable
13. Tax treatment as above for Monetary and Non-Monetary Items

Monetary items	Non-Monetary Items	Foreign Branch Operations
Monetary items are moneys held and assets to be received or liabilities to be paid in fixed or determinable amount of money. Examples are 1. Debtors abroad form	Non-Monetary Items as per Section 43AA and ICDS Non-Monetary Items are assets and liabilities others than monetary items. Fixed assets,	1. The items of profit and loss Account shall be converted into Indian currency using the

exports. 2. Creditors abroad for imports. 3. Loan taken in foreign currency or foreign supplier's credit for purchasing assets in India. 4. Any other amount receivable in foreign currency. 5. Any other amount payable in foreign currency except loans/supplier's credit for assets purchased outside India covered by section 43A. 6. Cash and Bank Balances abroad. 7. Amount receivable/payable from to foreign branch/foreign subsidiary or any other person. 8. Moneys kept in foreign accounts on account of issue of GDRS /ADR/FCCB/FCEB etc.	inventories and investment in equity shares outside India are examples of non-monetary item.	exchange rate prevailing on 31st March, 2019. 2. Monetary Items and Non-monetary Items to be converted as above

43B: certain deductions on actual payment basis

Section 43B is applicable only if the taxpayer maintains books of account on the basis of mercantile system of accounting. The provisions of section 43B are given below—

Certain Expenses are Deductible on Actual Payment Basis -	Exception - Certain Expenses are Deductible on Accrual Basis
The following expenses (which are otherwise deductible under the other provisions of the Income-tax Act) are deductible on payment	If the i. to vi. payment is actually made on or before the due date of submission of return of income, deduction can be claimed on Accrual

basis— i. any sum payable by way of tax, duty, cess or fee (by whatever name called under any law for the time being in force); ii. any sum payable by an employer by way of contribution to provident fund or superannuation fund or any other fund for the welfare of employees; iii. any sum payable as bonus or commission to employees for service rendered; iv. any sum payable as interest on any loan or borrowing from a public financial institution (i.e., ICICI, IFCI, IDBI, LIC and UTI) or a State financial corporation or a State industrial investment corporation; v. interest on any loan or advance taken from a scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank; vi. any sum payable by an employer in lieu of leave at the credit of his employee; and vii. Any sum payable to the Indian Railways for the use of railway assets. FA 2018 viii. Any sum payable by the assessee as interest on any loan or borrowing from a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company, in accordance with the terms and conditions of the agreement governing such loan or borrowing, (Finance Act 2019)	Basis. • Due date of submission of return of income in the case of a company (or in the case of a taxpayer whose books of account are required to be audited under any law) is September 30 of the assessment year. • In the case of any taxpayer (having international or specified domestic transactions) due date of submission of return of income is November 30 of the assessment year. • In all other cases, the due date of submission of return of income is July 31 of the assessment year.

However, in case an assessee follows mercantile system of accounting, the payments covered in items No. 1 to 6 in the Table below can be claimed on 'due' basis as well, provided the payment for the same is made within the stipulated period mentioned against each expenditure:

Nature of Expenses	Stipulated Time Period
1. Any sum payable by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force.	Due amount should be paid on or before the due date of furnishing the return of income u/s 139(1) in respect of the previous year in which the liability to pay such sum was incurred.
2. Any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees.	
3. Any sum payable to an employee as bonus or commission for services rendered.	
4. Any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or State Financial Corporation or State Industrial Investment Corporation like IDBI, IFCI, UPSIDC, Delhi Financial Corporation, etc. in accordance with the terms and conditions of the agreement governing such loan or borrowing.	However, in cases (1) to (6), if the payment of outstanding liability is made after the due date, deduction can be claimed in the year of payment.
5. Any sum payable by the assessee as interest on any loan or advance from a scheduled bank or a co-operative bank (other than a primary agricultural credit society or primary co-operative agricultural and rural development bank) in accordance with the terms and conditions of the agreement governing such loan.	
6. Any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee.	
7. Any sum payable by the assessee to the Indian Railways for the use of railway assets.	
8 Any sum payable by the assessee as interest on any loan or borrowing from a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company, in accordance with the terms and conditions of the agreement governing such loan or borrowing	,(Finance Act 2019)

<u>44C: taxation of branches of foreign companies-head office expenditure</u>

Head office expenditure shall be allowed to extent the lower of

Amount equal to 5% of Adjusted Total Income Adjusted Total Income" means the total income computed in accordance with the Income-tax, Act, without giving effect to Brought forward depreciation/Brought forward losses and Deductions under chapter VI-A	The amount of so much of the expenditure in the nature of head office expenditure attributable to business or profession of assessee in India

Note-If adjusted total income of the assessee is a loss, then, deduction under section 44C shall be 5% of average adjusted total income, where Average Adjusted Total Income is

a.If total income of branch is assessable in the three preceding previous years, the averageof adjusted total income of such 3 previous years.

b. If total income of branch is assessable in the two preceding previous years, the average of adjusted total income of such 2 previous years.

c. If total income of branch is assessable in only one preceding previous year, the adjusted total income of one previous year

43CA Deemed consideration for land or building or both as stock-in-trade

Where consideration for transfer of land or building or both as stock-in-trade is less than the stamp duty value, the value so adopted shall be deemed to be the full value of consideration for the purpose of computing income under this head. However, no such adjustment is required to be made if value adopted for stamp duty purposes does not exceed 105% of the sale consideration.

43CB Income from Construction and Service Contracts **Inserted by Finance Act, 2018**

The profits and gains arising from construction contract or a contract for providing service is to be determined on the basis of percentage completion method, in accordance with the notified ICDS. In case of contract for providing services with duration of not more than 90 days, the profits and gains shall be determined on basis of project completion method. While as in case of contract for providing services with indeterminate number of acts over a specified period of time shall be determined on basis of straight line method.

Revenue to be recognized on % completion method	Service contract for 90 days or less	Indeterminate number of acts over a specific period of the time
Profits and gains from Construction contract/Contracts for providing services Shall be determined on basis of percentage completion method. Therefore if 80% of construction contract/service	If a service contract is for 90 days or less, then revenue shall be recognized on project completion method. It a service contract for 90 days is entered on 01-03-2019, then the revenue from this contract shall be recognized in previous year 31-03-2020 on project	Where a service contract involves performance of indeterminate acts over a period of time, then revenue shall be determined on basics of SLM. For example indeterminate number of acts

contract is completed then: 80% of Gross Revenue from contract Less: 80% of the expenses including estimated expenses on completion of contact Shall be recognised as revenue income	completion method.	over a specific period of the time 1. Service contract involving maintenance of premises, collection of rentals, repair & maintenance of premise and security services, operation and maintenance of lift and generator. 2. Service contract for portfolio management 3. Service contract for complete maintenance and operation of credit card

Note-% completion method/Project completion method/ Straight line method Contract Revenue shall Include Retention money and Contract cost shall not be reduced by incidental income in nature of interest, dividends and capital gain

Section 145 Method of Accounting for Computing Business Income

(1) Income to be computed either on the basis of cash or mercantile system of accounting- Income chargeable under the head "Profits and gains of business or profession" or"Income from other sources" shall, subject to the provisions of section 145(2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) Central Government empowered to notify income computation and disclosure standards- The Central Government may notify, in the Official Gazette from time to time, income computation and disclosure standards to be followed by any class of assessees or in respectof any class of income. The Central Government vide Notification No. 87/2016, dated 29.9.2016 has notified certain Income Computation and Disclosure Standards to be followed by all assessees.

3) Assessing Officer empowered to make assessment in the manner provided under section144 in certain cases-

a.Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or

b.Where the method of accounting provided in section 145(1) has not been regularly followed by the assessee, or

c.Where income has not been computed in accordance with the standards notified under section 145(2), the Assessing Officer may make an assessment in the manner provided in section 144

Sec. 145A Method of accounting in Certain Cases (Substituted by FA 2018)

For the purpose of determining the income chargeable under the head "Profits and gains of business or profession", the following valuation rules are applicable with effect from the assessment year 2017-18 —

The valuation of inventory shall be made at lower of actual cost or net realizable value computed in the manner provided in ICDS.

The valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation.

Inventory (being securities not listed, or listed but not quoted, on a recognised stock exchange) shall be valued at actual cost initially recognised in the manner provided in ICDS.

Inventory (being securities held by a scheduled bank or financial institution) shall be valued in accordance with ICDS after taking into account extant guidelines issued by the RBI.

Inventory (being listed securities) shall be valued at lower of actual cost or net realisable value in the manner provided in ICDS and for this purpose the comparison of actual cost and net realisable value shall be done category-wise.

Any tax, duty, cess or fee, by whatever name called, under any law for the time being inforce, shall include all such payment notwithstanding any right arising as a consequence of such payment for the purposes of the said section

Valuation of Securities

Securities not listed on a recognized Stock exchange.	Securities being listed but not quoted on a recognized stock exchange with regularity from time to time	Securities being listed on a recognized stock exchange and quoted with regularity from time to time	Securities held by a Scheduled bank or Public Financial institution.
Value at cost of acquisition as per	Value at cost of acquisition as per	Value at lower of: i) Cost of acquisition or ii)	Value as per Guidelines issued by RBI

section 145A and as per ICDS	section 145A and as per ICDS	Net Realization value	

Note- As per ICDSVIII, the definition of Security shall not include derivatives

Valuation of Derivative and other Securities

Derivatives	Any Other inventory not being securities or derivatives
Value at purchase price of derivative AS Market to Market (M2M) not allowed.	Value at Lower of: i) Cost of Acquisition ii) Net Realizable value

Section 145B Mode of Taxation on Certain Incomes (Substituted by FA 2018)

Section 145B has been inserted by the Finance Act, 2018. It is applicable from the assessment year 2017-18 onwards. It provides mode of taxation of the following incomes –

Interest received by an assessee on compensation or on enhanced compensation, shall be deemed to be the income of the year in which it is received (however, it is taxable under section 56 under the head “Income from other sources”).

The claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.

Assistance in the form of subsidy (or grant or cash incentive or duty drawback or waiver or concession or reimbursement) as referred to in section 2(24)(xviii) shall be deemed to be the income of the previous year in which it is received, if not charged to income tax for any earlier previous year.

Rule 9A Special Provision for Taxation of Firm Producer & Film Distributor

A. Film producer/ Distributor sells Entire rights of exhibition of the film in theprevious year,then Entire cost production irrespective of date of Films released

B. If Film producer / distributor himself exhibits the film in all or some of the areas OR sells the right of exhibition of the in some areas and himself exhibits the film in remaining areas then Quantum of Deduction shall be based on date of Films released i.e Films released on or before 1st January, 2020 then Entire cost production and in other case Lower of i)cost of production, or (ii) Amount realized by exhibiting the film and sale of rights ofexhibition

“ Cost of production” , in relation to a feature film,

In case of Producer	In case of distributor

expenditure incurred on the production of the film, not being the expenditure incurred for the preparation of the positive prints of the film; and the expenditure incurred in connection with the advertisement of the film after it is certified for release by the Board of Film Censors:	cost of production means the amount paid by film distribution to the film producer for purchase of exhibition rights.

Note- The cost of production of a feature film, shall be reduced by the subsidy received by the film producer, under any scheme framed by the Government.

Employee's contribution to provident fund, superannuation fund, gratuity fund and other fund

Employees' Contribution to provident Fund, Superannuation Fund, Gratuity Funds And Other Funds
Section 2(24)(x): "Income" includes Any sum received by the assesse from his employees.As their contributions to Provident Fund / Superannuation Fund/ any fund set up under the provisions of Employees' State Insurance Act or any other fund for the welfare of the employee.
Section 36(1)(va): Deduction shall be allowed for any sum received by the assesse from his employees as their contributions to Provident Fund or Superannuation Fund or any Fund set up under the provisions of Employees' Sated Insurance Act or any other fund for the welfare of the employees, if such sum in credited by the assesse to the employees account in the relevant fund on or before the " due date"i.e sec 139(1) date.

Employer's Contribution	Employer's Contribution
To Gratuity Fund	To Provident Fund And Other Welfare Funds
Employers contribution to gratuity fund is allowable if all the following is satisfied- a. Section 36(1)(v) Fund should be an approved gratuity Fund b.section 40(a)(iv) Arrangements should be made for deduction of TDS from any payment made from the fund which is taxable under the head " Salaries" C.section 43B Deduction is allowed in the year in which the liability is incurred provided it is paid on or before the due date of furnishing of return of income of that year. Otherwise the deduction shall be allowed in	Employer's Contribution to Provident fund and other welfare funds is allowable as deduction if all the following conditions are satisfied- a.section 36(1)(iv)superannuation fund should be approved by Chief CIT / CIT or the contribution is towards the pension scheme referred to in section 80CCD b. Section 40(a)(iv) Arrangements should be made for deduction of TDS from any payment made from the fund which is taxable under the head "Salaries" c. Section 43B: Deduction is allowed in the year in which liability is incurred provided it is paid

the year in which actual payment is made. Note-.Section 40(A) (7) provides that no deduction shall be allowed for any provision of gratuity except towards Approved gratuity fund or Gratuity becoming payable during the year.Therefore, no deduction shall be allowed for any provision of gratuity towards unapproved gratuity fund.	on or before the due date of furnishing of return of income of that year. If not paid on or before the due date of furnishing of return of income then the deduction shall be allowed in the year in which actual payment is made. Note: section 40A (9) no deduction shall be allowed for any sum paid by the assessee as an employer for formation of, or contribution to any fund, society etc. except Payment is required to be made under any law or Payment made to an approved gratuity fund / approved superannuation fund or recognised provident fund or pension scheme under section 80CCCD

Section 44AA When Maintenance of Books of Accounts becomes Compulsory

1. Persons carrying on "Specified Professions"- For the purpose of section 44AA and Rule 6F legal, 'specified professions' includes medical, engineering, architectural, accountancy, technical consultancy, or interior decoration or any other notified profession [i.e., authorised representative, film artist, company secretary and information technology].-n these cases, if annual gross receipts (of any one or more of preceding 3 years) do not exceed Rs. 1,50,000, the taxpayer is required to maintain such books of account as may enable the Assessing Officer to compute his taxable income under the Income-tax Act.
If, however, gross receipts are more than Rs. 1,50,000 (of all preceding 3 years), the taxpayer will have to maintain books of account prescribed by Rule 6F [i.e., cash book, journal, ledger, copies of bills issued by the taxpayer, etc.

2.Other persons (except individual and HUF) carrying on business /profession [otherthan specified profession)

Total Income exceeds 1,20,000 Or Total sales turnover /total gross receipts exceeds Rs 10,00,000 in any one of the 3 immediately preceding years For newly set up business or profession, the above thresholds is to be seen in the year of set up.

3. Individual and HUF carrying on business / profession Total income exceeds 2,50,000 Or Total sales turnover / total gross receipts exceeds 25,00,000. In any one of the 3 immediately preceding years. For newly set up business or profession by Individual and HUF, the above thresholds is to be seen in the year of set up.

Section 44AB Compulsory Audit of Books of Accounts by Chartered Accountant

The following Persons are required to get their Accounts Compulsorily Audited by a Chartered Accountant : -

Different Taxpayers	When they are covered by the provisions of Compulsory Audit under section 44AB
A person carrying on Business	If the total sales, turnover or gross receipt in business for the previous year(s) relevant to the Assessment year Exceed or Exceeds Rs. 1 Crore get his accounts of such previous year audited by a Chartered Accountant before the *Specified Date* and furnish by that date the report of such audit in the prescribed form, duly signed and verified, by such accountant and setting forth such particulars as may be prescribed. t may be noted that the assessee is required not only to get his accounts audited by the *Specified Date* but also furnish the audit report on or before the *Specified Date*, irrespective of the fact whether the Return Of Income is Filed by that date or not. If the audit report is submitted on or before the due date but the return of income is filed subsequently then a copy of theTax Audit Report and the proof of Filling the same should be submitted alongwith the Return Of Income.
A person carrying on Profession	If his gross receipts in profession for the previous year(s) relevant to the assessment year exceeds Rs. 50 Lakh.
A person covered under section 44AE 44BB or 44BBB	If such person claims that the profits and gains from the business are lower than the profits and gains computed under these sections (irrespective of his turnover).
A person covered under section 44ADA	if such person claims that the profits and gains from the profession are lower than the profits and gains computed in accordance with the provisions of section 44ADA and if his income exceeds the maximum amount which is not chargeable to tax.
A person covered under section 44AD(4)	if a person carrying on business is covered by the provisions of section 44AD(4) and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year.

Note-*specified Date* shall be as under :

(a) Where the assessee is required to furnish a report of a chartered accountant as referred to in Section 92E relating to international transaction or specified domestic transaction	30th November of the relevant Assessment Year.
(b) In any other case	30th September of the relevant Assessment Year.

Section 43D: Interest income on bad and doubtful debts Expenditure on issue of shares and debentures Finance Act 2019

Notwithstanding anything to the contrary contained in any other provision of this Act,-
(a) in the case of a public financial institution or a scheduled bank or a State financial corporation or a State industrial investment corporation *or a deposit taking non-banking financial company or a systemically important non-deposit taking non-banking financial company*, the income by way of interest in relation to such categories of bad or doubtful debts as may be prescribed having regard to the guidelines issued by the Reserve Bank of India in relation to such debts;

(b) in the case of a public company, the income by way of interest in relation to such categories of bad or doubtful debts as may be prescribed85 having regard to the guidelines issued by the National Housing Bank in relation to such debts,shall be chargeable to tax in the previous year in which it is credited by the public financial institution or the scheduled bank or the State financial corporation or the State industrial investment corporation or *a deposit taking non-banking financial company or a systemically important non-deposit taking non-banking financial company* or the public company to its profit and loss account for that year or, as the case may be, in which it is actually received by that institution or bank or corporation or company, whichever is earlier.

NOTE: Scheduled Bank shall include co-operative Bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank.
Note-

"Deposit taking non-banking financial company" means a non-banking financial company which is accepting or holding public deposits and is registered with the Reserve Bank of India under the provisions of the Reserve Bank of India Act, 1934;

"Non-banking financial company" shall have the meaning assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934;

"Systemically important non-deposit taking non-banking financial company" means a non-banking financial company which is not accepting or holding public deposits and having total assets of not less than five hundred crore rupees as per the last audited balance sheet and is registered with the Reserve Bank of India under the provisions of the Reserve Bank of India Act, 1934.

Presumptive taxation in case of NR/FC

Section 44B	Section 44BBA	Section 44BB	Section 44BBB
This provision is applicable to Non-	This provision is applicable to Non-	This provision is applicable to Non-	This provision is applicable to Foreign

resident in shipping operations business	resident in aircraft operations business	Resident in business of supplying services or plant & machinery on fire to be used in prospecting. Extraction or production of mineral oil	company in business of civil construction or erection & testing of power plants(Turnkey project approved by Central Government
Income which shall be taxable as PGBP shall be 7.5% of: (i) Freight received In India or outside India for carriage of goods etc. shipped at port in India. (ii) Freight received or deemed to be received in India for carriage of goods etc. shipped at port outside India.	Income which shall be taxable as PGBP shall be 5% of: (i) Freight received in India or outside India for carriage of goods etc. from India. (ii) Freight received or deemed to be India for carriage of goods etc. from outside India.	Income which shall be taxable as PGBP shall be 10% of: (i) Amount received in India or outside India for prospecting extraction or production of mineral oil in India. (ii) Amount received or deemed to be received in India for prospecting, extraction or production of outside India	Income which shall be taxable as PGBP shall be 10% of: amount received in India or outside India for carrying out the above work.
Assessee cannot show Income lower than presumptive rate		Assessee can show Income lower than presumptive rate provided he maintain books of account & get the audit done under section 44AB & his case will be put in scrutiny assessment under section 143 (3)	
For Section 44B Recovery mechanism in sec.172 for amount received in India or outside India for carriage of goods etc. shipped at any port in India.	No recovery mechanism is available for Remaining three Provisions		

Common provision for Section 44B , 44BBA, 44BB and 44BBB

a. Provisions of Sec 28 to Sec 43A is Not Applicable.
b. Set off of CY depreciation and bf depreciation of other business against such income is not possible BUT Set off of CY Losses and bf Losses of other business against such income is possible.
c. Deduction under Chapter VI A is available.

Note1 Amount paid for technical services and knowhow used for prospecting / extraction/ production of petroleum is covered by either Section 115A or section 44DA. It is not covered by

section 44AB.

Notes2 Rent paid / amount paid for supply of plant & machinery on hire / services to be used in prospecting / extraction/ production of petroleum is covered by section 44BB.

172: shipping business of non-residents

(1) The provisions of this section shall, notwithstanding anything contained in the other provisions of this Act, apply for the purpose of the levy and recovery of tax in the case of any ship, belonging to or chartered by a non-resident, which carries passengers, livestock, mail or goods shipped at a port in India.

(2) Where such a ship carries passengers, livestock, mail or goods shipped at a port in India, seven and a half per cent of the amount paid or payable on account of such carriage to the owner or the charterer or to any person on his behalf, whether that amount is paid or payable in or out of India, shall be deemed to be income accruing in India to the owner or charterer on account of such carriage.

(3) Before the departure from any port in India of any such ship, the master of the ship shall prepare and furnish to the Assessing Officer a return of the full amount paid or payable to the owner or charterer or any person on his behalf, on account of the carriage of all passengers, livestock, mail or goods shipped at that port since the last arrival of the ship thereat:

Provided that where the Assessing Officer is satisfied that it is not possible for the master of the ship to furnish the return required by this sub-section before the departure of the ship from the port and provided the master of the ship has made satisfactory arrangements for the filing of the return and payment of the tax by any other person on his behalf, the Assessing Officer may, if the return is filed within thirty days of the departure of the ship, deem the filing of the return by the person so authorised by the master as sufficient compliance with this sub-section.

(4) On receipt of the return, the Assessing Officer shall assess the income referred to in sub-section (2) and determine the sum payable as tax thereon at the rate or rates in force applicable to the total income of a company which has not made the arrangements referred to in section 194 and such sum shall be payable by the master of the ship.

(4A) No order assessing the income and determining the sum of tax payable thereon shall be made under sub-section (4) after the expiry of nine months from the end of the financial year in which the return under sub-section (3) is furnished:

Provided that where the return under sub-section (3) has been furnished before the 1st day of April, 2007, such order shall be made on or before the 31st day of December, 2008.

(5) For the purpose of determining the tax payable under sub-section (4), the Assessing Officer may call for such accounts or documents as he may require.

(6) A port clearance shall not be granted to the ship until the Collector of Customs, or other officer duly authorized to grant the same, is satisfied that the tax assessable under this section has been duly paid or that satisfactory arrangements have been made for the payment thereof.

(7) Nothing in this section shall be deemed to prevent the owner or charterer of a ship from claiming before the expiry of the assessment year relevant to the previous year in which the date of departure of the ship from the Indian port falls, that an assessment be made of his total income of the previous year and the tax payable on the basis thereof be determined in accordance with the other provisions of this Act, and if he so claims, any payment made under this section in respect of the passengers, livestock, mail or goods shipped at Indian ports during that previous year shall be treated as a payment in advance of the tax leviable for that assessment year, and the difference between the sum so paid and the amount of tax found payable by him on such assessment shall be paid by him or refunded to him, as the case may be.

(8) For the purposes of this section, the amount referred to in sub-section (2) shall include the amount paid or payable by way of demurrage charge or handling charge or any other amount of similar nature.

44AD: special provision for computing profits and gains of business on Presumptive basis

Where the taxpayer is a resident individual, resident Hindu undivided family or a resident partnership firm (not being a limited liability partnership). The taxpayer should be engaged in any business (but not in the negative list given below). The annual turnover should not exceed Rs. 2 crore. In such a case, income is computed on estimated basis at the rate of 8% (6% See Note) of turnover. The rate of 8 % (6% See Note) is comprehensive (i.e., no further deduction is allowed under any other section, even the deduction of remuneration and interest to partners is not available).

An assessee (who opts for the above scheme) is eligible for the following benefits–
He can submit his return of income in ITR-4 (ITR-4 is a simplified form as compared to other forms).

He is exempted from maintenance of books of account.

He can pay advance tax pertaining to his business income in one instalment (i.e., on or before March 15 of the financial year immediately prior to the assessment year). Other assessees are required to pay advance tax in four instalments (i.e., on or before June 15, September 15, December 15 and March 15 of the financial year immediately prior to the assessment year).

Negative list - The following Persons are Not eligible to avail any benefit under section 44AD –
a person carrying on profession as referred to in section 44AA(1);

a person earning income in the nature of commission or brokerage;

a person carrying on any agency business; or

a person who is in the business of plying, hiring or leasing goods carriages;

the assessee who has claimed any deduction under sections 10A, 10AA, 10B, 10BA, 80HHto 80RRB in the relevant assessment year.

Is it possible to declare higher income -
A taxpayer who is covered by section 44AD can declare higher income.

Is it possible to declare lower income -
If an assessee declares profit for any previous year under the scheme of section 44AD, he cannot declare lower profit for the next 5 consecutive subsequent assessment years. If he declares lower profit, then he shall not be eligible to claim the benefit of the provisions of section 44AD for 5 subsequent assessment years [i.e., subsequent to the assessment year relevant to the previous year in which the profit has not been declared at the rate of 8 % (6% See Note)].

Example :

An eligible assessee claims to be taxed on presumptive basis of 8 % (6% See Note) of turnover under section 44AD for assessment year 2018-19. He offers income of Rs. 8 lakh on the turnover of Rs. 1 crore. For assessment year 2019-20 and assessment year 2020-21 also he offers income in accordance with the provisions of section 44AD.

However, for assessment year 2021-22, he offers income of Rs. 4 lakh on turnover of Rs. 1 crore. In this case, since he has not offered income in accordance with the provisions of section 44AD for 5 consecutive assessment years, after assessment year 2018-19, he will not be eligible to claim the benefit of section 44AD for next five assessment years (i.e., for assessment years 2022-23 to 2026-27).

Consequently, for the assessment years 2021-22 to 2026-27,—

he will have to maintain the books of account as per section 44AA (irrespective of income or turnover), if his total income exceeds the exemption limit; and

he will have to get his books of account audited under section 44AB (irrespective of turnover), if his total income exceeds the exemption limit.

If the taxpayer wants to declare lower income, he cannot submit his return of income in ITR-4 (return can be submitted in ITR-3 or ITR-5).

Note :

The existing rate of Deemed total Income of 6% shall be applicable only if the amount of such total turnover or gross receipts is received by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account *or through such other electronic mode as may be prescribed*(FA 2019)—

— during the previous year or

— before the due date specified in section 139(1) in respect of that previous

44ADA: special provision for computing profits and gains of profession on Presumptive basis (finance ACT, 2016)

The provisions of section 44ADA are given below -

1. The assessee is resident and engaged in a profession referred to in section 44AA(1) (i.e., such as legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession asis notified by the Board).
2. Gross receipts of the assessee from the profession does not exceed Rs. 50 lakh.
3. If the above two conditions are satisfied, income of the assessee shall be calculated on estimated basis at a sum equal to 50% of the total gross receipts.
4. The assessee can voluntarily declare a higher income in his return.
5. All deductions under sections 30 to 38, including depreciation and unabsorbed depreciation, are deemed to have been already allowed and no further deduction is allowed under these sections.
6. The written down value is calculated, where necessary, as if depreciation as applicable has been allowed. Moreover, it will be assumed that disallowance, if any, undersections 40, 40A and 43B has been considered while calculating the estimated income @ 50 %.
7. An assessee can declare his income to be lower than the deemed profits and gains as stated above. The following consequences are applicable if the taxpayer declares his income which is lower than the deemed profits and gains as stated above -

   - The assessee will have to maintain the books of account as per section 44AA, if his total income exceeds the exemption limit.

   - The assessee will have to get his books of account audited under section44AB (irrespective of turnover), if his total income exceeds the exemption limit.

44AE: special provision for computing profits and gains of business of plying, hiring or leasing goods carriages

The broad features of the Section 44AE or Scheme are :

1. Not more than 10 goods carriages -
The scheme applies to a person owning not more than 10 goods carriages at any time during the previous year.

For this purpose, an assessee who is in possession of a goods carriage, whether taken on hire purchase or on instalments and for which the whole or part of the amount payable is still due, shall be deemed to be the owner of such goods carriages. _

2. Mode of Estimation of Income (applicable up to the assessment year 2018-19) -
The income from each goods carriage being a "heavy goods vehicle" shall be estimated atRs. 1,000 for every month (or part of a month) during which the goods carriage is owned by the assessee.

The income from each goods carriage, other than a heavy goods vehicle shall be estimated at Rs. 7,500 for every month (or part of a month) during which the goods carriage is owned by the assessee.

In either case, the taxpayer can declare his income from trucks at a higher amount than that specified above.

For this purpose "goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods; and

"heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a roadroller the unladen weight of either of which exceeds 12,000 kilograms.

Example :

Aan assessee owns a commercial vehicle for 8 months and 3 days, a medium goods vehicle for 11 months and a medium goods vehicle for 12 months during the previous year. His profits and gains from three trucks shall be deemed to be (Rs. 7,500 × 9) + (Rs. 7,500 × 11) + (Rs. 7,500 × 12), i.e., Rs. 2,40,000.
3. Mode of Estimation of Income (applicable from the assessment year 2019-20) -
The mode of estimation of income, as revised with effect from the assessment year 2019-20, is as follows –

(A). Heavy goods vehicle (more than 12,000 kg. gross vehicle weight) -
For a heavy goods vehicle, the profits and gains shall be an amount equal to Rs. 1,000 per ton of gross vehicle weight (or unladen weight) for every month (or part of a month) during which the heavy goods vehicle is owned by the assessee in the previous year or an amount claimed to have been actually earned from such vehicle, whichever is higher.

(B) Other than heavy goods vehicle -
In the case of a goods carriage (other than heavy vehicle), the profits and gains shall be an amount equal to Rs. 7,500 for every month (or part of a month) during which the goods carriage is owned by the assessee in the previous year or an amount claimed to have been actually earned from such goods carriage, whichever is higher.

4. No further deduction -
The estimated income is comprehensive. All deductions under sections 30 to 38 including depreciation and unabsorbed depreciation shall be deemed to have been already allowed and no further deduction will be allowed under these sections. However, in the case of a firm, the normal deduction under section 40(b) shall be allowed. The written down value will be calculated, where necessary, as if depreciation as applicable has been allowed.

5. Accounts/audit not required -
The assessee is neither required to maintain books of account under the provisions of section 44AA, nor required to get his accounts audited under the provisions of section 44AB, in respect of his income from truck business.

However, even such an assessee should comply with the requirements of both sections 44AA and 44AB in respect of his businesses which are not covered by this scheme. _

6. Normal provisions applicable for other incomes -
Income from the truck business, estimated in accordance with this provision, is aggregated with other incomes of the assessee, from any other business or under other heads of income, in accordance with the normal provisions of the Act. Accordingly, all deductions under sections 80C to 80U will be available to the assessee, if the conditions therein are fulfilled. _

7. Consequences if lower income is declared -
An assessee may claim his income to be lower than the deemed profits and gains, subject to the condition that the books of account and other documents are kept and maintained as required under section 44AA and the assessee gets his accounts audited irrespective of turnover and furnishes a report of such audit as prescribed under section 44AB.

8.Finace Act 2019 – As per CBDT Clarification we have to consider Gross Vehicle weight for calculating income, However if Gross vehicle weight is not available ,then we will consider unladen weight like Tractor.

<u>Rule14A & Rule 8D: expenditure in relation to income not includible in Total income</u>

As per Section 14A, the expenditure incurred by a taxpayer in relation to income that excludes total income as per the provisions of the Act should not be considered as deduction while computing the total income of the taxpayer.

Section 14A has prescribed a method for determining the expenditure incurred towards earning exempt income under Rule 8D by income tax officer. However, the method prescribed under Rule 8D can be applicable only in one of the following scenarios:

- Where taxpayer claims that no expenditure has been incurred towards earning exempt income.
- Where taxpayer has already disallowed amount towards expenditure incurred in relation to earning exempt income. However, the assessing officer is not satisfied that the claim of taxpayer is correct, considering the accounts of the taxpayer.

Expenditure incurred in relation to earning exempt income is the aggregate of following:

a. Any amount of expenditure which is directly relating to exempt income; and

b. An amount equal to 1% of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of total income. However, any disallowance computed under this Rule cannot exceed total expenditure claimed by taxpayer.

Key points to be noted

Disallowance under Section 14A is only with respect to expenditure which is already claimed to be a deduction. If taxpayer has not claimed any deduction at all, there can not be question of any disallowance.

Basic condition for applicability of Rule 8D has to be satisfied and AO must mandatorily show why he is not satisfied with taxpayer's computation and show taxpayer's computation to be incorrect based on the principle of natural justice and various case laws including the decision of SC.

For the purpose of Rule 8D, only those investments relating to exempt income should be considered for the average and not the entire investment.

Section 14A and Rule 8D have been controversial provisions of the Income Tax Act wherein there is no clarity on various things and have utmost litigations even for something that may seem straight and simple. Following are a few controversies that have come up over the period, more so due to different views adopted by various deciding forum:

1. Can disallowance be made claimed in the absence of exempt income in any FY? Though there had been countless litigation on this issue, it seems to have been settled by various judgements of high courts that disallowance cannot be attracted under Section 14A in the absence of exempt income.

2. Does exempt income for the purpose of this section include profit-linked deduction under Chapter VI-A?

This includes deduction in respect of profits and gains of specific industries such as hotel business, small-scale industrial undertaking, housing projects, export business, infrastructure development, and units in Special Economic Zone (SEZ).

3. Is this section applicable to shares held as stock in trade?In this case, only dividend income would be exempted and gain on sale would be taxable business income based on dominant intention of taxpayer to hold shares as stock in trade and not to earn dividends. This issue is settled by SC in its judgement pronounced in February 2018 (published in March 2018) in the case of Maxopp Investment Ltd. SC stated that even when shares are held as stock in trade, disallowance is attracted on expenditure apportioned towards exempt dividend income; expenditure apportioned towards business profit is allowed as deduction.

4. Is disallowance attracted on dividend income from Indian companies as the dividendincome is actually not exempt but tax is collected from companies itself in the form of Dividend Distribution Tax (DDT)?

This issue has been a matter of debate before various courts/Tribunals which is now settled with the decision of SC in May 2017 in the case of Godrej & Boyce Manufacturing Company Limited where SC held that disallowance is attracted even when DDT is paid by companies

8.TDS and TCS

Section 206AA – TDS on payments made to non-residents and residents not having a PAN

Section 206AA was introduced from FY 2010-11. Section 206AA requires every taxpayer who receives taxable income to furnish their PAN to the payer of such income. This applies to both the resident as well as non-resident recipients. The payments in case of residents would include salary, rent, professional receipts, contractual receipts and so on. In the case of non-resident, these would include all receipts that are taxable in India.

A recipient of taxable income should furnish PAN to comply with the provisions of TDS under the Income Tax Act. Upon furnishing of the PAN, payments made to the recipient would be taxed at the rate of TDS specified under the various TDS provisions of the Income Tax Act. A recipient who does not furnish PAN would suffer TDS at the higher rates specified in Section 206AA.

The recipient is also required to furnish his PAN to the payer and both of them are required to indicate the same in all correspondence, bills, vouchers and other documents which are sent to each other.

Recipient who fails to furnish PAN to the person making a payment would suffer TDS at the higher of the rates mentioned below:

- At the rate specified in the relevant provision of the Act;
- At the rate or rates in force, i.e., the rate prescribed in the Finance Act (Finance Act 2019 for FY 2019-20);
- At the rate of 20%

A recipient of taxable payment can seek an application for lower deduction or nil deduction of tax (TDS) under Section 197. In such cases, where the assessing officer has issued a certificate under Section 197, TDS shall be done at the rates mentioned therein. The certificate is generally issued for a specified period. Section 206AA states that a certificate under section 197 is not valid unless the recipient furnishes their PAN at the time of making an application to the assessing officer.

A recipient is also entitled to submit a declaration under Section 197A to the person making payment. Declaration under 197A includes declaration made under Form 15G and Form 15H for a nil deduction of tax. Declaration under Form 15G can be submitted by a recipient who is less than 60 years of age. Declaration under Form 15H can be submitted by a recipient who is 60 years and above. As per Section 206AA, the declaration would not be valid if it does not contain PAN of the person making the declaration. If the recipient makes a declaration without their PAN, then TDS or tax is to be deducted at higher following rates:

- At the rate specified in the relevant provision of the Act.
- At the rate or rates in force, i.e., the rate prescribed in the Finance Act.

- At the rate of 20%.

Section 206AA would not apply to the below payments made to non-residents:

a) In respect of payment of interest on long-term bonds to a non-resident under section 194LC.

b) The Finance Act 2016 relaxed the applicability of Section 206AA in case of payments made to non-resident in the nature of interest, royalties, fees for technical services and payments on the transfer of any capital asset. Section 206AA would not apply to such non-resident recipient if the following details and documents are furnished to the payer (Rule 37BC inserted vide Notification No. 53/2016):

- Name, email ID, contact number;
- Address in the country or specified territory outside India of which the deductee is a resident;
- Certificate of his being resident in any country or specified territory outside India from the government of that country or specified territory if the law of that country or specified territory provides for the issuance of such certificate;
- Tax Identification Number of the deductee in the country or specified territory of his residence. In case no such number is available, then a unique number on the basis of which the deductee is identified by the government of that country or specified territory of which he claims to be a resident.

Income Tax TDS Rates Applicable for Resident

Nature of payment	*% of TDS*
Payment of salary (Section 192)	Normal slab rate (i.e. 10% to 30%)
Payment of accrued due of EPF Scheme, to Employees which is taxable in their hand (Section 192A)	10%
Interest on securities (Section 193)	10%
Dividend excluding the dividends mentioned in section 115-O (Section 194)	10%
Income received from interest other than â€œinterest on securities (Section-194A)	10%
Income received from winning lotteries, crosswords, and games, etc. (Section-194B / Section 194BB)	30%
Payment to contractors / sub-contractors (Section 194C)	2% for payments made to contractors who are not HUFs/individuals and 1% for payments made to contractors/sub-contractors who are HUFs/individuals
Insurance commission (Section-194D)	5%
Payment for life insurance policy	1%

Nature of payment	*% of TDS*
(Section 194DA)	
Rent (Section 194-I)	For plant and machinery 2% Land, furniture, fitting and furniture-10%
Payment on transfer of immovable property excluding agricultural land Section (194- IA)	1%

Nature of payment	*% of TDS*
Payment of salary (Section 192)	Normal slab rate
Payment of accumulated balance of provident fund (Section 192A)	10%
Income received from winnings lotteries, crossword puzzles, card games and other games of any sort (Section 194B)	30%
Income received from winnings from horse races (Section 194BB).	30%
Payment on deposit under National Savings scheme (section- 194EE)	20%
Payment on repurchase of Mutual Fund or Unit Trust of India (Section 194F)	20%
Commission on sale of lottery tickets (Section 194G)	10%
Interest on infrastructure debt fund (Section 194LB)	5%
Interest income distribution by a Business Trust (Section 194LBS(3))	30%
Distribution of income by an Investment Fund under Section 115UB of the Income Tax Act (Section 194LBB)	30%
Distribution of income by a Securitisation Trust under Section 115TCA of the Income Tax Act (Section 194LBC)	30%
Interest income from Indian company on funds borrowed in international currency (Section 194LC)	5%
Income by way of interest on certain government securities and rupee-denominated bonds (Section 194LD)	5%

Section 192 TDS on Salaries

Any person as a Deductor if Paying to Resident or Non-resident then At the time of payment TDS shall be deducted at Slab rate applicable to the estimated income of the employees.

Section 192(1A): No grossing up of tax is required in case of tax payment for nonmonetary perquisites

Section 192(2D): The evidence /proof/ particulars of the deductions/ exemptions/ allowances / set-off of loss claiming by the employee such as rent receipt for claiming exemption of HRA, evidence of interest payments for claiming loss from selfoccupied house property etc. should be furnished by employee to employer. The employer will allow the deduction/exemption /set-off of loss only if proofs are furnished by the employee.
Income from previous employer may be considered.

Relief under section 89(1) shall also be considered. While deduction TDS

Income from all sources may be considered. And any TDS thereon shall also be considered.

Only loss under the head house property shall be taken into account for the purpose of TDS and not any other loss.

The employer may deposit from his own pocket tax on the non-monetary perquisites to employees. Such tax is exempt income in hands of employee under section exempt income in hands of employee under section 10(10CC) and is disallowable expenditure to employer.

.Tax-dedicator-assesse was duty bound to deduct tax at source under section 192(1) from the home salary/ special allowance (s) paid abroad by the foreign company, particularly when no work stood performed for the foreign company and the total remuneration stood paid only on account of services rendered in India during the period in question

Tips collected by Hotel form customers and paid to employees did not amount to salary from employer and hence employer was not liable to deduct tax at source on such payments under section 192

Section 192A Payment of accumulated balance due to an employee.

Where Dedicator Trustees of Employees Provident Fund Scheme Dedicatees are Resident or Non-resident Then TDS shall be deducted At the time of credit or payment, whichever is earlier, @ 10%

Note- It is compulsory for the deductee to quote PAN. If PAN is not furnished then tax shall be deducted at maximum marginal rate

Notes: -TDS will not be deducted where payment is less than Rs 50,000. And also Tax shall not be deducted at source if declaration is given under section 197A.

Section 193 Interest on securities.

Deductor _ Any Person Deductee – Resident Time of Deductee –At the time of credit or payment, whichever is earlier. Rate of tax: 10% Notes: TDS shall not be deducted in following cases; • Interest payable on Central Govt. or State Govt. Securities. However, as per Finance Act, 2018 TDS shall be deducted on 7.75% Savings (Taxable) Bonds, 2018.

Interest paid to LIC, GIC or any other insurer, in respect of securities owned by it or held by it as beneficiary. • Interest paid on any listed security issued by a company held in dematerialized form. (If security is not listed or is not in dematerialized form, then TDS shall be deducted. However, in such a case no TDS shall be deducted if the interest paid to an individual /HUF does not exceed RS 5,000 during the financial year.)

Section 194 TDS on Dividends

NO TDS is required to be deducted as dividend under section 115-o is exempt in the hands of shareholders.

Note: There is no TDS on dividend exceeding Rs 10 lakhs which is taxable under section 115BBDA.

Section 194A TDS on Interest other than Interest on Securities

Any Person, Except individual or HUF not liable to tax audit in preceding Financial Year If pays to Resident then At the time of credit or payment, whichever is earlier TDS shall be deductable at 10% . Interest paid by cooperative bank to its members is liable to TDS

No TDS in following Case --

a. Where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the payee does not exceed

Rs 10,000	Rs 5,000
where payer is Banking Company where payer is a Co-operative Society Bank. on deposit with post office. **Note-** In case of payee being senior citizen, the words "fifty thousand rupees" had been substituted FA 2018	In any other case.

Note-Where core banking solution software has been adopted, TDS shall deducted on aggregate of interest pain by all the branches of the bank i.e. where aggregate interest paid by all the branches of the bank exceed R 10,000.

Note-CBDT Circular No TDS on the payment of the natures specified below

Interest payment is made by a person to a bank listed in the Second Schedule to the RBI Act excluding a foreign bank, or payment is made to any payment systems company authorized by the Reserve Bank of India:- (i) Bank guarantee commission; (ii) Cash management service charges; (iii) Depository charges on maintenance of DEMAT accounts; (iv) Charges for warehousing services for commodities; (v) Underwriting service charges; (vi) Clearing charges (MICR charges); (vii) Credit card or debit card commission for transaction between the merchant establishment and acquirer bank.

b. Where such income is credited or paid to any banking company to which Banking Regulation Act applies, or any co-operative society engaged in the carrying on the business of banking i.e., cooperative bank (including a co-operative land mortgage bank), or any financial corporation established by or under a Central, State or Provincial Act, or the LIC; or the company or co-operative society carrying on insurance business

c. Where such income is credited or paid by a firm to a partner of the firm, being a resident.

d. Interest credited or paid in respect of deposits with a primary agricultural credit society or a primary credit society or cooperative land mortgage bank or a cooperative land development bank

e. Where such income credited or paid by a co-operative society (other than a cooperative bank) to a member there of or to such income credited or paid by a cooperative society to any other cooperative society.

f. Interest on saving account with banks or with a co-operative society engaged in the business of banking (However tax shall be deducted on interest on time deposits i.e. FDR's and recurring deposits with such banks or co-operative society engaged in banking)

g. Where interest is credited or paid in respect of deposits under certain schemes of Post Office (Recurring Deposits), Post Office Monthly Income Account, kisan Vikas Patra, Indra Vikas Patra and National Savings Certificates.

h. interest on the compensation amount awarded by the Motor Accidents Claims Tribuna

i. interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amount so of such income paid during the financial year does not exceed Rs . 50,000.

j. Where interest is credited or paid by the Central Government under the Incometax Act, But TDs shall be deducted under section 195 where if such interest is paid to a non-resident.

k. Such income which is paid or payable in relation to a zero coupon bond.

l.. interest on FDRs made in the name of Registrar General of the Court or the depositor of the fund on the directions of the Court, will not be subject to TDS till the matter is decided by the Court. However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of section 194A will apply to the recipient of the income.

m. Chit dividend paid by chit fund company to its members is not interest and, consequently, no deduction of TDS under section 194A is required to be made.

Section 194B TDS on Winnings from Lottery, Crossword Puzzle, Card Game, etc.

Where Any person as Deductee Paying to Any person exceeding Rs 10,000 during a Financial Year Then At the time of payment TDS shall be deducted at 30%

Note: In a case where; (i) the winnings are wholly in kind; or (ii) partly in cash and partly in kind but the part in case is not sufficient to meet the liability of deduction of tax in respect of whole of the winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.

Section 194BB TDS on Winning from Horse Race

Where any person being the holder of license for the horse racing Paying exceeding Rs 10,000 during a Financial Year to Any person then at the time of payment TDS shall be deducted @ 10%.

Section 194C TDS on Payment to Resident Contractor

Any person Exept individual or HUF not liable to tax audit in preceding Financial Year Pying to Any resident then At the time of credit or payment, whichever is earlier TDS shall be deducted at 1% in case payee is individual of HUF OR 2% in case of any other assesse If amount payable Exceeded Rs 30,000 in case of a single of cortact OR Rs 1,00,000 in case of aggregate of contracts during Financial Year.

Note- TDS shall be deducted On the invoice value excluding the value of material, if such value is mentioned separately in the invoice.

Note- "work" includes: "Manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer However, it shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer."

Note –No TDS in Certain Cases –

a.If individual or HUF under a contract for personal purpose, even if he is subject to tax audit.

b.No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of plying, hiring or

leasing goods carriages, where such contractor owns 10 or less goods carriages at any time during the Previous Year and furnishes a declaration to that effect along with his PAN, to the person paying or crediting such sum.

CBDT Circular- This exemption from TDS is applicable only in respect of transport charges received for plying, hiring or leasing of goods carriage(s) owned by the transporter. Therefore, if a person receives payment in respect of playing, hiring or leasing of goods carriage(s) which are not owned by him, he shall not be entitled to claim exemptions from TDS in respect of these payments.The conditions of not owning more then 10 goods carriages by the transporter is required to be fulfilled on the date4 on which the amount is credited or paid, Whichever is earlier. In case a transporter does not own 10 goods carriages on the date on which the amount is credited or paid but becomes owner of 10 goods carriages later in the previous year, the payer shall not be required to deduct tax from the payment made to the transporter during the period of the previous year when he was not owning more than 10 goods carriages. However, the tax shall be required to be deducted from the payment made during that part of the previous year during which the transport owned more than 10 goods carriages Further, for determining the aggregate amounts of sum credited or paid for the purposes of computing limit of Rs 1,00,000, all the payment made during the financial year shall be taken into account including the amount credited or paid during the period of the financial year during which the transporter was not owning more than 10 goods carriages.

It is clarified that in case the Owner/ Seller of the gas sells as well as transports the gas to the purchaser till the point of delivery, where the ownership of gas to the purchaser is simultaneously transferred, the manner of raising the sale bill (whether the transportation charges are embedded in the cost of gas or shown separately) does not alter the basic nature of such contract which remains essentially a 'contract for sale' and not a 'works contract' as envisaged in section 194C of the Act. Hence in such circumstances, provisions of section 194Care not applicable on the component of Gas Transportation Charges paid by the purchaser to the Owner/Seller of the gas. The use of different modes of transportation of gas by Owner/Seller will not alter the position. It is needless to mention that transportation charges paid to a third-party transporter of gas, either by the Owner/Seller of the gas or purchaser of the gas or any other person, shall continue to be governed by the appropriate provisions of the Act and TDS shall be deductible on such payment to the third party at the applicable rates.

Section 194D TDS on Insurance Commission

Any person Paying here amount exceeding Rs 15,000 during a Financial Year to Any resident then at the time of credit or payment, whichever is earlier TDS shall be deducted at 5%

Note: The recipient of commission can furnish declaration under section 197A in From 15G/15H for non deduction of TDS.

Section 194DA TDS on Payment in respect of Life Insurance Policy

Where Any person paying amount exceeding 1,00,000 during a Financial Year To Any resident Then At the time of payment @ 5 %~~1%~~ shall be deducted. FA 2019

Note- No TDs on amount exempt under section 10(10D) Or declaration is given under section 197A.

Section 194E TDS on Payment to Non-Resident Sportsmen or Sports Associations or Non-Resident Entertainer

Any person responsible for making following payment shall deduct tax at source @20% at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier. For this purpose, "payment" can be in cash or by issue of a cheque or draft or by any other mode

(a) Non – resident foreign citizen sportsman (including an athlete) Paying Income is by way of **a.** participation in India in any game (other than card game or gambling, etc); or **b.** advertisement; or **c.** contribution of articles relating to any game or sport in India in newspapers, magazines or journals	Non – resident sports association or institution paying Income by way of Any amount guaranteed to be paid or payable in relation of any game (other than card game, etc.) or sport played in India.	Non- resident foreign citizen Entertainer getting Income I for his performance in India.

Section 194EE TDS on Payments in respect of Deposit under National Savings Scheme (NSC), etc

Person Responsible to Deduct Tax	Post Master
Exemption Limit	Rs. 2,500
TDS Rate	10% (20% up to 31.5-2016)
Time of Deduction of TDS	At the time of payment
Time for Deposit of TDS	Within one week from of the day of the month of tax deduction. For month of March, before 30th April.
Certificate of TDS	Form 16A for each quarter is to be issued within 15 days from the due date for furnishing the statement of tax deducted at source under rule 31A i.e. on or before 15th August, 15th November, 15th February and 15th June
Quarterly Return of TDS	In form 26Q on or before 31st July, 31st October and 31st January for the first three quarters and on or before 31st May for the last quarter.
AO's Certificate for Deduction at Lower Rate or Non Deduction	No
Is Self Declaration by Payee for Non Deduction Admissible	Yes, by an individual in new Form No. 15G/ 15H.

Section 194G TDS on Commission, etc. on Sale of Lottery Tickets

Any person Paying to Any Resident as well as Non-Resident amount d exceeding Rs 15,000 during a Financial Year, Then At the time of credit or payment, whichever is earlier TDS shall be deducted @ 5%.

Section 194H TDS on Commission or Brokerage

Any person,Except individual or HUF not liable to tax audit in the preceding Financial Year paying amount exceeding Rs 15,000 during a Financial Year to Any resident Then At the time of credit or payment, whichever is earlier TDS shall be deducted @ 5%.

Note

No TDS on brokerage and commission on securities. No TDS is required to be deducted by BSNL or MTNL on commission or brokerage paid to their PCO franchisees No TDS is attracted on payments made by television channels/ newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements.	TDS will be deducted on brokerage and commission paid for commodities transactions. Commission to employees and employee directors will form part of salary income and is liable to TDS under section 192 of the Act and not under this section. Tax should be deducted at source under section 194H on amount available to travel agents being difference between airfare fixed by Airlines and price at which agents are enabled to sell tickets.

Section 194-I TDS on Rent

Any person, not being an individual or a HUF, who is responsible for paying rent to a resident is required to deduct tax at source under the provisions of section 194 – I . An individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such rent is credited or paid, shall be liable to deduct income-tax under this section.

Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time of payment thereof, whichever is earlier. For this purpose, credit to "Suspense account" or any other name shall be deemed to be a credit of such income to the account of the payee. For this purpose, "payment" can be in cash or by issue of a cheque or draft or by any other mode.

Rate of tax

For the use of any machinery or plant or	For the use of any land or building (including

equipment	factory building) or furniture or fittings
2%	10%

No deduction shall be made under this section where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of the payee, does not exceed Rs. 1,80,000.

Note- Rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,— (a) land; or (b) building (including factory building); or (c) land appurtenant to a building (including factory building); or (d) machinery; or e) plant; or (f) equipment; or (g) furniture; or (h) fittings.

Note-No deduction shall be made under this section, where the income by way of rent is credited or paid to a business trust, being a real estate investment trust, in respect of any real estate asset, referred to in section 10(23FCA), owned directly by such business trust.

Section 194-IA TDS on Transfer of certain Immovable Properties (other than Agricultural Land)

Any person, being a transferee responsible for paying (other than the person referred to in section 194LA) to a resident transferor any sum by way of consideration for transfer of any immovable property (other than agricultural land), is liable to deduct tax at source under this section.

Tax shall be deducted under this section at 1% of consideration, either at the time of credit to the account of the payee or at the time of payment thereof, whichever is earlier. For this purpose, "payment" can be in cash or by issue of a cheque or draft or by any other mode.

No tax is deductible where the consideration paid or payable for the transfer of an immovable property is less than Rs.50,00,000.

Note- The term 'consideration for immovable property' is not defined but in general context It is sales consideration and the buyer is contractually bound to make such payments to the builder/seller, either under the same agreement or under a different agreement. Scope of "Consideration for Immovable Property" widened through Explanation u/s 194IA. "consideration for immovable property", for the purposes of TDS @ 1%, shall include all charges in the nature of club membership fee, car parking fee, electricity and water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property. FA 2019
Note- For deduction of tax at source under this section, location of immovable property is not relevant. Such property may or may not be situated in India. The main requirement to attract this section is that transferor shall be resident in India.

Note- Provisions of section 203A (pertaining to TAN) shall not apply to a person required to deduct tax under this section.

Note- Section 194-IA shall not apply if a person acquires agricultural land in India.

Section 194-IB TDS on Payments of Rent by certain Individuals or HUF

Any person, being an individual or a Hindu undivided family (other than those who are covered under section 194-I) , responsible for paying to a resident any income by way of rent, shall deduct an amount equal to 5 % of such income as income-tax thereon. The provisions of this section shall not be applicable to the individual or Hindu undivided family who are liable to deduct tax at source under section 194-I.

Tax is deductible at the time of credit of rent, for the last month of the previous year or the last month of tenancy, if the property is vacated during the year, as the case may be, to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

Tax is deductible if rent is exceeding Rs.50000 for a month or part of a month during the previous year.

In a case where the tax is required to be deducted as per the provisions of section 206AA (i.e. if payee does not provide PAN), such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.

For the purposes of this section, "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or both.

Section 194IC Payment under Specified Agreement

Any person responsible for paying to a resident any sum by way of consideration under the specified agreement u/s 45(5A), shall deduct tax at source.

Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time or payment thereof, whichever is earlier. For this purpose, “payment” can be in cash or by issue of a cheque or draft of by any other mode.

Note- Tax deduction at source shall not be made in respect of that part of consideration which is in kind under the specified agreement. "Specified agreement" means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash.

Section 194J TDS on Fees for Professional or Technical Services

Any person, not being an individual or a HUF, who is responsible for paying to a resident any sum by way of - (a) fees for professional services, or (b) fees for technical services or (c) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company or (d) royalty or (e) any sum referred to in section 28 (va) ; shall deduct tax at source under this section.

An individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which abovementioned sum is credited or paid, shall be liable to deduct income-tax under this section.

However, no tax deduction under this section is required on sum by way of fees for professional services in case such sum is exclusively for personal purposes of such individual or any member of Hindu Undivided Family.

Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time of payment thereof, whichever is earlier. For this purpose, credit to “Suspense account” or any other name shall be deemed to be a credit of such income to the account of the payee. For this purpose, “payment” can be in cash or by issue of a cheque or draft or by any other mode.

No tax is deductible if the amount credited or paid or likely to be credited or paid during the financial year to the account of the payee does not exceed Rs.20000 in case of Professional services, Fees for Technical Services, Royalty, Sum referred to in a section 28(va).

10%.but 2% in case of payee engaged only in the business of operations of call centre.

Section 194LA TDS on Payments of Compensation on Acquisition of certain Immovable Property

Any person paying tax to Any resident exceeding RS 2,50,000 during a Financial Year. then 10% tax At the time of payment shall be deducted.

Note-where any income is credited to any account, whether called "Suspense Account" or by any other name, in the books of account 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.

Note-No TDS where payment is made in respect of any award or agreement which has been exempted from levy of income-tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Note- compensation received under RFCTLARR Act for agricultural land and non-agricultural land is exempt from tax. Therefore, if any land or building is acquired under RFCTLRR Act,

then no capital gains shall arise. Hence, there will be no TDS on any award / compensation awarded under RFCTLARR Act.(CBDT Circular)

Section 194LB TDS on Income by way of Interest from Infrastructure Debt Fund

1. Conditions under which the provisions of section 194LB of the Income Tax Act, 1961 attracts –

If the following conditions are satisfied, then, the payer would be liable to deduct TDS –

- The interest income is paid by an infrastructure debt fund referred to in section 10 (47); and
- The interest income is paid to a non-resident (not being a company) or to a foreign company.

2. Time of deduction of TDS –

When the above listed conditions are satisfied, and the person is liable to deduct TDS under section 194LB, in that case, the TDS is to be deducted either at the time of credit of income to the account of the recipient or at the time of payment in cash or draft or cheque or any other mode, whichever is earlier.

3. Rate of TDS deduction –

TDS is deductible at the rate of 5%. Education cess and SHE cess is to be added to the base rate of 5%. Further, if the surcharge gets applicable, then, the same should also be added.

Section 194LBA TDS on Income from Units of a Business Trust

The Income covered under section 194LBA	Time of TDS deduction	Rate of TDS deduction
A business trust is liable to deduct TDS, where any distributed income referred to in section 115UA, being of a nature referred to in section 10 (23FC)(a) or section 10 (23FCA) is payable by the business trust to its unit holders being a resident.	Earlier of the following – Time of credit of payment to the account of the payee; or Time of payment in cash or draft or cheque or any other mode.	10%
A business trust is liable to deduct TDS, where any distributed income referred to in section 115UA, being of a nature referred to in section 10 (23FC)(a) is payable by the business trust to its unit holders being a non-resident (not being a company) or the foreign company.	Earlier of the following – Time of credit of payment to the account of the payee; or Time of payment in cash or draft or cheque or any other mode.	5%

A business trust is liable to deduct TDS, where any distributed income referred to in section 115UA, being of a nature referred to in section 10 (23FCA) is payable by the business trust to its unit holders being a non-resident (not being a company) or the foreign company.	Earlier of the following – Time of credit of payment to the account of the payee; or Time of payment in cash or draft or cheque or any other mode.	30%

- Section 10 (23FC)(a) –
  Above section refers to any income of a business trust by way of interest received or receivable from a special purpose vehicle.
- Section 10 (23FCA) –
  Above section refers to any income of a business trust (being a real estate investment trust) by way of renting / leasing / letting out any real estate asset owned directly by such business trust.

Section 194LBB TDS on Income in respect of Units of Investment Fund

Coverage of Section 194LBB –

- A person making payment to a unit holder in respect of units of an investment fund specified in Explanation 1 clause (a) to section 115UB shall be liable to deduct TDS.
- However, the proportion of income, which is of the same nature as income referred to in section 10 (23FBB) shall be excluded from TDS deduction.

Please note that Explanation 1 clause (a) to section 115UB states that 'investment fund' means any fund established / incorporated in India in the form of trust / a company / a limited liability partnership / a body corporate which has been granted a registration certificate as Category I / Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012.

Time of deduction of TDS –

The Deductor is liable to deduct TDS either at the time of credit of income to the account of the payee or at the time of payment in cash or draft or cheque or any other mode, whichever is earlier.

Rate of TDS deduction –

TDS shall be deducted at following rates –

Rate of TDS	Residential status of the Payee
10%	Resident
30%	Non-resident (not being a company) or a foreign company

Section 194LBC TDS on Income in respect of Investment in Securitisation Trust

Coverage of Section 194LBC –

A person making payment to an investor in respect of an investment in a securitization trust specified in Explanation (d) to section 115TCA is liable to deduct TDS.

Explanation (d) to section 115TCA provides a definition of 'securitization trust' which means trust, being a –

- Special purpose distinct entity' as defined in regulation 2 (1) clause (ii) of the Securities and Exchange Board of India (Public Offer and Listing of Securitised Debt Instruments) Regulations 2008; or
- 'Special Purpose Vehicle' as defined in and regulated by the guidelines on the securitization of standard assets issued by the Reserve Bank of India; or
- Trust set up by a securitization company or a reconstruction company formed for the purpose of the **Securitization and Reconstruction of the Financial Asset and Enforcement of Security Interest Act, 2002** or in pursuance of any guidelines / directions issued for the said purposes by the Reserve Bank of India.

Time of deduction of TDS –

The Deductor is liable to deduct TDS either at the time of credit of income to the account of the payee or at the time of payment in cash or cheque or draft or any other mode, whichever is earlier.

Rate of TDS deduction –

TDS shall be deducted at following rates –

Particulars	Rate of TDS
Where the payee is an individual or a HUF	25%
Any other person	30%

Section 194LC TDS Deduction by an Indian Specified Company or Business Trust from Interest to a Non-Resident / Foreign Company

Basic applicability of Section 194LC –

The basic provisions of section 194LC are narrated hereunder –

- The Indian Company or a business trust paying interest income to a non-resident, not being a company, or to a foreign company is liable to deduct TDS.
- Interest income payable by the Indian Company or the business trust on the following is covered under section 194LC –
  - Interest in respect of money borrowed by the Indian Company or the business trust in foreign currency from a source outside India –

- Under a loan agreement between 1st July 2012 to 1st July 2020.
- By issuing long term infrastructure bonds between 1st July 2012 to 1st October 2014.
- By issuing long term bond including long term infrastructure bonds between 1st October 2014 to 1st July 2020.

- Interest in respect of money borrowed by the Indian Company or the business trust in foreign currency from a source outside India by way of issue of rupee denominated bond before 1st July 2020.
- To the extent, the interest income does not exceed the amount of interest calculated at the rate approved by the Central Government.

Time of TDS deduction –

The Deductor is liable to deduct TDS within earlier of the below mentioned dates –

- At the time of payment thereof in cheque or cash or draft or any other mode of payment; or
- At the time of credit of interest income to the account of the payee.

Rate of deduction of TDS –

The Deductor is liable to deduct TDS @ 5%. In addition to the same, the Education Cess and SHE Cess is to be added to the base rate. Further, if the Surcharge gets applicable the same is also to be added.

Section 194LD TDS from Income by way of Interest on certain Bonds and Government Securities

Section 194LD states that –

- Any person paying income by way of interest to a Foreign Institutional Investor or a Qualified Foreign Investor is required to deduct TDS.
- Interest income on which TDS is deductible under section 194LD means –Interest payable on or after 1st June 2013 to 1st July 2020 in respect of investment made, by a Foreign Institutional Investor or a Qualified Foreign Investor, in a rupee denominated bond of an Indian Company or a Government Security.
- However, the proviso states that the rate of interest in respect of a rupee denominated bond of an Indian Company shall not exceed the rate as notified by the Central Government.

Time of tax deduction at source

The Deductor liable to deduct TDS under this section, shall deduct TDS either at the time of payment in cheque or draft or cash or any other mode or at the time of payment of credit of income to the account of the payee, whichever earlier.

Rate of tax deduction at source under section 194LD

The Deductor is liable to deduct TDS at the rate of 5%.

Section 194M payment of certain sums by certain individuals or HUF (FA 2019)

Individual or HUF (other than those who are required to deduct income-tax as per the Provisions of section 194C, section 194H or section 194J) while Paying to Any resident person shall pay TDS at 5% at the time of credit of such sum or at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier

Note- No TDS shall be done if payment or aggregate of all payments is `50,00,000 or less during the financial year.

Section 194N payment of certain amounts in cash FA 2019

Deductor	Every person, being **(a)** a banking companies **(b)** co-operative society engaged in carrying on the business of banking **(c)** post office
Deductee	Any person
TDS on amount	Any sum or aggregate of sums, in cash, in excess of `1 Crores during the PY from one or more accounts
Time of TDS	At the time of Payment
Rate of TDS	2%
Exemptions	No TDS shall be done if payment or aggregate of all payments is `1 Crores or less during the financial year. Further no TDS shall be done on any payment made to (a) the government (b) any banking company or co-operative society engaged in carrying on the business of banking or a post office (c) any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking (d) any white label ATM operator of a banking company or co-operative society engaged in carrying on the business of banking (e) such other person or class of persons, which the Central Government may, by notification in the Official Gazette, specify in consultation with the Reserve Bank of India
Notified class of persons	Cash Replenishment Agencies (CRAs) and franchise agents of White Label Automated Teller Machine Operators (WLATMOs) maintaining a separate bank account from which withdrawal is made only for the purposes of replenishing cash in the Automated Teller Machines (ATMs) operated by such WLATMOs and the WLATMO have furnished a certificate every month to the bank certifying that the bank account of the CRAs and the franchise agents of the WLATMOs have been examined and the amounts being withdrawn from their bank accounts has been reconciled with the amount of cash deposited in the ATMs of the WLATMOs

Analysis- For discouraging cash transactions and moving towards digital India, it is to be levied TDS @ 2% on cash payments exceeding Rs. 1 crore in aggregate made during the year by a banking company, co-operative society or a post office to any account holder.
Provided, it exempts payments made to certain account holders such as Government, banking company, post-office, co-operative society carrying on business of banking, banking correspondents and white label ATM operators, who are involved in handling substantial amount of cash as part of their business operation
Central Government may exempt other account holders, through a notification in the Official Gazette in consultation with the Reserve Bank of India

Section 195A: Income Tax Payble Net of Tax

Where under an agreement or arrangement, the tax chargeable on any income which is subject to tax deduction, is to be borne by the payer of income, then while deducting tax, such income shall be increased to such amount as would, after deduction of tax, be equal to the net amount payable under such agreement or arrangement.

Provisions of this section shall not be applicable to tax borne by an employer in respect of non-monetary perquisites, which is eligible for exemption under section 10(10CC).

Section 196 and 197A: No TDS in Few cases

No deduction of tax shall be made by any person from any sums payable to

(a) the Government

(b) the Reserve Bank of India

(c) a corporation established by or under the Central Act whose income is exempt from income –tax

(d) a mutual fund: or

(e) any person for, or on behalf of, the new pension system trust

Further, no deduction of tax shall be made by the Offshore Banking Unit from the interest paid—

(a) on deposit made on or after the 1st day of April, 2005, by a non-resident or a person not ordinarily resident in India; or

(b) on borrowing, on or after the 1st day of April, 2005, from a non-resident or a person not ordinarily resident in India.

Further, section 197A has been modified with effect from 1st July, 2012 to provide that no deduction of tax shall be made from such specified payment to such institution, association or body or class of institutions, associations or bodies as may be notified by the Central Government in the Official Gazette, in this behalf.

Notification No. 56/2012	**Circular No. 7/ 2008**
no deduction of tax shall be made from the payments of the nature specified below, in case such payment is made by a person to a bank listed in the Second Schedule to the Reserve	corporations which are established by a Central or State Act for the welfare and economic upliftment of ex-servicemen and whose income qualifies for exemption from income-tax under

Bank of India Act, 1934, excluding a foreign bank– (i) bank guarantee commission, (ii) cash management service charges, (iii) depository charges on maintenance of DEMAT accounts , (iv) charges for warehousing services for commodities, (v) underwriting service charges, (vi) clearing charges (MICR charges) and (vii) credit card or debit card commission for transaction between the merchant establishment and acquirer bank	section 10(26BBB), are exempt from tax deduction or collection at source on their receipts. That means, these corporations can receive payments without TDS and can purchase goods without TCS. But these organizations shall continue to be liable for deducting TDS on all contractual payments made by them.

Provision	196B **Deduction of tax at source in respect of units referred to in section 115AB**	196C **Deduction of tax from income or long – term capital gain from foreign currency bonds GDR**	196D **Deduction of tax at source from income of foreign institutional investors from securities**
Person liable to deduct TDS	Any person responsible for making payment	Any person responsible for making payment	Any person responsible for making payment
Payee	Offshore Fund	Non-resident	Foreign Institutional Investors
Nature of Payment	(a) Income from units referred to in section 115AB (b) Long-term capital gain arising from transfer of such units	(a) Interest on notified bonds referred to in section 115AC (b) Dividends on Global Depository Receipts referred to in section 115AC (c) Long-term capital gain arising from transfer of such bonds	Income in respect of securities referred to in section 115AD (not being interest referred to in section 194LD)

		or Global Depository Receipts	
Time of tax deduction	At the time of credit of such income to the account of payee or at the time of payment, whichever is earlier. For this purpose, "payment" can be in cash or by issue of a cheque or draft of by any other mode.	At the time of credit of such income to the account of payee or at the time of payment, whichever is earlier. For this purpose, "payment" can be in cash or by issue of a cheque or draft of by any other mode	At the time of credit of such income to the account of payee or at the time of payment, whichever is earlier. For this purpose, "payment" can be in cash or by issue of a cheque or draft of by any other mode.
Threshold limit	NA	NA	NA
Rates of TDS	10%(+SC+EC+SHEC)	10%(+SC+EC+SHEC)	20%(+SC+EC+SHEC)
Note		No deduction shall be made in respect of dividend referred to in section 115-O.	No deduction shall be made in respect of capital gains arising from transfer of such securities

Section 197 : certificate for no/ lower deduction of TDS	Section 197a: self declaration for non-deduction of TDS
The assessee's tax is deductible under section 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA, 194LBB, 194LBC and 195. He can apply in Form No. 13 to the Assessing officer to give him a certificate authorizing the payer not to deduct tax or deduct tax at lower rate, as may be appropriate. On being satisfied that total income of assessee justifies deduction of tax at lower rates or no deduction, the assessing officer shall issue a certificate to that effect. Such certificate shall be issued directly to the person responsible for paying income, under an advice to the applicant.	No TDS shall be deducted if the recipient of : Interest from securities and or Interest other than interest on securities OR Amount of accumulated balance due to an employee from Recognized Provident Fund OR Amount received in respect of Life Insurance Policy OR Rent OR Insurance Commission, Gives a declaration n From 15G or in From 15H (applicable for senior citizens)to the payer of income that the tax on tax on his current year income shall be NIL.

Note for Section 197

No TDS shall be deducted from any payment to any person for, or on behalf of, the New Pension System Trust under section 10(44)

This declaration cannot be given by a company or firm.

Declaration in Form 15H cannot be given by a person OTHER THAN A SENIOR CITIZEN if the aggregate of the incomes referred above exceeds the taxable limit even though the tax on his total income is NIL

Section 198 and Section199 TDS shall be deemed to be income received

Section 198 Tax deducted is income received FA 2019

Tax deducted at source shall be deemed to be income received. Accordingly, it shall be considered for the purpose of computing the income of assessee. All amounts of TDS shall be deemed to be income received and will form part of the total income. Thus while calculating Total Income of the person, amount of net income received (after TDS) has to be grossed up. Grossing income = amount received/(100 – r) X 100 Where r = rate of TDS done by the payer. However, sum deducted in accordance with the provisions of section 194N for the purpose of computing the income of an assessee, shall not be deemed to be income received.

Section 199 of the Income Tax act, credit for tax deducted at source shall be given to the deductee for the assessment year for which such income is assessable.

Where tax has been deducted at source and paid to the Central Government, and the income is assessable over a number of years, credit for tax deducted at source shall be allowed in the same proportion in which such income is offered for taxation.

If the income on which tax has been deducted is assessable in the hands of a person other than the deductee, then tax credit will be given to such other person if deductee files a declaration with the deductor to that effect. Such declaration shall contain the name, address, PAN of the person to whom credit is to be given and reasons for giving credit to such person.

Due date for furnishing quaterly returne of TDS /TCS

Date of ending of the quarter of the financial year	30thJune	30thSeptember	31stDecember	31stMarch
TDS	31st July of the financial year	31st October of the financial year	31st January of the financial year	31st May of the financial year immediately following the FY in which deduction is made

TCS	15th July of the financial year	15th October of the financial year	15th January of the financial year	5th May of the FY immediately following the financial year in which deduction is made

Section:- 203 **Form and Time Limit for issue of TDS Certificates**

Form No. 16 and Form No. 12BA	Form No. 16A	Form No. 16B
Annual Return On or before May 31 of the financial year immediately following the financial year in which tax is deducted.	Quarterly Return Within 15 days from the due date of furnishing quarterly TDS returns.	Within 15 days of furnishing challan in Form No. 26QB

Section 200A: processing of Statement of TDS (Section 206CB -Section 206B deals with

processing of TCS return is exactly same ad section 200A)

Where a quarterly return of tax deduction at source or a correction statement has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such quarterly return shall be processed in the following manner, namely:

a) The sums deductible under this Chapter shall be computed after making the adjustments, of (i)any arithmetical error in the quarterly return; or (ii)an incorrect claim, apparent from any information in the quarterly return;

(c) The fee, if any, shall be computed in accordance with the provisions of section 234E;

(d) The sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee;

(e) An intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and

(f) The amount of refund due to the deductor in pursuance of the determination under clause (d) shall be granted to the deductor.

Note**-** No intimation under this section shall be sent after the expiry of 1 year from the end of the financial year in which the quarterly return is filed.

An incorrect claim apparent from any information in the quarterly return" shall mean a claim, on the basis of an entry, in the quarterly return-

(i)of an item, which is inconsistent with another entry of the same or some other item in such quarterly return;	(ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act

Section 154 relating to rectification of mistake:
An assessed can file a rectification application under section 154 for rectification of any mistake apparent from record in the intimation under section 200A/206CB.

Section:- 205 Bar against direct demand on assessee
Assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.

Section 156 Notice of Demand

where any sum is determined as payable by the deductor/ collector in intimation under section 200A / 206CB, then such intimation shall be deemed to be notice of demand under section 156. If such demand is not paid within 30 days of receipt of the intimation, then the assesse shall be deemed to be an assessed in default for which he shall pay interest under section 220 and penalty under section 221.

Section:- 200(3) **Forms for quarterly statement of tax deduction**

Form 24Q	Tax deduction from salary under section 192
Form 27Q	Tax deduction when deductees are non-resident (not being a company), foreign company and persons who are resident but not ordinarily resident
Form 26QB	Tax deduction under section 194-IA
Form 26Q	Tax deduction in any other case

Section:- 201 Consequences of failure to deduct or pay TDS

Section 201(1): Where any person, including the principal officer of a company,—

(a) who is required to deduct any sum in accordance with the provisions of this Act; or

(b) referred to in sub-section (1A) of section 192, being an employer,
does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other

consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such Payee— [FA 2019]
(i) has furnished his return of income under section 139;

(ii) has taken into account such sum for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income,

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:
Provided that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.
Note-(Earlier Resident only as per Sec **40(a)(ia),but now also cover Non Resident if** read with 40(a)(i). Similer Amendment in 40(a)(i) also]
Section 201 (1A):- Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—
(i) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and

(ii) at one and one-half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid, and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200.]

Provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first proviso of sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.
Section 201(2):- Where the tax has not been paid as aforesaid after it is deducted, [the amount of the tax together with the amount of simple interest thereon referred to in sub-section (1A)] shall be a charge upon all the assets of the person, or the company, as the case may be, referred to in sub-section (1).
Section 201(3): No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given.

Section 201 (4):- The provisions of sub-clause (ii) of sub-section (3) of section 153 and of Explanation 1 to section 153 shall, so far as may, apply to the time limit prescribed in sub-section (3).
'Explanation.—For the purposes of this section, the expression "accountant" shall have the meaning assigned to it in the Explanations to sub-section (2) of section 288

Section 234: Fee for default in furnishing quarterly returns of TDS/ TCS

a. Where a person fails to deliver the quarterly returns of TDS /TCS within the time prescribed, then he shall be liable to pay a fees of Rs. 200 for every day during which the failure continues. This is in addition to the penalty under section 271H.

b. However, such fees shall not exceed the amount of TDS / TCS deductible/ collectible in the quarterly return.

c. The fees under section 234E shall be paid before furnishing the quarterly returns of TDS / TCS.

d. Fee under this section is mandatory and cannot be waived, except in cases where application is made to the CBDT stating sufficient and appropriate cause for the default.

Section 271H: Penalty for incorrect information or failure to furnish statements, etc.

a. This section levies a penalty for delay in filing quarterly returns of TDS / TCS or furnishing incorrect information in the said returns.
b. Section 271H provides that without effecting the provisions of section 234E, a person shall be liable to pay penalty if:

He fails to deliver the quarterly returns of TDS /TCS within the time prescribed; or	He furnishes incorrect information in the quarterly returns of TDS / TCS

c. The penalty shall be a minimum amount of Rs 10,000 and it can extend upto Rs.1,00,000.
d. The above penalty is mandatory and cannot be waived.
e. This section however provides that notwithstanding the above, no, penalty shall be levied for delay in delivering the quarterly returns of TDS /TCS if such person proves that:-

After paying the TDS/ TCS along with fees under section 234E and interest under section 201 to the credit of Central Government.	He has filed the quarterly returns before the expiry of 1 year from the time prescribed for filing the quarterly return.

Therefore, if quarterly returns of TDS /TCS which were to be filed on 31st July, 2017 are filed upto 31st July, 2018 and assessee has paid TDS /TCS and fees under section 234E and interest under section 201, then there shall be no penalty under section 271H for delay in furnishing of quarterly return.

TAX COLLECTION AT SOURCE

Section 206

1) Every person, being a seller, shall collect, from the buyer of following goods, income tax at the rates mentioned

1%	2.5%	5%
Alcoholic liquor for human consumption (other than Indian made foreign liquor) Indian made foreign liquor Scrap Minerals, being coal or lignite or iron ore	Timber obtained under a forest lease Timber obtained by any mode other than under a forest lease Any other forest produce (not being timber or tendu leaves)	Tendu leaves

(1A)Provisions of TCS are not applicable where the resident buyer furnishes to the person responsible for collecting tax, a declaration in the prescribed manner to the effect that the goods referred to above are to be utilized for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purpose.

(1B) Person responsible for collecting tax shall deliver one copy of such declaration to the CCIT/ CIT on or before the 7th day of the month next following the month in which the declaration is furnished to him.

(2) Tax has to be collected by the seller at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time or receipt of such amount from the buyer in cash or by issue of cheque or draft, or by any other mode, whichever is earlier.

(3) "Seller" means-

(a) the Central Government,

(b) a State Government

(c) any local authority

(d) corporation

(e) authority established by or under a Central, State or Provincial Act

(f) any company

(g) firm

(h) Co – operative society.

(i) Individual or a HUF whose books of account are required to be audited under section 44AB (a)/ (b) during the financial year immediately preceding the financial year in which goods are sold.

(4) "Buyer" means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in section 206C(1) or the right to receive any such goods. However, buyer does not include the following:

(a) a public sector company, the Central Government, a State Government, and an Embassy, a High Commission, Legation, Commission, Consulate and the trade representation, of a foreign State and a club.

(b) a buyer in the retail sale of such goods purchased by him for personal consumption.

(5) "Scrap" means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons. Accordingly, following would not be covered within the meaning of scrap and therefore not subject to tax collection at source.

a. Scrap or waste not arising from manufacture or mechanical working of material. (e.g. old newspapers)

b. Scrap or waste which is usable as such.

(6) No collection of tax shall be made from a resident buyer who purchases goods (which are to be utilized) for the purposes of manufacturing, processing or producing any article or thing or for the purpose of generation of power and not for the purpose of trading. For this purpose, resident buyer shall give a declaration in Form No. 27 C to the seller in duplicate.

The seller shall deliver one copy to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner on or before the seventh day of the month next following the month in the declaration is furnished to him.

(9)Where the total income of the buyer or licensee or lessee is taxable at lower rates, then such buyer or licensee or lessee can make an application to A.O. to issue a certificate for lower deduction of TCS. In such a case, the seller shall deduct income tax as per the rates specified in the certificate till such time the certificate cancelled by A.O

Section206C (1A) Provisions of TCS are not applicable where the resident buyer furnishes to the person responsible for collecting tax, a declaration in the prescribed manner to the effect that the goods referred to above are to be utilized for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purpose.

Section206C (1B) Person responsible for collecting tax shall deliver one copy of such declaration to the CCIT/ CIT on or before the 7th day of the month next following the month in which the declaration is furnished to him.

Section206C (1C)

(1) Every person, who grants a lease or a license or enters into a contract or otherwise, transfers any right or interest in

(a) any parking lot or

(b) toll plaza or

(c) mine or quarry,

to another person (hereafter referred to as “licensee or leasee”) for the use of such parking lot or toll plaza or mine or quarry, for the purpose of business, shall collect tax at source at two percent.
The provisions of this section shall not apply to mining and quarrying of mineral oil, petroleum and natural gas.
The provisions of this section shall not apply if the licensee or lessee is a public sector company.
(2) Tax has to be collected by the seller at the time of debiting of the amount payable by the licensee or leasee to the account of the licensee or leasee or at the time or receipt of such amount from the licensee or leasee in cash or by issue of cheque or draft, or by any other mode, whichever is earlier.

Section 206C(1F)

(1) Every person, being seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding ten lakh rupees, shall collect tax from buyer at one percent of sale consideration

(2) Tax shall be collected at the time of receipt of amount from the buyer.

(3) “Seller” means- (See Note)

(4) Buyer means buyer of motor vehicle of the value exceeding ten lakh rupees.

However, the tax collection at source shall not be made in relation to sale of motor vehicle of the value exceeding ten lakh rupees to the following class or classes of buyers, namely:-
(a) the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State
(b) a local authority
(c) a public sector company which is engaged in the business of carrying passengers.

Note-Note: in all the above cases," Seller" means: Central Government or State Government **or** Any local authority or corporation or authority established by or under a Central,State or Provincial Act or Any company or firm or co-operative society and also includes an individual or a HUF who was subject to tax audit during the financial year immediately preceding the financial year in which the goods of the nature specified above are sold.

9. Taxation of .AOP and BOI

I..TAXATION OF AOPs BOIs

Introduction:-The income of an Association of Persons (AOP) and Body of Individuals (BOI) shall be computed normally applying the normal provisions of the Income tax Act.

The business income of AOP/BOI shall be computed after allowing all expenses referred to in section 28 to 44D. However, Section 40(ba) is specific to AOP/BOI and this section disallows the salary and interest paid by AOP/BOI to its members

Section40(ba): payment of interest, salary, bonus, commission or remuneration Made by AOP/BOI to its members

In the case of an AOP/BOI, any payment of Interest, salary, Bonus, Commission or Remuneration made by such AOP/BOI to its members shall be disallowed in the hands of AOP/BOI for computing income under the head PGBP.

Rent paid by AOP/BOI to its members for use of member's premises for its business, is allowed subject to section 40A(2)

Where interest is paid by the AOP/BOI to any of its members who has also paid interest to AOP/BOI, the amount of interest to be disallowed shall be limited to the amount by which the payment of interest by AOP/BOI to the member exceeds the payment of interest by the member to AOP/BOI (Explanation 1)

Where an individual is a member in an AOP/BOI on behalf or for the benefit of any other person; then the interest paid by the AOP/BOI to such individual or by such individual to the AOP/BOI otherwise than as member in a representative capacity shall not be considered for disallowance. (Explanation 2)

Where an individual is a member in an AOP/BOI otherwise than as member in a representative capacity, interest paid by the AOP/BOI to such individual shall not be considered for disallowance, if such interest is received by him on behalf of, or for the benefit of any other person. (Explanation 3)

Section 167B -Tax rates on AOP/BOI

Where the shares of members are known and determinative	Where the shares of members are unknown
(1)None of the members have total income* which exceeds the maximum amount not chargeable to tax AND None of the members is	1.None of the members are assessable at a rate higher than Maximum Marginal Rate. Tax the entire income of AOP/BOI at the

assessable at a rate higher than Maximum Marginal Rate. Tax the income of AOP/BOI at the normal rates applicable to an individual (2)One or more members have total income* which exceeds the maximum amount not chargeable to tax AND None of the members is assessable at a rate higher than Maximum Marginal Rate. Tax the entire income of AOP/BOI at the Maximum Marginal Rate. (3)one or more of the members are assessable at a rate higher than Maximum Marginal Rate. Tax on AOP/BOI shall be aggregate of: (i)Tax at such higher rate on such members' share in the total income (ii)Tax at Maximum Marginal Rate on the balance income.	Maximum Marginal Rate. 2.one or more of the members are assessable at a rate higher than Maximum Marginal Rate. Tax the entire income of AOP/BOI at the higher Rate.

In computing the total income of members his share of income from this AOP/BOI shall be excluded.

Maximum Marginal Rate means the rate of income tax (including surcharge and education cess) applicable in relation to the highest slab of income in case of an individual i.e. 30% plus 37% surcharge plus 4% health education cess = 42.744%.

The share of members in AOP/BOI shall be deemed to be unknown if such share is indeterminate or unknown at the time of formation of AOP/BOI or at any time thereafter.

Loss of AOP/BOI shall be carried forward by AOP/BOI and shall not be allocated to the members.

Long Term Capital Gain and Short Term Capital Gain shall be taxed under section 112 and 111A respectively

86: rebate in respect of member's share in the income of AOP/BOI

If the AOP is chargeable to tax at Normal rates and income of AOP be included in Total Income of member then only Rebate Available at average rate of tax .In all other case not available.

10. Taxation of Firm and LLP

Tax rates for partnership Firm / LLP/ Local authority-Tax Rate 30% and Surcharge : @ 12% of Tax if Total Income >Rs 1 crore plus 4% health & education cess in all cases. LTCG and STCG shall be taxable as per section 112, 112A and 111A

Section184: Conditions to be fulfilled by a firm to be assessed as such

A firm shall be assessed as a firm if Partnership is evidenced by an instrument ,Individual shares of the partners are specified in the instrument and other conditions such as-

1. Copy of the instrument of partnership certified by all partners (others than minor partners) should be furnished with the return of income of the previous year in respect of which assessment as a firm is first sought.

2. Where any change in constitution had taken place in the previous year, firm to furnish certified copy of the revised instrument of partnership along with the return of income for the assessment year relevant to such previous year.

Note- If the firm does not comply with the conditions of section 184 or there is nay failure on the part of the firm as is mentioned in section 144, then Interest and remuneration paid to the partners will be fully disallowed in the hands of the firm; and Interest and remuneration shall not be taxable under section 28 in the hands of partners.

Section187: change in constitution of firm

Where at the time of making an assessment under section 143 or section 144 it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making the assessment.
For the purposes of this section, there is a change in the constitution of the firm

(a) if one or more of the partners cease to be partners or one or more new partners are admitted, in such circumstances that one or more of the persons who were partners of the firm before the change continue as partner or partners after the change ; or

(b) where all the partners continue with a change in their respective shares or in the shares of some of them :

Provided that nothing contained in clause (a) shall apply to a case where the firm is dissolved on the death of any of its partners

Section188: succession of one firm by another firm

Where a firm carrying on a business or profession is succeeded by another firm, and the case is not one covered by section 187, separate assessments shall be made on the predecessor firm and the successor firm in accordance with the provisions of section 170.

Section 188A: joint & several liability of partners for tax payable by firm

Every person who was, during the previous year, a partner of a firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable along with the firm for the amount of tax, penalty or other sum payable by the firm for the assessment year to which such previous year is relevant, and all the provisions of this Act, so far as may be, shall apply to the assessment of such tax or imposition or levy of such penalty or other sum.

Section 189: Firm dissolved or business discontinued

Where any business or profession carried on by a firm has been discontinued or where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such discontinuance or dissolution had taken place, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act, shall apply, so far as may be, to such assessment.

Without prejudice to the generality of the foregoing sub-section, if the Assessing Officer or the Commissioner (Appeals) in the course of any proceeding under this Act in respect of any such firm as is referred to in that sub-section is satisfied that the firm was guilty of any of the acts specified in Chapter XXI, he may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.

Every person who was at the time of such discontinuance or dissolution a partner of the firm, and the legal representative of any such person who is deceased, shall be jointly and severally liable for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.

Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against the person referred to in ABOVE from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply accordingly.Nothing in this section shall affect the provisions of sub-section (6) of section 159.

Taxation of firms and its partners

Firm shall be taxable at Flat tax rate of 30% plus 12% surcharge where total income exceeds RS 1 crore (+4% health & education cess). LTCG taxable under section 112 and STCG taxable under section 111A. LTCG referred in section 112A are taxable as per section 112A. Shares of partners in the total income of the firm is EXEMPT in the hands of partners under section 10(2A). Remuneration and interest paid to the partners is allowed as deduction to the firm subject to the limits and conditions specified in section 40(b).Remuneration and interest received by the partners shall be taxed in their hands as P/G/B/P under section 28(v). However, salaries and interest which have not been allowed under section 40(b) or section 184(5) or section 185 shall not be added to the income of the income of the partner under section 28(v).

Section 40(b): payment of interest, salary, bonus, commission or remuneration Made by firm to its partners

The interest and remuneration paid to partners by a firm are deductible if all the following conditions are satisfied:

a. Payment of salary, bonus, commission or remuneration, by whatever name called (hereinafter referred as remuneration)is to a working partner. If it is paid to a non-working partner, the same shall be disallowed.

b. The remuneration shall be admissible only if the partnership deed either specifies the amount of remuneration payable to each individual working partner or lays down the manner of quantifying such remuneration.

c. The payment of remuneration and interest should, relate to a period falling after the date of partnership deed. That means, the partnership deed should not provide for payment of remuneration and interest from retrospective effect.

d. The payment of interest to a partner should not exceed the amount calculated at the rate of 12% per annum simple interest.

e. The payment of remuneration should not exceed

Particulars	Salary Allowed
a. On the first 3,00,000 of book profits or in case of a loss	Rs. 1,50,000 or at the rate of 90% of the book profit (whichever is higher)

b. On the balance of book profits	at the rate of 60%

Note-Following Adjustment should be made to the Net Profit under PGBP for computation of Book Profit:

i. Only the income under the headP/G/B/P is to be taken.

ii. Current year and brought forward depreciation is to be deducted. (section 32)

iii. Brought forward Losses will not be deducted (section 72)

iv. Chapter VI-A deductions are also not to be deducted.

v. Remuneration is to be added back if it is debited to Profit& Loss Account.

vi. Interest paid to the partners to the extent it is deductible shall not be added back.

Note-If a firm pays interest to a partner and the partner pays interest to the firm on his drawings, then the interest shall not be netted off. The interest received by the firm from the partners on their drawings is taxable in the hands of the firm as income under the head PGBP. Interest paid by the firm to the partners is allowable under section 40(b).

Note-Interest paid by the firm to its partners on their fixed capital account, current capital account, and loan account is allowable as deduction to the firm provided the partnership deed specifically authorizes the payment of interest of interest on fixed capital account, current capital account and loan account. If the partnership deed authorizes the payment of interest on fixed capital account, then interest on current capital account and loan account shall not be allowed as deduction to the firm.

Note- Remuneration Vs Interest allowbility- Such salary and interest shall not be taxable in hands of partner.

- Remuneration	Interest
To a working partner	To a working/ non-working partner
To an individual only.	To any partner
Should be authorized by partnership deed.	Should be authorized by partnership deed.

In the partnership deed should Either specify the amount of remuneration payable to each partner, or Lay down the manner of quantification of remuneration to each partner	Rate of interest should be specified in the partnership deed.
Remuneration should not be retrospective	Interest should not be retrospective

Can salary and interest paid to partners be disallowed even if conditions of 40(b) are satisfied

a)Failure on part of the firm as referred to in section 144.

b)Non-compliance with the technical requirement of section 184 by the firm.

Section 40(b):explanation 1- Where an individual is a partner in a firm in a representative capacity, then interest paid by the firm to him in individual capacity, shall not be taken into account for the purpose of section 40(b).

Section 40(b): explanation 2- Where an individual is a partner in a firm in his individual capacity, then interest paid by the firm to such individual shall not be taken into account for the purposes of section 40(b), if such interest is received by him on behalf, or for the benefit of any other person. Salary paid to partner representing his HUF has to be disallowed; further salary paid to partners in their individual capacity who had joined firm as partners representing their respective HUFs too has to be disallowed.

Section 10(2A): income exempt from tax in the hands of the partner if taxable in hand of Firm.

Section 78: carry forward and set off losses

The losses and unabsorbed depreciation can be carried forward by a firm only. Where a change in constitution of firm taxes place on account of retirement or death of a partner, the firm shall not c/f and set off the following b/f losses

Shares of Retired / Deceased partner in b/f losses	
(-) Share in C.Y. profits	
Can't be c/f by the firm	

Note: Sec. 78(1) is not applicable if the partner does not die/retire but there isonly is a change in PSR

Whether remuneration paid to the partner can be disallowed under 40A(2)- where conditions prescribed under section 40(b)(v) are satisfied, the A.O. cannot disallow any part of the remuneration under section 40A (2) on the ground that it is unreasonable and excessive.

Limited Liability Partnership

i) Various provision of Firm applicable to LLP
The word "Firm" shall include Limited Liability Partnership (LLP),word "partner" shall include a partner of LLP and word "partnership" shall include a LLP as defined in LLP Act.

ii)The remuneration and interest paid by LLP to its partners shall be allowed as per section 40(b) and if deduction not allowed to LLP then The share of profit received by the partner of LLP shall be exempt under section 10(2A) otherwise The remuneration and interest received by partner of LLP shall be taxable as per section 28.

iii)Section 44AD is not applicable to a LLP.

iv)Tax implication on Conversion into LLP-
No implications under the Income Tax Act on conversion of partnership firm into a LLP and Capital gains shall be exempt when a company is converted into a LLP.

v)Signatory authority in case of LLP-
The ROI shall be signed by designated partner or where designated partner is not able to sign due to unavoidable reasons, and partner shall sign ROI.

vi)Recovery of taxes / penalty / interest of LLP -
where any tax / penalty / interest due from LLP in respect of any income of any previous year cannot be recovered, in such case, every person who was a partner of the LLP at any time during the relevant previous year, shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the limited liability partnership.

11. Amalgamation,Demerger and Business Re-organization

Amalgamation

mergers regarded as amalgamations	mergers are not regarded as amalgamations
"Amalgamation" in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company in such a manner that i. All the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of amalgamation. ii. All the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of amalgamation. iii. Shareholders holding not less than 75% in value of shares in amalgamating company or companies (other than shares held therein immediately before the amalgamation by the amalgamated company or its nominee or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation	i. Where the amalgamation scheme is not approved by the High Court and Company Abhinav Ltd. Sell as its assets and liabilities to Company Bibhuti Ltd. And thereafter Company Abhinav Ltd. Is liquidated. ii. Where the amalgamation scheme is not approved by the High Court and Company Abhinav Ltd. Goes in to liquidation and its assets are distributed to Company Bibhuti Ltd.

Taxation of Amalgamating Company	Taxation of Amalgamated Company
Section 47, No capital gains on transfer of a capital asset by the amalgamating company to the amalgamated company in the scheme of amalgamation if the amalgamated company is an Indian company	Section 49(1), where a capital asset became the property of the amalgamated company in a scheme of amalgamation, the cost of acquisition of the said asset to the amalgamated company shall be the cost for which the amalgamating company acquired it. The cost of improvements incurred by the amalgamating company shall be deemed to be the cost of improvement incurred by the amalgamated company.
Section 47, Bo capital gains on transfer of shares held in an Indian company in a scheme of amalgamation by the amalgamating foreign company to the amalgamated foreign company if the following conditions are satisfied: i. At least 25% of the shareholders of amalgamating foreign company continue to remain shareholders of amalgamated foreign	*Section 55. If amalgamating company acquired the capital asset before 1.4.2001, then the cost of such asset to the amalgamated company shall be the cost for which the amalgamating company acquired the asset or the FMV as on 1.4.2001, whichever is higher. *Section 2(42A), the period for which the capital asset was held by the amalgamating company shall

company; and ii. Such transfer does not attract tax on capital gains in the country, in which the amalgamating company is incorporated.	also be considered in determining the period of holding of such asset by the amalgamated company * Following expenditures which are unamortized in hands of amalgamating company in the year of amalgamation shall be allowed in the balance number of years to the amalgamated company. The said expenditure shall not be allowed in the year of amalgamation to the amalgamating company. i. Expenditure on scientific research under section 35. ii. Expenditure for obtaining license to operate telecommunication services under section 35ABB. iii. Expenditure for obtaining any right to use spectrum for telecommunication services under section 35ABA. iv. Preliminary expenses under section 35D. v. Capital Expenditure on family planning. vi. Expenditure under section voluntarily retirement scheme under section 35DDA. SEE NOTE BELOW

Note-

1.Section 35DD- expenses amalgamation shall be allowed in five successive Assessment Years beginning with the previous year in which amalgamation takes place. The deduction shall be 1/5th of such expenditure on amalgamation.

2.P.K. Kaimal Case- If the bad debts of the amalgamating company are recovered by the amalgamated company, then there will be no income under section 41(1).

3.Section 41(1)- . Recovery by amalgamated company of any allowance / deduction earlier allowed to the amalgamating company shall be taxable as P/G/B/P in hands of amalgamated company.

4.Veerabhadra Rao Case- Debts of Amalgamating Company written off as bad debts by the Amalgamated Company: deduction shall be allowed to the amalgamated company.

5.Where an amalgamating company transfers a capital asset a stock in trade to the amalgamated company, then the cost of acquisition of stock in trade shall be the aggregate of the following :

(a) Cost of acquisition of the said asset of the amalgamating company.

(b) Expenditure on improvement of the said asset incurred by the amalgamating company and amalgamated company and

c) Expenditure incurred wholly and exclusively in connection with the transfer by the amalgamating company.

6. Depreciation in case of Amalgamation- In year of amalgamation, depreciation shall be computed in the hands of amalgamating company as if amalgamation has not taken place and such depreciation shall be apportioned between the amalgamating company and the amalgamated company in the ratio of the number of days for which the assets were used by them.

7. Actual cost of asset in the hands of amalgamated company

Depreciable asset	Non-Depreciable Asset
WDV in hands of amalgamating company at the time when amalgamation takes place.	Actual cost to amalgamating company

8. If Undertaking entitled to deduction under section 10AA/80IB/80IC/80IE is transferred - Where an undertaking which is entitled to deduction under section 10AA/80IB/80IC/80IE is transferred before the expiry of the period specified in section 10AA/80IB/80IC/80IE in the scheme of amalgamation by the amalgamating company to the amalgamated company, then

No deduction under section 10AA/80IB/80IC/80IE shall be available to the amalgamating company for the previous year in which amalgamation takes place and	Provisions of Section 10AA/80IB/80IC/80IE shall apply to the amalgamated company in the same manner in which they would have applied to the amalgamating company.

9.Section 32AD- where the new asset is sold or otherwise transferred in connection with the scheme of amalgamation within a period of five years from the date of its installation, the provision of these sections shall apply to the amalgamated company as they would have applied to the amalgamating company.

Section 72A Provision affecting carry forward and set-off of loss and depreciation- When permissible in the hands of amalgamated company

If the following conditions are satisfied, then the non-speculative business loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be loss/ depreciation of the amalgamated company for the previous year in which the amalgamation is effected—

1. There is an amalgamation of:

- a company owning industrial undertaking, ship or a hotel with another company; or
- a banking company with a SBI or any subsidiary of SBI; or
- public sector airlines with other public sector airlines.

2. The amalgamating company has been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for at least 3 years.

3. The amalgamating company has held continuously as on the date of the amalgamation at least three-fourths of the book value of fixed assets held by it two years prior to the date of amalgamation.

4. The amalgamated company continues to hold at least three-fourths in the book value of fixed assets of the amalgamating company which is acquired as a result of amalgamation for five years from the date of amalgamation.

5. The amalgamated company continues the business of the amalgamating company for a minimum period of 5 years from the date of amalgamation.

6. The amalgamated company, which has acquired an industrial undertaking by way of amalgamation, shall achieve the level of production of at least 50 per cent of the installed capacity of the said undertaking before the end of 4 years from the date of amalgamation and continue to maintain the said minimum level of production till the end of 5 years from the date of amalgamation.
However, on an application made by the amalgamated company, the Central Government may relax this condition.

7. The amalgamated company shall furnish to the Assessing Officer a certificate in a prescribed form, duly verified by an accountant, with reference to the books of account and other documents showing particulars of production, along with the return of income for the assessment year relevant to the previous year during which the prescribed level of production is achieved and for subsequent assessment years relevant to the previous year falling within 5 years from the date of amalgamation.

Consequences when the above conditions are not satisfied after adjusting loss / depreciation -In case the above specified conditions are not fulfilled, then that part of brought forward loss and unabsorbed depreciation which has been set off by the amalgamated company shall be treated as the income of the amalgamated company for the year in which the failure to fulfill the conditions occurs.

Section 72AA Set off of losses of a banking company against the profit of a banking institution under a scheme of Amalgamation

If following conditions are satisfied, then the non-speculative business loss and the unabsorbed depreciation of the banking company shall be deemed to be loss/ depreciation of the banking institution for the previous year in which the amalgamation is effected:-

1. There is an amalgamation of a "banking company" with any other "banking institution".
2. Such amalgamation has been sanctioned and brought into force by the Central Government under section 45(7) of the Banking Regulation Act, 1949.

Note- Benefit under section 72AA is available to the banking institution even though conditions of section 2(1B) and section 72A are not satisfied.

DEMERGER AND ITS TAX IMPLICATIONS

Section 2(19AA) Demerger in relation to companies means transfer pursuant to Section 391 to 394 of the Companies Act by demerged company of its one or more undertaking to a resulting company in such a manner that : -

(i) All the properties of the undertaking immediately before demerger becomes the property of resulting company.

(ii) All liabilities relating to undertaking become liabilities of resulting company

(iii) All properties and liabilities shall be transferred at values appearing in books of accounts immediately before demerger

Explanation 3 to section 2 (19AA) changes in the value of assets consequent to revaluation shall be ignored.

Note-FA 2019 Condition shall not apply where the resulting company records the value of the "property and the liabilities of the undertaking(s)" at a value different from that appearing in "BOA of the demerged company", immediately before the demerger, in compliance to the IndAS specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015;

(iv) Resulting company issues shares to the shareholders of demerged company on proportionate basis except where the resulting company itself is a shareholder of the demerged company.

(v) Shareholders holding not less than 3/4 in value of shares in demerged company become the shareholder of resulting company

(vi) The transfer of undertaking is on a going concern basis.

(vii) Demerger should be subject to certain conditions notified under section 72A(5) by Central Government.

Taxation of shareholders of demerged company
Section 47 No capital gains in the hands of shareholders of demerged company where they receive in exchange of share of the demerged the company reduced shares of demerged company and the new shares of resulting company.
Section 2(22), No dividend in the hands of shareholders on distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is reduction of capital of the demerged company).
Section 2(42A)- Calculating the period for which the shares received upon demerger are held, the period for which shares were held in the demerged company shall also be considered.
Section 49 (2C), the cost of acquisition of shares of resulting company shall be Cost of Acquisition of shares held by the assessee in the demerged company X Net Book Value of assets transferred in demerger / Net Worth of the demerger company immediately before such demerger. Note- Where Net Worth = paid up Share Capital + General Reserves Section 49(2D) cost of acquisition of shares in the demerged company shall be ost of Acquisition of Original Shares in the demerged company (-)cost of Acquisition of Shares in the resulting company as calculated in Section 49 (2C).

Taxation of demerged company
Section 47, there will be not capital gains, when a capital asset is transferred, in a demerger, by the demerged company to the resulting company, provided that the resulting company is an Indian company.
Where any asset forming part of block of assets is transferred by the demerged company to the resulting company, then the Written Down Value of block of assets shall be reduced by the written down value of assets transferred to the resulting company pursuant to demerger.
Section 47(vic), there will be no capital gains on transfer of share held in an Indian company, by the demerged foreign company to the resulting foreign company if the following conditions are satisfied-

The shareholders holding not less then 75% in value of the shares of the demerged foreign company continue to remain shareholders of the resulting foreign company	Such transfer does not attract tax on the capital gains in the country, in which the demerged foreign company is incorporated.

Note-cost of acquisition of shares of Indian company in hands of resulting foreign company shall be the cost of such shares in hands of demerged foreign company

Taxation in hand of resulting Company	
1.Section 49(1) where a capital asset is transferred by demerged company to resulting company, then the actual cost of capital asset to the resulting company shall be the actual cost of capital asset in hands of demerged company.	
2.The actual cost of asset transferred by demerged company to resulting company in hands of resulting company-	
Depreciable asset- Actual Cost to the demerged company	Non-Depreciable asset- WDV in hands of demerged company.
Section 32, where there has been a demerger, the aggregate of depreciation available to the demerged company and the resulting company shall not exceed in the previous year, the depreciation calculated at the prescribed rates as if the demerger had not taken place and such depreciation shall be apportioned between the demerged company and the resulting company in the ratio of number of days for which assets were used by them.	
Section 72A, if the loss and unabsorbed depreciation of the demerged company directly relates to the undertakings transferred in the demerger, then such loss and depreciation shall be carried forward by the resulting company and not the demerged company. However, if such loss and unabsorbed depreciation is not directly relatable to the undertaking transferred to the resulting company, then the loss and depreciation shall be apportioned between the demerged company and the resulting company in the proportion of Assets retained by the demerged company : Assets transferred to the resulting company.	
Expenditures which are unamortized in hands of demerged company in respect of undertaking transferred to resulting company shall be allowed to the resulting company for the balance number of years. The said expenditure shall not be allowed to demerged company in the year of demerged: i. Preliminary expenses under section 35D ii. Expenditure for obtaining license to operated telecommunication services under section 35ABB. iii. Expenditure under voluntary retirement scheme under section 35DDA.	
Expenses on demerger shall be allowed in five successive Assessment Years beginning with the previous year in which demerger takes place. The deduction shall be 1/5th of such expenditure on demerger	
Where the demerged company was allowed a deduction in respect of any loss / expenditure / trading liability and subsequently the resulting company obtains some benefits, such benefit shall be taxable as Profits and Gains of Business or Profession in the hands of the resulting company.	

P. K. Kaimal.- Where bad debts of the demerged company are recovered by the resulting company, then there will be no income under section 41(4)
Veerabhadra Rao- Debts of Demerged Company Written off as bad debts by the Resulting Company then also Deduction shall be allowed to the Resulting Company
Section 32AD: Where the new asset is sold is sold or otherwise transferred in connection with the scheme of demerger within a period of five years from the date of its installation, the provisions of section 32AC and section 32AD shall apply to the resulting company as they would have applied to the demerged company.
where an undertaking which is entitled to deduction under section 10AA/80IB/80IC/80IE in the scheme of demerge by the demerged company to the resulting company, then

No deduction under section 10AA/ 80IB/80IC/ 80IE shall be available to the demerged company for the previous year in which demerger takes place	Provisions of Section 10AA/ 80IB/80IC/ 80IE shall apply to the resulting company in the same manner in which they would have applied to the demerged company. Deduction under section 80-IA shall not be available to resulting company if demerged company transfers the 80-IA undertaking to resulting company

Amalgamation or demerger of the co-operative banks

Definition of Amalgamation of Co-operative Banks	**Definition of Demerger of Co-operative Banks**
Section **44DB (5) (c)**, amalgamation means the merger of an amalgamating co-operative bank or banks with an amalgamated co-operative bank in such a manner that:- 1. All the assets and liabilities of the Amalgamating co-operative banks immediately before the merger become the assets and liabilities of the amalgamated co-operative banks. This rule is however not applicable in the case asset transferred, by sale or distribution on winding up, to the amalgamated co-operative banks. 2. The members holding 75% or more voting rights in the amalgamating co-operative banks become the members of amalgamated co-operative banks. 3. The shareholders holding 75% or more in value of the share in the amalgamating co-operative banks (other than the shares held by the amalgamated co-operative banks or its	Section **44DB (5) (f)** , demerger means transfer by demerged co-operative bank of one more of its undertaking to any resulting co-operative bank in such a manner that:- 1. All the assets and liabilities of the undertaking immediately before the transfer become the assets and liabilities of resulting co-operative bank. 2. The assets and liabilities are transferred to the resulting co-operative bank at values (other than change in the value of asset consequent to their revaluation) appearing in its books of accounts immediately before the transfer. 3. The resulting co-operative bank issues in consideration of the transfer its membership to the member of the demerged co-operative bank on proportionate basis 4. The shareholders holding 75% or more in value of the share in the demerged co-operative banks (other than the shares held by the resulting co-operative banks or its nominee or its subsidiary, immediately before the transfer) become shareholder of the resulting co-operative banks otherwise than as a result of the demerged co-operative bank or any undertaking thereof

nominee or its subsidiary, immediately before the merger) become shareholder of the amalgamated co-operative banks.	by the resulting co-operative banks. 5. The transfer of the undertaking is on a going concern basis 6. The transfer is in accordance with the conditions specified by the Central Government having regard to the necessity to ensure that the transfer is for genuine business purpose.

Section 47(vica) Tax benefits to amalgamating co-operative banks/demerged co-operative banks

Any transfer of capital asset in amalgamation/ demerger of co-operative banks to amalgamated co-operative banks or resulting co-operative banks shall not be treated as transfer provided amalgamation/ demerger satisfies conditions mentioned under section 44DB(5)(c) and 44D(5)(f) respectively.

section **47(1)(vicb)** Tax benefits to shareholders of amalgamating co-operative banks/demerged co-operative banks

Any transfer by shareholders in a scheme of amalgamation/ demerger of co-operative banks of shares held by him in amalgamating / demerged co-operative banks shall not be treated as transfer if following conditions are satisfied:

Transfer is made in consideration of allotment to him shares in amalgamated co-operative banks / resulting co-operative banks .	amalgamation/ demerger satisfies the condition mentioned under section 44DB (5)(c) and 44D(5)(f) respectively.

Section:- 49(2E) **Capital gains when shareholder subsequently transfers the shares of co-operative banks**

Shares of amalgamated co-operative bank

One has to keep in view the following points—

(a) The cost of shares allotted in amalgamated co-operative bank shall be the cost of shares held in amalgamating co-operative bank.

(b) To find out whether or not shares in amalgamated co-operative banks are long term capital asset or not the period of holding shall be determined from the date of allotment of shares

shares of demerged co-operative bank And resulting co-operative banks

COA of the shares in the resulting Co-operative = COA of shares held by the assessee in the demerged × Net book value of the assets transferred in a demerger

in amalgamated co-operative banks. **(c)** Therefore, indexation will start from the date of allotment of shares in the amalgamated co-operative banks.	**bank** co-operative bank / Net worth of the demerged co-operative bank immediately before demerger **COA of the shares in the Demerged co-operative bank after demerger** = COA of original shares **Less** COA of the shares in resulting co-operative bank **Note-** To find out whether resulting co-operative banks are long term capital asset or not the period of holding shall be determined from the date of allotment of shares in resulting co-operative banks. Therefore, indexation will start from the date of allotment of shares in the resulting co-operative banks.

Capital gains when amalgamated/ resulting co-operative bank subsequently sells (transfer) the assets acquired on amalgamation / demerger

Section **49(1) (iii) (e)** If amalgamated/ resulting co-operative bank transfers the capital asset [which has been received on amalgamation/demerger meeting conditions of section 47(vica)], then **the cost of acquisition in the hands of amalgamated / Resulting co-operative company shall be the cost incurred by the previous owner**.
Explanation 1 to section 2(42A) whether such transferred assets are long-term capital assets or not, the period of holding shall be determined from date of acquisition of such assets by the previous owner
Manjula J. Shah (Bom HC) Amalgamated company can claim indexation benefit from the previous year in which the capital asset was acquired by the previous owner.

Section 44DB: special provision for computing deductions in the case of business reorganization of co-operative banks

Deduction under sections 32, 35D, 35DD and 35DDA shall be allowed in following manner in a case where business reorganization of a co-operative bank has taken place during the financial year

Deduction for the year in which business reorganization takes place	Deduction for subsequent years
1. First find out amount of deduction under u/s 32, 35D, 35DD and 35DDA for the previous year as if no amalgamation or demerger has not taken place. 2. The amount of deduction so determined shall be apportioned between predecessor co-operative bank and successor co-operative bank in number of days for which the assets are used by them during the previous year.	For subsequent year(s), deduction under section 35D,35DD and 35DDA shall be available to the successor co-operative bank for the balance period under respective sections.

Set off and carry forward losses

Sec-72AB (1) and (2) Amalgamating co-operative bank by amalgamated co-operative bank	Sec 72AB(3) Demerged co-operative bank by resulting co-operative bank
Subject to following conditions, the successor co-operative bank is entitled to carry forward and set-off of non-speculative business loss and unabsorbed depreciation allowance of predecessor co-operative bank as if amalgamation had not taken place.) Conditions:- 1. Predecessor has been engaged in the business of banking for the three or more years. 2. Predecessor has held at least three fourth of the book value of the fixed asset as on the date of business reorganization, continuously for two years prior to the date of business reorganization. 3. The successor holds at least three fourth of the book value of the fixed asset of predecessor acquired through business reorganization	Losses and Depreciation allowed to be carried forward by resulting co-operative bank= (A) Non-speculative business losses and depreciation directly relatable to the undertaking transferred + (B) Non-speculative business losses and depreciation not directly relatable (A+B) x Value of the assets transferred in a demerger / Total value of assets of such demerged co-operative bank immediately before demerger

continuously for minimum period of 5 years from the date of business reorganization. 4. The successor continues the business of predecessor for the minimum period of 5 years from the date of business reorganization. 5. The successor fulfils such other conditions as may be prescribed.	

12. Tonnage Taxation Scheme

Chapter XII-G of Income Tax Act 1961, containing sections 115V to 115VZC which provide for special provisions relating to taxation of the income of shipping companies.
The income shall be computed in accordance with the Chapter XII-G provisions and deemed to be business income if the following conditions are satisfied:
(i) The company is a qualifying company.

(ii) It has opted to be taxed under TTS.

(iii) The Joint Commissioner has approved that the company could be taxed under TTS

(iv) The company is not disqualified under specified circumstances.

Note- The actual shipping income (termed as the relevant shipping income) shall not be chargeable to tax and shall also not be liable to MAT.
Note- The income of non-shipping business shall be computed after considering the provisions in the Scheme.

115VA Computation of profits in the business of operating qualifying ships
It is optional for a qualifying company, for the income from the business of operating qualifying ships to compute its income as per tonnage tax scheme or Alternatively, the company would be taxed as per the general provisions of the Act.

To opt Tonnage Tax Scheme following conditions must be fulfilled-
(a) it is an Indian Company;

(b) its place of effective management is in India;

(c) it owns at least one 'qualifying ship';

(d) its main object is to carry on the 'business of operating ships'; and

(e) it is operating a ship.

Note- Explanation to section 115VC Place of Effective Management

(a) the place where the board of directors of the company or its executive directors, as the case may be, make their decisions, or	**(b)** in a case where the board of directors routinely approve the commercial and strategic decisions made by the executive directors or officers of the company, the place where such executive directors or officers of the company perform their functions.

Note-Section 115VD Qualifying ship

It is a seagoing ship or vessel of 15 net tonnage or more	It is registered under the Merchant Shipping Act, 1958 or a ship registered outside India in respect of which a license has been issued by Director General of Shipping under section 406 or section 407 of the Merchant Shipping Act, 1958	It has a valid certificate indicating its net tonnage	**It is not a** (1) fishing vessel (2) ship used as fishing vessel for a period of more than 30 days during a previous year (3) a factory ship (4) an offshore installation (5) a dredger (6) a seagoing ship or vessel used mainly for provision of goods and services normally provided on land (7) pleasure crafts (8) harbour and river ferries.

Note- As per Section 115VO Tonnage tax income shall not be liable to MAT under section 115JB.

Section 115VE Manner of Computation of Income under Tonnage tax scheme
Tonnage tax business shall be considered as separate business distinct from all other businesses. - Profits of tonnage tax business shall be computed separately as per the Chapter.

Section115VG 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. Daily Tonnage Income shall be considered in following manner-

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

Note- Tonnage shall be rounded off to the nearest multiple of 100 tons i.e if such tonnage is not a multiple of 100 and if the last figure in that amount is: 50 tons or more, the tonnage shall be increased to the next

higher tonnage which is a multiple of 100; and if the last figure is less than 50 tons, the tonnage shall be reduced to the previous lower tonnage which is a multiple of hundred.
Note- No deduction or set off of any loss shall be allowed in computing the tonnage income under this Chapter.
Note- Tonnage Means tonnage of the ship as per valid certificate plus Deemed tonnage.
Deemed tonnage shall be the tonnage in respect of an arrangement of purchase of slots, slot charter and an arrangement of sharing of break-bulk-vessel.

Note- Section 115VH In case of joint operation of a qualifying ship by two or more companies, where the respective shares are definite and ascertainable, then the tonnage income of each such company shall be determined in proportion to their share. If shares are not ascertainable, then tonnage income shall be computed as if each had been the only operator.

Section 115VQ: Period for which tonnage tax option to remain in forc
An option for tonnage tax scheme, after it has been approved by Joint Commissioner, shall remain in force for a period of ten years from the date on which such option has been exercised and shall be taken into account from the assessment year relevant to the previous year in which such option is exercised.
Once a company opts for the scheme, the option remains in force for 10 assessment years except in following circumstances:
(a) the qualifying company ceases to be a qualifying company

(b) a default is made in complying with the provisions regarding creation and utilization of reserves, regarding minimum training requirement and regarding limits on chartering;

(c) the tonnage tax company is excluded from the TTS under section 115VZC for entering into transactions for avoidance of tax;

(d) the qualifying company furnishes to the Assessing Officer, declaration in writing to the effect that the provisions of the Chapter may not be made applicable to it.
Note- If Scheme ceased for above reason then the profits and gains of the company from the business of operating qualifying ships shall be computed in accordance with the other provisions .

Section 115VR: Renewal
After the end of 10 assessment years, the option may be renewed within one year from the end of the previous year in which the option ceases to have effect.

Section 115VSL: Prohibition

A tonnage tax company, which **(i)** on its own opts out of the TTS or **(ii)** makes a default in complying with section 115VT, 115VU or 115VV or **(iii)** is excluded from TTS in pursuance of an order under section 115VZC(1), will not be eligible to opt for the TTS for a period of 10 years from the date of opting out or default or order, as the case may be.

Section 115VS: Prohibition to opt for tonnage tax scheme in certain cases

A qualifying company, which, On its own, opts out of the tonnage tax scheme or Makes a default in complying with the provisions regarding transfer of profits to Tonnage Tax Reserve Account and minimum training requirements for tonnage company or Whose option has been excluded from tonnage tax scheme in pursuance of an order made under sub-section (1) of section 115VZC, Shall not be eligible to opt for tonnage tax scheme for a period of ten years from the date of opting out or default or order, as the case may be.

Section 115VZB Avoidance of Tax

The tonnage tax scheme shall not apply where a tonnage tax company is a party to any transaction or arrangement which amounts to an abuse of the tonnage tax scheme. is provided that a transaction or arrangement shall be considered an abuse if the entering into or the application of such transaction or arrangement results, or would have resulted, in a tax advantage being obtained for—

(a) a person other than a tonnage tax company; or

(b) a tonnage tax company in respect of its non-tonnage activities,

For this purpose, "tax advantage" includes—

(a) The determination/allocation of any allowance for any expense; or interest, which has the effect of reducing the income or increasing the loss, from activities other than tonnage tax activities chargeable to tax.

(b) A transaction or arrangement which produces to the tonnage tax company more than ordinary profits which might be expected to arise from tonnage tax activities,

However, a transaction shall not be considered as an abuse where the company shows to the satisfaction of the Assessing Officer that the transaction or arrangement was a bona fide commercial transaction and had not been entered into for the purpose of obtaining tax advantage.

Section 115VZC Exclusion from tonnage scheme

In the above circumstances when the assessee is not able to establish its bona fides, the Assessing Officer shall, by an order in writing, exclude such company from the Scheme. Before passing an order, an opportunity shall be given by the Assessing Officer to show cause as to why it should not be excluded from tonnage tax scheme. An order shall be passed only with the previous approval of the Chief Commissioner.

13.Section 80CCD New Pension Scheme

(1) Eligible assessee - Individual who is employed by the Central Government or being an individual employed by any other employer or any other assessee being an individual (self-employed person)

(2) Conditions - The amount shall be paid or deposited in any account under a pension scheme notified by the Central Government.

(3) Amount of deduction

(a) Section 80CCD(1)-Employee's contribution is deductible as does not exceed 10 per cent of the salary of the employee. In case of self-employed person, contribution to pension scheme is deductible as does not exceed 20 percent of his gross total income.

(b) section 80CCD(1B) so as to provide for an additional deduction in respect of any amount paid (upto Rs.50,000) for contributions made by any individual assessee under the NPS. On this additional contribution, the ceiling of Rs.1,50,000 under section 80CCE will not be applicable.

(c) Section 80CCD(2)-Contribution by the Central Government or employer to the notified pension scheme is deductible as does not exceed 10 per cent of the salary of the employee.
14% of Employee's Salary, where cont. is made by Central Government FA 2019
(4) Other points to be kept in mind .

(a) Section 80CCD(3) -The amounts standing to the credit of the employee in the pension account, for which a deduction has already been claimed by him, and the amount accrued on them, shall be taxed as income in the year in which such amounts are received by the assessee (or his nominee) on closure of the account or his opting out of the said scheme or on receipt of pension from the annuity plan.
Proviso to 80CCD (3)-The amount received by the nominee, on the death of the assessee, on closure or opting out of NPS, shall not be deemed to be the income of the nominee.
(b) If deduction is claimed under section 80C, in respect of the same investment, deduction is not available under section 80CCD.

(c) "Salary" for the purpose of points 1 and 2 (supra) includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites

Deductions

Provision	**Maximum deduction**
Section 80C	*Rs.1,50,000*
Section 80CCC	*Rs.1,50,000*
*Section 80CCD(1) [i.e., employee's or **assessee's contribution to NPS**]*	*10% of Salary or **20% of GTI** as the case may be.*
Section 80CCE : The aggregate deduction under sections 80C, 80CCC and 80CCD(1)	*Rs.1,50,000*
Section 80CCD(1B) i.e., contribution to NPS by an individual	*Rs.50,000*

Section 80CCD(2) i.e., employer's contribution to NPS	*10% of salary*

Note-Section:- 36(1)(iva) Sum paid by the assessee as an employer by way of contribution towards a pension scheme, as referred to in section 80CCD, on account of an employee. However, such deduction shall not exceed ten per cent of the salary of the employee in the previous year.
Meaning of Salary
"Salary" includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.

Note-10(12A) In case of ~~Employee~~ Assessee(FA 2018) ~~40%~~ 60 % (FA 2019) of total amount payable to him is exempt subject to condition-
1) Such amount is payable to employee at the time of closure of his account under NPS or opting out of the pension scheme referred to in section 80CCD.
(2) If above amount has been received by nominee on death, then as per proviso to 80CCD (3), nothing shall be taxed in the hands of nominee.

Note- Section 115-0(1A) provides that dividend paid to NPS Trust is not liable to Divided Distribution Tax. Hence NPS Trust to receive all the incomes without deduction of tax at source

Non-Employee	Employee
If a non-employee contributes any amount towards NPS, then he gets deduction of such amount from gross Total Income to the extent of 20% of Gross Total Income, This is subject to an overall ceiling of RS 1,50,000 in a year along with deduction under section 80C. The non-employee also gets additional deduction of RS 50,000 for any amount deposited by him in NPS. This is not subject to ceiling of 20% or Rs1,50,000. Any amount received by a non-employee on On partial withdrawal is taxable in the year in which amount is withdrawn by him.	If employee contributes any amount towards NPS, then he gets deduction of such amount from Gross Total Income under section 80CD(1) to the extent of 10% of the salary. This is subject to an overall ceiling of RS 1,50,000 in a year along with deduction under section 80C. Where employer contributes any amount towards NPS, then such amount is treated as salary of employee. Employee gets deduction from Gross Total Income under section 80CCD(2) to the extent of 10% of the salary. This is not subject to monetary ceiling of RS. 1,50,000. Thus an employee gets deduction under section 80CCD(1) and

Any amount received by nominee on death of the non-employee is not taxable. • Any payment to non-employee on closure of NPS account or on his opting out of NPS Scheme to the extent of ~~40%~~ 60 % (FA 2019) of the amount payable to him at the time of closure / opting out is exempt. [section 10(12A)	80CCD(2) of 20% of the salary in the Previous Year.Apart from that employee also gets an additional deduction of Rs 50,000 for any amount deposited by him in NPS. This is not subject to ceiling of 10% or RS 1,50,000. As per section 10(12A) Any payment to employee on closure of NPS account or on his opting out of NPS scheme to the extent of ~~40%~~ 60 % (FA 2019) of the amount payable to him at the time of closure /opting out is exempt. section 10(12A) Any partial withdrawal by an employee in accordance with rules prescribed to the extent of 25% of the amount of contribution made by him is exempt .Any amount received by nominee on death of employee is not taxable.

Taxability on withdrawal from NPS

Pre-mature Withdrawal

By Employee	By SelfEmployed Person	By Relative of Deceased Person
Section 10(12B) Exempt UPTO 25% of Employee's Contribution	Fully Taxable	On Death of Contributor/Account closure-Exempted Other case-Tax

Withdrawal on maturity by

Employee/ Self-Employed Person	By Relative of Deceased Person
Section 10(12A) 40% 60% of "amount due from Pension A/C on maturity Fully Exempt remaining 40% not taxed only if reinvestment in Annuity Plan of 80CCD ,otherwise Fully taxable.	On Death of Contributor/Account closure-Exempted Other case-Tax

Note-SECTION 10(12A) : AMOUNT PAYABLE AT THE TIME OF CLOSURE OF NPS- When individuals

~~Employee~~ Assessee choose to close the NPS account, then the amount in the individual's account in

respect of which deduction has been allowed, along with interest amount, received by him/her out of such account shall be shall be exempt from tax upto 60% of the total amount payable to him.

Section 80CCD(2)-Contribution by the Central Government or employer to the notified pension scheme is deductible as does not exceed 10 per cent of the salary of the employee. 14% of Employee's Salary, where cont. is made by Central Government FA 2019.Therefore,"Contribution made BY employer(CG or any Other employer)" TO the "Atal Pension Yojana (APY)" & "National Pension System (NPS) first added to Total Income of assessee and then, deduction is provided i.r.o. the same u/s 80CCD(2) subject to to a MAXIMUM of:- 14% of Employee's Salary, where cont. is made by Central Government; OR 10% of Employee's Salary, in any OTHER case. It is to be noted that is NOT subject to overall 1.5L limit u/s 80CCE.Hence , employee will be entitled to deduction under Section 80CCD from his Gross Total Income. This amount of deduction shall be the aggregate of:

Amount contributed by employee:	Amount contributed by employer
Amount contributed by employee: lower of (i) amount contributed during the previous year OR (ii)10% of the Salary	lower of (i) amount contributed during the previous year (ii) 14% of the Salary in case contribution is made by central government and 10% of the salary in case of any other employer

14.Agriculture Income

Section:- 2(1A) Meaning of Agricultural Income
"Agricultural income means"
1. Any rent or revenue derived from land which is situated in India and is used for agricultural purposes

2. Any income derived from such land by agriculture operations.

3. Any income derived by processing of agricultural produce by the cultivator or receiver of rent in kind. [such process shall be ordinarily employed to render the produce fit for the market]

4. Any income derived from the sale by a cultivator or receiver of rent in kind of the produce raised or received by him.

5. Income derived from any building if it fulfills the following conditions:

- It shall be occupied by the cultivator or receiver of rent or revenue.

- The building is on or in the immediate vicinity of the agricultural land.

- It is used as dwelling house or storehouse or out house.

- The land is assessed to land revenue or it is not situated within the limits of urban area or specified kilometers from urban area.

6 Any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income.

Note- The basic operations is essential to constitute agriculture which involve expenditure of human skill and labour upon the land itself and not merely on the growths from the land.
eg- Income from sale of forest produce (spontaneous growth) where basic operations are missing, cannot be termed as agricultural income. Apart from that certain subsequent operations such as cutting, harvesting etc on agriculture produce is also considered here as Agriculture operation.

Note- Agriculture not merely includes food and grains, it also includes fruits, vegetables, luxury and commercial crops too.

<u>RULE:- 7A, 7B and 8 to compute agriculture and business Income in case of Tea, coffee and</u> Rubber.

Rule 7A	Rule 7B(1)	Rule 7B(1)	Rule 8
Sale of centrifuged latex or cenex manufactured (in India)from rubber	Sale of coffee grown and cured by seller in India	Sale of coffee grown, cured, roasted and grounded by seller in India	Growing and manufacturing tea
35% of Profit shall be treated as Business	25% of Profit shall be treated as Business	40% of Profit shall be treated as Business	40% of Profit shall be treated as Business

Income and balance Agriculture Income.	Income and balance Agriculture Income.	Income and balance Agriculture Income.	Income and balance Agriculture Income.

Exemption of Agriculture Income are subject to Indirect collection of Tax in Certain cases

As per section 10(1) Agriculture Income is exempt from tax but, it is also to be included in total income for determining the rate at which non-agricultural income is chargeable to tax if following three conditions are satisfied.

1. The assessee is an individual, HUF, AOP or BOI or an artificial judicial person.
2. The agriculture income of the assessee exceeds Rs. 5,000.
3. The Total Income (non-agriculture income) chargeable as per slab exceeds the maximum amount not chargeable to tax. (i.e. exemption limit)

· Then, procedure for computation of tax payable on non-agricultural income after aggregation of agricultural income is as follows-

(i) Find out (Total income + Agriculture income)

(ii) Find out tax on step (i)

(iii) Find out (Basic Exemption limit + Agricultural Income)

(iv) Find out tax on step (iii). This amount is termed as rebate on agriculture income.

(v) Tax payable = (Tax at Step (ii) – Step (iv))

(vi) Compute surcharge, if any and education cess.

Note-Interest on any loan or advances taken from a scheduled bank or a co-operative bank other than a primary agriculture society or a primary co-operative agricultural and rural development bank are subject to Section 43B.

Note- Section 80PA If Assessee is Producer company u/s 581A(l) of the Companies Act, 1956 having TO upto Rs.100 cr in PY and The GTI of the producer company includes any profits and gains derived from “eligible business,then 100% of the profit (as reduced by the deductions sections 80C to 80U) attributable to “eligible business” is deductible for the assessment years 2019-20 to 2024-25

Where Eligible business means

(a) the marketing of agricultural produce grown by the members; or (b) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to the members; or (c) the processing of the agricultural produce of the members.

Note- Also read Section 80P(2)(a),

15. Taxation of HUF

Hindu Undivided Family

The Income-tax Act provides for a special status to a Hindu Undivided Family and it is assessed to income-tax as a separate unit of assessment. The act has not defined the concept of Hindu undivided family. For this purpose we have to depend upon Hindu law.Generally speaking, the concept of Hindu Undivided Family means a group of persons lineally descendent from a common ancestor and- includes their wives and unmarried daughters. It comes into existence due to a certain relationship and it cannot come into existence by an agreement among strangers.

To claim the status of Hindu Undivided Family, a family must satisfy the following two conditions

1. ***Existence of common property in the family.*** The common property may consist of ancestral property inherited from a male ancestor, property acquired with the aid of ancestral property and property acquired by an individual from his own sources but put into common pool of Hindu Undivided Family.
2. ***Existence of Hindu Coparcenary.*** When there is a person who can claim share in the property of Hindu Undivided Family on partition, he is known as Coparcener.

Assessment of Hindu Undivided Family (HUF)

- HUF is a separate and a distinct tax entity. The income of a HUF can be assessed in the hands of the HUF alone and not in the hands of any of its members, unless specifically provided by law.
- However, any sum received by an individual as a member of a HUF, where such sum has been paid out of the family or income of the impartible estate belonging to the family shall be exempt in the hands of the member of the HUF as per Section 10(2).
- The liability of income-tax in case of HUF also depends upon its residential status in India. HUF can be
    a. resident and ordinarily resident in India;
    b. Resident but not ordinarily a resident of India; or
    c. Non-resident in India.
- HUF cannot make any gift of HUF property to any coparcener or any other person. Any gifts made by HUF are void-ab-initio.
- However, the karta of a HUF has power to gift out of joint family property for certain approved purposes provided that gift amount is reasonable. For detail see case studies at the end of this Chapter.
- Coparceners are only allowed to claim partition of HUF. However if any partition takes place in HUF, there should be complete partition of HUF. Partial partition of HUF is not recognized by Income Tax and Wealth Tax Act.

- On partition of HUF, the mother i.e. wife of karta takes a share equal to the sons and daughter. However, they can mutually decide to take unequal shares. As per section 47 of Income Tax Act, no capital gain shall arise to HUF on distribution of assets on partition of HUF.
- Section 171: partition of HUF takes place on the date the properties are actually physically divided. There must be physical division of the properties. Physical division of income without physical division of properties does not amount to partition.

Partition of Hindu Undivided Family (HUF)

A HUF can be partitioned both as regards to persons and as regards to property. This partition can be of two types:

a. Total or complete partition;
b. Partial partition.

Total/Complete partition of HUF:
Where all the properties of the family are divided amongst all the constituents of the family, and the family ceases to exist as an undivided family, it is known as a total or complete partition.

Partial partition of HUF:
On the other hand, if some of the constituents of the HUF go out of the fold, others remaining joint, or some of the properties are divided and balance remain joint, it is known as partial partition. Partial partitions after 31.12.1978 are not recognised for tax purposes.

Persons entitled to Claim Partition under HUF:
Partition can only be claimed by a coparcener. But, when there is a partition of HUF the following persons are entitled to a share in the assets of the HUF:

i. All coparceners.
ii. Mother is entitled to a share equal to the share of a son in case of death of the father.
iii. Wife gets a share equal to that of a son if a partition takes place between her husband and his sons. She enjoys this share separately even from her husband.
iv. A son in the womb of the mother at the time of the partition.

Note-Any remuneration paid by HUF to the Karta or any other member for services rendered by him in conducing family's business, is deductions if remuneration is:
a. Paid under a valid and bona fide agreement:
b. In the interest of and expedient for the business of family; and
c. Reasonable and not excessive.

Effect of Partial Partition of HUF- If there is a partial partition of HUF, then it shall be deemed that no partition has taken place and the income from the property distributed on partial partitions shall be assessed in the hands of HUF as if no such partial partition has taken place.

16.Political Parties and Electoral Trust

Political parties in India are governed by The Representation of the People Act, 1951 (RPA). Any association of Indian citizens or body of individual citizens of India calling itself a political party need to make an application to the Election Commission to get itself registered under Section 29A as a political party in order to take part in elections and for other provisions of RPA. RPA also allows political parties to receive voluntary contributions from anyone including corporate companies (but not government companies) and exclude contributions from foreign sources such as from citizens of a foreign country, foreign company, foreign corporation, and foreign trust. India's political parties BJP, Congress, , AAP etc are all registered with Election Commission under RPA.

Section 13A of the Income Tax Act, 1961 deals with tax provisions relating to political parties in following manner-

Political party for the purpose of Section 13A means a political party which is registered under Section 29A of the Representation of the People Act, 1951.

Political parties are barred from taking any activity of a commercial nature and thereby earning profits. This does not mean political party does not have any income at all. As already mentioned, political parties are allowed to accept voluntary contributions under RPA. Further, political parties may also be owning immovable properties or deposits which might be earning some income. Political parties may have income from the sale of coupons, membership fee collected, and more. However, Section 13A has given 100% exemption to political parties on its income from house property, income from other sources, capital gains and voluntary contributions received from any person however, subject to conditions. These have been discussed below.

Political party to enjoy tax exemption provided under Section 13A need to fulfill the following conditions:

- To be registered under Section 29A of the RPA
- To maintain books of account and other documents so as to enable the Assessing Officer to deduce its income – It may be noted that Political party need not maintain all books of account as mentioned under Section 44AA. It is sufficient if political party maintains only such books for AO to arrive at its income
- To maintain records of each contribution of more than Rs 20,000 including name and address of the person making such contribution unless the contribution is made by way of electoral bond
- To get its books of account audited by a chartered accountant

- Has not received any donation of more than Rs 2,000 otherwise than by way of account payee cheque/demand draft or ECS or through bank account or any other electronic mode as may be prescribed (FA 2019) or electoral bond

- Treasurer of political party / any person authorised by political party in this behalf has furnished a report of donations received in excess of Rs 20,000 to Election Commission of India for the financial year on or before due date for filing the return of income for such financial year under Section 29C of RPA.

While condition of no tax relief for non furnishing of such report is coming out of Section 13A, it may be noted that Section 29C of RPA itself takes away tax relief to political party if it fails to furnish such report.

Political parties are required to furnish their return of income in ITR 7. ITR contains following major information to be filled by political parties:

- Balance sheet – broad information regarding main source of funds (corpus/general funds, loans etc) and application of funds (asset, investment, advances etc)
- Income and Expenditure Account – Income from fee/grants, donations sale of coupons etc and expenses
- Contribution report – Details regarding donors who made contribution in excess of Rs 20,000
- Whether political party is registered under Section 13A
- Whether report under Section 29C of RPA is filed and date of submission of report

Corporate donors are eligible to claim exemption on its donation to political parties under Section 80GGB and any other person (except local authority and every artificial juridical person wholly or partly funded by the Government) can claim exemption under Section 80GGC, unless such contribution is made by way of other than cash.

Taxation of electoral trust

Electoral Trust means a Trust approved by CBDT in accordance with the scheme made by the Central Government. Any voluntary contribution received by an Electoral Trust shall be deemed to be its income of such Trust.
Any voluntary donation received by such trust would be exempt u/s 13B,
a. If 95% of aggregate donation received during the PY along with surplus if any brought forward from earlier years is distributed to a registered political party.
b. The Electoral Trust functions in accordance with the rules made by the Central Government.
If an ET earns an income in form of interest or any other income by investing in fixed deposit or other securities then such interest / other income will not be exempt u/s 13B.
Donations given to such trust are eligible for deduction in the hands of the donor u/s 80GGC.

17. Taxation of. Co-operative Society

Meaning and Definition - Co-operative Societies

In a country like India, which had adopted socialistic pattern of society, the co-operative societies have to play an important role and to encourage them, they have to be put in privileged position. One of the privileges which the co-operative societies enjoy is in respect of income-tax payable by them.

Co-operative Society—Definition.

"Co-operative society" means a society registered under the Co-operative Societies Act, 1912 (II of 1912) or under any other law for the time being in force in any State for the registration of co-operative societies [Section 2(19).

Urban Consumer's Co-operative Society.

Under section 80P(2) (explanation), such a society has been defined as "a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town, area or cantonment".

"Co-operative bank" and "primary agricultural credit society"shall have the same meaning as assigned to them in Banking Regulation Act, 1949.

"Primary Co-operative agricultural and rural development bank"means a society having its area of operation confined to a taluk and the primary object of which is to provide for long term credit for agricultural and rural development activities.

'Consumer's Co-operative Society'means a society for the benefit

Section 80P(2) Deduction in respect of Income of Co-operative Societies

Where the assessee is a co-operative society and its gross total income includes the following incomes, a deduction shall be allowed in accordance with and subject to the provisions of this section

(a)Profits attributable to certain Specified Activities-

100% of the profits, included in Gross Total Income, attributable to any one or more of the following activities are deductible to a co-operative society engaged in:

i. carrying on the business of banking or providing credit facilities to its members; or
ii. a cottage industry; or
iii. the marketing of the agricultural produce grown by its members; or

iv. the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members; or
v. the processing, without the aid of power, of the agricultural produce of its members; or
vi. the collective disposal of the labour of its members; or
vii. fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members.

(b)Profits of certain primary co-operative societies-

100% of the profits, included in Gross Total Income are deductible in the case of a co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to

i. a federal co-operative society, being a society engaged in the business of supplying milk, oilseeds, fruits, or vegetables, as the case may be; or
ii. the Government or a local authority; or
iii. a Government company as defined in section 617 of the Companies Act, 1956 or a statutory corporation (being a company or corporation engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public).

(c)Co-operative society engaged in other activities-

In the case of a cooperative society engaged in activities, other than those specified in I and II of (A) above, either independently of, or in addition to, all or any of the activities so specified, the profits and gains attributable to such other activities upto the maximum limits indicated below are deductible.

i. where such co-operative society is a consumers' co-operative society Rs. 1,00,000
ii. in any other case Rs. 50,000.

(d)Income from investment with other co-operative societies-

100% of the profits, included in Gross Total Income are deductible in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society.

(e)Income from letting of "Godowns or Warehouse-

100% of the profits, included in Gross Total Income are deductible in respect of any income derived by the cooperative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities

(f)Entire income by way of interest on securities or income from house property if gross total income of a co-operative society (other than specified co-operative society) does not exceed `20,000-

100% of the income from interest on securities or income from house property shall be allowed as deduction in case of a co-operative society not being

i. a housing society or
ii. an urban consumer society, or
iii. a society carrying on transport business, or
iv. a society engaged in the performance of any manufacturing operation with the aid of power, provided its gross total income does not exceed Rs. 20,000.

Urban Consumer Co-operative Society means a society for the benefit of the consumers within the limits of municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.

18. Liquidation of Companies

Section 178 Procedure while company is under Liquidation

(1) Every person who is a liquidator of any company which is being wound up or who has been appointed the receiver of any assets of a company shall within 30 days of such appointment give notice of his appointment to the concerned Assessing Officer.

(2) The Assessing Officer shall, after making enquiries and calling for information notify to the liquidator within 3 months from the date of receipt of notice of the appointment of liquidator, the amount which in his opinion would be sufficient to provide for any tax which is likely to be payable by the company.

(3) The liquidator shall not part with any of the assets of the company until so notified without permission of the Chief Commissioner or Commissioner of Income Tax.

(4) On being so notified, the liquidator shall set aside an amount equal to the amount notified before parting with any asset of the company.

(5) However, he can part with the assets for the purpose of :- (i) payment of tax (ii) payment of secured creditors having priority over debts due to Government and (iii) meeting such costs and expenses of winding up as may be reasonable in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

(6) If the liquidator fails to give notice of his appointment or fails to set aside the amount as required above or parts with any assets of the company in contravention of the abovementioned provision, he shall be personally liable.

(7) Where there are more liquidators than one, then they shall be jointly and severally liable.

(8) The provisions of this section has an overriding effect over all the provisions of the act as well as over the provisions under any law for the time being in force except the provisions of the Insolvency and Bankruptcy Code, 2016.

Note- ***Imperial Chit Funds (P) Ltd.(SC)*** Income tax liability gets priority over the other debts of the company, in the same way, as a secured creditor.

Section 179: liability of directors of private company

(1) Where **any tax due from a private** company in respect of income of any previous year **cannot be recovered,** then, every person who was a director of such company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax.

(2) However, no such director shall be liable if he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(3) Section 179 has an overriding effect over the provisions of Companies Act.

(4) Further it is to clarify that “tax due” includes penalty, interest or any other sum payable under this Act.

Note- Before taking action against the director under this section, it is necessary for the revenue to establish that recovery cannot be made from the company (Guj HC)

19. Set of and Carry forward of Losses etc

SET OFF IN SAME FY

Section:- 70 Inter-source set-off within same head

Provision	Exceptions	Other Aspects
Where the net result for any assessment year, in respect of any source under any head of income, is a loss, then, the assessee shall be entitled to set off the amount of such loss against his income from any other source under the same head.	**a) Loss in a speculation business** can be set off only against the profit in a speculation business. **(b) Long-term capital loss** can be set off only against long-term capital gain. **(c) Loss incurred in the business of owning and maintaining race horses** cannot be set off against any income except income from such business. **(d) Loss from specified business referred to in section 35AD** can be set-off only against profits and gains from other specified business. **(e)** Loss cannot be set off against income referred to in section 115BB, 115BBDA and 115BBE.	**(a)** If income from a particular source is exempt from tax, loss from such source cannot be set off against income chargeable to tax. **(b)** If there is income from one source and loss from another source within the same head of income, then, one **has to** set off the loss against the income. In short, set-off is not optional, even, partial set-off is also not allowed.

Section 71 inter-head Adjustments of Income

Provisions	Exceptions	Other Aspects
If the net result of computation made for any assessment year in respect of any head of income is a loss, then, the assessee shall be entitled to set off such loss against his income from other heads.	**(a)** Loss in a speculation business **(b)** Loss under the head "Capital gains" **(c)** Loss from the activity of owning and maintaining race horses **(d)** Loss from business or profession cannot be set off against income under the head	**(a)** No order of priority is given under the Act for set-off. **(b)** If there is income from one head and loss from another head, then, one **has to** set off the loss against the other head income. In short, set-off is not optional, even, partial set-off is also not allowed.

	"Salaries". **(e)** Loss from specified business referred to in section 35AD **(f)** Loss under the head "House Property" exceeding Rs. 2,00,000 cannot be set off against income under other heads of income. **(g)** Loss cannot be set off against income referred to in section 115BB, 115BBDA and 115BBE.	

CY LOSSES CARRY FORWARD & SET OFF IN SUBSIQUENT FY

Where loss cannot be set off under section 70 or section 71, because of absence or inadequacy of the income of the same year, it can be carried forward subject to following provisions-

Provisions	Particulars
Section 71B	Loss under the head Income from house property
Section 72	Loss under the head "PGBP"
Section 73	Loss in a speculation business
Section 73A	Loss in a specified business
Section 74	Loss under the head "Capital gains"
Section 74A(3)	Loss from the activity of owning and maintaining race horses

Note- Other than above No any Losses can be carry forward.

Note- As per Section 80 A loss sustained by the assessee in any previous year under the Section 72(1) Profits and Gains of business or profession or Section 73(2) - Speculation business or Section 73A(2)-Specified business or Section 74A(3) - Owning and maintaining of horse races
(5) Section 74(3) - Capital Gains ,can be carried forward only if the return is furnished within the time allowed u/s. 139(1). However, losses under the head "Income from House Property" and "Unabsorbed depreciation" shall be carried forward even if return of income is furnished after the due date specified under section 139(1).

NOTE-Losses must be set-off in the immediate succeeding year and the loss not so set-off lapse.

Losses cannot be set-off against the income referred to in section 115BB i.e. lottery income, crossword puzzles and like Income.

Section 71B Carry forward and set off of loss from house property

where the assessee incurs loss under the head "Income from house property" and such loss cannot be wholly set off against income from any other heads of income in the same assessment year, then such unabsorbed loss shall be carried forward to the following assessment year and thereafter it can be set off against income from house property of subsequent assessment year.
Such carry forward and set-off cannot be more than 8 AY immediately succeeding the assessment year for which the loss was first computed.

Section 72 Carry forward and set off of business loss other than speculation loss

where the assessee incurs loss under the head "PGBP" (other than loss in a speculation business) and such loss cannot be wholly set off against income from any other heads of income (subject to the limitation discussed under section 71 of the Act) in the same assessment year, then such unabsorbed loss shall be carried forward to the following assessment year and thereafter it can be set off against income from "PGBP".
Such carry forward and set-off cannot be more than 8 AY immediately succeeding the assessment year for which the loss was first computed
Section 33B The unabsorbed loss sustained in a business which is discontinued in the circumstances given in section 33B, is eligible for being carried forward and set off against profits of the re-established, re-constructed or revived business up to **a period of 8 years, which is reckoned from the year in which the business was re-established, re-constructed or revived by the assessee.**
Section 78(2)- where any person carrying on any business or profession has been succeeded by another person then another person cannot carry forward and set off the loss of such business or profession against his income.
Exception to Section 78(2) i.e The assessee must be same – 1. On inheritance on death of an individual, the legal heir shall carry forward the losses of deceased for the balance number of years.

Madhukant M. Mehta (SC)- Where legal heirs of a deceased-proprietor enters into partnership and carries on the same business in the same premises under the same trade name, there is succession by inheritance as contemplated in section 78(2). As a result, assessee-firm is entitled to carry forward and set-off of the deceased's business loss against its income for subsequent year.	**Pramod Mittal (Delhi)-** If a partnership firm was dissolved and the takeover of the running business of the firm by the erstwhile partner as a sole proprietor was not a case of succession by inheritance. Hence, the carry forward of losses of the firm by the sole proprietor was not allowed in this case.

2. Section 72A- The unabsorbed losses and the unabsorbed depreciation of the amalgamating company shall be deemed to be the unabsorbed loss and depreciation of the amalgamate company subject to the fulfillment of certain conditions referred to in section 72A.
3. Section 72A: Firm succeeded to by a company fulfilling the conditions laid down in section 47(xiii)

4. Section 72A:Conversion of Company into LLP fulfilling the conditions laid down in section 47(xiiib).
5. Section 72A :Proprietorship concern succeeded to by a company fulfilling the conditions laid down in section 47(xiv)
6. Section 72A :Loss of the demerged company can be carried forward by the resulting company subject to the fulfillment of certain conditions.
7. Section 72AA: loss of the banking company amalgamated with a banking institution can be carried forward by the banking institution.
8. Section 72AB:Loss of the amalgamating co-operative bank can be carried forward by the amalgamated co-operative bank subject to the fulfillment of certain conditions.
9. Section 72AB: Loss of demerged co-operative bank can be carried forward to the resulting co-operative bank subject to the fulfillment of certain conditions.

SECTION 73: LOSSESS IN SPECULATION BUSINESS

Where the loss is computed in respect of a speculation business and such loss cannot be wholly set off against income from any other speculation business in the same assessment year, then such unabsorbed loss shall be carried forward to the following assessment year and thereafter it can be set off against income from speculation business of subsequent assessment year.

Such carry forward and set-off cannot be more than 4 AY immediately succeeding the assessment year for which the loss was first computed.

Section 43(5): defines a speculative transaction to mean a transaction in which a contract for purchase or sale of any commodity, including stocks and shares is periodically or ultimately settled otherwise than by actual delivery or transfer of the commodity or scrip.

An eligible transaction in respect of trading in derivatives in securities and currency futures carried out on a recognized stock exchange stock exchange shall not be treated as speculative transaction even if no deliveries are affected if following conditions are satisfied: 1.it is carried out electronically on screen based system 2. it is carried out through a duly registered stock-broker or sub-broker. 3. It is carried out on a recognized stock exchange 4..It is supported by a duly stamped contract note issued by such stock broker or subbroker to its client 5. The contract note indicates the unique client identity number 6. The contract note indicates the PAN.	An eligible transaction in respect of trading in commodity derivatives carried out in a recognized association which is chargeable to commodities transaction tax shall not be deemed to be a speculative transaction. Provided that for the purpose of clause above, in respect of trading in agricultural commodity derivatives, the requirement of chargeability of commodity transaction tax shall not apply. FA 2018

EXPLANTION TO SECTION 73- Where any part of the business of a company consists of sale and purchase of shares, such company for the purpose of section 73, be deemed to be carrying on a speculation business to the extent to which the business consists of sale and purchase of shares

This shall not apply to the following companies

Investment Company i.e., the company whose total income mainly consists of income from house property, capital gains and income from other sources.	Company whose principal business is of banking or of granting loans and advances.	Company whose principal business is the business of trading in shares.

This Explanation is applicable only to a company. It is applicable only when the part of the business of the company consist of purchase and sale of shares i.e.,the company must be carrying on some other business in addition to the business of purchase and sale of shares. In such a case, the business of purchase and sale of shares shall be deemed to be speculation business even if deliveries of shares have been affected. If the principal business of the company is business of trading in shares, then the Explanation to section 73 shall not apply even if company is also carrying on some other business.	Explanation to section 73 is applicable only for sale and purchase of shares. The said Explanation is not applicable for sale and purchase of units, debentures

SECTION 73A: CARRY FORWAND AND SET OFF OF LOSSSES BY SPECIFIED BUSINESS REFFERED IN SECTION 35AD

where the loss is computed in respect of specified business referred to in section 35AD and such loss cannot be wholly set off against income from any other specified business in the same assessment year, then such unabsorbed loss shall be carried forward to the following assessment year and thereafter it can be set off against income from specified business of subsequent assessment year.

Such carry forward and set off is for Infinite Period.

SECTION 74: LOSSES UNDER THE HEAD CAPITAL GAINS

Where the net result of computation under the head “Capital gains” is a loss, such loss shall be carried forward to the following assessment year and-

(1) Long-term capital loss can be set off only against long-term capital gain arising in subsequent assessment year(s);

(2) Short-term capital loss can be set off against short-term gain or long-term capital gain arising in subsequent assessment year(s).

However, such carry forward and set off in subsequent assessment years cannot be more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

SECTION 74A: LOSS FROM THE ACTIVITY OF OWNING AND MAINTAINING RACE-HORSES

Where the assessee (being the owner of horses maintained by him for running in horse races) incurs loss from the activity of owning and maintaining race horses and such loss cannot be wholly set off against such income in the same assessment year, then such unabsorbed loss shall be carried forward to the following assessment year and thereafter it can be set off against income from the activity of owning and maintaining race horses.
However, such carry forward and set-off cannot be more than four assessment years immediately succeeding the assessment year for which the loss was first computed.
For availing benefit of set off in subsequent year, the activity of owning and maintaining race horses shall be continued for such subsequent year.

SECTION 79: CARRY FORWARD AND SET-OFF OF LOSSES IN THE CASE OF CERTAIN COMPAINES

(a)In the case of companies in which the public are not substantially interested, loss will not be carried forward and set off unless the shares of the company carrying not less than 51 per cent of the voting power were beneficially held by the same person(s) both on the last day of the previous year in which loss occurred and on the last day of the previous year in which brought forward loss is sought to be set off.

(b) In the case of a company, not being a company in which the public are substantially interested but being an eligible start-up as referred to in section 80-IAC, the loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, if, all the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred,—
(i) Continue to hold those shares on the last day of such previous year; and
(ii) Such loss has been incurred during the period of 7years beginning from the year in which such Company is incorporated.
Exceptions

Where a change in voting power takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making the gift.
Where any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that 51% shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company.
Where a change in the shareholding takes place in a previous year pursuant to a resolution plan

<table>
<tr><td>approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.FA 2018</td></tr>
<tr><td>FA 2019-A company and its subsidiary and subsidiary of such subsidiary” is satisfying both of the following:-
<table>
<tr><td>The tribunal, on application moved by the CG u/s 241 of companies act, 2013, has suspended the board of directors of such company and has appointed new directors nominated by the CG only, u/s 242 of the said act;</td><td>A change in shareholding of “such company and its subsidiary and the subsidiary of such subsidiary”, has taken place in a previous year pursuant to a resolution plan approved by the tribunal u/s 242 of the companies act, 2013, after affording a “reasonable opportunity of being heard” to the jurisdictional “Commissioner/ principal Commissioner.”</td></tr>
</table></td></tr>
</table>

Note- **Shri Subhulaxmi Mills Ltd** This section is applicable to the losses and not to the unabsorbed allowances. Therefore, entire unabsorbed depreciation can be carried forward by closely held company irrespective of the change in shareholding pattern.

20. Bonus,Bond and Bond washing

BONUS STRIPPING

Sec-94(8) of the Income Tax Act – 1961, deals with the provisions related to the Bonus stripping.

Bonus stripping provides, that the loss, if any, arising to an investor on account of purchase and sale of *Original units* shall be ignored for the purpose of computing his total income chargeable to tax, subject to the following conditions-

♣ Conditions to be satisfied to attract provisions of B*onus Stripping*

Conditions	**Units***
Bought or acquired (Original units)	Within a period of **3 months** prior to the record date
Allotment of additional units (Bonus units)	Without any payment on such record date
Sold or transferred (Original units)	Within **9 months** after the record date
Holds atleast one additional bonus unit	On the date of such sale or transfer of original units

**Provisions of sec- 94(8) are applicable only in respect of units and not for shares.*

Hence, if the above conditions are met, the loss will be considered to be the cost of acquisition of the bonus units held on the date of sale. (Benefit of indexation is available on such cost of acquisition)

Notes: – 1) The provisions of sec- 94(8) are applicable, even in case of units are held as stock-in- trade.

2) The provisions of sec- 94(8) are not applicable, in case all the additional units **(bonus units)** are transferred before the original units are sold.

Bond-washing transactions

Section 94(1)Bond-washing transactions
where a security owner transfers the securities (sometime before the due date of interest) to any other person (transferee) and re-acquires the same or similar securities and the interest is received by the transferee, the income from such securities will be deemed as income of the owner (transferor) and not of the any other person (transferee). These transaction is popularly known as bond-washing transaction.

Section 94(4)Gain or loss to be ignored in the hands of transferee
Where any person carrying on a business which consists wholly or partly in dealing in securities, buys or acquires any securities and sells back or retransfers the securities, then, if the result of the transaction is that interest becoming payable in respect of the securities is receivable by him but is not deemed to be his income by reason of the provisions contained in sub-section (1), no account shall be taken of the transaction in computing for any of the purposes of this Act the profits arising from or loss sustained in the business.

Section 94(2)] Sales-cum-interest
Where assessee, having beneficial interest in securities during the previous year, sells them in such a way that either no income is received or income received is less than the sum he would have received if interest had accrued from day to day and been apportioned accordingly, then income from such securities for such year would be deemed be the income of such person.

Taxation of GDR in case of listed companies

Exempt from capital gains tax u/s Section 47	Taxation of Capital gains on conversion of GDRs into shares
Any transfer of a capital asset, being GDRs issued by listed companies made outside India by non-resident to another non-resident is exempt from capital gains tax	GDRs represented by equity shares if converted into shares then such gain from Transfer shall be Taxable under Income Tax as Nowhere Exempted from Tax. See Note below-

Note-For the purpose of computing capital gains on conversion of GDRs into shares

Sales consideration	Section 49(2ABB) cost of acquisition	Section 2(42A) Period of holding
The FMV of shares on the date on which request for redemption is made is treated as sale price of GDRs	For the shares of a company acquired by a non-resident on redemption of GDRs issued by listed companies, cost of acquisition of the shares shall be the price of such shares prevailing on any recognized stock exchange on the date on which a request for such redemption was made.	For the shares acquired on redemption of GDRs issued by listed companies, the period of holding shall be reckoned from the date on which a request for such redemption was made.
Date on which a request for redemption was made" shall be the date on which the instruction from foreign depositary is received by the local custodian in India requesting the release of underlying		

shares in favor of the non-resident assessee.

21.Taxation under Business Trust

.Business Trust

Meaning of Business Trust —

"Business trust" means a trust registered as an Infrastructure Investment Trust or a Real Estate Investment Trust, the units of which are required to be listed on a recognized stock exchange, in accordance with the regulations made under the Securities Exchange Board of India Act, 1992 and notified by the Central Government in this behalf;

Special Provisions Relating to Business Trusts'—

The said Chapter proposes—Section-II UA [Tax on income of unit holder and business trust] namely:—

1. to provide that the distributed income in the hands of the unit holders will be of the same nature and in the same proportion as the income in the hands of the trust;

2. to provide that the total income of the trust other than capital gain would be taxed in the hands of the trust at the maximum margin rate and capital gain would be taxed in accordance with sections 111A and 112;

3. to provide that any distributed income or part thereof received by a unit holder from the business trust is of the same nature as the income referred to in clause (23FC) of section 10, then, such distributed income or part thereof shail be deemed to be the income of such unit holder and shall be charged to tax as income of the previous year;

4. To provide that the person responsible for making payment of income or any part thereof distributed on behalf of a business trust to a unit holder, shall provide a statement to the unit holder and the prescribed authority in such time and in the form and manner as may be prescribed.

Business Trust

There are two types of Business Trust i.e Real Estate Investment Trust (REITs) and Infrastructure Investment Trust (InVIT).

Function of Business Trust [REITs/ InVIT]

It collect Cash by Issue Unit or Bonds of REITs/InVIT to public who can be Resident as well as non- InVIT	Other than Cash-Issue Unit of REITs/ for consideration other than cash

resident. Now It Invest such Cash a. Real estate Properties and Infrastructure facility which Yielding income. b. To Give loan to SPV holding Real estate properties & Infrastructure facility c. In Shares, FDRs and other assets upto permissible limit.	to sponsers Now It Invest such proceeds to buy controlling stake from Shareholders and promoters of SPV Company holding Real estate properties & Infrastructure facility
Income For units of business trust, the holding period should be more than 36 months to quality as long term gain. Units of business trust are to be compulsorily listed on stock exchange in India. STT in leviable when the units of business trust are sold on stock exchange. STT is also levied on sale of unlisted unit of a business trust by any holder of such units (which are acquired in consideration of a transfer referred to in section 47 (xvii) under an offer for sale to the public included in an initial offer and where such units are subsequently listed a recognized stock exchange.	

Real Estate Investment Trust (REITs)	Infrastructure Investment Trust (InVIT)
REITs makes Two type of Investments a. Direct investment in real estate properties which are producing rent b. Companies (SPV) which are holding Real Estate properties which are they producing rent. The investment in SPV is through acquiring controlling state in the company from their promoters/shareholders (Sponsors).	InVIT also makes Two type of Investments a. Direct investment in infrastructure facilities which are yielding income e.g. toll road. b. Companies (SPV) which are holding infrastructure facilities which ate yielding income. The investment in SPV is through acquiring controlling interest in the company from their promoters/shareholders (Sponsors)

Business Trust receive following types of Income, which it distribute to Unit Holders –

Interest on loan given to SPV

Divided from SPV in which business trust has controlling interest.

Note- Section 1150(7)- Divided is exempt in hands of Business Trust [subject to section 115BBDA] as well as Unit Holders[section 115BBDA not apply in hand of UH] ,if distributed

Out of current income arising after the date of acquisition of 100% equity shares on SPV	Out of accumulated profit and current profits upto the date of acquisition of 100% equity

Business Trust OR	shares of SPV

For above purpose The equity shares held in SPV by Any Government or Any Government body or Any person who is statutorily required to hold such equity share in SPV in accordance with any law/directions of Government/Regulatory body shall be exclude for the purpose of computing 100 % limit of Equity.

Note- Where dividend from SPV exceeds Rs. 10 lakh, then dividend in excess of Rs. 10 lakh shall be taxable in the hands of business trust@ 10% under section 115BBDA. The proportionate share of such dividend in hands of unit holders shall be exempt under section 10(23FD) and section 115BBDA shall not apply in the hands of unit holders.

LTCG and STCG on sale of properties
LTCG and STGC on sale of shares on stock exchanges
Interest Income on FDRs, etc.

Where Business Trust Give loan to SPV holding Real estate properties & Infrastructure facility

Where Business Trust Give loan to SPV, It derive rental income, capital gains etc. from such sum which is normally Taxable in hands of SPV. If in return of such loan

SPV pays interest to business trust	SPV Pays dividend to business trust
Interest exempt in the hands of business Trust and No TDS to be deducted bySPV	SPV will not pay DDT under section 115-0 if the conditions of section 115-0 as specified above are satisfied. Also, Dividend exempt in hands of business trust under section 10(23FC),hence No TDS is there on such dividend.

Sponsors i.e. promoters transfers shares of SPV to Business Trust ,who allots units in return of such Exchange.

This exchange is Exempted under section 47(xvii)
Cost of units of business trust to sponsors shall be the cost of acquisition of shares in the SPV
In determining the holding period of units of business trust in hands of sponsors, the period holding of shares in SPV shall also be considered.
CAPITAL GAIN IN HAND OF UNITHOLDERS- LTCG on sale of units of business trust on sale of which STT is paid is taxable in hands of unit holders @ 10% as per provisions of section 112A. • STCG on sale of units of business trust on sale of which STT is paid taxable in hands of unit holders @ 15% as per provisions of section 111A. WHEN SPONSORS SELL UNITS OF BUSINESS TRUST-When sponsors sell units of business trust on stock exchange, benefits of section 111A and section 112A is available. It means If LTCG arises on such transaction, then, it shall be taxable @ 10% under section 112A and if STCG arises then it shall be taxable @ 15% under section 111A. Similarly, When sponsors offers these units under an initial offer at the time of listing of units of business trust on stock exchange, the benefits of section 111A section 112A is available to sponsors.

Taxability

Nature of Income	Taxability in the hands of REITs unit holder	Taxability in the hands REITs	Taxability in the hands of InVIT unit holder	Taxability in the hands InVIT
Interest from SPV	Taxable [To Resident @ 10% TDS and To NR @ 5% TDS]	Exempt i.e No TDS	Taxable[To Resident @ 10% TDS and To NR @ 5% TDS]	Exempt i.e No TDS
Rental Income from letting out or leasing any real estate	Taxable [To Resident @ 10% TDS and To NR @ Sec195 applicable rate for TDS]	Exempt i.e No TDS	Exempt	Taxable at Maximum Marginal Rate
Dividend from SPV Note1	Exempt	Exempt	Exempt	Exempt
LTCG referred to in section 112A	Exempt	Taxable @ 10%	Exempt	Taxable @ 10%
Other LTCG	Exempt	Taxable @ 10%/20%	Exempt	Taxable @ 10%/20%
STCG referred to in section 111A	Exempt	Taxable @15%	Exempt	Taxable @15%
Other Incomes	Exempt	Taxable at MMR	Exempt	Taxable at MMR

Note1- Section 1150(7)- Divided is exempt in hands of Business Trust [subject to section 115BBDA] as well as Unit Holders[section 115BBDA not apply in hand of UH] ,if distributed

Out of current income arising after the date of acquisition of 100% equity shares on SPV Business Trust OR	Out of accumulated profit and current profits upto the date of acquisition of 100% equity shares of SPV

Note 2- Maximum Marginal Rate(MMR) is 30 %+ SC 37% + HEC 4%=42.744%

22. Taxation of Securitization Trust

Securitization Trust

RBI Guidelines define 'Securitization Trust' as—

- A process by which
- A single performing asset or a pool of performing assets are sold to a bankruptcy remote SPV and transferred from.the balance-sheet of the originator to the SPV
- In return for an immediate cash payment.

“Originator” in these guidelines refer to a bank that transfers from its balance-sheet a single asset or a pool of assets to an SPV as a part of a securitisation transaction and would include other entities of the consolidated group to which the bank belongs.

(1) Securitization, as per the SARFAESI Act, includes the following exercises namely

(a) Acquisition of financial interests of originator

(b) Raising of funds by issuing security receipts to QIB ; and

(c) Paying the consideration for the acquisition of the financial assets to the originator, i.e., the bank! Fis, which transfers such financial assets.

(2) The main agencies involved in the process of securitisation as per the SARFAESI Act are:

“Originator, obligator, investors, QIB, credit enhancers, legal advisors, receiving and paying agents, servicer of transactions and structure of deals.”

(3) Other definitions in the context of section (2) of the SARFAESI Act and as per the Income-tax Act (section. 115TC) are as under:

(1) Investor means a person, who is holder of any securitized debt, instrument or securities issued by the securitization trust (clause (a) of the *Explanation* below section 1 15TC.

(2) *Originator*

Means the owner of a financial asset, which is acquired by a securitization company or reconstruction company for the purpose of securitization or assets reconstruction (section z(r)).

(3) *Obliger*

Means a person liable to the originator, whether under a contract or otherwise, to pay a financial asset to discharge any obligation in respect of a financial asset, whether existing, future, conditional or contingent and includes the borrower (section z(q)).

(4) Property Means—

(i) Immovable property

(ii) Movable property

(iii) Any debt or any right to receive payment of money, whether secured or unsecured

(iv) Receivables, whether existing or future

(v) Intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature (section z(t)).

(5) *Qualified institutional buyer (QIB)*

Means a financial institution, insurance company, bank, state financial corporation, state industrial development corporation, trustee or securitisation company or reconstruction company, which has been granted a certificate of registration under sub-section (4) of section 3 or any assets management company making investment on behalf of mutual fund or a foreign institutional investor registered under the Securities and Exchange Board of India Act, 1992 (15 of 1992), or regulations made thereunder, or any other body corporate as may be specified by the Board (section z(u)).

(6) *Non-performing asset (NPA)*

Means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset—

1. in case such bank or financial institution is administered or regulated by any authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guide-lines relating to assets classifications issued by such authority or body
2. in any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank of India (section z(o)).

(7) *Reconstruction company*

Means a company formed and registered under the Companies Act, 1956 (1 of 1956), for the purpose of asset reconstruction,

(Definitions at S. Nos. 2 to 7 are as per SARFAESI Act)

(8) Securities mean debt securities issued by the SPV as referred to in the guidelines on securitization of standard assets issued by the RBI (vide clause (b) of the *Explanation* to section 115TC).

(9) *Securitization trust*

Clause (d) of *Explanation* to section 11 5TC defines securitization trust. It provides that securitization trust means a trust, being a—

(i) special purpose distinct entity as defined in clause (u) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Public Offer and Listing of Securitized Debt Instruments) Regulations, 2008, made under the Securities and Exchange Board of India Act, 1992, and the Securities Contracts (Regulation) Act, 1956, and regulated under the said regulations.

(ii) SPV as defined in and regulated by the guidelines on securitization of standard assets issued by the RBI, which fulfils such conditions, as may be prescribed.

(10) *Securitized debt instrument*

Securitized debt instrument is defined in clause (c) of the *Explanation* to section 115TC. The said clause refers to clause (s) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Public Offer and Listing of Securitized Debt Instruments) Regulations, 2008, which, in turn refers to section 2(h)(ie) of the Securities Contracts (Regulation) Act, 1956.

Securitized debt instrument as so defined has the following ingredients:

• It is any certificate or instrument (by whatever name called).

• It is issued to an investor.

• Its issuer is a special purpose distinct entity.

• It possesses any debt or receivable, including mortgage debt assigned to such entity.

• It acknowledges beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be.

If all above ingredients are present, then the certificate or instrument shall be treated as ‘securitized debt instrument.

(4) Securitization in general is a three-stage process and involves three parties to the transactions, namely,:

(i) originator

(ii) the securitization company

(iii) the qualified institutional buyer

(5) The process could be summarized thus:

(1) the loan is sanctioned by the secured creditor to the borrower.

(2) the secured creditor assigns/sells the financial dues of future from the borrower to the securitization company.

(3) The borrower becomes the obligor, the secured creditor is referred to as the originator.

(4) the financial assets are sold for a consideration to the securitization company, which raises the funds from the QIB. Essentially, the QIB is the investor, which subscribes to the securities issued by the securitization company for the purpose of paying off the originator, or for the purpose of the subscription of the securities.

(5) the QIB receives the payment of the dues made by the obligor to the originator 5 and the transaction becomes self-liquidating type. Due to many considerations, the financial assets may be transferred to the SPV, which may be set up by a securitization company (as per the Act), which would acquire the assets and issue the security receipt. The idea is to keep the originator/securitisation company separate from the entity, which is to deal and hold the securities issued for the purpose of the transaction.

(5.1) A securitization company acts as a conduit/SPy for transferring the financial assets of the originator to the QIB. This can be referred to as a conduit between the two. There are other reasons for bringing this entity into existence.

(5.2) The structure of SPV can be a trust, like debenture trustees, which are appointed for a very specific purpose.

Trust is not a legal entity in law. The trustee typically issues the security receipts/PTCs, which is a certificate of beneficial interest. Beneficial property and legal property are different in law and hence, the security receipts/ PTCs would not amount to the transfer of property by the SPE/ SPV. It just proves that the holder has some beneficial interest. Trustee can hold property.

(5.3) In short, SPV acts as a conduit between the QIB and the originator.

Analysis

Original lender (bank or FI) selects and then sells various types of loans to another institution (which may promote a subsidiary for this purpose called Special Purpose Vehicle, which is a sort of Trust). The special purpose vehicle- SPV (called issuer also) makes the payment to the original lender for the loans purchased under the arrangement. These loans are converted into a pool of securities (generally called "Pass through Certificates") by SPV. These "Pass through Certificates are then sold to individual or institutional investors, who are willing to make investments. The original lender may keep on getting recoveries from the original borrowers. He passes on these recoveries to the SPV. He passes on these recoveries to the SPV.

(6) Examination of income-tax provisions

With the above background, the Income-tax provisions relating to Securitisation Trusts (S. Trusts for short) referred to earlier in paras 1 & 2 can be examined.

(6.1) *Need for income-tax provisions*

The initial issue that arises for consideration in the context of securitisation provisions introduced by the Finance Act, 2013 is regarding the need for such provisions. Some mention about their necessity can be gathered from the Finance Minister's speech extracted earlier (in para 1): The major concern justifying such provisions in the Income-tax Act could be said to be the emergence of mutual funds in a major way in the last 2-3 decades and the exemption of their income under section 10(23D) of the Act. Hence, if such mutual funds themselves carry on securitisation, there would be no need for SPV with a distinct entity as income arising from such activity would be exempt from tax. But, this is not permissible under the SARFAESI Act because securitisation activity has to be through an SPy. So, if a separate trust is set up by mutual funds, its income would be taxable under section 161 of the Act at the maximum marginal rate, i.e., at 30% + education cess at the prescribed rates. Section 161 of the Act provides that in case of a trust if its income consists, of or includes, profits and gains of business then income of such trust shall be taxed at the maximum marginal rate in the hands of trust.

7) Salient aspects of the new provisions

(i) The income of Trusts, whose activities are to be regulated by the SEBI or the RBI, will be exempt from tax regarding income from securitisation activities.

(ii) If such trusts distribute any income to its investors, it would be liable to dividend distribution tax (DDT) on the lines levied in the case of mutual funds. The additional income-tax shall be levied at the rate of 28.325% (inclusive of surcharge, education cess and secondary and higher education cess) in case of distribution being made to investors who are individual and HUE and at the rate of 33.99% in other cases. No additional income-tax shall be payable if the income

distributed by the securitisation trust is received by a person, who is exempt from tax under the Act.

Section 10(23D) newly inserted in the Income-tax Act, with effect from the assessment year 2014- 15, however, provides that any income of a securitisation trust from the activity of securitisation shall be exempt from tax.

(iii) The distributed income would not be taxable in the hands of the investors (section 10(35)).

The securitization trust will be liable to pay interest at the rate of one per cent, for every month or part of the month or the amount of additional income-tax not paid within the specified time.

Tax Treatment

In the hands of Investors of Securitization Trust	In the hands of Securitization Trust
Under section 115TCA, any income accruing to or received by a person, being investor of a securitization trust shall be chargeable to income-tax in the same manner as if it were the income received by such person had he made investments directly. The income paid or credited by the securitization trust shall be deemed to be of the same nature and in the same proportion in the hands of the investors as it had been received by, or had accrued to, securitization trust during the previous year. The income accruing or arising to the securitization trust during a previous year, if not paid or credited to the investor, shall be deemed to have been credited to the account of the person on the last day of the previous year in the same proportion in which such investor would have been entitled to receive the income had it been paid in the previous year. However, where income has been so included on accrual basis in the total income of the investor in the previous year, then it shall not be included again at the time such income is actually paid to him by the securitisation trust.	Section 10 (23DA) entire incomes of securitization trust shall be exempt. The person responsible for crediting or making payment of the income on behalf of securitisation trust and the securitisation trust shall furnish, within such period, as may be prescribed, to the person who is liable to tax in respect of such income and to the prescribed income-tax authority, a statement in such form and verified in such manner, giving details of the nature of the income paid or credited during the previous year and such other relevant details, as may be prescribed. Section 194LBC Tax has to be deducted by securitisation trust at the time of payment or credit to the account of investor, whichever is earlier. [Section 194LBC]. Depending upon type of payees, the rates of TDS are as under 25% Resident Individual and HUF 30% Resident other than individual and HUF 30% Plus SC and EC Non-resident, not being foreign company 40% Plus SC and EC Foreign Company

Note-

Securitization trust referred to in section 10(23DA) shall furnish their return of income if the total income, before giving effect to the exemption under section 10, exceeds exemption limit

23. Taxation of Investment Funds

Investment Funds

Taxability between Business Trust and special purpose vehicle:
1. The business Trust will acquire the shares of the SPV by allotting them units in business trust. Such exchange is exempt under capital gains u/s 47 (xvii). The business Trust will acquire controlling interest from promoters of SPV.

2. Now the promoters of SPV hold units of Business Trust, then COA of such units = COA of shares in SPV [Section 49(2AC)]

3. The period of holding during which the shares were held by sponsors will also be clubbed to determine whether units are long term or short term [Section 2 (42A)

4. A unit of a business trust becomes long terms if it is held for more than 36 months.
5. When the sponsor i.e. promoters sells these units and if it is a long term capital asset, then it is **taxable u/s 112A.**
6. When these units are short term capital asset it will be chargeable to tax u/s 111A @15%.
Taxability of other Incomes.
1. The business trust will give loans to its SPV and in return SPV will pay interest to Business Trust. Such interest earned by a Business Trust is exempt in the hands ofbusiness trust u/s 10(23FC). Further, the SPV shall not deduct TDS on such interest.

Treatment of Unabsorbed Business and other Losses in case of Investment Funds (FA 2019)

Business loss of Investment funds shall be carry forward and set off against Investment Funds only. It shall not be passes to the Unit Holders.

Other than business losses shall be ignored for the purpose of pass through to its Unit Holders, If such losses arisen in respect to Units which has not been held by Unit holders at least for 12 months. These losses accumulated at the level of Investment Fund as on 31st March 2019 shall be deemed to be losses of Units Holders who held such units on 31st March 2019 and allowed to be carry forward for remaining period as per Chapter VI by considering 1st year as year of loss occurrence, these losses shall not be available to the Investment Funds.

When SPV pays dividend to Business Trust then no DDT shall be paid u/s 115- O if the following conditions are fulfilled :
(i) If Business Trust holds 100% of share capital of SPV or
(ii) If it holds all the share capital other than which is required to be held by any specified entity mentioned by the government And
(iii) The exemption from levy of DDT would only be in respect of dividend paid out of

current income after the date business trust acquires the shareholding asmentioned in point (i) above i.e. 100% or eg. 70% + 30% by government. Dividend
paid out of accumulated and current profits upto this date (i.e. 100% holding)
shall be liable for DDT

TDS implication on payment of Rent:
When a REIT makes payment to a resident investor, it shall deduct TDS @ 10% When a REIT makes payment to a non resident investor, it shall deduct TDS u/s 195.

TDS implication on payment of Interest:
When a REIT distributes interest to a resident investor then it shall deduct TDS @ 10% (194LBA) However, when a REIT distributes interest to non resident investors, it shall deduct TDS @ 5% u/s 194LC. Such interest is taxable for non-resident u/s 115A

24. Taxation of Charitable & Religious Trust

IV.Charitable and Religious & its Accreted Income

Purpose behind Formation of Trusts

Public interest such as Hospitals and other health-care institutions or Spirituality centres like yoga centers, meditation centers etc or Orphanages and destitute homes ,Schools. colleges & other educational institutions, libraries, leading

Forms of Charitable and Religious Institutions

Main forms of charitable and religious institutions are Public Charitable, Societies, Non-Profit Companies, Research Institutes, and Cultural Associations. These are constituted in any form such as Companies,Societies,Public Charitable Trusts,Muslim Wakf

Section 2(15) What is 'Charitable Purpose' for Income Tax Purposes ?

It is defined to include relief to the poor, education, (with effect from the assessment year 2016-17) yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility.

Note-Sports or Games

Promotion of sports and games is considered to be a charitable purpose within the meaning of section 2(15). Therefore, an association or institution engaged in the promotion of sports and games can claim exemption under section 11 even if it is not approved under section 10(23) —

Note-Restriction in case of Advancement of any other Object of general Public Utility -

, "advancement of any other object of general public utility" shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration.

This restriction is, however, not applicable if the total receipts from any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business does not exceed the limits given below –

From the assessment year 2016-17 onwards	20 % of total receipts of the relevant previous year of the trust undertaking such activities.

The above benefit (from the assessment year 2016-17) is available only if such activity is undertaken in the course of actual carrying out of such advancement or any other object of general public utility, regardless of nature of use or application, or retention, of the income from such activity.

Note-CBDT clarification
The amendment made in section 2(15) will not apply in respect of the first six limbs of section 2(15), i.e., relief of the poor, education, yoga, medical relief or preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest

Note-Section 13(8)- This section provides that if the trust has the object of any other activity of general public utility & trust has been granted registration u/s 12AA & if the commercial receipts of the trust goes beyond 20% of total receipts, then exemption u/s 11 & 12 will be denied, but CIT will not cancel the registration.

Note- 3rd Proviso to Sec 143(3)A.O. will disallow exemption u/s 11 & 12 , if C/R exceeds 20% of total receipts. This is allowance can be made irrespective of cancellation of registration by CIT u/s 12AA. Here AO can suo motu disallow.

<u>Section 11 Exempted Incomes of Charitable or Religious Trust</u>

Section 11(1)(a) Income derived from property held under trust, wholly for charitable and religious purposes, shall be exempt to the extent such income is applied in India for such purposes; and where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of 15% of the income from such property.

Note-Amount credited of paid to any other trust / institution registered u/s 12AA or u / s 10(23C), out of income derived from property held under trust being contribution with a specific direction that they would form part of corpus of the trust / institution, shall not be treated as application of income for charitable or religious purposes. Therefore, the amount donated by way of corpus donation to another trust / institution registered under section 12AA / 10 (23C) shall not be treated as application of income.
Note : the word “applied to religious or charitable purposes” included Purchase of capital assets, Revenue expenses ,Donations to religious / charitable trust registered under section 12AA or section 10(23C),Repayment of loan taken for purchase of capital assets, Interest bearing loans advanced by educational trust to student for Higher studies (returning of loan to the trust shall be treated as income of the year in which such amount is received) and also Incurrence of a liability for an expenditure .It is not necessary that the money should be actually spent.

Section 11(1)(b) Income derived from property held under trust in part only for such purpose, shall be exempt to the extent such income is applied in India for such purposes, provided, the trust in question is created before the commencement of Income-tax Act, 1961 i.e. before 1.4.1962; and where any such income is finally set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of 15% of the income from such property.

Section 11(1)(c) Income derived from property held under trust, created on or after 1.4.1952 for charitable purpose which tends to promote international welfare in which India is interested, shall be exempt to the extent to which such income is applied to such purpose outside India. Religious trusts are not covered here.

Income derived from property held under a trust for charitable or religious purposes, created before 1.4.1952, shall be exempt to the extent to which such income is applied to such purposes outside India. In the above two cases, it is necessary that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income.

Note - Income derived from property held under trust wholly for charitable or religious purposes included voluntary contributions i.e. donations except corpus donations
Section 11(1)(d)Income in the form of voluntary contributions made with a specific direction, that they shall form part of the corpus of the trust or institution, shall be fully exempt. The condition that at least 85% of the income should be applied during the previous year in which it is earned is not applicable in this case. It is not sufficient that the property is indirectly responsible for the income; it is necessary that the income must directly and substantially arise from the property held under trust. The property must be the effective source from which the income arises.

'Explanation 3.- For the purposes of determining the amount of application under section 11(1)(a)/(b), the provisions of section 40(a)(ia) and sections 40(3)/(3A), shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession" FA 2018

Section 40(a)(ia)30% of the expense if ant sum payable to a resident on which TDS is deductable under Chapter XVII-B and not deducted or deducted but not remitted to the credited of the Government within the due date specified in Section 139 (1).

Sections 40(3)If the following conditions are fulfilled, an expenditure except specified in Rule 6DD incurred by the assessee shall be disallowed in computing the business income-
1 The assessee incurs an expenditure which is otherwise deductible in computing income underPGBP.
2 The amount of expenditure exceeds Rs. 10000 [Transport operators Rs.35000]
3 Payment in respect of this expenditure or part thereof in a day exceeds Rs. 10000.

4 Payment is made otherwise than by way of Account Payee Cheque or Draft or by use of ECS through a bank a/c or other prescribed mode.

Section 40(3A), Where an assessee following mercantile system of accounting, if an expenditure has been allowed as deduction in any PY on due basis, and payment has been made in a subsequent year otherwise than by account payee cheque or account payee bank draft or use of ECS through a bank account *or* other prescribed mode, then the payment so made shall be deemed to be the income of the subsequent year if such payment or aggregate of payments made to a person in a day exceeds Rs. 10,000.

Section 11(1A) Cases where income from Capital Gain shall be Deemed to have been applied for Charitable Purposes

(a)Transfer of Capital Asset held under Trust Wholly for Charitable or Religious Purposes

Where any capital asset being property held under trust wholly for charitable or religious purposes is transferred, and

i. the whole of the net consideration is utilised for acquiring another capital asset; or
ii. part of the net consideration is utilised for acquiring another capital asset.

then, the capital gain arising from such transfer shall be deemed to have been applied to charitable purposes to the extent specified hereunder:

Amount of net consideration utilized	Amount deemed to be applied
(i) Where the whole of the net consideration of such asset is utilized in acquiring a new capital asset	the whole of the capital gain.
(ii) Where only a part of the net consideration is utilized for acquiring the new capital asset	so much of such capital gain as is equal to the amount, if any, by which the amount so utilized exceeds the cost of the transferred asset i.e. amount invested minus cost of the transferred asset.

(b)Transfer of Capital Asset held under Trust in Part only for Charitable or Religious Purposes

As already discussed, such trusts are eligible for exemption under section 11 only when they have been created before the commencement of the Income-tax Act, 1961.

Where capital assets being a property held under trust in part only for such purposes is transferred, the treatment of capital gains shall be as under:

Amount of net consideration utilized	*Amount deemed to be applied*
(i) Where the whole of the net consideration of such asset is utilized in acquiring a new capital asset	the appropriate fraction of the capital gain arising from the transfer of the capital asset
(ii) in any other case	the exemption shall be limited to so much of the appropriate fraction of the capital gain as is equal to the amount, if any, by which the appropriate fraction of the amount utilized for acquiring the new capital assets, exceeds the appropriate fraction of the cost of the transferred asset.

Appropriate fraction: means the fraction which represents the extent to which the income derived from the capital asset transferred was immediately before such transfer applicable to charitable or religious purposes.

Cost of the transferred asset: means the aggregate of the cost of acquisition (as ascertained for the purposes of section 48 and 49) of the capital asset which is the subject of the transfer and the cost of any improvement thereto within the meaning assigned to that expression in section 55(1)(b)

Net consideration: means the full value of the consideration received or accruing as result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

Section 11(4): property held under trust included business Undertaking
For the purpose of section 11, property held under trust" includes a business undertaking so held. Income from business shall be treated as income derived from held under trust" and shall be eligible for exemption under section 11(1) & 11(2) provided the business is incidental to the attainment of the objectives of the trust and separate books of account are maintained by such trust in respect of such business. If in the assessment, the Assessing officer finds any concealed income in respect of the above business then, exemption under section 11(1) & 11(2) shall not be available in respect of such concealed income.

Section 11(7): exemption under section 10 not available except under section 10(1) and 10(23C)
Where a trust has been grantable registration u/s 12AA and registration is in force for a previous year, then the trust cannot claim any exemption under any provision of section 10 [other than that relation to exemption of agricultural income and income exempt under section 10(23C) Similarly, entire which have been approved for claiming benefits of exemption under section 20(23C) would not be entitled to claim any benefits of exemption under other provisions of section 10 except exemption of agricultural income.

Exemption u/s 11 and 12 shall be available if return of income up to due date

Exemption u/s 11 and 12 shall be available if return of income is filed on or before the due date specified u/s 139(1). Therefore, no exemption under section 11 & 12 shall be available if return of income is filed after the due date specified under section 139(1).

Section 11 (1B): Consequences if income not applied for specific purposes
If income is not applied for specific purposes, then such income shall be deemed to be the income of the person in receipt thereof of the previous year immediately following the previous year in which the income was received or derived.Where 85% of the income referred above is not applied to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or
set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:-

(a) Such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, Stating the purpose for which the income being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in case exceed five years;

(b) the money so accumulated or set is invested or deposited in the forms or modes specified in section 11(5);

(c) the Statement referred to in clause (a) is furnished on or before the due date specified under section 139(1) for furnishing the returns of income for the previous year:

Provided that in a computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purposes for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.

Section 13(9): dental of exemption if return of income is not furnished within due date of filing of return
No exemption under section 11(2) if Statement is not filed under section 11(2) to Assessing Officer on or before the due date of filing of Return of Income; OR Returns of Income is not filed on or before the due date of filling of returns of income.

Need for Registration of “Charitable & Religious Trust”.

For a public trust, whether in relation to a movable property or an immovable property the registration is optional but always desirable. From the practical point of view, it is always advisable for charitable trusts to have a proper registered trust deed.

Registration has the following advantages:

a. A registered Trust Deed becomes an official document which carries support and force of law.
b. a registered deed effectuates transmutation of possession. The registration of a trust-deed, in the absence of an intention to the contrary, is enough to convey the title to trust-property to the trustee, even if the trust deed is not delivered to him;
c. A conveyance of trust property to the trustee under a registered deed is generally not open to challenge.
d. In case of a charitable or religious trust, in relation to an immovable property, for claiming exemption u/s. 11 of the Income Tax Act, it is essential that the instrument of trust is duly registered .
e. When the trust deed is reduced into writing with the Registrar, it facilitates exemptions under section 80G of the Income-Tax Act for the donors. It may be noted that this is an essential requirement for the purposes of section 80G of the Income-tax Act, 1961.
f. Under the provisions of sections 11,12,12A and 13 read with sections 60 to 63 of the Income-Tax Act, the income of charitable! religious trust is exempt from income tax subject to the fulfillment of certain conditions. Such trust institutions are entitled to exemption under the Income-tax Act when they are created or established for charitable purposes as defined under section *2(15)* of the Income tax Act, 1961.

Section 12A Registration under Income Tax Act

Charitable or religious trusts anti societies, claiming exemption under Section 11 and 12 of the Income-tax Act arc required to obtain registration under the Act. Private! family trusts arc neither allowed such exemption nor. Thus. Required to seek registration under the Income-tax Act. However, private trusts partly for charitable or religious purposes, are also eligible and should, thus, obtain registration. The income of a charitable or religious Trust is exempt under section 11 and 12 if the following conditions are satisfied:

a) The person in receipt of the income has made an application for registration of the trust to the Commissioner and such trust is registered under section 12AA. The provisions of section 11 & 12 shall apply in relation to income of such trust from the financial year in which such application is made.

b) Where the trust has been granted registration u/s 12AA and subsequently, it has adopted or undertaken modification of the objects which do not confirm to the conditions of registration, if shall make an application for registration of trust within 30 days from the date of such adoption or modification.

c) Where the total income of the Trust computed without giving effect to the provisions of section 11 and 12 exceeds RS. 2,50.000 in any previous year, then the account of the Trust for that year should be audited by a chartered Account Accountant and the report of such audit should be furnished along with the return of income of the relevant assessment year.

Note- where a trust has been granted registration under section 12AA of the Act, the benefits of section 11 and 12 shall be available in respect of any assessment proceeding for an earlier assessment year which is pending before the Assessing Officer as on the date of such registration, if the object and activities of such trust in the relevant earlier assessment year are the same as those on the basis of which such registration has been granted. Further, it is provided that no action for reopening of an assessment under section 147 shall be taken by the Assessing Officer in the case of such trust for any assessment year preceding the first assessment year for which the registration under section 12AA for the said assessment year. However, the above benefits would not be available in case of any trust which at any time had applied for registration and was refused under section 12AA or a registration once granted was cancelled.

Section 12AA Procedure for Registration of Trust or Institution

(1)Procedure for Registration of Trust or Institution

The Principal Commissioner or Commissioner, on receipt of an application for registration of a trust or institution made under section 12A(1)(aa) or (ab), shall—

a. call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and the compliance of such requirements of any other law for the time being in force by the trust or Institution as are martial for the purpose of achieving its objects (FA 2019) and may also make such inquiries as he may deem necessary in this behalf; and
b. after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—
    i. shall pass an order in writing registering the trust or institution;
    ii. shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,

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

    However, no order refusing to register the trust shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(2) Order Granting or Refusing Registration should be passed within 6 Months

Every order granting or refusing registration shall be passed before the expiry of six months from the end of the month in which the application was received under section 12A(1)(aa) or (ab).

(3)Cancellation of Registration of a Trust or Institution under Section 12AA

As per section 12AA, the registration once granted to a trust or institution shall remain in force till it is cancelled by the Principal Commissioner or Commissioner.

Consequently, the Principal Commissioner or Commissioner can after giving reasonable opportunity of being heard to the concerned trust or institution, pass an order under section 12AA(3) in writing cancelling the registration under the following two circumstances:

a. the activities of a trust or institution are not genuine, or;
b. the activities are not being carried out in accordance with the objects of the trust or institution.
c. The Trust or Institution has not complied with the requirements of any other law (FA 2019).

Only if either or both the above conditions are met, would the Principal Commissioner/ Commissioner be empowered to cancel the registration, and not otherwise. However, no order under section 12AA(3) shall be passed unless such trust or institution has been given a reasonable opportunity of being heard

(4)Cancellation of Registration of a Trust or Institution under Section 12AA

The powers of Principal Commissioner/Commissioner to cancel registration under section 12AA(3) are severely restricted. There have been cases where trusts, particularly in the year in which they have substantial income claimed to be exempt under other provisions of the Income Tax Act, deliberately violate provisions of section 13 by investing in prohibited mode etc. Similarly, there have been cases where the income is not properly applied for charitable purposes or has been diverted for benefit of certain interested persons. Due to restrictive interpretation of the powers of the Principal Commissioner/ Commissioner under section 12AA, registration of such trusts or institutions continues to be in force and these institutions continue to enjoy the beneficial regime of exemption.

Whereas under section 10(23C), which also allows similar benefits of exemption to a fund, Institution, University etc, the power of withdrawal of approval is vested with the prescribed authority if such authority is satisfied that such entity has not applied income or made investment in accordance with provisions of section 10(23C) or the activities of such entity are not genuine or are not being carried out in accordance with all or any of the conditions subject to which it was approved.

Therefore, in order to rationalise the provisions relating to cancellation of registration of a trust, section 12AA(4) was inserted to provide that where a trust or an institution has been granted registration, and subsequently it is noticed that section 13(1) is applicable as its activities are being carried out in such a manner that,—

i. its income does not enure for the benefit of general public;
ii. it is for benefit of any particular religious community or caste (in case it is established after commencement of the Income-tax Act);
iii. any income or property of the trust is applied for benefit of specified persons like author of trust, trustees, etc.; or
iv. its funds are invested in prohibited modes,

Then the Principal Commissioner or the Commissioner may by an order in writing cancel the registration of such trust or institution. However, registration shall not be cancelled under section 12AA(4) if such trust or institution proves that there was a reasonable cause for the activities to be carried out in the above manner.

Medical and educational facilities to specified person
Section 12(2) provides that the value of any medical or educational services made available by any charitable or religious trust running a hospital or medical institution or any specified person shall be deemed to be he income of such trust derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be
chargeable to income-taxat normal rates and exemption under section 11(1) & 11(2) shall not be available for such income.

Section 13(1) provides that the income of a charitable or religious trust will not be exempt if any part of such income or any property of the trust is used or applied directly or indirectly for the benefit of any person specified in section 13(3). Sub-Section (6) provides that a charitable or religious trust running an educational institution or a medical institution or a hospital shall not be denied the benefit of exemption under section 11 or section 12, in relation to any income by reason only that trust has provided educational or medical facilities to specified persons.

Specified persons for the purposes of section 13

a. The author of the trust or the founder of the institution;
b. Any person who has made a total contribution (up to the end of the relevant previous year) of an amount exceeding RS. 50,000 (Substantial contributor)
c. Where such author or founder or substantial contributor is an HUF, a member of HUF;
d. Any trustee of the trust or manager (by whatever name called) of the institution;
e. Any relative of such author, founder, substantial contributor, member, trustee or manager; and
f. Any concern in which any of the persons referred to above has a substantial interest.

Anonymous donations to be taxed in certain cases
The expression "anonymous donation" has been defined as follows—

1. It is a voluntary contribution referred to in section 2(24)(iia).
2. The person receiving such contribution does not maintain a record of—
    a. the identity indicating the name and address of the person making such contribution; and
    b. such other records as may be prescribed.

"Anonymous donation" would be taxable at the rate of 30 %. However, from the assessment year 2010-11, anonymous donations are taxable only to the extent such donation exceeds Rs. 1,00,000 or 5% of total donations received by the trust, *whichever is higher*.

Where the total income of a trust or an institution referred to in section 115BBC(1) includes an income by way of any anonymous donations, the income tax payable shall be the aggregate of—

i. the amount of income-tax calculated at the rate of 30% on the aggregate of anonymous donations received in excess of the higher of the following, namely:
    A. 5% of the total donations received by the assesse; or
    B. Rs. 100,000 and
ii. the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received in excess of the amount referred to in sub-clause (A) or sub-clause (B) of clause (i) above, as the case may be.

Therefore, if such amount of donation which is not treated as anonymous donation is not applied like any other income, it will become taxable.

Institutions Liable to pay Tax on Anonymous Donations	Institutions Not Liable to pay Tax on Anonymous Donations
Any income received by way of anonymous donations by the following entities shall be included in the total income and taxed at the rate of 30%. - a. any trust or institution referred to in section 11; b. any university or other educational institution referred to in section 10(23C)(iiiad) and (vi); i.e. its annual	The following entities shall not be liable to pay tax on anonymous donations received by them: i. donations received by any trust or institution created or established 'wholly for religious purposes '; and ii. donations received by any trust or institution created or established for both religious as well as charitable

receipts is less than or more than Rs. 1 crore; c. any hospital or other institution referred to in section 10(23C)(iiiae) and (via); i.e. its annual receipts is less than or more than Rs. 1 crore; d. any fund or institution referred to in section 10(23C)(iv); and e. any trust or institution referred to in section 10(23C)(v).	purposes. However, donation mentioned in (ii) (supra) does not include any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

Note- There is no line of demarcation in the Hindu system between religion and charity. The "religious purpose" also includes relief to the poor, education, and medical relief, etc. Thus, where the objects of a trust exhibits the dual tenor of religious and charitable purpose and activities and anonymous donation is received by it without any specific direction that such donation is for any university or other educational institutions or any hospital or other medical institutions run by the trust, such donation cannot be taxed by invoking provisions of section 115BBC.

The following conclusions can be drawn from the aforesaid discussion : -

Institution receiving anonymous donations	Tax treatment
Case 1 - Wholly religious entities	Section 115BBC is not applicable
Case 2 - Partly religious and partly charitable entities	If anonymous donation is made to an educational or medical institution run by such entity, such anonymous donation is taxable at the rate of 30 per cent* [see Notes]. Any other anonymous donation is not subject to tax under section 115BBC
Case 3 - Wholly charitable entities	All anonymous donations are taxed at the rate of 30 % *[see Notes] under section 115BBC

Notes -The following points are applicable from the assessment year 2010-11 onwards—

a.If aggregate anonymous donation is Rs. 1 lakh or less, section 115BBC will not be applicable.

b.If aggregate anonymous donation is more than Rs. 1 lakh but it is not more than 5 per cent of the total donations received by the assessee, section 115BBC will not be applicable.

c.If aggregate amount of anonymous donation is more than Rs. 1 lakh or 5 per cent of the total donations received, whichever is higher, the excess amount will be subject to tax at the rate of 30 % * under section 115BBC. However, it will be taxable only in the cases of Case 2 and Case 3 noted above.

Special provisions relating to tax on accreted income

Section 115TD Levy of Tax where the Charitable Institution Ceases to Exist or Converts into a Non-Charitable Organization

Section 115TD is inserted with effect from June 1, 2016. This section provides for levy of additional income-tax in case of conversion into, or merger with, any non-charitable form or on transfer of assets of a charitable organization on its dissolution to a non-charitable institution. Provisions are here under

(1)Accreted income of Trust or Institution to be Taxed at the Maximum Marginal Rate (MMR) in certain cases

Notwithstanding anything contained in this Act, where in any previous year, a trust or institution registered under section 12AA has—

a. converted into any form which is not eligible for grant of registration under section 12AA;
b. merged with any entity other than an entity which is a trust or institution having objects similar to it and registered under section 12AA; or
c. failed to transfer upon dissolution all its assets to any other trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in section 10(23C)(iv), (v), (vi) or (via), within a period of 12 months from the end of the month in which the dissolution takes place,

then, in addition to the income-tax chargeable in respect of the total income of such trust or institution, the accreted income of the trust or the institution as on the specified date shall be charged to tax and such trust or institution, as the case may be, shall be liable to pay additional income-tax (herein referred to as tax on accreted income) at the maximum marginal rate on the accreted income.

(2)Meaning of Accreted Income in case of Charitable Trust

The accreted income for the purposes of section 115TD(1) means the amount by which the aggregate fair market value of the total assets of the trust or the institution, as on the specified date, exceeds the total liability of such trust or institution computed in accordance with the method of valuation as may be prescribed.

Note-Certain Assets and Liabilities to be ignored for the purpose of computing the Accreted Income

The following assets and liabilities shall be ignored for the purpose of computing the accreted income:

1. So much of the accreted income as is attributable to the following asset and liability, if any, related to such asset shall be ignored for the purposes of section 115TD(1), namely:—
    i. any asset which is established to have been directly acquired by the trust or institution out of its income of the nature referred to in section 10(1) (i.e agricultural income);
    ii. any asset acquired by the trust or institution during the period beginning from the date of its creation or establishment and ending on the date from which the registration under section 12AA became effective, if the trust or institution has not been allowed any benefit of sections 11 and 12 during the said period.
2. While computing the accreted income in respect of a case referred to in clause (c) of section 115TD(1) above (i.e. transfer upon dissolution), assets and liabilities, if any, related to such asset, which have been transferred to any other trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in section 10(23C)(iv), (v), (vi) or (via), within the period specified in the said clause, shall be ignored.

(3)When the Trust or an Institution shall be deemed to have been Converted into any Form not eligible for Registration under Section 12AA

For the purposes of section 115TD(1), a trust or an institution shall be deemed to have been converted into any form not eligible for registration under section 12AA in a previous year, if,—

i. the registration granted to it under section 12AA has been cancelled; or
ii. it has adopted or undertaken modification of its objects which do not conform to the conditions of registration and it,—
    a. has not applied for fresh registration under section 12AA in the said previous year; or
    b. has filed application for fresh registration under section 12AA but the said application has been rejected.

(4)Tax on the Accreted Income to be payable even if no Income-tax is payable on Total Income of the Trust or Institution

Notwithstanding that no income-tax is payable by a trust or the institution on its total income computed in accordance with the provisions of this Act, the tax on the accreted income under section 115TD(1) shall be payable by such trust or the institution.

(5)Time Limit for Payment of Tax on Accreted Income

The principal officer or the trustee of the trust or the institution, as the case may be, and the trust or the institution shall also be liable to pay the tax on accreted income to the credit of the Central Government within 14 days from,—

i. the date on which,—
   a. the period for filing appeal under section 253 against the order cancelling the registration expires and no appeal has been filed by the trust or the institution; or
   b. the order in any appeal, confirming the cancellation of the registration, is received by the trust or institution,

   in a case referred to in clause (i) of section 115TD(3);

ii. the end of the previous year in a case referred to in sub-clause (a) of clause (ii) of section 115TD(3) (i.e. the trust has not applied for fresh registration under section 12AA in the said previous year);

iii. the date on which,—
   a. the period for filing appeal under section 253 against the order rejecting the application expires and no appeal has been filed by the trust or the institution; or
   b. the order in any appeal, confirming the cancellation of the application, is received by the trust or institution,

   in a case referred to in sub-clause (b) of clause (ii) of section 115TD(3);

iv. the date of merger in a case referred to in clause (b) of section 115TD(1);

v. the date on which the period of 12 months referred to in clause (c) of section 115TD(1) expires.

(6)Credit of Tax Paid on Accreted Income Not Available

The tax on the accreted income by the trust or the institution shall be treated as the final payment of tax in respect of the said income and no further credit therefor shall be claimed by the trust or the institution or by any other person in respect of the amount of tax so paid.

(7)Deduction under any Other Provisions of the Act not Allowed in respect of Income Charged or the Tax Paid as per Section 115TD(1)

No deduction under any other provision of this Act shall be allowed to the trust or the institution or any other person in respect of the income which has been charged to tax under section 115TD(1) or the tax thereon.

Section 115TE Interest Payable for Non-Payment of Tax by Trust or Institution

Where the principal officer or the trustee of the trust or the institution and the trust or the institution fails to pay the whole or any part of the tax on the accreted income referred to in section 115TD(1), within the time allowed under section 115TD(5), he or it shall be liable to pay simple interest @ 1% for every month or part thereof on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

Section 115TF When Trust or Institution is deemed to be Assessee in Default

According to section 115TF(1), if any principal officer or the trustee of the trust or the institution and the trust or the institution does not pay tax on accreted income in accordance with the provisions of section 115TD, then, he or it shall be deemed to be an assessee in default in respect of the amount of tax payable by him or it and all the provisions of this Act for the collection and recovery of incometax shall apply.

Further, according to section 115TF(2), notwithstanding anything contained in section 115TF(1), in a case where the tax on accreted income is payable under the circumstances referred to in clause (c) of section 115TD(1), the person to whom any asset forming part of the computation of accreted income under section 115TD(2) thereof has been transferred, shall be deemed to be an assessee in default in respect of such tax and interest thereon and all the provisions of this Act for the collection and recovery of income-tax shall apply:

Provided that the liability of the person referred to in section 115TF(2) shall be limited to the extent to which the asset received by him is capable of meeting the liability.

Section 49(8) : Cost with reference to certain modes of acquisition

Where capital gain arises from the transfer of asset held by a trust or an institution in respect of which accreted income has been computed and the tax has been paid thereon in accordance with the provisions of section 115TD, COA of such asset shall be deemed to be the FMV of the asset which has been taken into account for computation of accreted income as on the specified date referred to in section 115TD.

Cancelation of registration under section 12AA in certain circumstances (CBDT Clarification)

It is clarified that it shall not be mandatory to cancel the registration already granted under section 12AA to a charitable institution merely on the ground that the cut-off specified in the proviso to section 2(15) of the Act (i.e. commercial receipts exceeds 20% of total receipts) is exceeded in a particular year without there being any change in the nature of activities of the institution. Cancellation of registration granted under section 12AA may lead to a charitable institution getting hit by section 115TD and becoming liable to tax on accreted income. Authorities are, therefore, advise not to cancel the registration of a charitable institution granted under section 12AA just because the proviso to section 2(15) comes into play.

Rule – 17CB, Method of valuation for the purposes of sub-section (2) of section 115TD

*(*1) For the purpose of sub-section (2) of section 115TD of the Act, the aggregate fair market value of the total assets of the trust or institution, shall be the aggregate of the fair market value of all the assets in the balance sheet as reduced by—

(i) advance tax payment as reduced by the amount of income-tax deducted or source income-tax claim refund under the Act, and

(ii) deferred expenditure including unamortized amount as does not represent the value of any asset.

(2) For the purpose of sub-rule (1), the fair market value of the asset shall be determined in the following manner, namely:—

(I) Valuation of shares and securities,—

(a) the fair market value of quoted share and securities shall be the following:—

(i) securities quoted on a recognized stock exchange as on the specified date; or the highest of such

(ii) where on the specified date, there is no trading in such shares and securities on a recognized stock exchange, the average of the lowest

and highest price of such shares and securities on a recognized stock exchange on a date immediately preceding the specified date when such shares and securities were traded on a recognized stock exchange,

(b) the fair market value of unquoted equity shares shall be the value, on the specified date as determined in accordance with the following formula, namely:—

$$\text{Fair market value of unquoted equity shares} = \frac{(A+B-L) \times (PV)}{(PE)}$$

where,

A = book value of all the assets in the balance sheet (other than bullion, jewellery, precious stone, artistic work, shares, securities, and immovable property) as reduced by—

(i) any amount of income-tax paid as deduction or collection source or as advance payment as reduced by the amount of income-tax claimed as refund under the Act; and

(ii) unamortised amount of deferred expenditure which does not represent the value of any asset;

B = fair market value of bullion, jewellery, precious stone, artistic work, shares, securities and immovable property as determined in the manner provided in this rule;

L = book value of liabilities shown in the balance sheet, but not including the following amounts, namely:—

(i) representing contingent liabilities other than arrears of dividends payable inrespect of the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of income-tax deducted collection source advance tax payment as reduced by the amount of income-tax

claimed as refund under the Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount cumulative preference shares;

PE = total amount of paid-up equity share capital as shown in the balance-sheet;

PV = the paid-up value of such equity share,

(c) The fair market value of shares and securities other than equity shares shall be estimated to be price it would fetch if sold in the open market on the specified date on the basis of the valuation report from a merchant banker or an accountant in respect of such valuation.

(II) The fair market value of an immovable property shall be higher of the following:—

(a) that shall ordinarily fetch market on the specified date the basis of the valuation report from a registered valuer; and

(b) stamp duty value as on the specified date.

(III) market value a business undertaking, trust institution, shall be its assets determined net accordance with the following formula:—

Fair market value = (A + B-L), which shall be determined in the manner provided in sub-clause (b) of clause (I) of sub-rule (2).

(IV) The fair market value of any asset, other than those referred to in clauses (I), (II) and (III), shall be the price that the asset shall ordinarily fetch if sold in the open market on the specified date on the basis of valuation report from a registered valuer:

Provided that in case no valuer is registered for valuation of such assets, the valuation report shall be obtained from a valuer who is a member of any one of the professional valuer bodies viz. Institution of Valuers, Institution of Surveyors (Valuation Branch), Institution of Government Approved Valuers, Practicing Valuers Association of

India, the Indian Institution of Valuers, Centre for Valuation Studies, Research and Training, Royal institute of Chartered Surveyors; India Chapter, American Society of Appraisers, USA; Appraisal institute, USA or a valuer who is appointed by any public sector bank or public sector undertakings for valuation purposes.

(3) For the purpose of sub-section (2) of section 115TD of the Act, the total liability of the trust or institution shall be the book value of liabilities in the balance sheet on the specified date but not including the following amounts, namely:—

(i) capital fund or accumulated funds or corpus, by whatever name called;

(ii) reserves or surpluses or excess of income over expenditure, by whatever name called;

(iii) any amount representing contingent liability;

(iv) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(v) any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of income-tax claimed as refund under the Act, to the extent of the excess over the income-tax payable with reference to the income in accordance with the law applicable thereto.

Explanation.— For the purposes of this rule,—

(a) "accountant" shall mean a fellow of the Institute of Chartered Accountants of India within the meaning of the Chartered Accountants Act, 1949 (38 of 1949) who is not appointed by the trust or institution as an auditor;

(b) "balance-sheet" in relation to any trust or institution, shall mean the balance-sheet of such trust or institution (including the notes annexed thereto and forming part of the accounts) as drawn up on the specified date which has been audited by an accountant;

(c) "merchant banker" shall mean a category I merchant banker registered with Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(d) "quoted share or security" in relation to share or security means a

share or security quoted on any recognised stock exchange with regularity from time to time, where the quotations of such shares or securities are based on current transaction made in the ordinary course of business;

(e) "recognised stock exchange" shall have the same meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(f) "registered valuer" means a person registered as a valuer under section 34AB of the Wealth-tax Act, 1957 (27 of 1957);

(g) "securities" shall have the same meaning assigned to it in clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(h) "specified date" means the date referred to in Explanation to section 115TD of the Act;

(i) "stamp duty value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property;

(j) "unquoted share and security" in relation to share or security means share or security which is not a quoted share or security.

25. Concept of Mutuality and Mutual Concern

Mutuality and Mutual Concern

The basic principle of mutuality is that no person can trade with himself or make income out of it. These associations arise when group of persons associate together with a common object and contribute fund for achieving that object. A mutual concern or association is a group of people who agree to contribute funds for some common purpose that is mutually beneficial and gain the benefit of the remaining amount in the same capacity in which the contributions were made. This article deals with the concept of mutual concern under Income Tax.

Example of Mutual Concerns-Resident Welfare Associations, Social clubs, Sports clubs, Bar association, Shop owner association, PHD chambers, etc

Example of Mutual Receipts-Membership subscriptions, Membership entrance fee, Payments received by the members for particular services that are provided by the organization.

Principle of Mutuality

Mutual concerns are not taxable under income tax as the concept of mutuality is exempted from its purview. The principle of mutuality is applicable to mutual benefit funds, wherein the contributors are not expected to gains profits as the income received by them are almost synonymous with their contribution and any amount that is received from oneself is not regarded as an income.

The principle of mutuality doesn't permit the participators to trade on their own to make income out of themselves. As already observed, a mutual association is formed when a group of people associate together with a common objective and contribute funds to achieve the cause. However, any amount earned in addition to the contribution would be mutually shared amongst the members of the association or concern.

People part of such associations work for the purpose of social security, entertainment, professional development, etc. The principle of mutual association is that all contributors should have a common fund entitled to participate in the surplus and all the participants to the surplus should be contributors to the common fund.

The mutual concerns are not necessitated to distribute the surplus immediately. Any excess amount that is generated through this fund is held by the association to cater to the contributors in the future.

The essential elements of a mutual organization are as follows:

a.An association or people called as members: Every member of the group makes a contribution and there should be a complete identity between the contributors and the participants.

b.Common cause: The actions of the participants and contributors should be in furtherance of the mandate of the association.

c.Non-Profit Initiative: The members shouldn't have any intention of profiteering from a fund for which they have extended their contributions, as the same could only be extended or returned to themselves.

Essence of Mutuality-The principle of mutuality is normally applicable to mutual benefit funds or societies. Any entity that is governed by the principle of mutuality is called mutual concern. A mutual association or concern is an association of people who agree to contribute funds towards a common purpose and gain the benefit out of the excess amount in the same capacity as the contribution. The contributors, in this case, do not discharge their funds with an intention to trade but as an act of rendering mutual help. The sum received from the contribution isn't considered as profits as profits cannot be churned out of one's own contribution.

Exceptions of Doctrine of Mutuality

The following associations do no fall under the doctrine of mutuality as specified in the Income Tax Act, 1961 They are:

a.Trade or Profession Associations-According to Section 28(iii), the income derived from trade, professions or similar association from a specific service performed for its members are not included under the doctrine of mutuality.

b.Mutual Insurance Association-According to Section 44, the profit of the insurance business, whether life or non-life, which is carried on by a company or co-operative society are not classed under mutual associations

Taxable Incomes-The income-tax for mutual concerns is taxable in the following manner:

a. Instances of non-mutual concerns: A co-operative society that carries on an ordinary banking business with non-members is not a mutual benefit society, which effectively means that the tax implications prescribed for the particular society will apply.

b.Interest earned from banks other than co-operative banks: The interest earned from investments in any banks other than co-operative banks is taxable under this provision.

c.Interest on fixed deposits is liable to tax: The amount of interest earned by an assessee from fixed deposits in the bank is not included within the ambit of mutuality and therefore is taxable on the hands of the taxpayers.

Mutual Concern – Income Tax

A mutual concern or association is a group of people who agree to contribute funds for some common purpose that is mutually beneficial and gain the benefit of the remaining amount in the same capacity in which the contributions were made. This article deals with the concept of mutual concern under Income Tax.

Principle of Mutuality-Mutual concerns is not taxable under income tax as the concept of mutuality is exempted from its purview. The principle of mutuality is applicable to mutual benefit funds, wherein the contributors are not expected to gains profits as the income received by them are almost synonymous with their contribution and any amount that is received from oneself is not regarded as an income.

The principle of mutuality doesn't permit the participators to trade on their own to make income out of themselves. As already observed, a mutual association is formed when a group of people associate together with a common objective and contribute funds to achieve the cause. However, any amount earned in addition to the contribution would be mutually shared amongst the members of the association or concern.

People part of such associations work for the purpose of social security, entertainment, professional development, etc. The principle of mutual association is that all contributors should have a common fund entitled to participate in the surplus and all the participants to the surplus should be contributors to the common fund.

The mutual concerns are not necessitated to distribute the surplus immediately. Any excess amount that is generated through this fund is held by the association to cater to the contributors in the future.

Elements of Mutual Organization-The essential elements of a mutual organization are as follows:

An association or people called as members: Every member of the group makes a contribution and there should be a complete identity between the contributors and the participants.

Common cause: The actions of the participants and contributors should be in furtherance of the mandate of the association.

Non-Profit Initiative: The members shouldn't have any intention of profiteering from a fund for which they have extended their contributions, as the same could only be extended or returned to themselves.

Essence of Mutuality-The principle of mutuality is normally applicable to mutual benefit funds or societies. Any entity that is governed by the principle of mutuality is called mutual concern. A mutual association or concern is an association of people who agree to contribute funds towards a common purpose and gain the benefit out of the excess amount in the same capacity as the contribution. The contributors, in this case, do not discharge their funds with an intention to trade but as an act of rendering mutual help. The sum received from the contribution isn't considered as profits as profits cannot be churned out of one's own contribution.

The following associations do no fall under the doctrine of mutuality as specified in the Income Tax Act, 1961 . They are:

I.Trade or Profession Associations-According to Section 28(iii), the income derived from trade, professions or similar association from a specific service performed for its members are not included under the doctrine of mutuality.

II.Mutual Insurance Association-According to Section 44, the profit of the insurance business, whether life or non-life, which is carried on by a company or co-operative society are not classed under mutual associations.

Taxable Incomes-The income-tax for mutual concerns is taxable in the following manner:

a.Instances of non-mutual concerns: A co-operative society that carries on an ordinary banking business with non-members is not a mutual benefit society, which effectively means that the tax implications prescribed for the particular society will apply.

b.Interest earned from banks other than co-operative banks: The interest earned from investments in any banks other than co-operative banks is taxable under this provision.

c.Interest on fixed deposits is liable to tax: The amount of interest earned by an assessee from fixed deposits in the bank is not included within the ambit of mutuality and therefore is taxable on the hands of the taxpayers.

Tax Exempted Incomes

a.The income of mutual concern is exempted from tax. The additional income received from trading within the members of the concern are also exempted. On the other hand, exemptions are not accorded if a mutual concern derives income from an activity pursued with an outsider.

b.Contribution from members: Maintenance charges, electricity charges, penalties, the interest that is charged on outstanding maintenance charges, etc. are some of the contributions that are made by the members of the association. The association works only as an agent that collects these charges and uses it for various common purposes. Any excess amount during a fiscal year is carried forward to the next fiscal year, with no tax exemptions.

c.Interest earned from co-operative banks: Any interest earned from investments made to co-operative banks qualifies for a deduction at the rate of 100%.

d.Dividend: According to Section 10(34), the dividend income received by Indian Companies are completely exempted from tax. Also, the dividend that is received from co-operative banks are exempted.

e.Rentals received from members for utilizing facilities: Considering the ‘Concept of Mutuality’, income received from common facilities such as community hall, open spaces, terrace etc. cannot be taxed

26. Alternate Minimum Tax

Alternate minimum tax (AMT) on all assessees except companies

AMT provisions are applicable to following taxpayers:

All non-corporate taxpayers; and Taxpayers who have claimed deduction under:

Chapter VI-A under the heading "C. — Deductions in respect of certain incomes' – These deductions are under Section 80H to 80RRB provided in respect of profits and gains of specific industries such as hotel business, small scale industrial undertaking, housing projects, export business, infrastructure development etc. However, deduction under Section 80P which provides deduction to co-operative societies is excluded for this purpose; or

Deduction under Section 35AD – While capital expenditure in assets usually qualify for depreciation year on year, under this Section 100% deduction is allowed on capital expenditure incurred for specified business such as operation of cold chain facility, fertilizer production etc; or Profit linked deduction under Section 10AA – Deduction of profit varying from 100% to 50% is provided to units in Special Economic Zones (SEZs).

Based on the above, it can be concluded that AMT provisions are applicable only to those non-corporate taxpayers having income under the head 'Profits or Gains of Business or Profession'.

Further, as mentioned above AMT provisions are applicable only when normal tax payable is lower than AMT in any FY.

In another word All assesses exempt companies are liable to pay AMT if the tax payable under the normal provisions of Income tax is lesser than 18.5% of Adjustment total income (plus surcharge and education cess) ,Provided,9% in case of an assesse being unit located in an International Financial Services Central (IFSC)
However, AMT shall not be payable by individual/HUF/AOP/BOI/ Artificial juridical person if adjusted total income of such person does not exceed RS. 20 Lakhs.

Adjusted total income and AMT is arrived in the following manner:

Particulars	**Amount (in Rs)**
Taxable income (A)	XXXXX
Add: Deduction claimed if any under Chapter VI-A from 80H to 80RRB except 80P (B)	XXXXX

Deduction claimed if any under Section 10AA (C)	XXXXX
Deduction claimed if any under Section 35AD reduced by regular depreciation allowed (D)	XXXXX
Adjusted total income (E) = (A)+(B)+(C)+(D)	XXXXX
AMT – 18.5% of (E)	XXXXX

Tax Liability When AMT Provisions are Applicable

Particulars	Amount (in Rs)
Tax liability computed as per normal provisions of the Income-tax Act – normal tax liability	XXXX
AMT computed at 18.5% (plus applicable surcharge and cess) on adjusted total income	XXXX
Tax liability of taxpayer	Higher of the above

AMT Credit

Though AMT was introduced to collect tax from zero tax companies, it was also with the intention of having consistent flow of tax to public fund. Therefore, while minimum tax is being levied in an FY wherein normal tax is lower than AMT, in subsequent FYs wherein AMT is lower than normal tax, AMT paid earlier is allowed to be carried forward and reduced against normal tax to the extent of the difference between normal tax and AMT. Balance if any after such set off can be carried forward to subsequent FYs. This concept is called AMT Credit. However, AMT Credit is not allowed to be carried forward for only upto 15 FYs succeeding the FY in which such AMT is paid.

In case of any change in normal tax due to any order passed by income tax department, AMT credit will also change accordingly.

Further, if taxpayer has any foreign tax credit (tax paid in foreign countries with which India has bilateral or unilateral tax agreement) to be claimed against AMT, any FTC in excess of AMT shall be ignored.

Reporting Requirement

All taxpayers to whom AMT provisions are applicable is required to obtain a report from Chartered Accountant certifying that adjusted total income and AMT have been computed as per provisions of Income-tax Act, in Form No. 29C and furnish the report on or before the due date for filing the return of income. Report can be filed electronically along with return of income.

27. Minimum Alternate Tax with Ind AS Adjustments

A MAT was introduced for the first time in the AY 1988-89. It was felt that due to various concession provided in Tax Laws big corporate groups become zero tax companies. Therefore, to counter this, as system of MAT was introduced. *The there is a difference between Two Profits i.e. Regular Profit and Book Profit.*

1. Regular Profit is the profit computed by applying the provisions of Tax Laws. Whereas Book Profit is computed on the basis of Schedule VI of the Companies Act, 1956.
2. Rate of Depreciation is different in Tax Law and Companies Act.
3. In Tax Laws real income is computed, whereas in Companies Act, deductions are allowed for provisions and reserves also which leads to computation of not real income but conservation income.
4. Tax Laws allowed various incentives and deductions from Profits like deduction u/s 80IA , 80IB. This is not so in computation of Book Profit under the Companies Act.

Section 115JB Tax payable for any Assessment year Cannot be Less than 18.5% of Book Profit Concept- MAT is equal to 18.5% (15% from AY 2020-21) of Book profits (Plus Surcharge and cess as applicable). Where in the case of a company, the income-tax payable on the total income as computed under the Income-tax Act, in respect of previous year relevant to the assessment year 2012-13 or thereafter is less than 18.5%(15% from AY 2020-21) 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 (book profit) shall be the amount of the income-tax at the rate of 18.5%(15% from AY 2020-21).

MAT Taxation- Thus in case of a company income tax payable shall be higher of the following two amounts:

Tax on total income computed as per the normal provisions of the Act by charging applicable normal rates and special rates if any income included in the total income of the company is taxable at special rates i.e 18.5% of book profit.

Section 115JB(7) MAT Rate to be 9% instead of 18.5% in case of a Unit Located in an International Financial Services Center -Notwithstanding anything contained in section 115JB(1), where the assessee referred to therein, is a unit located in an International Financial Services Center and derives its income solely in convertible foreign exchange, the provisions of section 115JB(1) shall have the effect as if for the words "eighteen and one-half per cent" wherever occurring in that sub-section, the words "nine per cent" had been substituted.

Provisions of Section-115JB not to apply in certain cases..

The provisions of section 115JB shall not apply in case of the following:

Any income accruing or arising to a company from life insurance business referred to in section 115B [Section 115JB(5A)].

A foreign company, if—

the assessee is a resident of a country or a specified territory with which India has an agreement referred to in section 90(1) or the Central Government has adopted any agreement under section 90A(1) and the assessee does not have a permanent establishment in India in accordance with the provisions of such agreement; or the assessee is a resident of a country with which India does not have an agreement of the nature referred to in clause (i) and the assessee is not required to seek registration under any law for the time being in force relating to companies.

Explanation 4A below section 115JB, to clarify that FA 2018

Section 115JB shall not apply to a foreign company, if it total income solely comprises of profits and gains from business referred in the following provisions and such income or loss is offered to tax at rates specified in those sections :
44B Special provision for computing profits, and gains of shipping business in the case of non-residents..
Note-
44BB Special provision for computing profits and gains in connection with the business of exploration, etc. of mineral oils.

44BBA Special provision for computing profits and gains of the business of operation of aircraft in the case of non-residents.

44BBB Special provision for computing profits and gains of foreign companies is engaged in the business of civil construction, etc., in certain turnkey power projects.

Section 115JB How to Determine Book Profit

(A). Positive Adjustment*:* Amount to be Added Back if Debited to Profit and Loss Account :

1. Income-tax paid or payable and the provisions Income-tax, interest under the Income-tax Act, dividend thereof

   Explanation: Amount of income tax shall include, (i) any tax on distributed profits under section 115-O or on distributed income u/s 115-R (ii) any interest charged under this Act (iii) Surcharge, if any has levied by the central Acts from time to time. (iv) Education cess on income tax, if any has levied by the Central Acts from time to time Secondary and higher education cess on Income Tax, if any levied by the Central Acts from time to time.

Commodities transaction Tax, Security Transaction Tax, Interest under any other Acts and any Penalties is not to be added.

2. Amounts carried to any reserves, by whatever name called

   Note- Here, Any revere includes Excess provisions and Transfer to reserves under section 10AA etc

3. Amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities

   Note- Provision if created on any basis other than any scientific basis such as Provision for gratuity on basis of Actuary, Bad Debts written off.

4. Amount by way of provision for losses of subsidiary companies

   Note: Even the actual loss of the subsidiary company debited to Profit & Loss Account shall be added back.

5. Amount or amounts of dividends paid or proposed
6. The amount or amounts of expenditure relatable to any income to which section 10 [not being provisions contained under section 10(38)] or 11 or 12 apply.
7. the amount or amounts of expenditure relatable to, income, being share of the assessee in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86;
8. 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 this Act (other than the provisions governing MAT) is less than 18.5%;
9. the amount representing, a. notional loss on transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by the trust referred to in clause (xvii) of section 47 or b. the amount representing notional loss resulting from any change in carrying amount of said units or c. the amount of loss on transfer of units referred to in clause (xvii) of section 47
10. the amount or amounts of expenditure relatable to income by way of royalty in respect of patent chargeable to tax under section 115BBF
11. (From the assessment year 2007-08), the amount of Depreciation
12. Amount of deferred tax and the provisions thereof
13. The amount or amounts set aside as provision for diminution in the value of any asset such as A. Provision for bad and doubtful debts as it amounts to provision for diminution in value of assets or . Provision for diminution in value of any investment or asset as per AS-13/AS-28

14. Amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset if it is not credited to the statement of profit and loss;
15. the amount of gain on transfer of units referred to in clause (xvii) of section 47 computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through profit or loss account, as the case may be

(B). Negative Adjustments -Amount to be Deducted from Net Profit :

Profit as shown in the statement of profit and loss is to be reduced by the following amounts:

(1) the amount withdrawn from reserves or provisions, if any such amount is credited to the statement of profit and loss; or (Provided book profits was increased in the year of creation of reserve or reserve was created by way of debit to statement of profit and loss)

(2) the amount of income to which any of the provisions of section 10 [not being provisions contained u/s 10(38)] or 11 or 12 apply, if any such amount is credited to the statement of profit and loss; or

Note- Note : Income exempt under section 10AA, and 80-IA/80-IAB/80- IB/80-IC/80-ID/80-IE shall not be reduced.

(3) the amount of depreciation debited to the statement of profit and loss (excluding the depreciation on account of revaluation of assets); or

(4) the amount withdrawn from revaluation reserve and credited to the statement of profit and loss, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in clause (3) above; or

(5) the amount of income, being the share of the assessee in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86, if any, such amount is credited to the statement of profit and loss; or

(6) the amount of income accruing or arising to 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 this Act (other than the provisions governing MAT) is less than 18.5%; or

(7) the amount representing,— (A) notional gain on transfer of a capital asset, being share of a special purpose vehicle to a business trust in exchange of units allotted by that trust referred to in clause (xvii) of section 47; or (B) notional gain resulting from any change in carrying amount of said units; or (C) gain on transfer of units referred to in clause (xvii) of section 47, if any, credited to the statement of profit and loss; or

(8) the amount of loss on transfer of units referred to in clause (xvii) of section 47 computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through profit or loss account, as the case may be; or

(9) the amount of income by way of royalty in respect of patent chargeable to tax u/s 115BBF;or

(10) the amount of loss brought forward or unabsorbed depreciation, whichever is less, as per books of account Explanation.—For the purposes of this clause,— (a) the loss shall not include depreciation; (b) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation is nil ;or

Provided, The aggregate amount of unabsorbed depreciation and loss brought forward in case of a company against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016.

Explanation.—For the purposes of this clause, the expression "Adjudicating Authority" shall have the meaning assigned to it in section 5(1) of the Insolvency and Bankruptcy Code, 2016 and the loss shall not include depreciation; or] Finance Act, 2018

(11) the amount of profits of sick industrial company for the assessment year commencing from the assessment year relevant to the previous year in which the said company has become a sick industrial company u/s 17(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 and ending with the assessment year during which the entire net worth (i.e., paid-up capital plus free reserves) of such company becomes equal to or exceeds the accumulated losses;

(12) Amount of deferred tax, if any such amount is credited to statement of profit and loss.

Proviso to section 115JB(2) Power of AO to alter net profit of the company.

It shall be ensured while preparing the annual accounts including profit and loss account that — (i) the accounting policies; (ii) the accounting standards adopted for preparing such accounts including profit and loss account; (iii) the method and rates adopted for calculating the depreciation, shall be the same as have been adopted for the purpose of preparing such accounts including statement of profit and loss and laid before the company at its annual general meeting in accordance with the provisions of section 129 of the Companies Act, 2013.

MAT Credit- When any amount of tax is paid as MAT by the company, then it can claim the credit of such tax paid in accordance with the provision of section 115JAA.

Allowable Tax Credit: Tax paid as per MAT calculation — Income tax payable under normal provision of Income-tax Act, 1961.(However, no interest shall be paid on this Tax credit by the Department.)

MAT credit shall be allowed to be set off in a year when the tax becomes payable on the total income in accordance with the normal provisions of the Act. Set off shall be allowed to the extent of difference between the tax on the total income under normal provision and tax which would have been payable as per MAT under section 115JB.

The account of MAT credit will be reduced by Foreign Tax credit allowed against MAT minus Foreign Tax credit allowed against normal income tax.

In case of conversions of a company into LLP, MAT credit available in hands of company shall not be allowed to LLP.

Section 115JB(3) Loss which can be carried forward

In respect of the relevant previous year, the amounts determined under the provisions of of section 32(2) or section 32A (3) or section 72(1) (ii) or section 73 or section 74 or section 74A(3), shall be allowed to be carried forward to the subsequent year or years, even though tax liability of the company falls under MAT. Hence, Company can carry forward losses and depreciation to the extent it could have carried forward had section 115JB not there

Section 115JB(4) Report from a chartered accountant

Every company to which section 115JB applies, shall furnish a report in the prescribed form (Form No. 29B) from a chartered accountant certifying that the book profit has been computed in accordance with the provisions of section 115JB, along with the return of income filed under section 139(1) or along with the return of income furnished in response to a notice u/s 142(1)(i).

Section 115JB(5) Applicability of other provisions of the Income Tax Act

Save as otherwise provided in this section, all other provisions of this Act shall apply to every assessee, being a company. Hence , Company to which MAT applies shall be liable to pay advance tax, interest under section 234A, 234B and 234C. Company shall also be liable to pay penalty fir understatement or misreporting of income.

Section 115JAA MAT Credit Scheme

Scheme of MAT Credit, its set off and rules of carry forward is as under:-

When company pays tax under MAT, the tax credit shall be an amount which is the difference between the amount payable under MAT and the regular tax. However, where the amount of tax credit in respect of any income-tax paid in any country or specified territory outside India, under section 90 or section 90A or section 91, allowed against the tax payable under MAT exceeds the amount of such tax credit

admissible against the regular tax payable by the assessee, then, while computing the amount of MAT credit, such excess amount shall be ignored.

MAT credit will be allowed to be carried forward for a period of ten assessment years immediately succeeding the assessment year in which MAT credit is available. However, with effect from the assessment year 2018-19, MAT credit will be allowed to be carried forward for a period of 15 assessment years.

If, in any subsequent assessment year, regular tax becomes payable, then, the difference between the regular tax and tax computed under MAT for that year shall be available as set off. The MAT credit will not bear any interest. scheme of MAT credit shall not apply to a limited liability partnership which has been converted from private company or unlisted public company.

MAT with IND-AS Adjustments For a company whose financial statements are drawn up in compliance to the Indian

Accounting standards the books profit as computed in accordance with Explanation 1 to sub-section (2) shall be further-

Increased by	Decreased by
All amounts credits to other comprehensive income in the statement of profit and loss under the head "Items that will not be re-classified to profit or loss", Except gains on PPE, intangible assets and investment in equity instruments.	all amounts debited to other comprehensive income in the statement of profit and loss under the head "Items that will not be re-classified to profit or loss" Except loss on PPE, intangible assets and investment in equity instruments
amounts or aggregate e of the amount debited to the statement of profit and loss on distribution of non-cash assets to shareholders in a demerger in case of demerged company.	All amount or aggregate of the amount credited to the statement of profit and loss on distribution of non-cash assets to shareholders in a demerger in case of demerged company.

In the case of resulting company, where the property and the liabilities of the undertaking or undertaking beings received by it are recorded at values different from value appearing in the books of account of the demerged company immediately before the demerger, any change in such value be ignored for the purpose of computation of book profit of the resulting company under this section-

Change in revaluation surplus of property, plant or Equipment (PPE) and Intangible assets To be included in books profits at the time of realization /	Gains and losses from investments in equity Instruments designated at fair value through other comprehensive income To be included	Re measurement of defined benefit plants To be included in book profits every year as the remeasurement gains and losses arise	other Item To be included in book profits every year as the gains and losses arise

disposal retirement or otherwise transferred.	in book profits at the time of realization / disposal retirement or otherwise transferred		

28. Deduction under Ch VI A.

Section 80AC: No deduction unless return furnished on time [FA 2018]

No any deduction is admissible under any provision of this Chapter under the heading "C.— Deductions in respect of certain incomes",him unless furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139.

Earlier, Return was required only for section 80-IA or section 80-IAB, Section 80-IB or Section 80-IC or Section 80-ID or section 80-IE

Section 80-IB: Deduction in respect of profits and gains from industrial undertakings other infrastructure development undertakings

The deduction in case of an assessee whose gross total income includes any profits and gains from any business of In industrial undertaking, being located in an industrially Backward State- being Janunu & Kashmir, shall be of the following amount-

Initial 5 Assessment Year	For the next 5 Assessment Years	
100% of the profits and gains derived from such undertaking	Company-30% of the profits and gains derived from such industrial undertaking.	Other than Co-25% of the profits and gains derived from such industrial undertaking.

Conditions

The undertaking is not formed by splitting up or reconstruction of existing unit . **Exception:** This condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period	Undertaking should not be set up by the transfer of old plant and machinery. However, following two cases old machinery is permitted: **Case 1:-** If the value of the old assets does not exceed 20 per cent of the total value of the plant and machinery, this condition is deemed to have been satisfied. **Case2:-** Second-hand imported machinery is	Undertaking manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule (such restriction not applicable to SSI or the unit set up in backward State), or operates one or more cold storage or plant or plants in any part of India.	Undertaking employs ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without aid of power.

specified in that section.	treated as new subject to satisfaction of few conditions in this regard.		

Section80-IB(9) Commercial production of mineral oil or natural gas

(1) Eligible Business -Undertaking which is engaged in commercial production of mineral oil or refining of mineral oil.

(2) Conditions

(i) Undertaking is located in the North-Eastern region and has begun or begins commercial production of mineral oil before 01.04.1997.

(ii) Undertaking is located in any part of India and has begun or begins commercial production of mineral oil on or after 01.04.1997 but not later than 31st March, 2017.
However, this deduction shall not be available for blocks licensed under a contract awarded after 31.03.2011 under the New Exploration Licensing Policy or in pursuance of any law for the time being in force or by the Central or State Government in any other manner
(iii) Undertaking is engaged in refining of mineral oil and begins such refining on or after 01.10.1998 but before 31.03.2012;

(iv) Undertaking is engaged in the commercial production of natural gas in blocks licensed under the VIII Round of bidding for award of exploration contracts (NELP-VIII) under the New Exploration Licensing Policy announced by the Government of India and begins commercial production of natural gas on or after 01.04.2009 but not later than 31st March, 2017;

(v) Undertaking is engaged in commercial production of natural gas in blocks licensed under the IV Round of bidding for award of exploration contracts of Coal Bed Methane blocks and begins commercial production of natural gas on or after 01.04.2009 but not later than 31st March, 2017.

Note- For the purpose of claiming deduction, all blocks licensed under a single contract, awarded under the New Exploration Licensing Policy announced by the Government of India vide Resolution No. O-19018/22/95-ONG.DO.VL, Dt. 10.02.1999 or in pursuance of any law for the time being in force or by the Central or State Government in any other manner, shall be treated as a single "undertaking"- Explanation to this sub- section.

(3) Quantum and period of deduction -100% of the profits derived from such business for 7 consecutive years including the initial assessment year.

Section 80-IA(4)(i) Infrastructure facilities

Eligible business -Any enterprise carrying on the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facility.

Any enterprise, for availing deduction with reference to the profits of the business relating to infrastructure facility, shall fulfill all the following conditions:
(i) The enterprise should be owned by a company registered in India or a consortium of such companies or by an authority or a Board or a Corporation or any other body established or constituted under any Central or State Act;

(ii) The enterprise should enter into an agreement with Central/State Government or a local authority or any other statutory body for developing or operating and maintaining or developing, operating and maintaining a new infrastructure facility;

(iii) The enterprise has started its operations and maintenance on or after 01.04.1995.

(iv) The benefit of deduction under this section shall not be available to any enterprise which starts the development or operation and maintenance of the infrastructure facility on or after the 1st day of April, 2017.

(v) **Quantum of Deduction** 100% of profits derived from eligible undertaking
(vi) For the purpose of this clause:

"Infrastructure facility" means	Road including toll road, a bridge or a rail system	Highway project including housing or other activities being an integral part of the highway project	Water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system	A port, airport, inland waterway, inland port or navigational channel in the sea
Period of Deduction	Any 10 consecutive years out of 20 years beginning from the year in which the enterprise develops and begins to operate any infrastructure facility.			Any 10 consecutive years out of 15 years beginning from the year in which the enterprise develops and begins to operate any infrastructure facility.

(vii) Special condition for housing projects:- The deduction shall be subject to the condition that the

profits of such housing or other development activities shall be transferred to a special reserve account and shall be utilized for the highways projects (excluding housing and other activities) within a period of three years following the year in which transfer to reserve took place. Any amount remaining unutilized shall be chargeable to tax as income of the year in which such transfer to reserve account took place.

(viii) Some other Points

Where an	***Circular 10/2005 -***	***Circular 1/2006 -***	***Circular 4/2010 -***

infrastructure facility is transferred by an enterprise which developed such infrastructure facility to another enterprise for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with the agreement with the Central Government, State Government, local authority or statutory body, the provisions of this section shall apply to the transferee enterprise for the unexpired period.	Structures at the ports for storage, loading, unloading etc. will be included in the definition of 'port' for this purpose if the concerned port authority has issued a certificate to that effect .	Effluent treatment and conveyance system is a part of water treatment system and therefore same would qualify as an infrastructure facility for the purpose of section 80IA	widening of an existing road by constructing additional lanes as a part of a highway project shall be regarded as a new infrastructure facility. However, simply relaying of an existing road shall not be considered as a new infrastructure facility

<u>Section 80-IA(4)(ii) Telecommunication Services</u>

(1) Eligible Business -Any undertaking providing telecommunication services whether basic or cellular including radio paging, domestic satellite service, network of trunking, broadband network and internet services.

(2) Conditions

(i) The undertaking is not formed by splitting up or reconstruction of existing unit. **Exception:** This condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section	(ii) Further, undertaking should not be set up by the transfer of old plant and machinery. However, following two cases old machinery is permitted: ***Case 1:-*** If the value of the old assets does not exceed 20 per cent of the total value of the plant and machinery, this condition is deemed to have been satisfied. ***Case2:-*** *Second-hand imported machinery is treated as new subject to satisfaction of few conditions in this regard.*	(iii) The operations of the eligible business should have been started on or after 01.04.1995, but on or before 31.03.2005.

(3) Quantum and period of deduction

100% of profits derived for the first 5 consecutive assessment years and 30% of profits in the next 5 consecutive assessment years out of 15 years.

Section 80-IA(4)(iii) Undertaking which develops, develops and operates or maintains and operates an industrial park notified by the CG

Any undertaking, which develops, develops and operates or maintains and operates an industrial park notified by the Central Government.

(1) Conditions -The operations of the undertaking should have started on or after 01.04.1997, but on or before 31.03.2011.

(2) Quantum and period of deductions -100% of profits derived for any 10 consecutive assessment years out of 15 years beginning from the year of operation.

(3) Additional Points -Where an undertaking develops an industrial park or a special economic zone and transfers the operation and maintenance of such industrial park or such special economic zone, to another undertaking, then deduction shall be allowed to such transferee undertaking for the remaining period in the ten consecutive assessment years.

Section 80IA(4)(iv) Power generation

(1) Eligible Business

(i) An undertaking set up in any part of India for the generation or generation and distribution of power on or after 01.04.1993 but on or before 31.03.2017.

(ii) An undertaking, which starts transmission or distribution of power by laying a network of new transmission or distribution lines on or after 01.04.1999 but on or before 31.03.2017

(iii) An undertaking which undertakes substantial renovation and modernization of the existing network of transmission or distribution lines on or after 01.04.2004 but on or before 31.03.2017. "Substantial renovation and modernization" means an increase in the plant and machinery in the network of transmission or distribution lines by atleast 50% of the book value of such plant and machinery as on the 01.04.2004.

(2) Conditions

(i) The undertaking is not formed by splitting up or reconstruction of existing unit.

Exception: This condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(ii) Further, undertaking should not be set up by the transfer of old plant and machinery. However, following two cases old machinery is permitted:

Case 1:- If the value of the old assets does not exceed 20 per cent of the total value of the plant and machinery, this condition is deemed to have been satisfied.

Case2:- *Second-hand imported machinery is treated as new subject to satisfaction of few conditions in this regard.*

(3) Quantum and period of deduction -100% of profits derived for any 10 consecutive assessment years out of 15 years, beginning from the year of operation.

Section 80-IA(4)(v) Reconstruction or Revival of power generating plant

(1) Eligible Business -An undertaking owned by an Indian company and set up for reconstruction or revival of power generating plants

(2) Conditions -Sec. 80-IA provides for deduction to an undertaking owned by an Indian company and set up for reconstruction or revival of power generating plant, where such:
(i) Indian company is formed before 30.11.2005, with majority equity participation by public sector companies for the purposes of enforcing the security interest of the lenders to the company owning the power generation plant

(ii) Such Indian company is notified before 31.12.2005 by the Central Government

(iii) Undertaking begins to generate or transmit or distribute power before 31.03.2011.

(3) Quantum and Period of Deduction -100% of profits derived for any 10 consecutive assessment years out of 15 years, beginning from the year of operation.

Section 80-IA(5) to (12) Some Common Points for Section 80-IA

(1) Determination of quantum of deduction -Determination of quantum of deduction: Section 80 IA (5) provides that "Notwithstanding anything contained in any other provision of this Act, for the purpose of determining the **"quantum of deduction** under section 80-IA for the assessment year immediately succeeding the initial assessment year or any subsequent assessment year, the profits and gains from the eligible business **shall be computed as if such eligible business were the only source of income of the assessee** during the previous year relevant to the initial assessment year and to even subsequent assessment year up to and including the assessment year for which the determination is to be made.

(2) Audit of accounts -The deduction shall be allowed only if the accounts are audited by an accountant and audit report in prescribed form has been furnished along with the return of income.

(3) Power of A.O. to recompute profit of eligible business (Inter-Unit Transfer)

Where any goods or services held for the purposes of eligible business are transferred to any other business carried on by the assessee; or any goods or services held for any other business are transferred to the eligible business and in either case, if the consideration for such transfer as recorded in the accounts of the eligible business does not correspond to the market value thereof, then the profits of eligible business shall be computed by adopting market value for such goods or services as on the date of transfer- Sec. 80-IA(8). However, where in the opinion of the Assessing Officer, the computation of profits and gains from the eligible business in the manner specified above presents exceptional difficulties; the Assessing Officer may compute such profits and gains on such reasonable basis as he may deem fit.

(4) Transactions between close connection entities -Where it appears to the Assessing Officer that, owing to the close connection between the assessee carrying on the eligible business to which this section applies and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in the eligible business, the Assessing Officer shall, in computing the profits and gains of the eligible business, take the amount of profits as may be reasonably deemed to have been derived therefrom- Sec. 80-IA(10).
Note- "Market value" in relation to any goods or service means the price that such goods or service would ordinarily fetch on sale in the open market. Where the transfer of such goods or services is a specified domestic transaction referred to in Sec. 92BA, the market value shall be the Arm's length price as defined u/s. 92F.

(5) Restriction on double deduction -Where any amount of profits and gains of an undertaking or of an enterprise is claimed and allowed under this section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this chapter under the heading "C.--Deductions in respect of certain incomes" and shall in no case exceed the profits and gains of such eligible business of the undertaking or enterprise.
(6) The Central Government may notify that exemption conferred by this section shall not apply to any class of industrial undertaking or enterprises with effect from such date as specified in the notification.

(7) Amalgamation and demerger -Where any undertaking which is entitled to the deduction under this section is transferred (on or before the 31st March, 2007) before the expiry of the period of deduction to another company in a scheme of amalgamation or demerger, no deduction shall be admissible to the amalgamating or demerged company, for the previous year in which the amalgamation or demerger takes place.
The benefit conferred under this section shall be available to the amalgamated or the resulting company as if amalgamation or demerger has not taken place.
(8) For removal of doubt, it is hereby declared that the intention of this section is not to give tax benefit for the persons who merely execute works contract awarded by any person including the Central or State Government.

(9)Mandatory Return- No deduction under this section shall be allowed if it has not been claimed in the return of income.

Section 80IC: Special provison in respect of certain undertakings in certain special category states

(1) Eligible Business

Undertaking or enterprise begins to manufacture or production of any article or thing other than those specified in Thirteenth Schedule in following Industrial	Undertaking or enterprise has begun or begins to manufacture or production of any article or thing specified in Fourteenth Schedule in the (1) State of Sikkim (2) State of	Undertaking or enterprise which has begun to manufacture or production but undertakes substantial expansion. "Substantial expansion" for the

Zones of (1) State of Sikkim (2) State of Uttaranchal or Himachal Pradesh (3) Any of the North-Eastern States (a) Export Processing Zone; or (b) Integrated Infrastructure Development Centre; or (c) Industrial Growth Centre; or (d) Industrial Estate; or (e) Industrial Park; or (f) Software Technology Park; (g) Industrial Area; or (h) Theme Park	Uttaranchal or Himachal Pradesh (3) Any of the North-Eastern States.	purpose of this section means increase in the investment in the plant and machinery by at least 50% of the book value of plant and machinery (before taking depreciation in any year) as on the first day of the previous year in which substantial expansion is undertaken.

(2) Conditions

(i) The undertaking is not formed by splitting up or reconstruction of existing unit. **Exception:** This condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;	(ii) Further, undertaking should not be set up by the transfer of old plant and machinery. However, following two cases old machinery is permitted: **Case 1:-** If the value of the old assets does not exceed 20 per cent of the total value of the plant and machinery, this condition is deemed to have been satisfied. **Case 2:-** Second-hand imported machinery is treated as new subject to satisfaction of few conditions in this regard.

(3) Quantum and period of deduction

State of Sikkim	State of Himachal Pradesh or State of Uttranchal	Any of the North- Eastern States
Beginning from 23.12.2002 and ending before 01.04.2007	Beginning from 07.01.2003 and ending before the 01.04.2012	Beginning from 24.12.1997 and ending before the 01.04.2007
100% of profits and gains for first 10 assessment years	100% of profits and gains for first 5 assessment years and thereafter 30% for Companies and 25% for other assessees for subsequent 5 assessment years	100% of profits and gains for first 10 assessment years

(4) Other consideration

(i) No deduction can be claimed by the assessee under any other section contained in Chapter VI-A in relation to the profits and gains of such undertaking or enterprise.

(ii) In case the assessee was already claiming the benefit u/s. 80-IB(4), the aggregate period of deduction availed by the assessee in respect of the undertaking or enterprise u/s. 80-IC or u/s. 80-IB(4) together shall not exceed 10 assessment years.

(iii) The other provisions with reference to furnishing of audit report, determination of quantum of deduction, power of assessing officer to re-compute profit in case of inter-unit transfer, restriction on double deduction, transactions between close connection activities of 80 IA are equally applicable to this section.

Section 80IE Special provision in respect of certain undertaking in North-eastern states

A deduction of an amount equal to 100% of the profits and gains derived from following business for 10 consecutive Assessment Years shall be allowed to an assessee which

(1) begins to manufacture or produce any eligible article or thing;	(2) undertake substantial expansion to manufacture or produce any eligible article or thing:	(3) carry on any eligible business.
"substantial expansion" means Increase in the investment in the plant and machinery by at least 25% of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken; "Eligible article or thing" means the article or thing other than the fallowing: — (a) goods which pertains to tobacco and manufactured tobacco substitutes; (b) pan masala; (c) plastic carry bags.		"eligible business" means the business of,— (a) hotel (not below two star category); (a) adventure and leisure sports including ropeways; (c) providing medical and health services in the nature of nursing home with a minimum capacity of 25 beds; (d) running an old-age home; (e) operating vocational training institute for hotel management, catering and food craft, entrepreneurship development, nursing and pars-medical, civil aviation related training, fashion designing and industrial training; (f) running information technology related training centre; (g) manufacturing of information technology hardware; and (h) bio-technology.

Section 80-IAC: Special person in respect of specified business

Where the gross total income of an assessee, being an eligible start-up, includes any profits and gains derived from eligible business, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to one hundred per cent of the profits and gains derived from such business for three consecutive assessment years.	Such Specified deduction may, at the option of the assesses, be claimed by him for any three consecutive assessment years out of seven years beginning from the year in which the eligible start-up is incorporated.

Explanation.-"Eligible start-up" means a company or a limited liability partnership engaged in eligible business which fulfils all the following conditions (FA 2019)

It is incorporated on or after the 1st day of April. 2016 but before the 1st day of April, 2021	the total turnover of its business does not exceed Rs.25 crore in the previous year relevant to the assessment year for which such deduction is claimed; and	It holds a certificate of eligible business from the Government.

Section 80IBA: Deductions in respect of profits and gains from housing project

An asses in the business of developing and building housing projects shall be allowed a deduction of an amount equal to 100% of the profits and gains derived from such business if satisfy following conditions-

(i) The project is approved by the competent authority

(ii)The Stamp duty value of a Residential Unit in thr Housing Project does not exceed Rs.45 Lacs FA 2019

(iii) The project in completed within a period of 5 years (FA 2018) from the date of approval

Where approval is obtained more than once, the project shall be deemed to have been approved on the date on which housing project was first approved;	The project shall be deemed to have been completed when a certificate of completion of project is obtained in writing

(iv) The carpet area of the shops and other commercial establishment's included in the housing project does not exceed 3% of the aggregate carpet area

(v)The project is on a plot of land measuring not less than—

Project is located within the cities of BENGALURU Chennai, DELHI NATIONAL CAPITAL REGION SUCH AS NOIDA,GAZIABAD,GURUGRAM,FARIDABAD. Kolkata,HYDERABAD or Mumbai i.e WHOLE METROPOLITAN REGION FA 2019	project is located in any other place
1,000 sq. metres	2,000 sq. metres

(vi) The carpet area of the residential unit comprised in the housing project does not exceed

Project is located within the cities of BENGALURU Chennai, DELHI NATIONAL CAPITAL REGION SUCH AS NOIDA,GAZIABAD,GURUGRAM,FARIDABAD. Kolkata,HYDERABAD or Mumbai i.e WHOLE METROPOLITAN REGION FA 2019	project is located in any other place
30 sq. metres	60 sq. metres

(vii) Where a residential unit in the housing project is allotted to an individual, no other residential unit In the housing project shall be allotted to the individual or the spouse or the minor children of such individual OR Spouse or Minor children of such Individual. FA 2019

(viii) The project utilizes

Project is located within the cities of BENGALURU Chennai, DELHI NATIONAL CAPITAL REGION SUCH AS NOIDA,GAZIABAD,GURUGRAM,FARIDABAD. Kolkata,HYDERABAD or Mumbai i.e WHOLE METROPOLITAN REGION FA 2019	project is located in any other place
not less than 90% of the floor area ratio permissible in respect of the plot of land	Not less than 80% of such floor area ratio
project must utilize 80% or 90% of the floor area ratio permissible (depending upon the location of the project). For this purpose, floor area ratio has been defined as total covered area of plinth area on all floors divided by the are the plot of land.	

(ix) Nothing contained in this section shall apply to any assesses who executes the housing project as a works-contract awarded by any person (including the Central Government or the

State Government).

(x) Where the housing project is not completed within 5 years and in respect of has been a deduction has been claimed and allowed under this section, the total amount of deduction so claimed and allowed in one or more previous years, shall be deemed to be the income of the assesee chargeable as business Income of the previous year in which the period for completion 5 years so expires.

Section 80JJAA: Deduction in respect of employment of new employees

Eligible Assessee and Amount of deduction -Where the gross total income of an assessee to whom section 44AB applies, includes any profits and gains derived from business, there shall, be allowed a deduction of an amount equal to thirty per cent of additional employee cost incurred in the course of such business in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

Conditions		
The business is not formed by splitting up, or the reconstruction, of an existing business:	The business is not acquired by the assessee by way of transfer from any other person or as a result of any business	The assessee furnishes alongwith the return of income the report of the accountant, as defined in the Explanation to

However, this condition is not applicable in respect of a business which is formed as a result of re-establishment, reconstruction or revival by the assessee of the business in the circumstances and within the period specified in section 33B	reorganisation;	section 288 giving such particulars in the report as may be prescribed
No deduction under this section shall be allowed if it has not been claimed in the return of income	Double deduction is not possible in respect of the same business income under section 80H to 80RRB.	The aggregate deductions under the various provisions referred to above, shall not exceed the profits and gains of the undertaking or unit or enterprise or eligible business, as the case may be

Explanation.—For the purposes of this section

"Additional employee cost" means total emoluments paid or payable to additional employees employed during the previous year.

- However, in the case of an existing business, the additional employee cost shall be nil, if—

(a) there is no increase in the number of employees from the total number of employees employed as on the last day of the preceding year;

(b) emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account OR OTHER ELECTRONIC MODE AS MAY BE PRESCRIED (FA 2019)

- For the first year of a new business, emoluments paid or payable to employees employed during that previous year shall be deemed to be the additional employee cost

"Additional employee" means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year. However, additional employee does not include,—

(a)an employee whose total emoluments are more than twenty-five thousand rupees per month; or

(b) an employee for whom the entire contribution is paid by the Government under the Employees' Pension Scheme notified in accordance with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; or

(c) an employee employed for a period of less than 240 days during the previous year; or (150 days if assessee is engaged in the business of manufacturing of apparel or footwear or leather products FA 2018)

(d) an employee who does not participate in the recognized provident fund;

"emoluments" means any sum paid or payable to an employee in lieu of his employment by whatever name called, but does not include—

(a) any contribution paid or payable by the employer to any pension fund or provident fund or any other fund for the benefit of the employee under any law for the time being in force; and (b) any lump-sum payment paid or payable to an employee at the time of termination of his service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and the like

Section 80PA: Deduction in respect of certain income of producer companies FA 2018 Inserted

Eligible assessee: Assessee being Producer company u/s 581A(l) of the Companies Act, 1956.

(2) Conditions

(a) The total turnover of the producer company is less than Rs.100 crore in any previous year.	(b) The gross total income of the producer company includes any profits and gains derived from "eligible business".

Amount of deduction

100% of the profit and gain attributable to "eligible business" is deductible for the assessment years 2019-20 to 2024-25.	If the assessee is also entitled to deduction under any othe provision or provision of Chapter VI-A (i.e, sections 80C to 80U), the deduction under section 80PA shall be allowed from the gross total income as reduced by the deductions under such other provisions.

Note- Eligible business means (a) the marketing of agricultural produce grown by the members; or (b) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to the members; or (c) the processing of the agricultural produce of the members;

Note-"member" shall have the meaning assigned to it in clause (d) of section 581A of the Companies Act, 1956.

Section 80LA: Deductions in respect of certain incomes of offshore banking units and IFSC

Eligible assessee means

(a) a scheduled bank and having an offshore banking unit in a special economic zone; or

(b) a foreign bank and having an offshore banking unit in a special economic zone; or

(c) a unit of International Financial Services Centre.

Amount of Deductions

(*1*) (a)100 per cent of the income	(*1*) (b)50 per cent of income	(*1A*) For Units in IFSC
For 5 consecutive AY beginning with the AY relevant to the PY in which the permission as stated is obtained.	For the next 5 years	100% OF Such profit for any 10 Consecutive AY out of 15 years, at the option of Assessee, beginning with the year in which the permission under SEBI Act, Banking

		Regulation Act or Other relevant laws. FA 2019

Conditions - The following conditions should be satisfied

1.The gross total income of the eligible assessee includes

Any income from the offshore banking unit in a Special Economic Zone .	From the business referred to in section 6(1) of the Banking Regulation Act, with an undertaking located in Special Economic Zone or any other undertaking which develops, develops and operates or operates and maintains a Special Economic Zone .	From any unit of the International Financial Services Centre from its business for which it has been approved for setting up in such a centre in a Special Economic Zone.

2. No deduction shall be allowed under this section unless assessee furnishes along with the return

The report from a Chartered Accountant in a prescribed Form certifying that the deduction has been correctly claimed in accordance with the provisions of this section should be submitted along with the return of income.	A copy of permission obtained under section 23(1)(a) of Banking Regulation Act for opening the branch of a banking company.

3. No deduction under this section shall be allowed if it has not been claimed in the return of income

4. Double deduction is not possible in respect of the same business income under section 80H to 80RRB.

5. The aggregate deductions under the various provisions referred to above, shall not exceed the profits and gains of the undertaking or unit or enterprise or eligible business, as the case may be.

Section 80QQB Deduction in respect of royalty income, etc., of authors of certain books other than text-books

Eligible assessee: Resident Individual

Amount of deduction – It shall be lower of —
(a) Rs. 3,00,000; or (b) Royalty income

Conditions -

(a) Resident Individual is an author. For this purpose, author includes a joint author.

(b) His gross total income includes

Royalty or copyright fees (payable in lump sum or otherwise) in respect of any book being a work of literary, artistic or scientific nature (including advance payment which is not	Lump sum consideration for transfer (or grant) of any interest in the copyright of the book.

returnable)	

(c) The assessee shall have to furnish a certificate in prescribed form, duly signed by the prescribed authority along with the return of income

Some other Aspects-

(i) The "book" shall not include brochures, commentaries, diaries, guides, journals, magazines, newspapers, pamphlets, text-books for schools, tracts and other publications of similar nature, by whatever name called.

(ii) Rate of royalty not to exceed 15 per cent - Where the income by way of royalty (or the copyright fee), is not a lump sum consideration in lieu of all rights of the assessee in the book, so much of the income (before allowing expenses attributable to such income) as is in excess of 15 per cent of the value of such books sold during the previous year, shall be ignored.

(iii) *Royalty from outside India:* Where any income is earned from sources outside India on which the deduction under this to be claimed, then, only so much of the income shall be considered as **is brought into India** by, or on behalf of, the assesse ***in convertible foreign exchange within a period of 6 months from the end of the previous year*** or within such further period as the competent authority may allow in this behalf. Further, where any royalty is earned from sources outside India, a certificate (in the prescribed form) from the prescribed authority needs to be furnished along with the return on income.

(iv) No deduction under this section shall be allowed if it has not been claimed in the return of income.

(v) Double deduction is not possible in respect of the same business income under section 80H to 80RRB.

(vi) The aggregate deductions under the various provisions referred to above, shall not exceed the profits and gains of the undertaking or unit or enterprise or eligible business, as the case may be.

Section 80RRB: deduction of royalty on patents

Eligible assessee: Resident + Individual are eligible for deduction **Amount of deduction** – It shall be lower of (a) Rs. 3,00,000; or (b) Royalty income, subject to Condition

(a) Resident individual must be a patentee.
(b) He is in receipt of any income by way of royalty in respect of patent, which is registered under the Patent Act .
(c) The assessee shall have to furnish a certificate in prescribed form, duly signed by the prescribed authority along with the return of income.

Note- Patentee means the person (being the true and first inventor of the invention), whose name is entered on the patent register as the patentee, in accordance with the Patents Act, 1970. It includes every such person (being the true and first inventor of the invention) where more than one person is registered as patentee under that Act in respect of that patent.

Somr Other points

(a) *Royalty does not include* any consideration, which is chargeable under the head "Capital gains".

(b) *Royalty from outside India:* Where any income is earned from sources outside India on which the deduction under this to be claimed, then, only so much of the income shall be considered as **is brought into India** by, or on behalf of, the assesse ***in convertible foreign exchange within a period of 6 months from the end of the previous year*** or within such further period as the competent authority may allow in this behalf. Further, where any royalty is earned from sources outside India, a certificate (in the prescribed form) from the prescribed authority needs to be furnished along with the return on income.

(c) *Limit when compulsory licence granted* : Where a compulsory licence is granted in respect of any patent under the Patents Act, 1970, the income eligible for the purposes of this section shall not exceed the amount of royalty under the terms and conditions of a licence settled by the Controller under that Act.

(d) No deduction under this section shall be allowed if it has not been claimed in the return of income.

(e) Double deduction is not possible in respect of the same business income under section 80H to 80RRB.

(f) The aggregate deductions under the various provisions referred to above, shall not exceed the profits and gains of the undertaking or unit or enterprise or eligible business, as the case may be.

Section 80C Deduction in respect of Life insurance Premia, etc

Section 80C provides deduction in respect of specified qualifying amounts paid or deposited by the assessee in the previous year.

(1) Eligible assessee:- Individual or a Hindu undivided family.

(2) Payments / deposits / contributions eligible for deduction under section 80 C

(a) Life insurance premium

Note

Amount of Deduction – The amount deduction under section 80C shall not exceed Rs. 1,50,000 if investments/deposits/contributions in following manner-

(a)In the case of an individual life insurance policy may be taken on his own life, life of the spouse or any child. In the case of a Hindu undivided family, policy may be taken on the life of any member of the family. ***Deduction in respect of Insurance Premium paid cannot exceed the ceiling given below-***

	If policies issued between 1.4.2003 and 31.3.2012	*If policies issued on or after 1.4.2012 but before 1.4.2013*	*If policies issued on or after 1.4.2013*

Where the insurance is on the life of a person with disability or severe disability as referred to in section 80U or a person suffering from disease or ailment as specified under section 80DDB	*20% of sum assured*	*10% of sum assured*	*15% of sum assured*
Where the insurance is on the life of any other person	*20% of sum assured*	*10% of sum assured*	*10% of sum assured*

Sum assured means minimum amount assured under the policy. Further, sum assured will not include any premium agreed to be returned and /or any benefit by way of bonus or otherwise.

(b) Premium paid in respect of a contract for deferred annuity

Note: Annuity plan may be taken in the name of the individual, his wife/her husband or any child of such individual.

(c) Any sum deducted from salary payable to a Government employee for the purpose of securing a deferred annuity (subject to a maximum of one-fifth of salary)

Note: This annuity shall be for the benefit of the individual, his wife or children.

(d) Contribution towards statutory provident fund

(e) Contribution (not being repayment of loan) towards 15 year public provident fund

Note:
In the case of an individual, the provident fund account may be in his own name or in the name of his/ her spouse or any child.
In the case of a Hindu undivided family, provident fund account may be in the name of any member of the family.

(f) Contribution by an exmploee towards recognized provident fund

(g) Contribution by an employee towards an approved superannuation fund

(h) Subscription to National Savings Certificates, VIII Issue including accrued interest thereon or IX Issue.

(i) Deposit in **'Sukanya Samriddhi Account' Notification No. 9/2015**

Note: In the case of an individual, deposit in Sukanya Samriddhi Account can be made in the name of individual, or any girl child of that individual or any girl child for whom such person is the legal guardian, if the scheme so specifies.

(j) Contribution in the unit-linked insurance plan (ULIP) of Unit Trust of India

Note : In the case of an individual, ULIP may be taken on his own life, life of the spouse or any child. In the case of a Hindu undivided family, ULIP may be taken on the life of any member of the family.

(k) Contribution in the unit-linked insurance plan (ULIP) of LIC Mutual Fund

Note : In the case of an individual, ULIP may be taken on his own life, life of the spouse or any child. In the case of a Hindu undivided family, ULIP may be taken on the life of any member of the family

(l) Payment for notified annuity plan of LIC (i.e., New Jeevan Dhara, Jeevan Akshay) or any other insurer (Tata AIG Easy Retire Annuity Plan

(m) Subscription towards notified units of Mutual Fund or UTI

(n) Contribution to notified pension fund set up by Mutual Fund or UTI

(o) Subscription to any notified deposit scheme or pension fund set up by the National Housing Bank. [National Housing Bank (Tax Saving) Term Deposit Scheme, 2008 vide Notification No. 3/2009]

(p) Subscription to any deposit scheme of—

a. public sector company engaged in providing long-term finance for purchase/construction of residential houses in India;

b. housing board constituted in India for the purpose of planning, development or improvement of cities, towns and villages or both.

(q) Any sum paid as tuition fees (excluding any payment towards development fees / donation / payment of similar nature) whether at the time of admission or otherwise to any university or college or educational institution in India for full time education of any two children of the individual [Note 10]

Note : Full-time education includes any educational course offered by any university, college, school or other educational institution to a student who is enrolled full-time for the said course. Full-time education includes play-school activities, pre - nursery and nursery classes. –Circular No. 17/2014, dated December 10, 2014.

(r) The following payment made towards the cost of purchase/construction of a new residential house property is qualified for the purpose of section 80C :

a. **any instalment or part payment of the amount due under any self-financing or other scheme of any development authority, housing board** or other authority engaged in the construction and sale of house property on ownership basis ; or

b. **any instalment or part payment of the amount due to any company or co-operative society of which the assessee is a shareholder or member:): towards the cost of the house property allotted to him** (it is not applicable if the assessee is not a shareholder or member of the company/co-operative society which provides house to the assessee); or

c. **repayment of the amount borrowed by the assessee from** —

(i) the Central Government or any State Government, or

(ii) any bank, including a co-operative bank, or

(iii) the Life Insurance Corporation of India, or

(iv) the National Housing Bank, or

(v) any public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes which is eligible for deduction under section 36(1)(viii),or

(vi) any company in which the public are substantially interested or any co-operative society, where such company or co-operative society is engaged in the business of financing the construction of houses, or

(vii) the assessee's employer where such employer is an authority or a board or a corporation or any other body established or constituted under a Central or State Act, or

(viii) the assessee's employer where such employer is a public company or public sector company, or a university established by law or a college affiliated to such university or local authority or co-operative society;

d. **stamp duty, registration fee and other expenses for the purpose of transfer of such house property to the assessee.**

Note:
The following payments are not qualified for the purpose of section 80C :
a. the admission fee, cost of the share and initial deposit which a shareholder of a company or a member of a co-operative society has to pay for becoming such shareholder or member; or

b. the cost of any addition or alteration to, or renovation or repair of, the house property which is carried out after the issue of the completion certificate in respect of the house property by the authority competent to issue such certificate or after the house property (or any part thereof) has either been occupied by the assessee or any other person on his behalf or been let out; or

c. any expenditure in respect of which deduction is allowable under the provisions of section 24.

(s) Subscription to equity shares or debentures of a public company engaged in infrastructure including power sector or units of a mutual fund proceeds of which are utilised for the purpose of business referred to in section 80 IA (4)

(t) Subscription to any units of any mutual fund referred to in section 10(23D) and approved by the Board.

Note:

It is necessary that such units shall be subscribed only in the issue made by the public company formed in India or a public financial institution and entire proceeds of the issue are utilized wholly and exclusively for the purpose of business referred to in section 80 IA (4)

(u) ***Amount deposited as term deposit for a period of not less than 5 years and it is in accordance with a scheme framed and notified by the Central Government.***

(v) ***Subscription to any notified bonds of National Bank for Agriculture and Rural Development (NABARD)***

(w) ***Amount deposited under Senior Citizens Saving Scheme***

(x) ***Amount deposited in fiver year time deposit scheme in post office***

Lock-in-period In respect of the few investments/deposits/contributions eligible for deduction under section 80C, law provides lock-in-period

2 years	**5 years**
Life insurance premium	Unit-linked insurance plan (ULIP) House Property Deposit under Senior Citizen Saving Scheme Time Deposit in Post Office

Consequences when lock-in-period not observed		
Where a member participating in ULIP, terminates his participation before 5 years, then following consequences would arise	Same rule is to be followed in case of termination of life insurance policy before 2 years and transfer of residential house property before 5 years	In case of withdrawal before 5 years by the depositor during his lifetime from amount deposited under Senior Citizen Saving Scheme or time deposit in Post Office, the amount withdrawn shall be taxable in the year of withdrawal. For this purpose, interest which has already been taxed in earlier years shall be excluded.

Any contribution made towards ULIP in the year of termination shall not be eligible for deduction under section 80C.	The amount of deduction already claimed under this section in the earlier years shall be deemed as income of the taxpayer in the year in which ULIP is terminated

Note- Secton 10(0D) provides that any sum received under a Life Insurance Policy including the stint allocated by way of bonus on such policy, shall be exempt from tax. However, the following are not exempt and therefore shall be taxable-

(I) Any sum received under Keyman Insurance Policy. 'keyman insurance policy" means a life insurance policy taken by a person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person and includes such policy which has been assigned to a person, at any time during the term of the policy, with or without any consideration.	Any sum received under an Insurance Policy which exceeds the % specified in Table of premium payable. However, the amount received on such policy on death of the insured shall not be taxable

(y) Contribution to NPS: Contribution by Individual who is an employee of the Central Government to NPS u/s section 80CCD (a) for a fixed period of not less than three years (locking period of three years); and (b) which is in accordance with the scheme as may be notified by the Central Government in the Official Gazette for the purposes of this claus Specified account means an additional account referred u/s 20(3) of the Pension Fund Regulatory and Development Authority Act, 201[FA 2019].

Section 80D Deduction in respect of medical insurance premia

Eligible assessee- Individual or Hindu undivided family

Conditions –

(a) Mediclaim insurance is paid by the individual or HUF. In the case of individual, payment can also be made to the Central Government Health Scheme or such other scheme as may be notified by the Central Government in this behalf and/or on account of preventive health check-up.

(b) It is paid out of income chargeable to tax.

(c) Payment shall be made by any mode other than cash. However, payment on account of preventive health check-up can be made by any mode including cash

Deduction-

Amount spent on	Individual , spouse and dependent children		Parents		Any member of HUF	
	Age upto 60/NR Senior citizen	Age 60 Plus	Age upto 60/NR Senior citizen	Age 60 Plus	Age upto 60/NR Senior citizen	Age 60 Plus
Medical Insurance	25,000	50,000	25,000	50,000	25,000	50,000
Health Checkup#	5,000	5,000	5,000	5,000	***NA***	***NA***
CGHS	25,000	25,000	***NA***	***NA***	***NA***	***NA***

Medical Expenditure, if no amount has been paid towards health insurance of such person	***NA***	50,000	***NA***	50,000	***NA***	50,000
	25,000	50,000	25,000	50,000	25,000	50,000

Note:# Deduction is available if payments are made other than by cash. However, for health checkup payment can be made in cash.

Note-FA 2018 If the amount of medical insurance premium is paid in lump sum in the previous year to effect or to keep in force insurance on the health of any person specified in the section for more than a year. There shall be allowed for each of the relevant previous year, a deduction equal to the appropriate fraction of the amount. Where,

"appropriate fraction" means the fraction, the numerator of which is one and the denominator of which is the total number of relevant previous years;	"relevant previous year" means the previous year beginning with the previous year in which such amount Is paid and the subsequent previous year or years during which the insurance shall have effect or be In force

Section 80DD-Deduction in respect of maintenance including medical treatment of a dependant who is a person with disability-

Deduction under section 80DD of the income tax act is allowed to Resident Individuals or HUFs for a dependant-who is differently abled **and**– is wholly dependent on the individual (or HUF) for support & maintenance-

Below are the **conditions** you must meet to avail this deduction –

- Deduction is allowed for a dependant of the taxpayer and not the taxpayer himself.
- The taxpayer is **not** allowed this deduction if the dependant has claimed a deduction under section 80U for himself/herself.
- Dependant in case of an individual taxpayer means spouse, children, parents, brothers & sisters of the taxpayer. In case of a HUF means a member of the HUF.
- The taxpayer has incurred expenses for medical treatment (including nursing), training & rehabilitation of the differently abled dependant or the taxpayer may have deposited in a scheme of LIC or another insurer for maintenance of the dependant.
- Disability of the dependant is not less than 40%.
- Disability is as defined under section 2(i) of the Persons of Disabilities Act, 1995.

Table Showing Tax Deduction under section 80DD

Type	Amount (in Rupees)
Dependent person with disability	Rs. 75,000
Dependent person with severe disability	Rs. 1,25,000

Section 80DDB: Deduction in respect of medical treatment, etc

Assessee-Must be Resident

Eligible Expenditure-Any amount actually paid for the medical treatment of such disease or ailment as may be specified: (a) for himself or a dependent, in case the assessee is an individual; or (b) for any member of a HUF, in case the assessee is a HUF

Conditions-

(i).No such deduction shall be allowed unless the assessee obtains the prescription for such medical treatment from a neurologist, an oncologist, a urologist, a hematologist, an immunologist or such other specialist, as may be prescribed.

(ii) The deduction under this section shall be reduced by the amount received, if any, under insurance from an insurer. Or reimbursed by en employer, for the medical treatment of the person referred to in clause (a) or (b).

Age of person who underwent treatment	Deduction allowed to assessee
Up to 60 years	Least of actual amount spent or Rs 40,000
Senior citizen (60-80 years)	Least of actual amount spent or **Rs 1,00,000**
Super senior citizen (above 80 years)	Least of actual amount spent or **Rs 1,00,000**

Section 80E : Deduction in respect of interest on loan taken for higher education

Eligible assessee: Individual

Conditions:

(a) He had taken a loan from any bank, financial institution or an approved charitable institution for the purpose of pursuing ***any course of studies pursued after passing the senior secondary examinations or its equivalent from any recognized board.***

(b) The loan was taken by the taxpayer for the purpose of pursuing **his own higher education or of his relatives. For this purpose, relative means** ***spouse and children of that individual or student for whom the individual is the legal guardian.***

(c) Amount is paid by the individual during the previous year by **way of interest on such loan out of his income chargeable to tax.**

Amount deductible -The entire amount paid by way of interest is deductible under this section

Period of Deduction: The **above** deduction is allowed in computing the taxable income of the initial assessment year (i.e., the assessment year relevant to the previous year in which the assessee starts paying the interest on the loan) and 7 immediately succeeding assessment years or until the above interest is paid in full, whichever is earlier.

Section 80EE : Deduction in respect of interest on loan taken for residential house property

Eligible Assessee:- Individual

(2) Conditions

(a) He has taken loan from any financial institution for the purpose of acquisition of a residential house property.

(b) the loan has been sanctioned by the financial institution during the period beginning on the 1st day of April, 2016 and ending on the 31st day of March, 2017

(c) the amount of loan sanctioned for acquisition of the residential house property does not exceed Rs.35 lacs;

(d) the value of residential house property does not exceed Rs.50 lacs;

(e) the assessee does not own any residential house property on the date of sanction of loan.

(3) Amount deductible:- The maximum deduction allowable is Rs. 50,000. This deduction is over and above the deduction available u/s 24 of the Act.

(4) Other points to consider

(a) Financial institution

(i) A banking company to which the Banking Regulation Act, 1949 applies ; or

(ii) Any bank or banking institution referred to in section 51 of the Banking Regulation Act, 1949; or

(iii) A housing finance company

(b) Housing finance company

A public company formed or registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes

Section 80EEA Deduction is allowed for the INTEREST paid on Loan taken FOR the Acquisition of any Residential House NEWLY inserted section {FA 2019}

Individual who is NOT eligible to claim deduction u/s 80EE i.e Loan sanctioned > 35 Lakhs; OR ii) Loan sanctioned in FY 19-20 not 16-17 then subject to certain condition deduction is allowed for the INTEREST paid on Loan taken FROM a financial institution(same definition as that u/s 80EE) FOR the Acquisition of any Residential House Property restricted upto a maximum of Rs. 1,50,000(not 50,000) in 1 PY. This maximum limit is over & above the 2,00,000 limit u/s 24.

Certain condition

i) SDV of House < 45 Lakhs; ii) Assessee should not own any residential house ON the date of sanction of loan; AND iii) Loan should be sanctioned DURING the PY 19-20.iv)There is no maximum limit on the "amount of loan v) Deduction u/s 80EEA is allowed for the Interest paid on Loan taken FROM a financial institution(same definition as that u/s 80EE) FOR the Acquisition of any Residential House Property vi) - If deduction i.r.o. Interest is allowed u/s 80EEA, deduction i.r.o. Such Interest shall NOT be allowed under any other provision of the Act for the same or any other AY vii) The deduction u/s 80EEA is available till the repayment of Loan continues.

SECTION 80EE	SECTION 80EEA

Introduced in AY 2017-2018	Introduced in AY 2020-2021
Apllicable to ROR / NOR / NR	Apllicable to ROR / NOR
	Only Where section 80EE is not applicable
Loan taken from any Financial Institution	Loan taken from any Financial Institution
Period of sanctioning of loan between 1/4/2016 to 31/3/2017	Period of sanctioning of loan between 1/4/2019 to 31/3/2020
Purpose of taking loan is acquiring a residential property	Purpose of taking loan is acquiring a residential property
Amount of loan Maximum `35 lakhs	NA
Stamp duty value of residential house Should not exceed `50 lakhs	Stamp duty value of residential house Should not exceed `45 lakhs
Maximum limit 50,000	Maximum limit 150,000

Section 80EEB Deduction i.r.o. Interest on loan taken to purchase Electric Vehicle: NEWLY inserted section AS PER FINANCE ACT 2019

This deduction is allowed to INDIVIDUAL for the INTEREST paid on Loan taken FROM a financial institution FOR the purposes of Purchase of an Electric Vehicle subject to MAXIMUM of Rs. 1,50,000 in 1 PY.

Conditions-

a. Loan should be sanctioned DURING the period BEGINNING on 1st April'19 and ENDING on 31st March'23.
b. - If deduction i.r.o. Interest is allowed u/s 80EEB, deduction i.r.o. SUCH Interest shall NOT be allowed under any OTHER provision of the Act for the same or any other AY.
c. The deduction u/s 80EEB is available TILL the repayment of Loan continues

Note- Financial Institution:- It MEANS a "Banking Company to which the Banking Regulation Act, 1949 applies" OR "any Bank or Banking Institution referred to u/s 51 of THAT Act" and INCLUDES any "deposit taking NBFC(Defined u/s 43B) " OR a "systemically important non-deposit taking NBFC

Electric Vehicle:- It MEANS a vehicle which is Powered EXCLUSIVELY by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle and the vehicle has such electric regenerative braking system, which during braking provides for the conversion of vehicle kinetic energy into electrical energy.

Section 80G Deduction in respect of donations to certain funds, chartable institutions

Eligible Assessee:- Any person, resident as well as non-resident
Mode of payment: Donation can be given in cash or by cheque or draft. However, no deduction shall be allowed u/s 80G in respect of donation in cash of an amount exceeding Rs.2,000.
Amount deductible:-
There are four categories of deductions. The following table gives the details of the institutions and funds to which donations can be made for the purpose of claiming deduction under section 80G, –

1.Donation qualifying for 100% deduction, without any upper limit
2. Donation qualifying for 100% deduction, subject to upper limit
3. Donation qualifying for 50% deduction, without any upper limit
4. Donation qualifying for 50% deduction, subject to qualifying limit
The eligible donations referred to in (2) and (4) should be aggregated and the sum total should be limited to 10% of the adjusted gross total income

"Adjusted gross total income" shall be calculated as
Gross total income –[LTCG+ STCG u/s 111A+Income referred to in section 115A+Amount deductible under sections 80C to 8OU (except section 80G)]

Note-
a.No deduction allowed in respect of donation made in excess of Rs.2,000 unless such sum is paid by any mode other than cash.
b.Donation made in kind shall not be deductible.
c. Donation directly to beneficiary is not deductible
d.Donation to any trust established for benefit of particular community or caste is not deductible

Section 80GG:Deductions in respect of rents paid
Eligible assessee: Individual who is not in receipt of house rent allowance at any time during the previous year.
Conditions:
(a) The assessee incurs expenditure towards payment of rent in respect of any furnished or unfurnished accommodation occupied by him for the purposes of his own residence.
(b) The assessee is required to file a declaration in a prescribed form regarding expenditure incurred by him towards payment of rent.
Amount of deduction - If the above five conditions are satisfied, Lower of
(a) Rs. 5,000 per month; **(b)** 25 per cent of total income; or **(c)** the excess of actual rent paid over 10 per cent of total income , shall be deductable.
"Total income" shall be calculated as Gross total income –[LTCG+ STCG u/s 111A+Income referred to in section 115A+Amount deductible under sections 80C to 8OU (except section 80G)]
The deduction under this section shall not be available if following persons own any residential accommodation at the place where the taxpayer resides, performs the duties of his office, or employment or carries on his business or profession—
(a) the assessee;
(b) his spouse;
(c) his minor child;
(d) the Hindu undivided family of which the assessee is a member.

Section 80U: Deduction in case of a person with disability
Eligible assessee: Resident Individual who is certified by the medical authority to be a person with disability or severe disability .

Deduction-Person suffering

with disability	with severe disability
Rs.75,000	Rs.1,25,000
Disability such as blindness; low vision; leprosy-cured; hearing impairment; locomotor disability; mental retardation; and mental illness.	
Person with sever disability means the individuals who suffers 40 percent or more of one or more disabilities mentioned above	**Person with sever disability** means the individuals who suffers 80 percent or more of one or more disabilities mentioned above

Section 80GGB: Deduction in respect of contributions given by companies to political parties or electoral trust

Assessee eligible for deduction-Indian company.
Nature of deduction Assessee is eligible for deduction in respect of contributions made to registered political parties or electoral trust during the PY (otherwise than by way of cash).
Extended meaning of political contribution-Political contribution includes even the expenditure incurred on advertisement in any publication (being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like) by or on behalf of a political party or for its advantage.
Ceiling on deduction Nothing is specified in the section.
Note-Any expenditure on advertisement in a political magazine incurred by an Indian company is disallowed U/s 37 (2B) while computing income U/H PGBP. However, it is allowed as deduction U/s 80GGB against the GTI.
Note-No deduction shall he allowed under this section in respect of any sum contributed by way of cash.

Section 80GGC: Deduction in respect of contributions given by any person to political parties or electoral trust

Assessee eligible for deduction Any person other than (a) Indian company; (b) local authority; (c) AJP wholly or partly funded by the Government.
Nature of deduction Assessee is eligible for deduction in respect of contributions made to registered political parties or electoral trust during the PY (otherwise than by way of cash).
Ceiling on deduction Nothing is specified in the section.
Note-No deduction shall be allowed under this section in respect in any sum contributed by way of cash.

Section 80TTAand 80TTB Deduction in respect of interest on Certain deposit deposits

	Section 80TTA	Section 80TTB FA2018
Applicable To / who is Eligible	Individual and HUF & NR Senior citizen except Resident senior citizens	Only Resident senior citizens. i.e. 60 year Or More
Qualified income	Only Interest on savings account of any kind No deduction shall be available in respect of Fixed Deposits.	Interest income from Fixed Deposit, Recurring Deposit and Savings Account in Banks or Post Office is eligible
Quantum of deduction	Upto Rs 10,000	Upto Rs 50,000

29.Deuction under Section 10AA

Section 10AA: Special provisions in respect of newly established units in SEZ

While computing ins total income of an undertaking, which begins to manufacture or produce articles or things or computer software in any SEZ, the deduction shall be-

100% of profits and gains derived from export First 5 consecutive assessment years (beginning with the assessment year in which undertaking begins to manufacture or produce articles or things or computer software, as the case may be).	50% of profits and gains derived from export from export or amount transferred to "SEZ Reinvestment Allowance Reserve Account" Whichever is lower. Next 5 assessment years

Note-Profits and gains derived from export shall be: -
Profits of the business of the unit × Export turnover of the unit/Total Turnover of the unit

Export Turnover means the consideration in respect of export by the unit of articles or things or services received in, or brought into India by the assessee, but do not include the following:
a. Freight;
b. Telecommunication charges;
c. Insurance attributable to the delivery of the articles or things outside India;
d. Expenses, if any, incurred in foreign exchange in rendering of services outside India.
The profits and gains derived from on-site development of computer software including services for
Development of software outside India shall be deemed to be export profits eligible for deduction.

Manner of utilization of "SEZ Reinvestment Allowance Reserve Account".
(1) The new plant and machinery shall be first put to use before the expiry of 3 years from the end of year in which the reserve was created.
(2) Until the acquisition of new plant and machinery, the reserve may be utilized for the business purposes of the unit. However, it cannot be utilized for the distribution of dividends or profits or for remittance outside India as profits or for creating any asset outside India.
(3) Prescribed particulars shall be submitted in respect of new plant and machinery along with the return of income for the previous year in which such plant and machinery was first put to use.
(4) If the reserve is mis-utilized then the deduction shall be taken back in the year in which the reserve is Mis-utilized and chargeable to tax in that year.
(5) If the reserve is not utilized for acquiring new plant and machinery within three years as stated above then the deduction shall be taken bank in the year immediately following the period of three years.
Conditions:

(1) A unit in SEZ has begun to manufacture or produce any article or things or provide any services after 31.03.2005 but on or before 31st March, 2020.
(2) The unit in SEZ is not formed by the splitting up, or the reconstruction, of a business already in existence. However, where an industrial undertaking is formed as a result of re-establishment, reconstruction or revival by the assesse of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section the same will quality for the tax concession.
Note-Section 33B provides that the business of any industrial undertaking carried on in India is discontinued in any previous year by reason of extensive damage to, or destruction of, any building, machinery, plant or furniture owned by the assessee and used for the purposes of such business as a direct result of—
(i) Flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature; or
(ii) Riot or civil disturbance; or
(iii) Accidental fire or explosion; or
(iv) action by an enemy or action taken in combating an enemy (whether with or without a declaration of war), and, thereafter, at any time before the expiry of three years from the end of such previous year, the business is re-established, reconstructed or revived by the assessee.
(3) The unit in SEZ is not set up by the transfer of plant and machinery previously used for any purpose. This condition is subject to following relaxation:
(a) 20 per cent previously used plant and machinery is permitted - If the value of the previously used plant and machinery does not exceed 20 per cent of the total value of the machinery or plant used in the business, this condition is deemed to have been complied with.
(b) Second-hand imported machinery is treated as new- Any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled—
(i) Such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India.
(ii) Such machinery or plant is imported into India from any country outside India.
(iii) No deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.
(4) The assessee shall furnish the report from a chartered accountant in a prescribed form along with the return of income, certifying that the deduction has been correctly claimed in accordance with the provision of this section.
(5) Deduction under section 10AA is not available unless it is claimed in the return of income. – Section 80A(5).
(6) If deduction is claimed in respect of a specified business [as referred to in section 35AD(8)(c)] under section 10AA, no deduction in respect of that business will be available under section 35AD.
(7)Ceiling on deduction to be claimed under section 10AA of the Act
(a) *Amount of deduction under section 10AA shall be allowed from the total income* of the assessee computed under the Act *before giving deduction under section 10AA* and
(b) *Deduction* under section 10AA *shall not exceed (a) above.*
(8) Power of A.O. to re-compute Profit

The provisions of 80IA(8) and 80IA(10) shall apply mutatis mutandis to the unit of SEZ claiming benefit under this section.

(9) Impact once benefit has been availed under section 10AA

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

b. No deduction u/s.80 IA or 80-IB shall be allowed in relation to the profits and gains of unit of SEZ.

c. Any unabsorbed depreciation u/s.32(2); or business loss u/s.72 (1) or loss under the head 'Capital gains' u/s.74 of the unit shall not be allowed to be carried forward and set off where such loss relates to any of the assessment years ending before the 1st day of April, 2006.

(10) Impact when amalgamation or demerger takes place: -

Where an undertaking is transferred to another company under a scheme of amalgamation or demerger, the *deduction under this section shall be allowable in the hands of the amalgamated* or the resulting *company for the unexpired period.*

However, no deduction shall be admissible under this section to the amalgamating company or demerged company for the previous year in which amalgamation or demerger takes place.

Section 80A: Deductions to be made in computing total income

a. The aggregate amount of deduction u/s 80C to 80U shall not exceed gross total income of assessee.

b. No deductions under section 80C to 80U can't be claimed from long-term capital gains, short-term capital gains under section 111 A, winnings from lottery, races, etc.

c. Where an association of persons or body of individuals is entitled for deductions under section 80G, 80GGA, 80GGC, 80-IA, 80-IB, 80-IC, 80-ID, 80IE and 80 TTA, a member thereof cannot claim the same deduction in his individual assessment in relation to his share in the total income of the association of persons or body of individuals.

d. Where a deduction under section 80-IA/ 80-IAB/ 80-IC/ 80-IE/ 10AA is claimed and allowed in respect of profits of any of the specified business referred to in section 35AD for any AY, no deduction shall be allowed under the provisions of section 35AD In relation to sorb specified business for the same or any other AY.

30.Assessment Procedure

Section 139(1) requires that every person,—

a. being a company or a firm; or
b. being a person other than a company or a firm, if (i) his total income or (ii) the total income of any other person in respect of which he is assessable under the Income-tax Act, during the previous year, exceeded 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 prescribed.

Fourth and Fifth Proviso to section 139(1)

A person, being a resident other than not ordinarily resident in India Who is not required to furnish a return under section 139(1)
(a) Who holds, as a beneficial owner, any asset(including any financial interest in any entity) located outside India or has signing authority in any account located outside India; or
(b) Who is a beneficiary of any asset (including any financial interest in any entity) located outside India.

However, an individual, being a beneficiary of any asset (including any financial interest in any entity) located outside India is not required to file the return under this Proviso where, income, if any, arising from such asset is includible in the income of the person referred to in clause (a).

Note- Sixth Proviso to section 139(1) All assessee other than company & firm, If total income before giving effect to: Chapter VI-A exceeds the maximum amount not chargeable to tax
Note-

Beneficial owner	Beneficiary	Disclosure requirement
Means, An individual who has provided Directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person.	Means, An individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such Beneficiary.	Assessee is required to disclose in the return of income, the assets for which he is a beneficial owner or for which he is the beneficiary.

Seventh Proviso to Section 139(1) (New Inserted by Finance Act 2019)

Provided Further, every person, who is otherwise not required to file return u/s 139(1), shall be required to filed by the due date if he has, during the PY:-

a) Deposited an "amount or aggregate of the amounts" exceeding Rs.. 1cr. in one or more "current accounts maintained with a banking company or a co-operative bank";

b) Incurred expenditure of an "amount or aggregate of the amounts" exceeding Rs.. 2 lakhs for "himself or any other person" for travel to a foreign country;

c) Incurred expenditure of an "amount or aggregate of the amounts" exceeding Rs.. 1 lakh towards consumption of electricity; or

d) Fulfilled such other conditions as may be prescribed

139(4A)	A person in receipt of income derived from property held under a trust for charitable or religious purposes is required to submit return of income if its income (without giving exemption under section 11 or 12) exceeds exemption limitt.
139(4B)	Chief executive officer of every political party is required to submit income-tax return if income of the political party (without giving exemption under section 13A) exceeds exemption limit.
139(4C)	If total income (without claiming any exemption given below) of the assessee (who is qualified to claim exemption under the following sections) exceeds the exemption limit - - Section 10(21) - Section 10(22B) - Section 10(23A) - Section 10(23AAA) - Section 10(23B) - Section 10(23C)(iiiab)/(iiiac)/(iiiad)/ (iiiae)/(iv)/(v)/(vi)/(via) - Section 10(23D) - Section 10(23DA) - Section 10(23EC) - Section 10(23ED) - Section 10(23EE) - Section 10(23FB) - Section 10(24)(a)/(b) - Section 10(29A) - Section 10(46) - Section 10(47)
139(4D)	Any university/college/other institution referred to in section 35(1)(ii)/ (iii) is required to submit return of income (return has to be submitted whether there is income or loss. Such return has to be submitted even if it is not required by any other provision)
139(4E)/(4F)	These sub-sections cover submission of return by business trust/investment fund.

Various "Return Forms" for filing Return of Income

ITR Forms	Subject

ITR-1 (i.e., SAHAJ)	For an individual who is resident and ordinarily resident (total income does not exceed Rs. 50 lakh) having income from salary/one house property (not being brought forward loss or loss to be carried forward)/income from other sources (not being loss and not being winning from lottery/income from race horses)
ITR-2	For an individual/HUF where the total income does not include income under the head business or profession
ITR-3	For an lnvidual/HUF having income under the head business or profession
ITR-4 (i.e., Sugam)	For an individual/HUF/firm (other than LLP) deriving business income and such income is computed in accordance with special provisions referred to in section 44AD, 44ADA or 44AE
ITR-5	For firms, AOPs and BOIs or any other person (not being individual or HUF or company or to whom ITR-7 is applicable)
ITR-6	For companies other than companies claiming exemption under section 11
ITR-7	For persons including companies required to furnish return under section 139(4A)/(4B)/(4C)/(4D)
ITR-V	Where the data of the return of income in Forms ITR-1, ITR-2, ITR-3, ITR-4 and ITR-5 transmitted electronically without digital signature

Due Date or Time for Filing Return of Income

Different Situations	Due Date of Submission of Return of Income
1. Where the assessee is required to furnish a report under section 92E pertaining to international or specified domestic transaction(s) (i.e. where a person has entered into an international transaction or specified domestic transaction aggregating to an amount exceeding Rs. 5 cr./ 20 crore as the case may be)	November 30
2. Where the assessee is a company [not having international or specified domestic transaction(s)]	September 30
3. Where the assessee is a person other than a company [not having international or specified domestic transaction(s)]	
• In case where accounts of the assessee are required to be audited under any law	September 30
• Where the assessee is a “working partner” in a firm whose accounts are required to be audited under any law	September 30
• In any other case	July 31

Note:

a. Where the last day for filing return of income or loss is a day on which the office is closed, the assessee can file the return on the next day afterwards on which the office is open and, in such cases, the return will be considered to have been filed within the specified time limit—

b. Due date of furnishing return of income in case of a non-working partner shall be 31st July of the assessment year whether the accounts of the firm are required to be audited or not.

c. A working partner for the above purpose shall mean an individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner and is drawing remuneration from the firm.

d. In case of firm whose accounts are not required to be audited under this Act or any other law, the last date for furnishing the return by the firm as well as partners (whether working or non-working) shall be 31st July of the assessment year.

Mode of "Submission of Income-Tax Return" for the Assessment year 2019-20 is as follows–

Person	Conditions	Mode of Furnishing Return
Individual / HUF	Case 1 - Accounts are required to be audited under HUF section 44AB	Electronically with digital signature
	ase 2- Return is submitted in ITR-1 or ITR-4 and the dividual/HIJF satisfies at least one of the following two onditions- • the individual was born before April 2, 1937; or • the total income of the individual/l-IUF does not exceed Rs. 5 lakh and no refund is claimed in the return of income	• Electronic mode given in Case 3; or • Paper format
	Case-3 – Any other Case	Return can be submitted by using an one of the following electronic modes - A. Electronically under digital signature; or B. Transmitting the data in the return electronically under electron

purpose of electronic verification of the person furnishing the return of income as per the data structure and standards specified by Principal Director General (Systems) or Director General (Systems). MODE OF SUBMISSION OF AUDIT REPORT -No document, audit report, statement, accounts, etc., can be attached with return forms. However, where an assessee is required to furnish a report of audit specified under section 10(23C)(iv)/(v)/(vi)/(via), section 10A, section 10AA, section 12A(1)(b), section 44AB, section 44DA, section 50B, section 80-IA, section 80-IB, section 80-IC, section 80-ID, section 80JJAA, section 80LA, section 92E, section 115JB or section 115VW or to give a notice under section 11(2)(a), he shall furnish the same electronically.		verification code; or C. Transmitting the data in the return electronically and thereafter submit in the verification of return in Form ITR-V
Person required to Furnish Return in ITR-7	Case 5 - Political Party	Electronically with digital signature
	Case 6 - Any other case	Electronic mode given in Case 3
Firm, LLP or any Person (not mentioned above) required to Furnish Return in ITR-5	Section139 (3): read with section 80: loss return If a person has sustained a loss in any previous year under the head "Profits and gains of business or profession" or under the head "Capital Gains" and claims that such loss or any part thereof should be carried forward under section 72(1) or section 73(2) or 73A(2) or section 74(1) and (3) of section 74A(3) then he may furnish a return of loss within the time prescribed Case 7- Accounts are required to be audited under Section 44AB	Electronically with digital signature
	Case 8- Any other case	Electronic mode given in Case 3

Note - For the aforesaid table “electronic verification code” means a code generated for the

under section 139(1) and all the provisions of this Act shall apply as if it were a return under section 139(1).

The following Losses cannot be carried forward if the Return Of Loss is not submitted in time—

a. business loss (speculative or otherwise);
b. capital loss; and
c. Loss from the activity of owning and maintaining race horses.

It is not mandatory to file a return of loss (except in case of a company or a firm) as there is no taxable income. However, as already discussed under section 80 in the chapter on 'Set off and carry forward of losses', losses under the head business or profession and capital gain cannot be carried forward unless the return of loss is submitted on or before the due date mentioned under section 139(1) and it is duly assessed. If the return of loss is not submitted or is submitted after the due date, such losses cannot be carried forward.

Some Points in respect of Return of Loss [Section 139(3)]

1. As already discussed, all losses are not allowed to be carried forward. Therefore return of loss should be submitted on or before due date only in case of business loss, speculation loss, capital loss or loss on account of owning and maintaining the horses for running in horse races.
2. It may be noted that filing a return of loss within the due date is necessary for carry forward of losses under sections 72(1), 73(2), 73A(2), 74(1), 74(3) and 74A(3). It does not cover section 71B i.e. carry forward and set off loss of house property. Therefore, loss on account of house property can be carried forward even if the return is submitted late.
3. Unabsorbed depreciation can also be carried forward even if the return of loss is submitted after the due date, as it is not covered under Chapter VI of set off or carry forward of losses but covered under section 32(2).
4. Section 139(3) read with section 80, does not prohibit the set off of losses of the current year while computing the Total Income even if the return is filed after the due date. It only prohibits the carry forward of such losses.
5. If an assessee has submitted a return of loss in response to a notice under section 142(1), such loss cannot be carried forward unless it is a loss under the head income from house property. However, unabsorbed depreciation can be carried forward in this case.
6. Although the loss of the current year cannot be carried forward unless the return of loss is submitted before the due date but the loss of earlier years can be carried forward if the return of loss of that year(s) was submitted within the due date and such loss has been assessed.

<u>Section 139(4): belated return</u>

Any person, who has not furnished a return within the time allowed to him under section 139(1), or within the time allowed under notice issued under section 142(1), may furnish the return for any previous year at any time before the end of the relevant assessment year; or before the completion of the assessment, whichever is earlier.

Consequences of Late Submission or Filing of IT Return -

If return is submitted after the due date of submission of return of income, the following consequences will be applicable. These rules are applicable even if a belated return is submitted within the time-limit given above—

1. he assessee will be liable for penal interest under section 234A.
2. The assessee shall be liable for late filing fee under section 234F.
    - Late filing fee under section 234F is Rs. 5,000 (if the return is furnished after the due date but on or before December 31 of the assessment year) or
    - Rs. 10,000 (if return is furnished after December 31 of the assessment year).
    - However, in a case where the total income does not exceed Rs. 5 lakh, the late filing fee amount shall not exceed Rs. 1,000.
3. If return of loss is submitted after the due date, a few losses cannot be carried forward . However, CBDT has power under section 119(2) to condone delay in case of a return which is filed late and where a claim for carry forward of losses is made.
4. If return is submitted after the due date, deduction under sections 10A, 10B, 80-IA, 80-IAB, 80-IAC, 80-IB, 80-IBA, 80-IC, 80-ID, 80-IE, 80JJA, 80JJAA, 80LA, 80P, 80PA, 80QQB and 80RRB will not be available.

<u>Section 139(5): Revised return</u>

1. Conditions to Furnish a Revised Return of Income under Section 139(5)

If certain conditions are satisfied, a person may furnish a revised return of income under section 139(5).

The following conditions one has to satisfy—

1. Which Return can be Revised -

    If any person, having furnished a return under section 139(1)/(4), discovers any omission or any wrong statement therein, he may furnish a revised return. From the assessment year 2017-18, even a belated return submitted under section 139(4) can be revised.

2. Omission or Wrong Statement -

Revised return can be filed only if the assessee discovers any omission or wrong statement in return originally filed.

3. Time-Limit -

Revised return can be filed at any time before the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

2. 'Completion of Assessment' in reference to Section 139(5):

The word assessment used in section 139(5) will refer to assessment made under section 143(3) and section 144. Assessment made under section 143(1) will not be treated as assessment for this purpose as such return can be revised even after the intimation under section 143(1) has been served.

Further, the return can be revised before the date of passing the order under section 143(3) or section 144 and not till the date of service of such order.

3. Can a Return Filed under section 139(3) or 139(4A) or 139(4B) or 139(4C) or 139(4D) be Revised:

As already stated that a return of loss submitted under section 139(3) or a return submitted under section 139(4A) or 139(4B) or 139(4C) or 139(4D) is deemed as if it were a return under section 139(1).

Therefore, a return submitted under section 139(3) or 139(4A), etc. can be revised under section 139(5).

4. Can a Return Filed within the time extended by CBDT be Revised:

Return filed within the period extended under section 119 i.e. extended by the CBDT beyond the due date mentioned under section 139(1) is a return filed under section 139(1).

It can therefore be revised under section 139(5).

5. Can a Return Furnished in response to Notice under Section 142(1) be Revised:

The notice under section 142(1) to file a return of income can be issued by the Assessing Officer to the assessee only after the due date mentioned under section 139(1). Thus return filed in response to a notice under section 142(1) is though filed after the due date prescribed under section 139(1) but as per section 139(5), such return can be revised. However, if the return in response to notice given under section 142(1) is furnished after the time allowed in the notice, it will be a return submitted under section 139(4) and such return cannot be revised as per the decision of the Supreme Court mentioned above.

Hence return submitted in response to notice under section 142(1) can be revised but any loss declared in either the original return filed in response to a notice under section 142(1) or in the revised return cannot be carried forward in view of section 80 read with section 139(3) as the original return has been filed after due date.

6. Can Revised Return be further Revised:

If the assessee discovers any omission or any wrong statement in a revised return, it is possible to revise such a revised return provided it is revised within the same prescribed time.

7. Revised Return substitutes the Original Return:

Once a revised return is filed, the originally filed return must be taken to have been withdrawn and substituted by the revised return. Thus where a return was filed under section 139(1) declaring income and later it is revised declaring a loss, the loss shall be allowed to be carried forward as the revised return shall substitute the original return which was filed with in time.

Similarly, where a return is filed declaring a loss within the time allowed under section 139(1) and such loss is increased in the revised return, such higher loss will be eligible for being carried forward.

8. Can a Return be Revised after receipt of Notice under Section 143(2) / Show cause notice under section 144:

As per the law (prior to the amendment made by the Finance Act, 2017, w.e.f. A.Y. 2018-19,) a return can be revised at any time before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier.

Issue of notice under section 143(2) or show cause notice under section 144 means that the assessment is not yet completed. Therefore, original return, if submitted within the due date, can be revised even after issue of such notice. But the penalty under section 271(1)(c) for concealment of income may be levied on the additional income disclosed in the revised return.

<u>Section 139(9): Defective return</u>

What is a Defective or Incomplete Return?

Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of 15 days from the date of such intimation. Such time may be extended by the Assessing Officer on an application made by the assessee.

If the defect is not rectified within 15 days, or the extended time so allowed, as the case may be, the return filed by the assessee shall be treated as invalid return and the consequences of

the same will be as if no return has been filed by the assessee. However, if the assessee rectifies the defect even after 15 days, or the extended time, but before the completion of assessment, the Assessing Officer may condone the delay and treat the return as a valid return.

2. When a Return of Income is Defective?

A return of income is regarded as defective in the following cases—

(1) Return Form has not been duly Filled -
All items in income-tax return form (i.e., ITR-1 to ITR-7) must be filled in the manner indicated in the return form. If any schedule of the relevant form is not applicable in the case of an assessee, it should be scored across as ".... NA...." If any item is inapplicable, one should write "NA" against it. One should write "NIL" to denote nil figure. No column or row should be left blank. Otherwise the return may be liable to be held defective or even invalid.

(2) Return of Income without Self-Assessment Tax -
This provision has been amended by the Finance Act, 2016 from the assessment year 2017-18. After this modification, a return (which is otherwise valid) would not be treated as defective merely because self assessment tax and interest payable in accordance with the provisions of section 140A, have not been paid on or before the date of furnishing of the return. Section 139(9) provides that the return of income shall be regarded as defective unless the tax together with interest, if any, payable in accordance with the provisions of section 140A has been paid on or before the date of furnishing of the return.

3. Defective or Incomplete Return of Income due to Annextures , Statements , Accounts etc. -

Under section 139(9), a few statements, reports, proof of pre-paid taxes, accounts, etc. should accompany the return of income, otherwise the return will become defective. However, it is not possible to attach any certificate or report or computation or final accounts with new incometax return forms. Likewise, it is not possible to attach proof of pre-paid taxes (like tax deducted/collected at source, advance payment of tax, self-assessment tax). The assessee should, therefore, retain these certificates, report, computation, final accounts, proof of pre-paid taxes with him. These may be furnished whenever the Assessing Officer wants to examine them in assessment proceedings or otherwise. Return of income will not become defective because of non-fulfillment of this requirement.

Section 139AA Quoting of Aadhaar number

Every person who is eligible to obtain Aadhaar number shall, on or after the 1st day of July, 2017, quote Aadhaar number—

(i) in the application form for allotment of permanent account number; (ii) in the return of income:

(1) However, where the person does not possess the Aadhaar Number, the Enrolment ID of Aadhaar application form issued to him at the time of enrolment shall be quoted in the application for permanent account number or, as the case may be, in the return of income furnished by him.

(2) Every person who has been allotted permanent account number as on the 1st day of July, 2017, and who is eligible to obtain Aadhaar number, shall link his Aadhaar number to such authority in such form and manner as may be prescribed, on or before a date to be notified [As per latest notification, Till 31st Dec 2019] by the Central Government in the Official Gazette. FA 2019
In case of failure to intimate the Aadhaar number, the permanent account number allotted to the person shall be deemed to be invalid and the other provisions of this Act shall apply, as if the person had not applied for allotment of permanent account number.

(3) The provisions of this section shall not apply to such person or class or classes of persons or any State or part of any State, as may be notified by the Central Government in this behalf, in the Official Gazette.

Notification No. 37/2017-provisions of section 139AA shall not apply to an individual who does not possess the Aadhaar number or the Enrolment ID and is:-
(i) Residing in the States of Assam, Jammu and Kashmir and Meghalaya;
(ii) A non-resident as per the Income-tax Act, 1961;
(iii) Of the age of eighty years or more at any time during the previous year;
(iv) Not a citizen of India

Section 139A Requirement **to furnish PAN**

i.As per Section 139A(1), the following persons, who have NOT been allotted PAN, are required to make an Application to the A.O. within prescribed time for allotment of PAN:-

ii.Every person "whose total income OR the total income of any other person in respect of which he is assessable under this Act" during any PY exceeded the Basic Exemption Limit;

iii.Every person who is required to furnish a return of Income u/s 139(4A)

iv.Every person carrying on any business/profession whose "total sales/turnover/gross receipts" exceeds or is likely to exceed Rs.500000 in any PY;

v. FA 2018-Every person being a "resident other than an individual", which enters into a financial transaction of an amount aggregating to Rs.2,50,000 or more in a FY; OR

vi.FA 2018-Every person who is the "managing director, director, partner, trustee, author, founder, karta, CEO, principal officer or office bearer" OF the "person referred to in point (iii) OR any person competent to act on behalf of such person".

vii. FA 2019- Every person who INTENDS to enter into SUCH transaction as may be PRESCRIBED by the Board (i.e.CBDT) in the interest of Revenue.

Section 139A (5E) **Inter-changeability of PAN and Aadhaar FA 2019**

Person required to "furnish or intimate or quote" PAN under this act; and Person is "not allotted a PAN" but "possesses Aadhar Number	He may "furnish OR intimate OR quote" his Aadhaar Number in LIEU OF the reqd. PAN; AND He shall be allotted a pan in prescribed manner.
Person required to "furnish OR intimate OR quote" pan under this act; and 2 person "has been allotted PAN" AND "has intimated his Aadhaar Number to prescribed authority as per Section 139AA(2)	He may "furnish OR intimate OR quote" his Aadhaar Number in lieu of the required PAN.

FA 2019-Section 139A (6) Every person RECEIVING any DOCUMENT relating to a "transaction prescribed under section 139A(5)(c) such as Purchase of motor vehicle OR opening DEMAT

account etc, shall ensure that the PAN **or the Aadhaar number, as the case may be,** has been duly quoted in the document.

Section 139B: scheme for submission of return through tax return preparers (TRPs)

Section 139B provides as follows—

- For the purpose of enabling any specified class or classes of persons to prepare and furnish returns of income, the Board has framed 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.
- The Scheme specifies the manner in which the Tax Return Preparer shall assist the persons furnishing the return of income, and shall also affix his signature on such return.
- A Tax Return Preparer may be an individual other than a person referred to in section 288(2)(ii)/(iv) or an employee of the specified class or classes of persons, who has been authorized to act as a Tax Return Preparer under the above scheme.
- The above scheme also provides the manner in which a Tax Return Preparer shall be authorized, the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Tax Return Preparer, the code of conduct for the Tax Return Preparer, the duties and obligations of the Tax Return Preparer, the manner in which the authorization may be withdrawn, and any other matter which is required to be or may be specified.

Section 140A: self assessment

The provisions of section 140A are given below—

1. Every person, before submitting a Return of Income under:

   a. Section 139 or
   b. Section 142(1) or

c. Section 148 or
d. Section 153A,

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.

The assessee shall be liable to pay such tax together with interest and fee payable for any delay in furnishing the return or any default or delay in payment of advance tax.

2. Before submitting the aforesaid return, he is supposed to find out whether any tax and/or interest and/or fee is payable. For this purpose, tax and/or interest and/or fee shall be calculated as follows-

Income tax (Including surcharge, if any, and education cess) on the returned income
Add: interest under sections 234A, 234B, 234C
Add: Fee under section 234F
Less: Relief of tax under sections 90/90A/91
Less: MAT credit under section 115JAA/ AMT credit under section 115JD
Less: TDS/TCS
Less: Advance Tax

3. Self-assessment tax so determined shall be deposited by the assessee before submitting return of income. From April 1, 2008, all corporate assessees and other assessees (who are subject to compulsory audit under section 44AB) will have to make electronic payment of tax through internet banking facility offered by authorized banks. Alternatively, these taxpayers can make electronic payment of tax through internet by way of credit or debit cards.

4. The proof of deposit should be submitted along with the return of income (i.e., BSR code of bank, Serial No. of Chillan, amount of deposit and date of deposit).

5. Where the amount paid by the assessee falls short of the aggregate of tax, interest and fee, as determined above, the amount so paid shall first be adjusted towards interest and fee payable and the balance, if any, shall be adjusted towards tax payable.

Other points - The following should also be kept in view:

After a regular assessment of income has been made, any amount paid under section 140A shall be deemed to have paid towards such regular assessment.

If any assessee fails to pay whole or any part of such tax or interest or fee in accordance with the provisions of section 140A, he shall (without prejudice to any other consequences which he may incur) be deemed to be an assessee in default in respect of the tax or interest or fee remaining unpaid, and all the provisions of the Act shall apply accordingly.

Notice under section 142(1)

For the purpose of making an assessment, the Assessing Officer may take any/all of the following steps:

i. Serve a Notice to the Assessee under Section 142(1)(i) :

to the person requiring him to furnish a return of his income, or the income of any other person in respect of which he is assessable under the Act, in the prescribed form and within the time specified in the notice, if the person has not filed a return of income within the time allowed under section 139(1) or before the end of the relevant assessment year.

ii. Serve a Notice to the Assessee under Section 142(1)(ii) :

to any person who has filed a return of income or not to produce or cause to be produced such accounts or documents as the Assessing Officer may require. However, the Assessing Officer shall not require the assessee to produce any accounts relating to a period more than three years prior to the previous year. Further, the notice under this clause can be sent only when the return has been submitted under section 139 [i.e. under section 139(1) or 139(3) or 139(4) or 139(4A) or 139(4D) or 139(5)] or when the time allowed under section 139(1), as the case may be, for furnishing the return has expired and the return is not submitted. Example: For making an assessment of assessment year 2017-18 the Assessing Officer can ask for books of account for previous years 2013-14, 2014-15 and 2015-16 besides, of course, for previous year 2016-17 which is in question.

iii. Serve a Notice to the Assessee under Section 142(1)(iii), :

to any person who has filed a return of income or in whose case the time allowed under section 139(1) for furnishing the return has expired, to furnish, in writing and verified in the prescribed manner information in such form and on such points and matters as he may require. The Assessing Officer may also ask for a statement of all assets and liabilities of the assessee whether included in the accounts or not. However, prior approval of the Joint Commissioner of Income-tax will be required, if the Assessing Officer requires the assessee to furnish a statement of assets and liabilities not included in the accounts. Statement of assets and liabilities can be asked for any number of previous years.

Note-

a. Notice under section 142(1)(i) or (ii) or (iii) can be served only for the purpose of making an assessment under the Income-tax Act.

b. Notice under section 142(1)(i) to file a return of income can be served only after the time allowed under section 139(1) has expired.

c. Further, the notice 142(1)(ii) or (iii) can be served whether the return of income has been submitted or not but it can be served only after the time allowed under section 139(1), has expired.

d. Section 142(1) read with section 2(31) leads to the only conclusion that co-operative societies are also "person" as defined in the Income-tax Act. Therefore, the impugned notice under section 142(1) cannot be held issued without jurisdiction. [Mangalam Service Co-operative Bank Ltd. v ITO (2013) 86 DTR 399 (Ker)].

e.The law does not provide any time limit for service of notice under section 142(1)(i) for filing the return but as per general provision, a return cannot be filed after the expiry of one year from the end of the relevant assessment year.

f. If the assessee has not furnished the return of income within the time allowed under section 139(1), it is not mandatory for the Assessing Officer to serve notice under section 142(1)(i) for filing the return of income in case he wishes to make best judgment assessment under section 144. In that case, he shall have to follow the procedure given under section 144.

g. Where the notice under section 142(1) was served to the assessee, calling for certain information, and the Assessing Officer also intimated to the assessee that his claim of residential status as not ordinarily resident was rejected and he was treated as ordinary resident, it was held that the determination of residential status after hearing the evidence was part of assessment under section 143(3) and the issue could not have been determined in notice under section 142(1) while calling the information.

Section 142(2A) to Section **142(2D)** direction for special audit

The Assessing Officer may, at any stage of the proceedings before him, direct the assessee to get the accounts audited by a Chartered Accountant nominated by the Chief Commissioner/Commissioner of Income-tax. Such a decision may be taken by the Assessing Officer, if having regard to:

1. the nature and complexity of the accounts,
2. volume of the accounts,
3. doubts about the correctness of the accounts,
4. multiplicity of transactions in the accounts, or
5. specialized nature of business activity of the assessee, the interests of the revenue,

is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner or the Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit.

The Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard.

Direction of audit can be given even if the accounts are already audited under the Income-tax Act or under any other law. [Section 142(2B)]

Inquiry before Assessment of Tax (Section-142 or 142A)

1. Giving Notice to the Assessee to Submit Return (if not submitted earlier), Produce Accounts, Documents, etc. [Section 142(1)]
2. Making Inquiry and giving Opportunity of being heard to Assessee [Section 142(2), 142(3)]
3. Giving direction to get Books Of Account Audited [Section 142(2A) to (2D]
4. Estimates by Valuation Officer in certain cases for Assessment of Tax (Section 142A)
5. Consequences of Non-compliance of Section 142(1) and Section 142(2A)

Section 142 and 142A deals with the following :

1. Giving notice to the assessee to submit return (if not submitted earlier), produce accounts, documents, etc.	Section 142(1)
2. Making inquiry and giving opportunity to assessee	Section 142(2), (3)
3. Giving direction to get books of account audited	Section 142(2A) to (2D)
4. Estimates by Valuation Officer in certain cases for Assessment of Tax	Section 142A

5. Consequences of Non-compliance of Section 142(1) and Section 142(2A)

1. Giving Notice to the Assessee to Submit Return (if not submitted earlier), Produce Accounts, Documents, etc. [Section 142(1)]

For the purpose of making an assessment, the Assessing Officer may take any/all of the following steps:

i. Serve a Notice to the Assessee under Section 142(1)(i) :

to the person requiring him to furnish a return of his income, or the income of any other person in respect of which he is assessable under the Act, in the prescribed form and within the time specified in the notice, if the person has not filed a return of income within the time allowed under section 139(1) or before the end of the relevant assessment year.

ii. Serve a Notice to the Assessee under Section 142(1)(ii) :

to any person who has filed a return of income or not to produce or cause to be produced such accounts or documents as the Assessing Officer may require. However, the Assessing Officer shall not require the assessee to produce any accounts relating to a period more than three years prior to the previous year. Further, the notice under this clause can be sent only when the return has been submitted under section 139 [i.e. under section 139(1) or 139(3) or 139(4) or 139(4A) or 139(4D) or 139(5)] or when the

time allowed under section 139(1), as the case may be, for furnishing the return has expired and the return is not submitted. Example: For making an assessment of assessment year 2017-18 the Assessing Officer can ask for books of account for previous years 2013-14, 2014-15 and 2015-16 besides, of course, for previous year 2016-17 which is in question.

iii. Serve a Notice to the Assessee under Section 142(1)(iii), :

to any person who has filed a return of income or in whose case the time allowed under section 139(1) for furnishing the return has expired, to furnish, in writing and verified in the prescribed manner information in such form and on such points and matters as he may require. The Assessing Officer may also ask for a statement of all assets and liabilities of the assessee whether included in the accounts or not. However, prior approval of the Joint Commissioner of Income-tax will be required, if the Assessing Officer requires the assessee to furnish a statement of assets and liabilities not included in the accounts. Statement of assets and liabilities can be asked for any number of previous years.

1. Notice under section 142(1)(i) or (ii) or (iii) can be served only for the purpose of making an assessment under the Income-tax Act.
2. Notice under section 142(1)(i) to file a return of income can be served only after the time allowed under section 139(1) has expired.
3. Further, the notice 142(1)(ii) or (iii) can be served whether the return of income has been submitted or not but it can be served only after the time allowed under section 139(1), has expired.
4. Section 142(1) read with section 2(31) leads to the only conclusion that co-operative societies are also "person" as defined in the Income-tax Act. Therefore, the impugned notice under section 142(1) cannot be held issued without jurisdiction. [Mangalam Service Co-operative Bank Ltd. v ITO (2013) 86 DTR 399 (Ker)].
5. The law does not provide any time limit for service of notice under section 142(1)(i) for filing the return but as per general provision, a return cannot be filed after the expiry of one year from the end of the relevant assessment year.
6. If the assessee has not furnished the return of income within the time allowed under section 139(1), it is not mandatory for the Assessing Officer to serve notice under section 142(1)(i) for filing the return of income in case he wishes to make best judgment assessment under section 144. In that case, he shall have to follow the procedure given under section 144.
7. Where the notice under section 142(1) was served to the assessee, calling for certain information, and the Assessing Officer also intimated to the assessee that his claim of residential status as not ordinarily resident was rejected and he was treated as ordinary resident, it was held that the determination of residential status after hearing the evidence was part of assessment under section 143(3) and the issue could not have been determined in notice under section 142(1) while calling the information.

2. Making Inquiry and giving Opportunity of being Heard to Assessee [Section 142(2), 142(3)]

(A) Make Inquiry [Section 142(2)]:

For the purpose of obtaining full information in respect of income or loss of any person, the Assessing Officer may make such inquiry, as he considers necessary. While section 142(1) empowers the Assessing Officer to collect information from the assessee himself, section 142(2) on the other hand, empowers him to collect information from sources other than the assessee.

(B) Opportunity of being Heard [Section 142(3)]:

The Assessing Officer shall give an opportunity to the assessee of being heard in respect of any information gathered by the Assessing Officer on the basis of the aforesaid inquiry under section 142(2) or on the basis of the audit conducted as per section 142(2A) above, where the Assessing Officer proposes to utilise such information for the purpose of any assessment. However, no such opportunity is necessary when the assessment is made under section 144.

3. Giving direction to get Books Of Account Audited [Section 142(2A) to (2D)]

The Assessing Officer may, at any stage of the proceedings before him, direct the assessee to get the accounts audited by a Chartered Accountant nominated by the Chief Commissioner/Commissioner of Income-tax. Such a decision may be taken by the Assessing Officer, if having regard to:

1. the nature and complexity of the accounts,
2. volume of the accounts,
3. doubts about the correctness of the accounts,
4. multiplicity of transactions in the accounts, or
5. specialized nature of business activity of the assessee, the interests of the revenue,

is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner or the Commissioner, direct the assessee to get his accounts audited by an accountant and to furnish a report of such audit.

The Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard.

Direction of audit can be given even if the accounts are already audited under the Income-tax Act or under any other law. [Section 142(2B)]

(A) Form and time limit for submission of report [Section 142(2C) and Rule 14A]:

The Chartered Accountant shall submit the audit report in Form No. 6B to the assessee who will in turn submit it to the Assessing Officer within such period as may be specified by the Assessing Officer. Such period may, however, be extended by the Assessing Officer suo motu or on the request of the assessee and for any good and sufficient reasons. The aggregate of the

period originally fixed and the extended period(s) shall not, in any case, exceed 180 days from the date on which the directions for audit were received by the assessee.

(B) Audit Expenses [Section 142(2D)]:
The expenses of and incidental to such audit (including the remuneration of the accountant) shall be determined by the Chief Commissioner or Commissioner, in accordance with such guidelines as may be prescribed and the expenses so determined shall be paid by the Central Government.

Note-The direction to get accounts audited can be issued only in the course of assessment proceeding which is pending and not after the completion of assessment. Further the assessment also includes reassessment.No appeal is possible against the orders under section 142(2A) for audit of accounts

Consequences of non –compliance with a notice issued under section 142(1) (i) or under section 142(2) or a direction under section 142(2A)

1. It may result in a best Judgment assessment under section 144 and/ or
2. Penalty under section 272A – penalty of Rs 10,000 for each such failure and /or
3. Prosecution under section 276D – Imprisonment which may extent upto 1 year with or without fine.

Section 142A: estimate by valuation officer in certain cases

(1) The Assessing Officer may, for the purposes of assessment or reassessment, make a reference to the Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit the report to him.

(2) The Assessing Officer may make a reference to the Valuation Officer whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.

(3) The Valuation Officer, on a reference being made, shall, for the purpose of estimating the value of the asset, property or investment, have all the powers of section 38A of the Wealth-tax Act, 1957.

(4) The Valuation Officer shall estimate the value of the asset, property or investment after taking into account the evidence produced by the assessee and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.

(5) If the assessee does not co-operate or comply with the directions of the Valuation Officer, he may, estimate the value of the asset, property or investment to the best of his judgment.

(6) The Valuation Officer shall send a copy of the report of the estimate made by him under section 142A(4) and (5) to the Assessing Officer and the assessee within a period of six months from the end of the month in which the reference is made.

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

Section 143(1): scheme of processing of returns

Under section 143(1), the Assessing Officer can complete an assessment without passing a regular assessment order. The assessment is completed on the basis of return submitted by the assessee under (i) section 139 or (ii) in response to a notice under section 142(1),.

The Assessing Officer can, however, make the following adjustments to the total income declared in the return of income –

Adjustment of Income or Loss submitted by Assessee by Assessing Officer Under

A. the total income or loss shall be computed after making the following adjustments, namely:—
    i. any arithmetical error in the return; or
    ii. an incorrect claim, if such incorrect claim is apparent from any information in the return;
    iii. disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under section 139(1);
    iv. disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;
    v. disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under section 139(1); or

addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return: (As per Finance Act, 2018 this adjustment cannot be made for Assessment year 2018-19 and subsequent Assessment Years.)

A. the tax, interest and fee, if any, shall be computed on the basis of the total income computed under clause (A);
B. the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax, interest and fee, if any, computed under clause (B) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest or fee;

C. an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee under clause (C); and
D. the amount of refund due to the assessee in pursuance of the determination under clause (C) shall be granted to the assessee.

2. Opportunity to the Assessee by the Assessing Officer under Section 143(1)

Before making any adjustment, an opportunity shall be provided to the assessee to explain and rectify the same within 30 days of issuance of such intimation and the response so received shall be considered before making such adjustments. In case no response is received within such time, the adjustment of the amount indicated in the intimation to be made.

3. Intimation to the Assessee by the Assessing Officer under Section 143(1)

Intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by or the amount of refund due to, the assessee after the aforesaid corrections. The amount of refund due to the assessee shall be granted to him. The acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee, and where no adjustment has been made.

Intimation under section 143(1) should not be sent after the expiry of one year from the end of the financial year in which return of income is made.

<u>Section 143(1D): processing of return in case of scrutiny</u>

If return is filed having a claim of refund and case is selected for scrutiny under section 143(2), then the refund shall be granted to the assessee under section 143(1). The Income Tax Department cannot stop the refund till the completion of assessment under section 143(3). The return shall be processed under section 143(1) even if the case is selected for scrutiny and there is a refund. However, to protect the interest of revenue section 241A has been has been inserted, wherein Assessing Officer has been given:
a. Power to withhold the refund under section 143(1)
b.Upto the date on which assessment in made under section 143(3)

c.Only in cases where Assessing Officer is of the opinion that the grant of the opinionthat the grant of refund is likely to adversely affect the interest of revenue (e.g.massive tax evasion detected or assessee is a habitual tax offender).

d.But in this case Assessing Officer has to take previous approval of CIT

e.And has to record reasons as to how grant of refund will affect will affect the

interest of revenue.

Note-Section 241A where refund of any amount becomes due to the assessee under section 143(1) and the Assessing Officer is of the opinion that grant of refund may adversely affect the recovery of revenue, he may, for the reasons recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, withhold the refund upto the date on which the assessment is made.

Section 143(3): regular / scrutiny assessment

On the day specified in the notice issued under] sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment. The "hearing" in assessment / reassessment proceeding can be through communication of data and document through electronic mode.

For making assessment under section 143(3) the Assessing Officer is required to serve a notice under section 143(2). This notice has to be served within 6 months from the end of the Financial Year in which return is furnished. Notice under section 143(2) need not be necessarily issued by the jurisdictional Assessing Officer. Where no return of income has been furnished, notice under section 143(2) cannot be issued and consequently assessment under section 143(3) is not possible. This is because notice under section 143(2) can be issued only if the assessee has filed return under section 139 or in response to a notice issued under section 142(1).

The Prescribed Income Tax Authority i.e I.T.O. and above officers designated by CBDT can issue the notice under section 143(2) in electronic form or in paper form. Such notice can be signed in Manuscript by the Prescribed Income Tax Authority.

The Assessing Officer can reduce the income below the returned income and can assess the loss higher than the returned loss under section 143(3).

If a deduction has not been claimed in the return and the assessee wants to claim the said deduction in the assessment proceedings them he can do so, only by filing a revised return.

First Proviso to section 143(3)	Second Proviso to section 143(3)
Assessing Officer cannot himself disallow the exemption under section 10(21) /10(22B)/ 10(23A)/ 10(23B) /10(23C) while making an	Assessing Officer empowered to recommend to the Central Government to withdraw the approval under section

assessment under section 143(3). He can under section 143(3) disallow the exemption under the said section only if the Government / prescribed authority has rescinded the notification of exemption. Assessing Officer shall intimate the contraventions to Government / prescribed authority who shall withdraw the exemption.	35(1)(ii)in case the Assessing Officer finds that such institution is not complying with the conditions subject to which approval was granted to it. On recommendation of the Assessing Officer, the Central Government will cancel the approval granted under section 35 (1)(ii)/(iii).

Note-As per section 10(23C) and section 13, exemption under section 10(23C) or 11 or 12 shall not be available for the previous year in which commercial receipts exceeds 20% of total receipts, whether or not the approval granted or notification issued for such charitable / religious institutions has been cancelled. Accordingly, as per section 143(3), Assessing Officer shall also disallow exemption under section 10(23C) or 11 & 12 by operation of law where First Proviso to section 2(15) becomes applicable i.e. commercial / business receipts exceed 20% of total receipts.

Section 143 (3A)/(3B)/(3C) **E-Assessment scheme [FA 2018]**

143 (3A) The Central Government may a scheme, by notification in the Officer Gazette, for the purpose of making assessment of total income or loss of the assessee under Section 143(3) so as to impart greater efficiency transparency and accountability by-

(a) Elimination the interface between the Assessing Officer and the assesse in the course of proceedings to the extent technologically feasible;

(b) Optimizing utilization of the resources through economies of scale and functional specialization;

(c) Introducing a term-based assessment with dynamic jurisdiction.

143 (3B) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (3A), by notification in the Official Gazette, direct that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.

Section 144: Best Judgment assessment

Where any person:

(a) Fails to furnish a return of income under section 139(1) and has not furnished the return under section 139(4) upto the date of issue of show cause notice under section 144, or

(b) Fails to comply with all terms of a notice issued under section 142(1)(i) or 142(1)(ii), or

(c) Fails to comply with all terms of a notice issued under section 142(2A), or

(d) Fails to comply with all terms of a notice issued under section 143(2)

then after taking into account all relevant material which he has gathered and giving opportunity of being heard ,the AO shall make an assessment to the best of his judgment and determine the tax payable by the assessee,subject to the condition that he cannot assess the income assess the income below the loss higher than the returned loss. It may be noted that where a notice under section 142(1)(i) has already been issued to the assessee.

It may be noted that The assessment under section 144 cannot be made in an arbitrary manner or on adhoc basis. The assessment must be based on the material which the AO collects e.g. last year's ROI, current year's ROI, growth rate of industry etc.The Assessing Officer must specify the basis of computation of income under section144 and the basis must be a rational and scientific basis. The order under section 144 should be a speaking order.

Section 144A: powers of the joint commissioner to issue direction in certain cases

A Joint Commissioner may:

a. on his own motion; or
b. on a reference being made to him by the Assessing Officer; or
c. on the application of an assessee

call for and examine the record of any proceeding in which an assessment is pending. Thereafter, if he considers that:

a. having regard to the nature of the case; or
b. the amount involved; or
c. for any other reason,

it is necessary or expedient so to do, he may issue such directions as he thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment

The powers of the Joint Commissioner are wide and he can issue directions to the Assessing Officer for any reasons that he thinks are necessary. The directions to the Assessing Officer are binding in nature and the assessee has a recourse to agitate in appeal if the Assessing Officer does not follow the directions.

However, no directions which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be heard.

Direction as to the lines on which an investigation connected with the assessment should be made, shall not be deemed to be a direction prejudicial to the assessee.

Section 144A is indeed an effective tool for seeking intervention of higher authorities on interpretation and resolution of vexed issues arising during the course of assessment.

Conditions to be satisfied before invoking section 144A:
The provisions of section 144A can only be evoked if:

a. Notice under section 143(2) has been issued, and
b. The assessment proceedings as a consequence of the notice are pending.

Note-Assessment includes reassessment and hence direction under section 144A can be given even when any reassessment is pending.

Note-No appeal can be filed against the directors issued by Joint Commissioner under section 144A. The assessee can file an appeal to CIT (Appeal) against the assessment order passed by Assessing Officer on the direction of Joint Commissioner.

Section 145: Method of Accounting

<table>
<tr><td colspan="3">Income under the head “PGBP” or “IFOS”, shall be computed by either case or accrual system of accounting, regularly employed by the assessee.</td></tr>
<tr><td colspan="3">The Assessing Officer shall make the assessment to the best of his judgment under section 143(3)/ 144/147/153A as the case may be, in which he finds that-</td></tr>
<tr><td>The accounts are not correct and complete to his satisfaction</td><td>No method of accounting has been regularly employed by the assessee</td><td>Income under the head “PGBP” or “other sources” has not been computed in accordance with ICDS.</td></tr>
<tr><td colspan="3">In the above cases, the Assessing Officer gets the power to reject the books of account and make an assessment to the best of his judgment.</td></tr>
</table>

Section 144C: reference to dispute resolution panel

Meaning
Dispute resolution panel is collegiums (group) of 3 CIT. As per this section AO shall complete the regular assessment, Income Escaping assessment with the help of 3 CIT.
This means it will be quality assessment and there are less chances of appeal.
" **Eligible assessee-**
Following assessee are eligible for dispute resolution panel:

(i) A foreign company.
(ii) (ii) Any other assessee in whose case variation arises due to order of TPO and such variation are prejudicial to such assesse. " **PROCEDURE**

(i) The AO shall forward the copy of draft order to the assessee
(ii) Within 30 days from the date of receipt of draft order, the assessee shall.

(i) File its acceptance to AO
(ii) File its objection to AO and DRP
(iii) If the assessee file his acceptance then AO shall pass the final order within one month from the end of the month from which assessee acceptance is received by the AO (Ignore 153 & 153B as it override those section).
(iv) If the assessee files his objection then the AO shall wait for direction of DRP.
(v) The DRP shall issue direction within 9 month from the end of the month in which the draft order is forwarded to the assessee.
(vi) After receiving the direction of DRP the AO shall pass the final order within 1 month from the end of the month in which direction are received by AO.
(vii) The DRP shall issue the direction after considering the Draft order, objection filed by assessee, evidence furnished by assessee, report of AO or valuation officer or TPO, records relating to Draft order, Evidence collected by DRP.
(viii) Before issuing the direction DRP shall provide an opportunity of being heard to assessee and AO.
(ix) The direction of DRP is binding on AO.
(x) If member of DRP is differ in opinion on any point, the point shall be decided according to opinion of majority of the member.

Section 147: assessment or reassessment of incomes escaping assessment

If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment, he may assess/reassess such income. For this purpose, a notice shall be issued under section 148. Once an assessment has been reopened, any other income which has escaped assessment and which comes to the notice of the Assessing Officer subsequently in the course of the proceeding under section 147, can also be included in the assessment.

Conditions - There are two conditions –

1. The Assessing Officer must have reason to believe that income or profits or gains chargeable to income-tax had escaped assessment.
2. Such an escapement had occurred by reason of either omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year.

Note-Normally in the above cases, the Assessing Officer will reassess the income or re-compute the loss, allowance etc. But if no return of income has been furnished or return of income has been furnished but the assessment has not been done by the Assessing Officer for that assessment year, under section 143(3)/144, the procedure followed by the Assessing Officer will be called Assessment instead of Reassessment or Re-computation.

Note-In an assessment, reassessment or re-computation made under this section, the tax shall be chargeable at the rate or rates at which it would have been charged had the income not

escaped assessment. [Section 152(1)] i.e. tax shall be charged at the rate or rates of the relevant assessment year of which income has escaped assessment.

Note-Initiation of the assessment proceeding under section 147 shall be governed by and shall be subject to the provisions of sections 148 to 153.

Proviso 3 to Section 147 When can Reassessment Process be started for any Income Escaping Assessment- Both these conditions should be satisfied if the original assessment was made under section 143(3)/147 and the Assessing Officer wants to take action after the expiry of 4 years from the end of the assessment year. However, only Condition 1 should be satisfied in the following cases –

a. if the Assessing Officer wants to take an action within 4 years (from the end of the assessment year) and the original assessment was completed under section 143(1), 143(3), 144 or 147; or
b. if the Assessing Officer wants to take an action after the expiry of 4 years and the original assessment was completed under section 143(1) or 144.

However, the above rule is not applicable where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year.

Explanation 2 of Section 147 Deemed Cases of Income Escaped Assessment

It clarifies that the following shall also to be deemed to be cases where income chargeable to tax has escaped assessment namely:

a. where no return of income has been furnished by the assessee and no assessment has been made although:
    i. his total income; or
    ii. the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income tax;
b. where a return of income has been furnished by the assessee but no assessment (scrutiny/best judgment assessment) has been made and it is noticed by the Assessing Officer that the assessee:
    i. has understated the income; or
    ii. has claimed excessive loss, deduction, allowance or relief in the return;
c. (ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E.
d. where assessment under section 143(3) or 144 has been made whether return of income has or has not been furnished but:
    i. income chargeable to tax has been under-assessed; or
    ii. income chargeable to tax has been assessed at too low a rate; or

iii. income chargeable to tax has been made the subject of excessive relief under the Incometax Act; or
iv. excessive loss or depreciation allowance or any other allowance under the Income-tax Act has been computed.

e. (ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under section 133C(2), it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;
f. where a person is found to have any asset (including financial interest in any entity) located outside India.

Issue of Notice for Income Escaping Assessment under Section 148

Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer should serve on the assessee a notice requiring him to furnish a return of income. Before issuing a notice, the Assessing Officer is required to record reasons for doing so.

Time-limit for issue of Notice for Income Escaping Reassessment (Section 149/151) -
Case-1 : Notice can be issued within 4 years from the end of relevant assessment year.

Case-2 : If, however, the escaped income is Rs. 1,00,000 or more, notice can be issued within 6 years from the end of the relevant assessment year.

Case-3 : Where income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment, notice can be issued within 16 years from the end of the relevant assessment year.

If the person on whom notice under section 148 is to be served is a person treated as an agent of non-resident (under section 163), then notice shall not be issued after the expiry of 6 years from the end of the relevant assessment year.

Note-If the return of income is not furnished within the time allowed in the notice issued under section 148, the assessee shall be liable to pay interest under section 234A(3), for late filing of return or for not filing the return of income, if the income has already been determined under section 143(1) or if the assessment already has been done under section 143(3) or 144 or 147.

Note-On the other hand, if the assessee had not furnished the return of income in respect of any assessment year and no assessment of such assessment year was done under section 144,

then interest for late filing of return in response to a notice given under section 148, shall be leviable under section 234A(1) instead of section 234(3).

Note-The assessee is required to file return in response to notice under section 148 even if he had duly filed the return of income in the normal course under section 139/142(1).

Note-Separate notice under section 148 has to be given for each assessment year for which income has escaped assessment**:** For making assessment or re-assessment under section 147 a separate notice under section 148 is required to be issued by the Assessing Officer for each assessment year for which the income has escaped assessment.

Section 149(1): time limits for issue of notice under section 148

i.Within 6 years from the end of relevant AY, If income which has escaped assessment amounts to or is likely to amount to Rs. 1,00,000 or more for that year

ii.Within 16years from the end of relevant AY, If income in relation to any asset (including financial interest in any entity located outside India, chargeable to tax, has escaped assessment

iii.Within 4 years from the end of relevant AY in Any other case

Exceptions to the time limits given in section 149(1)

a.First Proviso to section 147- No notice under section 148 shall be issued after expiry of 4 years from the end of the relevant AY where Assessment has been made earlier under section 143(3) or under section 147,Assessee has filed return of income which he was required to furnish under any provision of Income Tax Act, AND Assessee has disclosed fully and truly all material facts necessary for assessment. Its possible only when income has escaped assessment because of mistake of assessing Officer.

b.Second proviso to section 147- Nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeableto tax, has escaped assessment for any AY.

c.Notice issued to Agent of NR as per Section 149(3)- No notice under section 148 shall be issued after the expiry of 6 years from the end of the relevant AY where the recipient of notice under section 148 is treated as an agent of the nonresident u/s163 and the assessment / reassessment is to be made on him as the agent of the non-resident.

d.No time limit for issue of notice as per Section 150- Notice under section 148 may be issued at any time for the purposes of making an assessment / reassessment in consequence for in order to give effect to the finding or direction contained in an order under section 250,254,260A, 262,263 or 264 of the Income-tax Act or the order of a court under any other law.

Section 151: sanctions for issue of notice under section 148

i. Notice can be issued up to 4 years from the end of the relevant AY by Joint Commissioner. However, the Assistant Commissioner / Deputy Commissioner / Income Tax Officer can issue the notice if Joint Commissioner is satisfied on reasons recorded by assessing Officer that it is a fit case for issue of such notice.
ii. Notice can be issued after 4 years but up to 6 years / 16 years from the end of the relevant AY,by any Assessing Officer if CCIT / CIT is satisfied on reasons recorded by assessing Officer that it is a fit case for issue of such notice.

Section 152: other provisions

(1) In an assessment, reassessment or recomputation made under section 147, the tax shall be chargeable at the rate or rates at which it would have been charged had the income not escaped assessment.

(2) Where an assessment is reopened under section 147, the assessee may, if he has not impugned any part of the original assessment order for that year either under sections 246 to 248 or under section 264, claim that the proceedings under section 147 shall be dropped on his showing that he had been assessed on an amount or to a sum not lower than what he would be rightly liable for even if the income alleged to have escaped assessment had been taken into account, or the assessment or computation had been properly made :

Provided that in so doing he shall not be entitled to reopen matters concluded by an order under section 154, 155, 260, 262, or 263.

Section 153: time limit for completion of assessment or reassessment

i.Assessment under section 143(3) or under section 144 within 12 months from the end of the relevant Year

ii.Assessment or reassessment under section 147,12 months from end of the financial year in which notice under section 148 was served (24 months where reference has been made to Transfer Pricing Officer to determine Arm's Length Price)

iii.Fresh assessment under section 143(3) /144/147 where assessment has been cancelled and referred back to Assessing Officer for fresh assessment by an order under section 254, 263,or 264

iv.12 months from the end of the financial year in which order under section 254 is Received by the CIT or order under section 263 or 264 was passed by the CIT (24 months where reference has been made to Transfer Pricing Officer to determine Arm's Length Price)

Section 153(5): appeal effect or revision effect

Where effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 is to be given by the Assessing Officer, wholly or partly, otherwise than by making a fresh assessment or reassessment, such effect shall be given within a period of three months from the end of the month in which order under section 250 or section 254 or section 260 or section 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, the order under section 263 or section 264 is passed by the Principal Commissioner or Commissioner:

Provided that where it is not possible for the Assessing Officer to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer, if satisfied, may allow an additional period of six months to give effect to the order:

Provided further that where an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 shall be made within the time specified in sub-section (3).

Then Assessing Officer shall pass modification order within 12 months form the end of the financial year in which order under section 250/254/ 260A/ 262 is received by the CIT or order under section 263/264 is passed by the CIT.

Section 153(6): time limit for completion of assessment or reassessment in certain cases Pursuant to directions of Appelate authorities and courts

Nothing contained in sub-sections (1) and (2) shall apply to the following classes of assessments, reassessments and recomputation which may, subject to the provisions of sub-sections (3) and (5), be completed—

(i) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, section 254, section 260, section 262, section 263, or section 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act, on or before the expiry of twelve months from the end of the month in which such order is received or passed by the Principal Commissioner or Commissioner, as the case may be; or

(ii) where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147, on or before the

expiry of twelve months from the end of the month in which the assessment order in the case of the firm is passed._

Note- Section **153.** (1) No order of assessment shall be made under section 143 or section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the income was first assessable:

Provided that in respect of an order of assessment relating to the assessment year commencing on the 1st day of April, 2018, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:

Provided further that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted.

Note-153. (2) No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served:

Provided that where the notice under section 148 is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.

Section 92CA(3A): reference to transfer Pricing officer Second proviso to section 153

Refer Transfer Pricing chapter

Section 154: rectification of mistake 156: notice of demand

Sometimes there may be a mistake in any order passed by the Assessing Officer. In such a situation, mistake which is apparent from the record can be rectified under section 154. The provisions relating to rectification of mistake under section 154 are discussed in this part.

(A) Rectification only when mistake apparent from the record and by the authority who passed the order

It may be possible that an Income-tax authority may commit a mistake while passing the order of assessment, appeal, revision, etc. With a view to rectifying any mistake, apparent from the record, the income-tax authority is empowered as under:

a. The Assessing Officer is empowered to rectify any order of assessment or of refund or any other order passed by him.
b. The Assessing Officer/designated income tax authority is empowered to amend any intimation or deemed intimation under section 143(1).
c. The Assessing Officer/designated income tax authority may amend any intimation

i. under section 200A(1) relating to processing of statement of tax deducted at source, or
ii. under section 206CB(1) relating to processing of TCS statement [Inserted by the Finance Act, 2015 w.e.f. 1.6.2015]

d. The Commissioner is empowered to rectify any order passed by him in revision under section 263 or 264.
e. The Commissioner (Appeals) may rectify any order passed by him under section 250.
f. Other Income-tax Authorities mentioned under section 116 may also amend any order passed by it.

(B) When can Rectification be made

The Income-tax authorities may make the rectification:

a. on its own motion; or
b. on application made by the assessee or the deductor or by the collector bringing the mistake to the notice of the authority concerned.

Where the authority concerned is Commissioner (Appeals), besides the above, such mistake can be brought to his notice by the Assessing Officer also.

The Appellate Tribunal can rectify its order under section 254(2) but not under section 154 as it is not an income-tax authority.

Rectification can be done for any matter other than the matter considered and decided in Appeal / Revision

Where any matter had been considered and decided in any proceeding by way of appeal or revision, rectification of such matter cannot be done by Assessing Officer under section 154. However, the matter which has not been considered and decided in the appeal/revision can be rectified under section 154.

Assessing Officer could not pass order suo motu under section 154 levying interest under sections 234B and 234C when superior authority had already passed an order against levy of interest.

Opportunity of being heard is necessary if Rectification results into Enhancement, etc

If such rectification order has the effect of enhancing an assessment, or reducing a refund, or otherwise increasing the liability of the assessee or the deductor or the collector the authority concerned must give a notice to the assessee or the deductor or the collector of its intention to do so and an opportunity of being heard must be given to the assessee of the deductor or the collector.

Order of Rectification- Where any rectification is made under this section, an order of rectification shall be passed in writing by the income-tax authority concerned. Refusal to make rectification shall also require an order under this section.

Refund to be given in case Rectification results into Reduction of Assessment-Where any such amendment has the effect of reducing the assessment or otherwise reducing the liability of the assessee or the deductor or the collector, the Assessing Officer shall make any refund which may be due to such assessee or the deductor or the collector.

Notice of Demand to be issued in case Rectification results in to Enhancing the Assessment, etc. Where any such amendment has the effect of enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee or the deductor or the collector, the Assessing Officer shall serve on the assessee or the deductor or the collector, as the case may be, a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 156 and the provisions of the Income-tax Act shall apply accordingly.

Time limit for Rectification-Rectification of an order under this section can be made only within four years from the end of the financial year in which the order sought to be amended was passed. However, this time limitation shall not apply to cases where amendment is made under section 155.

Time Limit for Passing an Order of Rectification if Application for Amendment made by the Assessee under Section 154-Without prejudice to the provisions of section 154(7), where an application for amendment under this section is made by the assessee or the deductor or the collector to an income-tax authority referred to in section 154(1), the authority shall pass an order, within a period of six months from the end of the month in which the application is received by it—

a. making the amendment; or
b. Refusing to allow the claim.

Rectification of Order which is subject to Appeal or Revision-If an order is the subject-matter of any appeal or revision, any matter which is decided in such an appeal or revision cannot be rectified by the Assessing Officer. In other words, if an order is subject matter of any appeal, then the Assessing Officer can rectify only those matters which are not decided in such appeal.

Initiation of Rectification by whom-The income-tax authority can rectify the mistake on its own motion. The taxpayer can intimate the mistake to the income-tax authority by making an application to rectify the mistake.

If the order is passed by the Commissioner (Appeals), then the Commissioner (Appeals) can rectify mistake which has been brought to notice by the Assessing Officer or by the taxpayer.

The Procedure to be followed for making an Application of Rectification

Before making any rectification application the taxpayer should keep following points in mind.

- The taxpayer should carefully study the order against which he wants to file the application for rectification.
- Many times the taxpayer may feel that there is any mistake in the order passed by the Income-tax Department but actually the taxpayer's calculations could be incorrect and the CPC might have corrected these mistakes, e.g., the taxpayer may have computed incorrect interest in return of income and in the intimation the interest might have been computed correctly.
- Hence, to avoid application of rectification in above discussed cases the taxpayer should study the order and should confirm the existence of mistake in the intimation, if any. If he observes any mistake in the order then only he should proceed for making an application for rectification under section 154.
- Further, he should confirm that the mistake is one which is apparent from the records and it is not a mistake which requires debate, elaboration, investigation, etc. The taxpayer can file an online application for rectification of mistake. Before making an online application for rectification the taxpayer should refer to the rectification procedure prescribed at https://incometaxindiaefiling.gov.in/
- For rectification of intimation under Section 200A(1)/206CB online correction statement is to be filed; the procedure thereof is given at http://contents.tdscpc.gov.in/en/filing-correction-
- An amendment or rectification which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the taxpayer (or deductor) shall not be made unless the authority concerned has given notice to the taxpayer or the deductor of its intention to do so and allowed the taxpayer (or the deductor) a reasonable opportunity of being heard.

Protective assessment

Protective Assessment is permissible in law. It is occasioned when an income is offered by one person, while the Revenue considers that such income is assessable in the hands of other. In such case, the Revenue has the right to assess the income offered protectively, so that in case its inference that such income is assessable in the hands of another person is not sustained in appeal, the protective assessment becomes final.

There are many cases, where the income declared by a person in his return is claimed by two Assessing Officers that the income belongs to them or in their category. Some time income declared by a person in his return would be assessed in the hand of a company, associations of person or some other entities and hence the jurisdiction of AO will be changed.

Though there is no provision in the income tax act authorizing the levy of income tax on a person other than whom the income tax is payable, yet it is open to the authorities to make a protective or alternative assessment if it is not ascertainable who is really liable to pay the tax among a few possible persons. It is a kind of assessment whereby the assessing officer, not knowing the true ownership of the asset, the income of which he wants to tax, deems the incomes of all the persons who are actually claiming to have their rights over there.

IT must, however be noted that while protective assessment is permissible, a protective order for recovery is not permissible. in making a protective assessment, the authorities are merely making an assessment and leaving it as a paper assessment until the matter is decided (as to whom the asset owned by) one way or another. Furthermore, a protective order of assessment can be passed but not a protective order of penalty." and as & when the final assessment is made, the department must recover the tax from the person in whose hands the income is finally assessed.

31.Power to call for conduct survey and issue summons

Income Tax Authorities under the Act are-

(a) The Central Board of Direct Taxes

(b) *Principal Directors General of Income-tax or Principal Chief Commissioners of Income-tax,*

(c) Directors-General of Income-tax or Chief Commissioners of Income-tax,

(d) *Principal Directors of Income-tax or Principal Commissioners of Income-tax,*

(e) Directors of Income-tax or Commissioners of Income-tax or CIT (Appeals),

(f) Additional Directors of Income-tax or Additional CIT or Additional CIT (Appeals),

(g) Joint Directors of Income-tax or Joint Commissioners of Income-tax,

(h) Deputy Directors of Income-tax or Deputy Commissioners of Income-tax,

(i) Assistant Directors of Income-tax or Assistant Commissioners of Income-tax,

(j) Income-tax Officers,

(k) Tax Recovery Officers,

(l) Inspectors of Income-tax.

Section 131 Summons

Assessing Officer, Joint Commissioner of Income Tax, Commissioner of Income Tax (Appeals), Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the Dispute Resolution Panel shall have the following powers as are vested in a Court under the Code of Civil Procedure, 1908

a. Discovery and inspection;

b.Enforcing attendance of any person, including any officer of a banking company and examining him on oath;

c.Compelling production of books of accounts and other documents; and

d. Issuing commissions

The authority mentioned above may impound and retain books and documents in its custody for such period as it thinks fit. However, the Assessing Officer/ Assistant director/ Deputy Director shall not retain books/ documents

(a) without recording reasons for doing so, or

(b) for a period exceeding 15 days (exclusive of holidays) without prior permission of Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director of Income Tax.

Section 133 Requisition/Power to call for information

The Assessing Officer, Joint Commissioner, Commissioner (Appeals) may require to furnish the following details-

a.Firm -Names, addresses of the partners of the firms and their respective shares.
b.HUF -Names, addresses of the manager and the members of the family
c.Trustee, guardian, agent- Names of the persons for or of whom he is trustee, guardian or agents and their addresses
d.Any assessee -Name and addresses of persons to whom the following payments are made for Rent, interest, commission, royalty, brokerage, annuity not being taxable under the head "Salaries" exceeding Rs. 1,000 or such higher amount as may be prescribed
e.Broker, agent or any person concerned in the management of stock or commodity exchange- Names and addresses of all persons to whom any sum has been paid or received for transfer by way of sale, exchange or otherwise of assets together with particulars of all such payments and receipts.
f.Any person, including a banking company or any officer thereof- Statements of accounts and affairs verified in a specified manner in relation to such matters or points as, in the opinion of the authority will be useful for or relevant to any enquiry or proceedings under the Act.

However, the powers referred to in section 133(6) may also be exercised by the Principal Director General or Director-General, the Principal Chief Commissioner or Chief Commissioner, the Principal Director or Director and the Principal Commissioner or Commissioner or **the Joint Director or Deputy Director or Assistant Director**

For the purpose of DTAA or TIEA, notified Income tax authorities may exercise all the powers under this section, even if no proceedings are pending against such person before any income tax authority.

Provided further that the power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income-tax authority below the rank of Principal Director or Director or Principal Commissioner or Commissioner **other than the Joint Director or Deputy Director or Assistant Director** without the prior approval of the Principal Director or Director or, as the case may be, the Principal Commissioner or Commissioner.

Section 133B: Power to collect Information

This provision can be said as door to door survey .

(1) Joint Commissioner, Assistant Director, Deputy Director, Assessing Officer, and Inspector of Income tax authorized by the Assessing Officer may enter-
(a) Any building or place within the limits of the area assigned to the income tax authority
(b) Any building or place occupied by any person in respect of whom the income tax authority exercises jurisdiction, at which a business or profession is carried on, whether such place be principal place or not, and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession to furnish such information as per Form No. 45 D.

(2) An income-tax authority may enter any place of business or profession only during the hours at which such place is open for the conduct of business or profession.

(3) The income-tax authority acting under this section shall, on no account, remove or cause to be removed from the building or place, any books of account or other documents or any cash, stock or other valuable article or thing.

Section 133C: Power to call for information by prescribed income tax authority

This section provides that the prescribed income-tax authority, may for the purposes of verification of information in its possession relating to any person, issue a notice to such person requiring him, on or before a date to be specified therein, to furnish information or documents (verified in the manner specified therein), which may be useful for, or relevant to, any inquiry or proceeding under the Act. This power can be exercised even if no proceedings are pending.
For this purpose, the Board may make a scheme for centralized issuance of notice and for processing of information or documents and making available the outcome of the processing to the Assessing Officer.

Explanation 2 to Section 147 -Where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under section 133C (2) , it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return, then it shall be deemed to be the case where income chargeable to tax has escaped assessment.

Section133A: Power of survey

Authority who is to conduct survey	Types of survey these authority can conduct
Principal Commissioner, Commissioner, Joint Commissioner, Principal Director, Director, Joint Director, Assistant Director, Deputy Director and Assessing Officer and Tax Recovery Officer.	1. Section 133A(1) Survey in connection with business or profession 2. Section 133A (2A) Survey in relation to TDS / TCS 3. Survey in connection with function, ceremony or event. 4. Survey on charity institutions

1. Section 133A(1) Survey in connection with business or profession

Place of survey:

a) Any place within the limits of the area assigned to the income tax authority,

b) Any place occupied by any person in respect of whom the income tax authority exercises jurisdiction,

c) any place in respect of which he is authorised for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place, at which a business or profession or **an activity for charitable purpose** is carried on, whether such place be the principal place or not of such business or profession or **of such activity for charitable purpose.**

Explanation.—For the purposes of this sub-section, a place where a business or profession or **activity for charitable purpose** is carried on shall also include any other place, whether any business or profession or **activity for charitable purpose** is carried on therein or not, in which the person carrying on the business or profession or **activity for charitable purpose** states that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession or **activity for charitable purpose** are or is kept.

Time to enter the place of survey

Place of business or profession	At any other place
During the hours at which such place is open for the conduct of business or profession .	Only after sunrise and before sunset.

Rights of the Income tax Authority

(a) Inspect books of accounts or other documents available at such place and impound and retain in his custody books of account or other documents inspected by him after recording his reasons for so doing. However, such books of account or other documents shall not be retained for more than 15 days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner of Income-tax or the Principal Director General or Director-General or Principal Commissioner or the Commissioner or the Principal Director or the Director.

(b) Make inventory of the cash, stock, or other valuable article or thing found therein.

(c) Record statement of any person, which may be useful or relevant to any proceedings under this Act.

(d) Place marks of identification on books of accounts/ other documents inspected by the I. T. Authority

(iv) Duties of the proprietor, employee or any other person available at the time of survey:

Afford necessary facility to the surveying official:

(a) To inspect such books of accounts and other documents as they require and which may be available at such place.

(b) To check or verify cash, stock or other valuable article or thing which may be found therein.

(c) Furnish such information as he may require which may be helpful for or relevant to any proceeding under the Act.

2.Section 133A (2A) Survey in relation to TDS / TCS

(i) Purpose of Survey

For verifying that tax has been deducted or collected at source in accordance with the provisions of Income Tax Act.

(ii) Place of survey:

(a) any office, or any other place where business or profession is carried on, within the limits of the area assigned to income tax authority or

(b) any place in respect of which income tax authority is authorised for the purposes of this section by such income-tax authority who is assigned the area within which such place is situated, where books of account or documents are kept.

(iii) Time to enter the place of survey Only after sunrise and before sunset.

(iv) Rights of the Income tax Authority

(a) Record statement of any person, which may be useful or relevant to any proceedings under this Act.

(b) Place marks of identification on books of accounts/ other documents inspected by the I. T. Authority

(v) Duties of the deductor, the collector or any other person who may at that time and place be attending in any manner to such work

(a) to afford income tax authority the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place, and

(b) to furnish such information as income tax authority may require in relation to such matter.

3. Section 133A (5) Survey in connection with function, ceremony or event

Where, having regard to the nature and scale of expenditure incurred by an assessee, in connection with any function, ceremony or event, the income-tax authority is of the opinion that it is necessary or expedient so to do, he may, at any time after such function, ceremony or event,
require the assessee by whom such expenditure has been incurred or any person who, in the opinion of the income-tax authority, is likely to possess information as respects the expenditure incurred, to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act and may have the statements of the assessee or any other person recorded and any statement so recorded may thereafter be used in evidence in any proceeding under this Act.

4. Survey on charity institutions

Rights of the Income tax Authority- An income-tax authority may enter any place where an activity for charitable purpose is carried on, whether such place be the principle place of such activity for charitable purpose or not

Place of survey- places connected with activity for charitable purpose not for religious purpose, Hence temples, mosques, churches, Gurudwara, derasar, etc., cannot be surveyed

Time to enter the place of survey – only after sunrise and before sunset.

Note- TDS / TCS survey cannot be conducted on a charitable institution.

Note-Where the books of account are lying at the residence or office of the trustee or at the residence of the accountant, then even these places could be surveyed under section 133A.

Common Points in case of Survey

a) The I. T. Authority has no right to remove from the place of survey any cash, stock or other valuable article or thing.

b) If the assessee refuses or evades, the I. T. Authority shall have all powers u/s. 131(1) to enforce compliance

32. Search and seizure

Section 132: Procedure of search and seizure

A. Basis for search and seizure -Where the Principal Director General or Director-General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner in consequence of information in his possession has reasons to believe that-

Any person to whom summons/ notice u/s. 131(1) / 142(1) were issued to produce books of accounts or other documents has willfully omitted or failed to do so .	Any person to whom summons or notice, as aforesaid, has been or might be issued, does not or would not produce any books of accounts or other documents called for or which will be useful or relevant to any proceeding undertaken under the Income-tax Act .	Any person who is in possession of any articles or things, including money, bullion or jewellery, or other valuable article or things and these assets represent either wholly or partly the income which has not been disclosed or would not be disclosed for the purpose of Income tax Act.

Then,

The Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, may authorise any Additional Director or Additional Commissioner or Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer to carry out the search and seizure, or	Additional Director or Additional Commissioner or Joint Director, or Joint Commissioner, if empowered by the Board, may authorise any Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer to carry out the search and seizure.

The Officer so authorized is referred to as Authorised Officer. The authorization is done by issuing a search warrant.

Explanation to section 132(1)- For the removal of doubts, it is hereby declared that the reason to believe, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.

B. Powers of authorized officer while carrying out search-

i) enter and search any building place, vessel, vehicle or aircraft where authorized officer has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

(ii) break open the lock of any door, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;

(iii) search any person who has got out of, or is about to get into, or is in the building, place, vessel, vehicle or aircraft, if the authorized officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;

(iv) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic records, to afford the authorized officer the necessary facility to inspect such books of account or other documents;

(v) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search. However any bullion, jewellery or other valuable article or thing being stock-in-trade of the business found as a result of search shall not be seized.

(vi) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(vii) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

Second proviso to section 132(1) Deemed seizure –

Where, it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume weight or other physical characteristics or due to its being of a dangerous nature, the Authorised Officer may serve an order on the owner or the person who is in immediate possession thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such Authorised Officer and such action of the Authorised Officer shall be deemed to be seizure of such valuable article or thing. However, the provision relating to deemed seizure shall not apply in case of any valuable article or thing, being stock-in-trade of the business.

Section132 (1A) Where books of account, money, bullion etc. are kept in building not specified in the search warrant -Where any Principal Chief Commissioner or Chief commissioner or Principal Commissioner or Commissioner, in consequence of information in his possession, has reason to suspect that any books of accounts, other documents, money, bullion, jewellery or other valuable article or things of the assessee are kept in any building, place, vessel, vehicle or aircraft not specified in the search warrant, then such Principal Chief Commissioner or Chief commissioner or Principal Commissioner or Commissioner may authorize the authorized officer to search other building, place, vessel, vehicle or aircraft.

Explanation to section 132(1A)- The reason to suspect, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.

Section132(2) Police assistance -The authorized officer may requisition the services of any police officer or any officer of the Central Government or both to assist him at the time of search and seizure and it shall be duty of every such officer to comply with such requisition.

Section:- 132(3) & (8A) Where not practicable to seize books of account -

Where, it is not practicable to seize books of account, other documents, money, bullion, jewellery or other valuable article or thing, for the reasons other than those mentioned in

deemed seizure, then in such case the authorized officer may serve an order on the owner or the person who is

immediate possession or control thereof that such person shall not remove, part with or otherwise deal with it except with the prior permission of the authorized officer. Such authorized officer may take such steps as he deems necessary for proper compliance of his orders. Serving of these order is not to be deemed as case of seizure. However, above order shall not remain in force for a period exceeding 60 days from the date of the order.

Section132(4) Examination on oath -The authorized officer may during the course of search and seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or valuable article or thing.

Any statement made by such person during such examination may thereafter be used as evidence in any proceeding under the Act. The examination of any person may not be merely in respect of any books of account, other documents or assets found as a result of search but also in respect of all matters relevant for the purpose of any investigation, connected with any proceedings under the Act.

Section132(4A) Rebuttable presumption- Where any books of account, other documents, money, bullion, jewellery and other valuable article or thing is found in possession or control of any person in the course of a search, the following presumption can be made:

i) The books of account or other documents money, bullion, jewellery and other valuable article or thing belongs to such person;

ii)The contents of such books of account and other documents are true and

iii)The signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped, executed or attested by the person by whom it purports to have been so executed or attested.

Section132(8) and (10) Time limit for retention of seized books of account, etc. -The books of account or other documents seized cannot be retained by the authorized officer for a period exceeding 30 days from the date of the assessment under section 153A. Retention for a period exceeding 30 days can be made only if reasons are recorded in writing and the approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director-General or Director-General or Principal Director or Director is obtained. Moreover, the such higher authorities cannot authorize the retention for a period exceeding 30 days after all the proceedings under the Act in respect of years for which books of accounts or other documents are relevant are completed. However, if the person legally entitled to the books of account or other documents objects to the approval given by the abovementioned higher authorities, he may make an application to the Board stating therein the reasons for the objection and requesting for return of books of account or other documents. Thereafter, the Board shall pass such order as it thinks fit after providing an opportunity of hearing to such applicant.

Section132(9) Taking copies of seized documents or extracts there from -The person from whom the books of account or other documents were seized is permitted to make copies thereof, or take extracts therefrom, in the presence of the authorized officer or any other

person empowered by him in this behalf and at such place and time as the authorized officer may appoint in this behalf.

Section132(9A) Authorized officer having no jurisdiction over the person searched -Where books of account or other documents or any money, bullion, jwellery or valuable article or thing have been seized by authorized person having no jurisdiction over the person searched, then such an authorized officer is required to hand over the same to the Assessing Officer who has jurisdiction over such person within a period of 60 days from the date on which the last of the authorization for search was executed.

Section132(9B), (9C) and (9D) Power of authorized officer to attach property provisionally - Where, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, the authorised officer, for reasons to be recorded in writing, is satisfied that for the purpose of protecting the interest of revenue, it is necessary so to do, he may with the previous approval of the Principal Director General or Director General or the Principal Director or Director, by order in writing, attach provisionally any property belonging to the assessee in accordance with the provisions of the Second Schedule. Every provisional attachment shall cease to have effect after the expiry of a period of six months from the date of such order. The authorised officer may, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorizations for search was executed, make a reference to a Valuation Officer referred to in section 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the said officer within a period of sixty days from the date of receipt of such reference.

Section132(13) and (14) Miscellaneous provisions relating to search and seizure -The provisions of the Code of Criminal Procedure, 1973 relating to searches and seizure shall apply, so far as may be, to searches and seizure conducted under this Act.

The CBDT is empowered to make rules in relation to search and seizure under this section.

Section 132A Powers of requisition

Where the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, in consequence of information in his possession, has reason to believe that—

Any person to whom summons u/s. 131(1) or notice u/s. 142(1) has been issued or might be issued to produce any books of accounts or other documents, has failed to produce or would not produce them because such books or documents are in the custody of any officer or authority under any other law for the time being in force (e.g. GST officer / Custom officer)or	Where any assets representing undisclosed income wholly or partly have been taken into custody by an officer or authority under any other law for the time being in force.

Then,the abovementioned authorities may authorize any Additional Director, Additional Commissioner, Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer **(to be called the**

requisitioning officer) to require the officer or authority under any other law for the time being in force, to deliver such books of account, other documents or assets to the requisitioning officer.

As per **Explanation to section 13A(1)** ,for the removal of doubts, it is hereby declared that the reason to believe, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.

On receipt of a requisition, the officer or authority concerned (e.g. excise officer/VAT officer) shall deliver the books of account, other documents or assets to the requisitioning officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody. Where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions starting from section 132(4A) to (14) and section 132B shall apply accordingly.

Section 132B Application of seized or requisitioned assets

Application of money and assets seized or requisitioned against few liabilities

All assets which are seized under section 132 or requisitioned under section 132A shall be dealt with in the following manner, namely against the amount of:

1. Liability existing on the day of seizure or requisition under Income-tax Act, Wealth-tax Act, Expenditure-tax Act, Gift-tax Act and Interest-tax Act.

2. Liability determined on completion of assessment under section 153A (including assessment of the previous year in which search is initiated) provided such person is in default or deemed to be in default for such liability.

3. Liability arising on an application made before Settlement Commission under section 245 C (1) of the Act.

Note-For the removal of doubts, it is hereby declared that the **"existing liability" does not include advance tax** payable.

Where any asset or money proceeds are left

Release of sum or assets remaining after recovery	Where assets seized or requisition consists of money
Where any asset or proceeds are left, then such sum shall be released to the person from whose custody it was taken if the following conditions are satisfied: **1.** The concerned person makes an application to the Assessing Officer within 30 days from the end of month in which the asset was seized. **2.** Nature and source of such assets is explained to the Assessing Officer satisfactorily. **3.** All existing liabilities and liability determined on completion of assessment	Where assets seized consists solely or partly of money, then the Assessing Officer is empowered to apply such money in discharge of the existing liabilities and liability determined on completion of assessment u/s. 153A and assessee shall be discharged of such liability to the extent of the money so applied. Further, the assets other than money may also be applied in discharge of remaining liability. For the aforesaid purpose, such assets shall be deemed to be held in distraint as if such distraint was effected by the Assessing Officer or as the case may be, by the Tax Recovery

under section 153A as mentioned in para above are recovered out of such assets. **4.** Prior approval of Principal Chief Commissioner or Chief Commissioner of Income-tax or Principal Commissioner or Commissioner of Income-tax has been obtained.	Officer under authorization from the Principal Chief Commissioner or Chief Commissioner of Income-tax or Principal Commissioner or Commissioner of Income-tax under section 226(5). Thereafter, such Assessing Officer or Tax Recovery Officer may recover the amount of such liability by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

Recovery through any other modes not affected Nothing contained in section 132B(1) shall preclude the recovery of the amount of liabilities as mentioned in above by any other mode laid down under the Income-tax Act.

Payment of interest by the CG on excess money or excess proceeds

The Central Government shall pay interest at half percent for every month or part of a month on the excess money or excess proceeds of assets sold.

The interest shall be paid from the date immediately following the expiry of the period of 120 days from the date on which the last of the authorization for search under section 132 or requisition under section 132A was executed to the date of completion of the assessment under section 153A.

Section 153A -Assessment in case of search and seizure-Notwithstanding anything contained in section 139, 147, section 148, section 149, section 151 and section 153 of the Act ,In the case of any person, a search is initiated u/s 132 or requisition is made u/s 132A, the Assessing Officer shall issue a notice to such person requiring him to furnish a return of income in respect of each of the assessment years falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such **search is conducted or requisition is made.**

The assessee shall furnish return of income in response to the above notice within the time period specified in the notice and the provisions of the Act shall apply as if such were a return required to be furnished under section 139 of the Act. The assessing officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years.

Any assessment or reassessment relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search u/s 132 or making of requisition u/s 132A shall abate. The income determined under this section shall be taxed at the rates or rates applicable to each of the relevant assessment years.

However the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made.

In respect of the search initiated under section 132 or the requisition made under section 132A ,the assessing officer is empowered to issue notice under section 153A and further empowered to assess or reassess total income for the aforementioned six assessment years and "for the relevant assessment year or years" (i.e. beyond six years).
The expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made. However, for this purpose, following conditions must be satisfied-

Assessing officer has in his possession books of account or other documents or evidence which reveal that the income which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in one year or in aggregate in the relevant 4 assessment years (which are falling beyond sixth assessment years);	Such income has escaped assessment for such year or years	Such income is represented in the form of asset. For this purpose, asset shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

Section153B Time limit for completion of assessmen u/s153a

For 6 Assessment Year immediately preceding the Assessment Year relevant to the Previous Year in which search is started and for the relevant assessment year or year.	For Assessment Year relevant to the Previous Year in which search is started
18 months from the end of the financial year in which search is completed.	

Note- where a reference Officer under Section 92CA in course of proceeding under section 153A then Period of Assessment / Reassessment extended by 12 months more .

Section153C-Assessment of income of any other person
This section has an overriding effect over section 139, 147, section 148, section 149, section 151 and section 153 of the Act. Where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A, **THEN** the seized or requisitioned records and assets shall be handed over to the assessing officer having jurisdiction over such other person. **Thereafter, such assessing officer shall proceed to issue notice to such other person and assess or reassess his income in accordance with the provisions of sec.153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in Section 153A (1).**

For the purpose of assessment under section 153A in case of other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having the jurisdiction over such other person.

The above assessments in the hands of other person shall be completed on or before the time limit

Specified below

For 6 Assessment Year immediately preceding the Assessment Year relevant to the Previous Year in which search is started and for the relevant assessment year or years	For Assessment Year relevant to the Previous Year in which search was stared
18 months from the end of the financial year in which search is completed Or 12 months from the end of the Financial Year in which books of accounts, assets etc. are handed over under section 153C to the A.O. having jurisdiction over such other person WHICHEVER IS LATER	

Note- where a reference Officer under Section 92CA in course of proceeding under section

153A then Period of Assessment / Reassessment extended by 12 months more .

<u>Section153A (2) and 153(8) Revival of regular assessment on annulment of search assessment</u>

As per provisions of section 153A (2), if any proceeding under section 153 A(1) or any order of assessment or reassessment made under section 153A(1) has been annulled in appeal or any other legal proceeding, the abated assessment or reassessment relating to any assessment shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner.

As per Section 153(8)Such order of assessment or reassessment shall be made Within one year from the end of the month of such revival; or Within the time period specified in section 153; or Within the time period specified in section 153B, WHICHEVER IS LATER.

Section & seizer where elections are being held for assembly or parliament constituency

Notification No. 42/2012-In exercise of the powers conferred by section 153A and 153C, the Central Government has, through this notification, inserted a new Rule 112F which provides that the Assessing Officer is not required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made, in the following cases:

where as a result of a search under section 132(1) or a requisition made under section 132A, a person is found to be in possession of any money, bullion, jewelers or other valuable articles or things, whether or not he is the actual owner of the same, and	where, such search is **conducted or such requisition is made in the territorial area of an assembly or parliamentary constituency in respect of which a notification has been issued under section 30 read with section 56 of the Representation of the People Act, 1951**, **or where the assets so seized** or requisitioned are **connected in any manner to the ongoing election** in an assembly or parliamentary constituency.

However, this Rule is not applicable to cases where such search under section 132 or such requisition under section 132A has taken place after the hours of poll so notified. Also this rule shall not be applicable to cases where any assessment or reassessment has abated under the second proviso to section 153A.

Section 292CC Authorization and assessment in case of search

(1) Notwithstanding anything contained in this Act,—

(i) it shall not be necessary to issue an authorisation under section 132 or make a requisition under section 132A separately in the name of each person;

(ii) where an authorization under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the mention of such names of more than one person on such authorization or requisition shall not be deemed to construe that it was issued in the name of an association of persons or body of individuals consisting of such persons.

(2) Notwithstanding that an authorization under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorization or requisition.

33. Advance tax and Interest

Every person whose estimated tax liability for the year is Rs. 10,000 or more is liable to pay advance tax. However, a resident senior citizen (i.e., an individual of the age of 60 years or above during the relevant financial year) not having any income from business or profession is not liable to pay advance tax.

Section 208: Conditions of liability to pay advance tax
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 is Rs.10,000/- or more.
Advance Tax Liability = Tax on Total Income +/- Surcharge / Rebate u/s 87A + Education Cess / SHEC (-) Relief u/s 90/90A/91 (-) MAT/AMT Credit (-) TDS/TCS Credit

Due dates for payment of advance tax

Advance tax is to be paid in different installments. The due dates for payment of different installments of advance tax are as follows:

Status	By 15th June	By 15th Sept.	By 15th Dec.	By 15th March
All assessees (other than the eligible assessee as referred to in Section 44AD or section 44ADA)	Minimum 15% of advance tax	Minimum 45% of advance tax liability as reduced by the amount, if any, paid in earlier installment	Minimum 75% of advance tax liability as reduced by the amount, if any, paid in earlier installment	Minimum 100% of advance tax liability as reduced by the amount, if any, paid in earlier installment
Taxpayers who opted for presumptive taxation scheme of section 44AD or section 44ADA	Nil	Nil	Nil	Minimum 100% of Advance tax

Note-eligible assessee who is governed by section 44AD/ 44ADA is required to pay advance tax by 15th March of the Previous Year irrespective of the fact that he has substantial incomes apart from the income deemed under Section 44AD/ 44ADA

Note- If an assessee who declares profits and gains in accordance with the provisions of section 44AD or section 44ADA, who is liable to pay advance tax under section 208 has failed to pay such tax or the advance tax paid by the assessee on its current income on or before the 15th day of March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of 1% on the amount of the shortfall from the tax due on the returned income.

210 **Payment of advance tax by the assessee of his own accord or in pursuance of order of Assessing Officer.**

(1) Every person who is liable to pay advance tax under section 208 (whether or not he has been previously assessed by way of regular assessment) shall, of his own accord, pay, on or before each of the due dates specified in section 211, the appropriate percentage, specified in that section, of the advance tax on his current income, calculated in the manner laid down in section 209.

(2) A person who pays any instalment or instalments of advance tax under sub-section (1), may increase or reduce the amount of advance tax payable in the remaining instalment or instalments to accord with his estimate of his current income and the advance tax payable thereon, and make payment of the said amount in the remaining instalment or instalments accordingly.

(3) In the case of a person who has been already assessed by way of regular assessment in respect of the total income of any previous year, the Assessing Officer, if he is of opinion that such person is liable to pay advance tax, may, at any time during the financial year but not later than the last day of February, by order in writing, require such person to pay advance tax calculated in the manner laid down in section 209, and issue to such person a notice of demand under section 156 specifying the instalment or instalments in which such tax is to be paid.

(4) If, after the making of an order by the Assessing Officer under sub-section (3) and at any time before the 1st day of March, a return of income is furnished by the assessee under section 139 or in response to a notice under sub-section (1) of section 142, or a regular assessment of the assessee is made in respect of a previous year later than that referred to in sub-section (3), the Assessing Officer may make an amended order and issue to such assessee a notice of demand under section 156 requiring the assessee to pay, on or before the due date or each of the due dates specified in section 211 falling after the date of the amended order, the

appropriate percentage, specified in section 211, of the advance tax computed on the basis of the total income declared in such return or in respect of which the regular assessment aforesaid has been made.

(5) A person who is served with an order of the Assessing Officer under sub-section (3) or an amended order under sub-section (4) may, if in his estimation the advance tax payable on his current income would be less than the amount of the advance tax specified in such order or amended order, send an intimation in the prescribed form to the Assessing Officer to that effect and pay such advance tax as accords with his estimate, calculated in the manner laid down in section 209, at the appropriate percentage thereof specified in section 211, on or before the due date or each of the due dates specified in section 211 falling after the date of such intimation.

(6) A person who is served with an order of the Assessing Officer under sub-section (3) or amended order under sub-section (4) shall, if in his estimation the advance tax payable on his current income would exceed the amount of advance tax specified in such order or amended order or intimated by him under sub-section (5), pay on or before the due date of the last instalment specified in section 211, the appropriate part or, as the case may be, the whole of such higher amount of advance tax as accords with his estimate, calculated in the manner laid down in section 209.

Interest under Section 234A :
For defaults in furnishing return of income Simple Interest @ 1% p.m. or part thereof shall be chargeable

ROI furnished	ROI not furnished
Date next to due date to date of furnishing ROI	Date next to due date to date of completion of the assessment u/s 144

Note-Amount on which Interest is to be calculated shall be Tax on the total income as per section 143(1), or as determined under regular assessment as reduced by

a) advance tax paid ,b) TDS / TCS c) Relief of tax allowed under section 90/90A/91d) MAT /AMT credit
Circular No. 2/2015
No interest under section 234A shall be payable on the self-assessment tax paid before the due date of filing of return of income even if belated Return is filed

Interest under Section 234B

Interest under Section 234B shall be chargeble If defaults in payment of 90% advance tax
Simple interest at 1% p.m. or part on Assessed tax from

No assessment made	Assessment Made
1st April next following such year to the date of intimation u/s 143(1)	1st April next following such year to the date of such regular assessment

Assessed tax means,
Tax on income determined under section 143(1) or under such regular assessment as reduced

by
a) TDS/TCS b) Relief of tax allowed under section 90/90A/91 c) MAT / AMT Credit
Amount on which Interest is to be calculated = Assessed tax (-) Advance Tax paid

Interest under Section 234B

Interest under section 234C is levied, if advance tax paid in any instalment is less than the required amount. In other words, interest u/s 234C in case of deferment of different instalments of Advance Tax is levied in following cases:

A. For taxpayers under presumptive taxation scheme (section 44AD) Interest will be applicable if Advance Tax paid on or before 15th March is less than 100% of Advance Tax payable.

B.For any other taxpayer Interest will be applicable if:

If Advance Tax is paid on or before 15th June is less than 12% of Assessed Tax

If Advance Tax is paid on or before 15th September is less than 36% of Assessed Tax

If Advance Tax is paid on or before 15th December is less than 75% of Assessed Tax

If Advance Tax is paid on or before 15th March is less than 100% of Assessed Tax

Note: No interest is levied on taxpayer if shortfall in payment of Advance Tax occurs due to capital gains or winning from lottery, etc.

NOTE- The Income Tax Department wants you to pay your Advance Tax in 4 installments to ease the burden of tax. These installments must be paid on or before the due date. If you fail to do so, then the tax department can impose interest penalty u/s 234C.

Advance Tax payments must be made according to the following dates:

Due date	For all Taxpayers (Including Corporates, Non-Corporates and Individuals)
15th June	15% of Assessed Tax
15th September	45% of Assessed Tax
15th December	75% of Assessed Tax
15th March	100% of Assessed Tax

Assessed Tax = Tax on Income declared in ROI as reduced by a) TDS/TCS b) Relief under section 90/90A/91 c) MAT AMT Credit

Note

- while calculating Interest, Total Tax paid till the due date (cumulative) shall be reduced.
- if during assessment, appeals etc., amount of tax changes, this Interest will not change.

Any taxpayer who opts for the scheme of computing business income under section 44AD on presumptive basis @ 8% of turnover, such taxpayer has no obligation to pay Advance Tax in instalments. However, he must pay 100% of Advance Tax on or before 15th March of Financial Year for which the tax has to be paid.

Important points for calculating penalty under section 234C:

- Interest is charged @ 1% on the outstanding tax amount.
- The nature of interest is simple interest.
- Any fraction of month shall be considered as a full month for calculating interest.
- When calculating interest, the amount of taxes due shall be rounded off to the nearest multiple of 100 and ignore any fraction of 100.

Note: Interest under section 234C is levied for a period of 3 months, in case of short fall in payment of 1st, 2nd and 3rd installment and for 1 month, in case of short fall in payment of last instalment.

First proviso to section 234C (applicable to corporate & non-corporate Assesses)

These provisions shall not apply to any shortfall in the payment of the tax due on the returned income where such shortfall is on account of under-estimate or failure to estimate
a) The amount of capital gains or
b) any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.
c) Income under the head "Profits and gains of business or profession" in cases where the income accrues or arises under the said head for the first time
d) Income of the nature referred to in section 115BBDA

Interest under section 234A/B/C can be waived by CCIT/ Director General (Investigation) in the following cases

Waiver of interest under section 234A	Waiver of interest under section 234C	Waiver of interest under section 234B/C
i.Where during the course of search proceedings under section 132,**the books of account and other documents have been seized,** and the assessee has been unable to furnish the return of income for the previous year. ii. Where a return of income could not be filed by the assessee due **to unavoidable circumstances** and such return of income is **flied voluntarily by the assessee** or his legal heirs without detection by the Assessing Officer.	Any income chargeable to income-tax under any head of income, **other than "Capital Gains"** is received or accrued after due date of payment of the first or subsequent installments of advance tax which **was neither anticipated nor was in the contemplation of the assesses,** and the advance tax on such income is paid in the remaining installment or installments.	In consequence of any **retrospective amendment of law or the decision of the Supreme Court or a decision of a larger Bench of the jurisdictional High Court** (which was not challenged before the Supreme Court and has become final), some expense is disallowed or certain receipts which were not taxable become taxable.

Note: No reduction or waiver of interest shall be ordered **unless the essence has filed the return** of income for the relevant Assessment Year **and paid the entire income-tax (principal component of demand)** due on the income as assessed

234D: interest on excess refund

There may be cases where a taxpayer has been granted a refund upon processing of an income tax return. The refund would be granted under an intimation issued under Section 143(1) of the Income Tax Act. Subsequently, the taxpayer may be subject to scrutiny at a later date. Upon such scrutiny, and upon a regular assessment, the refund amount may be reduced or no refund may be due. Hence, the earlier amount refunded would be recoverable from the taxpayer. Section 234D further levies interest on the amount recoverable from the taxpayer. The rate of interest under Section 234D is levied at 0.5% per month or a part of the month on the refund amount recoverable from the taxpayer. The interest is calculated from the date of granting the refund under Section 143(1) until the date of regular assessment

Note- Regular assessment is an assessment carried out under Section 143(3) under a scrutiny notice issued to the taxpayer. This also includes the best judgement assessment under Section 144. Any assessments made for the first time under Section 147 or 153A will also be treated as regular assessment.

If under an order passed under any of the sections mentioned below, the refund granted under Section 143(1) is held to be correctly allowed, then the interest levied under Section 234D would be adjusted as per the orders:

Note-According to Rule 119A, the computation details of the interest payable by the assessee or the Central Government is given below:

a. **Interest calculated on a monthly basis:**When you calculate interest for a part of the month comprised in a period or a fraction of the month, you are required to calculate the interest considering a full month.

b. **Interest calculated on an annual basis:**As stated earlier, the period for which interest must be calculated will be rounded off to full months. Interest will be calculated for a period based on the rounded-off months.

c. **Interest amount rounded off to one hundred:**The amount of interest calculated on the excess refund will be rounded off to the nearest multiple of one hundred. Any fraction of Rs 100 is ignored and the rounded off amount will be considered payable as an interest to the department.

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244A(1): interest on refunds

(1) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely :—

(*a*) where the refund is out of any tax collected at source under section 206C or paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period,—

(*i*) from the 1st day of April of the assessment year to the date on which the refund is granted, if the return of income has been furnished on or before the due date specified under sub-section (1) of section 139; or

(*ii*) from the date of furnishing of return of income to the date on which the refund is granted, in a case not covered under sub-clause (*i*);

(*aa*) where the refund is out of any tax paid under section 140A, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period, from the date of furnishing of return of income or payment of tax, whichever is later, to the date on which the refund is granted:

Provided that no interest under clause (*a*) or clause (*aa*) shall be payable, if the amount of refund is less than ten per cent of the tax as determined under sub-section (1) of section 143 or on regular assessment;

(*b*) in any other case, such interest shall be calculated at the rate of one-half per cent for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

Explanation.—For the purposes of this clause, "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

(1A) In a case where a refund arises as a result of giving effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264, wholly or partly, otherwise than by making a fresh assessment or reassessment, the assessee shall be entitled to receive, in addition to the interest payable under sub-section (1), an additional interest on such amount of refund calculated at the rate of three per cent per annum, for the period beginning from the date following the date of expiry of the time allowed under sub-section (5) of section 153 to the date on which the refund is granted.

(1B) Where refund of any amount becomes due to the deductor in respect of any amount paid to the credit of the Central Government under Chapter XVII-B, such deductor shall be entitled to receive, in addition to the said amount, simple interest thereon calculated at the rate of one-half per cent for every month or part of a month comprised in the period, from the date on which—

(*a*) claim for refund is made in the prescribed form; or

(*b*) tax is paid, where refund arises on account of giving effect to an order under section 250 or section 254 or section 260 or section 262,

to the date on which the refund is granted.

(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee or the deductor, as the case may be, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable under sub-section (1) or (1A) or (1B), and where any question arises as to the period to be excluded, it shall be decided by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner whose decision thereon shall be final.

Note- where refund of any amount becomes due to the assessee under the provisions of section 143(1) and the Assessing Officer is of the opinion, having regard to the fact that a notice has been issued under section 143(2) in respect of such return, that the grant of the refund is likely to adversely affect the revenue, he may, for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, withhold the refund up to the date on which the assessment is made

Some other Concept

Section234A(3) **Interest for defaults in furnishing return of income**

Where the return of income for any assessment year, required by a notice under section 148 or section 153A issued after the determination of income under sub-section (1) of section 143 or after the completion of an assessment under sub-section (3) of section 143 or section 144 or section 147, is furnished after the expiry of the time allowed under such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the day immediately following the expiry of the time allowed as aforesaid, and,—

(*a*) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or

(*b*) where no return has been furnished, ending on the date of completion of the reassessment or recomputation under section 147 or reassessment under section 153A,

on the amount by which the tax on the total income determined on the basis of such reassessment or recomputation exceeds the tax on the total income determined under sub-section (1) of section 143 or on the basis of the earlier assessment aforesaid.

Section 234B(3) **Interest for defaults in payment of advance tax.**

where, as a result of an order of reassessment or recomputation under section 147 or section 153A, the amount on which interest was payable in respect of shortfall in payment of advance tax for any financial year under sub-section (1) is increased, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April next following such financial year and ending on the date of the reassessment or recomputation under section 147 or section 153A, on the amount by which the tax on the total income determined on the basis of the reassessment or

recomputation exceeds the tax on the total income determined under sub-section (1) of section 143 or on the basis of the regular assessment as referred to in sub-section (1), as the case may be

Section 234B (2A) **Interest for defaults w.r.t Settlement commission**

(*a*) where an application under sub-section (1) of section 245C for any assessment year has been made, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of making such application, on the additional amount of income-tax referred to in that sub-section;

(*b*) where as a result of an order of the Settlement Commission under sub-section (4) of section 245D for any assessment year, the amount of total income disclosed in the application under sub-section (1) of section 245C is increased, the assessee shall be liable to pay simple interest at the rate of one per cent for every month or part of a month comprised in the period commencing on the 1st day of April of such assessment year and ending on the date of such order, on the amount by which the tax on the total income determined on the basis of such order exceeds the tax on the total income disclosed in the application filed under sub-section (1) of section 245C;

(*c*) where, as a result of an order under sub-section (6B) of section 245D, the amount on which interest was payable under clause (*b*) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly

34. Appeals and Revision

Section 246 A : Appealable orders before CIT (A)- Any assessee or any deductor or collector aggrieved by any of the following orders may appeal to the Commissioner (Appeals):-

A.Order passed by a Joint Commissioner under section 115VP(3)(ii) i.eOrder refusing to register under Tonnage Taxation Scheme.

B. An order against assessee where assessee denies liability to be assessed or order under section 143(3) [except an order passed in pursuance of directions of the Dispute Resolution Panel] or section 144.

C. An intimation under section 143(1) / 143(1B)/ 200A(1) / 206CB (1)

D. An order of assessment, reassessment or recompilation under section 147 [except an order passed in pursuance of directions of the Dispute Resolution Panel].

E .An order of assessment / reassessment under section 153A. [except an order passed in pursuance of directions of the Dispute Resolution Panel]

F. An order of assessment or reassessment under sub-section (3) of section 92CD

G. An order of rectification of mistake under section 154 or section 155

H. An order under

Section 163 treating assessee as an agent of non-resident Section 170(2) or 170(3) relating to succession of business otherwise on death. Section 171 regarding assessment after partition of a HUF. Section 201. Interest on Late Payments of TDS Section 237 relating to refund. Section 206C (6A) TCS Section 221, 271, 271A, 271AAA, 271AAB 271F, 271FB, 272AA or 272BB Penalty order Section 271B or section 271BB Penalty Order

I. An order made by a Deputy Commissioner

Imposing a penalty under section 271C, section 271CA, section 271D or section 271E. Imposing a penalty under section 272AA. An order made by a Deputy Commissioner or a Deputy Director imposing a penalty under section 272A.

J .An order of imposing or enhancing penalty under sub-section (1A) of Section 275[Inserted by the Taxation Laws(Amendment) Act,2006]

K. An order imposing penalty under Chapter XXI (i.e., under sections 270 to 275)

L. An order made by an Assessing Officer (other than a Joint Commissioner) under the provision of the Act in the case of such person or classes of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations direct.

Section 248 Appeal by person denying liability to deduct tax

Where under an agreement or other arrangement, the tax deductible on any income, other than interest, under section 195 *is to be borne by the person by whom the income is payable*, and such person having paid such tax to the credit of the Central Government, who denies his liability to make such deduction,, may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.

Section249(1) Form of appeal, signing of form, documents to be submitted and filing fees -The appeal shall be presented in Form No. 35. It shall be signed and verified by the person authorized to sign the return of income under section 140.
Documents to be submitted are-Form No. 35 (including statement of facts and grounds of appeal) in duplicate, One copy of order appealed against , Notice of demand in original and specified Fees.
Note-Prescribed fee

Assessed total income			Any other subject-matter
Rs.1 lakh or less	More than Rs. 1 lakh but less than Rs.2 lakh	More thn Rs.2 lakh	250
Rs.250	Rs.500	Rs.1000	

Section249(2)Time limit for presenting appeal -Appeals shall be presented within 30 days of

where the appeal is u/s 248, the date of payment of the tax	where the appeal relates to any assessment or penalty, the date of service of notice of demand relating to the assessment or penalty, or	In any other case, the date on which intimation of the order sought to be appealed against is served.
Provided, when the assessee makes an application under section 270AA, then period from the date on which such application is made to the date on which order rejecting the application is served on assessee, shall be excluded for calculation of 30 days.		

Section249(4) No appeal shall be admitted unless at the time of filing the appeal-

Where a return has been furnished by the assesse, the assesse has paid the tax due on the income returned by him, or	Where no return has been furnished, the assesse has paid tax assessed by Assessing Officer in best judgement assessment. Commissioner of Income tax [Appeals] on an application made by the assesse may exempt the assesse from the condition of payment. Note-the Appellate Authority may, for any good and sufficient reason to be recorded in writing, exempt him from the payment of whole or part of such tax.

Section 249(3) Condonation of delay in filing appeal -The Commissioner (Appeals) may admit an appeal after the expiration of the prescribed period, if he is satisfied that the appellant had sufficient cause for not presenting the appeal within that period.

The statutory right of appeal must be construed in furtherance of justice and therefore liberal meaning shall be given to the expression "sufficient cause".	Distinction must be made between a case where delay is inordinate and a case where delay is of a few days. Where assessee requests for condonation of delay of few days on genuine ground, then such type of delay must be condoned.

Stay of demand

I.By AO/C(A) When appeal is pending before it.

Section 220(6) provides that where an assessee has presented an appeal under section 246A, then, the Assessing Officer may, in his discretion, and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount of dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of. If assessing officer refuses to grant the stay then

Paulsons Litho Works (Mad.) Assessee can very well approach Commissioner (Appeals) to grant the stay. Because, the Commissioner (Appeals) has inherent power to stay recovery proceedings	Kesav Cashew Company (Ker.) Assessee can straight away approach Commissioner (Appeals) for staying collection of tax, even though, he has not filed an application under section 220(6) to the assessing officer

II.By ITAT When appeal is pending before it.

ITAT can grant stay of demand for 180 days from the date of stay order. ITAT shall have to pass it. If ITAT does not pass order under section 254 within 180 days and there was no mistake of assesse, then ITAT can further extend the stay. The original stay and stay extended shall not exceed 365 days from the date of first stay order.order under section 254 within 180 days.	TAT has to pass order under section 254 within 365 days. If order under section 254 not passed within 365 days, then the order of stay shall be vacated after 365 days
No further stay can be granted by ITAT.EVEN, High Court and Supreme Court do not have the power to grant stay of demand.	

Rule46A Power of CIT(A) to admit additional evidence

The appellant shall not be entitled to produce before the Commissioner (Appeals) any evidence,

whether oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer.

However, in the following cases additional evidence shall be admitted by the Commissioner (Appeals) :

a. where the AO has refused to admit evidence which ought to have been admitted or

b. where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer ; or

c. where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal ; or

d. where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

No additional evidence shall be admitted unless the Commissioner (Appeals) records in writing the reasons for its admission. The Commissioner (Appeals) shall not take into account any additional evidence produced unless the Assessing Officer has been allowed a reasonable opportunity —
a. to examine the evidence or to cross-examine the witness produced by the appellant ; or

b. to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.
Note-Without prejudice to above, the Commissioner (Appeals) may direct the production of any document, or the examination of any witness, to enable him to dispose of the appeal.

Section 250 Procedure in appeal

The Commissioner (Appeals) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Assessing Officer against whose order the appeal is preferred. Appeal can be heard by The appellant, either in person or by an authorised representative Or the Assessing Officer, either in person or by a representative.
The Commissioner (Appeals) shall have the power to adjourn the hearing of the appeal from time to time. The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).
The Commissioner (Appeals) may, at the time of hearing of an appeal, allow the appellant to go into any ground of appeal not specified i.e additional ground of appeal in the original grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission of that ground from the form of appeal was not wilful or unreasonable. The order of the Commissioner (Appeals) disposing of the appeal shall be speaking order i.e in writing and shall state the points for determination, the decision thereon and the reason for the decision.

On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the assessee and to the Chief Commissioner or Commissioner. The appeal, where it is possible, shall be disposed within a period of one year from end of financial year in which appeal is filed.
Section 251 Powers of commissioner (A)
The Commissioner (Appeals) enjoys the following powers:
a. In an appeal against an order of assessment, he may confirm, reduce, enhance, or annul the assessment.

b.In an appeal against an order imposing a penalty, he may confirm or cancel such order to make a variation to reduce or enhance the amount of penalty.

c.In any other case, he can pass such orders as he thinks fit.

d. *Explanation* to section 251, in disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.

e. As per *Jute Corporation of India* [1991] (SC)in the absence of any statutory restriction, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter.

f He can do what the Assessing Officer can do and also what Assessing officer has failed to do , e.g Commissioner (Appeals) has power to reject assessee's books of account which have been accepted by Assessing Officer. That means, the scope of Commissioner (Appeal)'s power is coterminous with that of the Assessing Officer.

Section 252 Constitution an Appellate Tribunal

<table>
<tr><td colspan="3">The Central Government shall constitute an Appellate Tribunal consisting of as many judicial and accountant members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal.</td></tr>
<tr><td colspan="3">A judicial member shall be a person</td></tr>
<tr><td>who has held a judicial office in the territory of India at least for ten years; or</td><td>who has been a member of the Indian Legal Service and has held a post in Grade II of that service or any equivalent or higher post for at least three years; or</td><td>who has been an advocate for at least 10 years.</td></tr>
<tr><td colspan="3">An accountant member shall be a person -</td></tr>
<tr><td colspan="2">who has been in the practice of accountancy as a Chartered Accountant at least for ten years; or</td><td>who has been a member of the Indian Income-tax Service. Group A and has held the post of Additional Commissioner of Income Tax or any equivalent or higher post for at least three years.</td></tr>
<tr><td colspan="3">The Central Government shall appoint—</td></tr>
<tr><td colspan="2">A person who is a sitting or retired Judge of a High Court and who has completed not less than seven years of service as a Judge in a High Court; or</td><td>One of the Vice-Presidents of the Appellate Tribunal, to be the President thereof.</td></tr>
</table>

Section252A President, Vice-president and Member of ITAT –Qualifications etc.
Qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the President, Vice-President and other Members of the Appellate Tribunal, shall be governed by the provisions of section 184 of that Act.

Section 253 : Appeals to ITAT

Section 253(1) Appeal by assesse	Section 253(2) Appeal by Commissioner
a. An order passed by a Commissioner (Appeals) u/s 154, section 250, section 271, section 271A or b. Section 272A or An order passed by a Commissioner under section 12AA or u/c (vi) of section 80G(5) or under section 263 or section 271 or under sections 272A or c .An order passed by him under section 154 amending his order under section 263 or an order passed by a Chief Commissioner or a Director General or a Director under section 272A . d. An order passed by Assessing Officer under section 115VZC(1)-Expulsion from Tonnage Taxation Scheme. e. An order passed by an Assessing Officer under section 143(3) or section 147 or section 153A or section 153C in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order. f. An order passed by the prescribed authority under Section 10(23C) (iv) or (v) or (vi) or (via). g. An order passed by a Commissioner (Appeals) under **Section 271J Penalty order on Chartered Accountant/Merchant Banker/ Registered valuer for giving incorrect Report or Certificate FA 2018**	Order passed by Commissioner (Appeals) under section 154 or 250.
Section 253(3) Time limit - Within 60 days of the date on which order sought to be appealed against is communicated to the assessee/ Commissioner.	
Section 253(6) Form of Appeal, Filing Fees, Signing of Form and Documents to be submitted The appeal shall be presented in Form No. 36. It shall be signed and verified by the person authorized to sign the return of income under section 140. Documents to be submitted: (a) Form No. 36- 2 copies (b) Order appealed against – 2 copies (including one certified copy) (c) Order of Assessing Officer – 2 copies (d) Grounds of appeal before first appellate authority – 2 copies (e) Statement of facts filed before first appellate authority – 2 copies (f) In case of appeal against penalty order -2 copies of relevant assessment order. (g) In case of appeal against order under section 143(3), read with section 144A - 2 copies of the directions of the Deputy Commissioner under section 144A. (h) In case of appeal against order under section 143(3), read with section 144B - 2 copies of the draft assessment of the Deputy	

Commissioner under section 144B. (i) In case of appeal against order u/s 143(3), read with section 147-2 copies of original assessment order, if any. (j) Triplicate copy of challan for payment of fee. prescribed fee –

Assessed total income			254(2)Miscellaneous applications	253(7) Stay petitions And Any other matter
Rs.1 lakh or less	More than Rs. 1 lakh but less than Rs.2 lakh	More than Rs.2 lakh	Rs.50	Rs.500
Rs.500	Rs.1,500	1% of the assessed income subject to a maximum of Rs.10,000		

Section 253(4) Time limit for filing of cross-objections - On receipt of notice from the Registrar of Tribunal intimating that an appeal against the order of CIT (A) has been preferred under section 253(1) or 253(2) by the other party, the Assessing Officer or the assesse may file a memorandum of cross-objections within 30 days from the date of receipt of such notice. It shall be in Form No. 36A. No fee is required to be paid for filing such memorandum of cross objection. Once memorandum of cross-objection is filed within the time limit, it shall be disposed of by the Tribunal as if it were an appeal.

Section 253(5) Condonation of delay in filing appeal - The Tribunal may admit an appeal / memorandum of cross-objection after the expiration of the prescribed period, if it is satisfied that there was sufficient cause for not presenting it within that period.

Section 254 Orders of ITAT

254(1)The Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders as it thinks fit. The Tribunal shall send a copy of any order passed to the assessee and to the Principal Commissioner or Commissioner.
254(2B) Cost of appeal shall be at discretion of Tribunal.
254(2A)The appeal, where it is possible, shall be disposed within a period of four years from end of financial year in which appeal is filed.
Provided,Appellate Tribunal may, after considering the merits of the application made by the assessee, pass an order of stay in any proceedings relating to an appeal filed under sub-section (1) of section 253, for a period not exceeding one hundred and eighty days from the date of such order and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order .
Provided further,Where such appeal is not so disposed of within the said period of stay as specified in the order of stay, the Appellate Tribunal may, on an application made in this behalf by the assessee and on being satisfied that the delay in disposing of the appeal is not

attributable to the assessee, extend the period of stay, or pass an order of stay for a further period or periods as it thinks fit; so, however, that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed three hundred and sixty-five days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed
Also Provided also that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee

Section 254(2) Rectifications of mistakes by ITAT

The Tribunal may, at any time within six months from the end of the month in which the order was passed, with a view to rectifying any mistake apparent from the record, amend any order passed by it and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer.
Provided where an amendment has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, it shall not be made unless the Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard.
Provided further that any application filed by the assessee i shall be accompanied by a fee of Rs.50
Note-Some Example of “Mistake apparent from record” -
(a) Arithmetical error
(b) Subsequent Supreme Court decision
(c) Retrospective Amendment
(d) Non-consideration of Judgment cited before it
(e) Non-disposal of grounds of appeal
(f) Procedural lapse on the part of Tribunal like failure to refer matter to president when there is a disagreement between Accountant Member and Judicial Member
(g) Overlooking the material facts on record

Section 255 Procedure of Appellate Tribunal.
255(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members thereof.
255(2) Normally, a Bench of the Appellate Tribunal shall consist of one Judicial Member and one Accountant Member.
255(3) The President or a member of the Appellate Tribunal may be empowered by the Central Government, sitting singly, to dispose of any case where total income assessed does not exceed Rs. 50 lakh. The President may constitute a Special Bench consisting of three or more members, one of whom shall be a judicial member and one on accountant member.
255(4) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority. If the members are equally divided, they shall state

the point or points on which they differ, and the case shall be referred by the President for hearing by one or more of the other members of the Appellate Tribunal. Such point shall thereafter be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.

Rule 29 of Appellate Tribunal Rules, 1963 Power of ITAT to admit additional evidence

The parties to the appeal shall not be entitled to produce additional evidence, either oral or documentary, before the Tribunal. However, the following are the exceptions to this rule –

where the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause; Tribunal may allow such document to be produced or witness to be examined or affidavit to be filed.	Where the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by the them. Tribunal may allow such evidence to be adduced.
Note-In both cases, the Tribunal should record its reasons in writing.	

Section260A Appeal to High Court

Who can file appeal -Assessee or Chief Commissioner / Commissioner can file appeal against any order passed in appeal by the Appellate Tribunal, if the High court is satisfied that the case involves a substantial question of law.

Note-The expression 'substantial question of law' has not been defined anywhere in the statute.

But it has acquired a definite meaning through various Court decisions. As per these decisions, five tests to be carried out.

The tests are:

(1) Whether directly or indirectly it affects substantial rights of the parties,

(2) The question is of general public importance,

(3) Whether it is an open question in the sense that issue is not settled by the pronouncement of the Supreme Court or Privy Council or by the Federal Court,

(4) The issue is not free from difficulty, and

(5) It calls for a discussion for alternative view.

Time limit - 120 days from the date on which order of Tribunal is received by the assessee or the Chief Commissioner or Commissioner. Further, the High Court may admit an appeal after the expiry of the period of 120 days, if it is satisfied that there was sufficient cause for not filing the appeal within 120 days.

Some common points-

The appeal shall be in form of a memorandum of appeal, precisely stating the substantial question of law involved in the appeal. Where the High Court is satisfied that a substantial question of law is involved, it should formulate the question. Where the High Court delivers a judgment, effect shall be given to order passed by AO on basis of certified copy of judgement.

The appeal to be heard only on the question to be formulated (however, the Court has the power to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulate by it, if it is satisfied that the case involves such question).

High Court can award such costs as it deems fit. The High Court may determine any issue which has not been determined by the Appellate Tribunal; or has been wrongly determined by the Appellate Tribunal.

The appeal is to be heard by a bench of not less than 2 judges of the High Court and decision will be in accordance with opinion of majority of judges. Where judges are equally divided in their opinions, the case on the point on which they differ shall be heard by one or more other judges of the High Court. The section 260A(7) provides that the provisions of the Code of Civil Procedure, 1908 relating to appeals to the High Court shall apply in the case of appeals under this Act.

Section 261 Appeal to the SC and Section 262 hearing before SC

Assessee or Commissioner **can file appeal against** any order passed in appeal by the High Court, if the High Court certifies the case fit for appeal to Supreme Court. If however, High Court refuses to give a certificate, the aggrieved party can make an application to Supreme Court under Article 136 of the Constitution. Where the judgment of the High Court is varied or reversed by the Supreme Court, the Appellate Tribunal should pass such orders as are necessary to dispose of the case conformably to such judgment.

Section 268A: filing of appeal by income-tax authority

The CBDT have issued instructions from time-to-time directing departmental officers not to file an appeal if the tax effect is less than the monetary limit prescribed by it. At present following monetary limits are in force:-(FA 2019)

Appeal to Tribunal	Appeal to High Court	Appeal to Supreme Court
Exceeding Rs.50 lacs	Exceeding Rs.1Cr	Exceeding Rs.2Cr

The Board may issue orders, instructions or directions to other income-tax authorities, fixing such monetary limits as it may deem fit. Such fixing monetary limit is to be for the purpose of regulating

filing of an appeal or an application for reference by any income-tax authority under the provisions of the Act. Where an income-tax authority has not filed an appeal or application for reference on any issue in the case of an assessee for any assessment year, due to above-mentioned order/instructions / direction of the Board, such authority shall not be precluded from filing an appeal or an application for reference on the same issue in the case of The same assessee for any other assessment year or Any other assessee for the same year or any other assessment year . Where no appeal or application for reference has been filed by an income-tax authority pursuant to abovementioned orders / instructions / directions of the Board, it shall not be lawful for an assessee to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or an application for reference in respect of any case. The Appellate Tribunal or Court shall have regard to the above-mentioned orders / instructions / directions of the Board and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.

Annulment/Cancellation/Set aside of Order

<table>
<tr><td>The CIT(A) under section 260, the CIT under section 264 and the ITAT under section 254, has the power to</td><td>The CIT under section 264 and the ITAT under section 254, has the power to {Not CIT(A)}</td></tr>
<tr><td>Annulment of the assessment, i.e., to declare the assessment to be invalid or void ab-initio</td><td>Cancel/ set aside the assessment and refer back to the Assessing Officer for making fresh assessment</td></tr>
<tr><td>Annulment of the assessment generally held where AO has not complied with the technical requirements of the Act such as issue of notice ,service of notice or time limits for making the assessment/reassessment. In such a case the assessment is declared void and the AO is not directed to make a fresh assessment.</td><td>Cancel/ set aside the assessment generally held where AO has already complied with the technical requirements of the Act such as issue of notice ,service of notice or time limits for making the assessment/reassessment but the basis of assessment is not correct. In such a case, the assessment is cancelled/set aside and the Assessing Officer is directed to make a fresh assessment on a proper basis.
Eg</td></tr>
<tr><td>Where assessment is made under-
143(3) without issuing a notice under section 143
144 Without a show cause notice under section 144.
143(3)/144/147 After the time limits specified in section 153.
143(3) On the basis of an invalid return.
147 Without issuing a notice under section 148.
147 In pursuance of a notice under section 148 which is issued after the time limits prescribed under section 149(1).
143(3) In pursuance of a notice under section 113(2) which is served after the time period prescribed under section 143(2).
143(3) In pursuance of a notice under section 143(2) which has been issued to an assessee who has not filed the return of income.</td><td>Where assessment is made in hurry Since it was getting time barred.
Where income is assessed ignoring the books of account and other relevant information.
Where income is assessed on adhoc basis without giving the basis on which income is assessed.
Where the Assessing Officer Not followed the directions under section 144A
Where the Assessing Officer Not followed CBDT circular.</td></tr>
</table>

Section 263 revision of orders prejudicial to Revenue

Which order can be Revised- Any **order passed by the Assessing Officer** which the Principal Commissioner or Commissioner considers **erroneous in so far as it is prejudicial to the interests of the revenue may be revised.**

Explanation 1

For the purpose of this section, order passed by the Assessing Officer shall include: (i) An order of assessment made by the Assistant Commissioner or Deputy Commissioner or the Income-tax Officer on the basis of the directions issued by the Joint Commissioner under section 144A; (ii) An order made by Jt. CIT in the capacity of A.O.	For the purpose of this section, "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner.	In the case of orders which have been the subject-matter of appeal, the Commissioner can use his power under this section and revise the orders in relation to such matters as had not been considered and decided in such appeal.

Explanation 2

For the purposes of section 263, it is hereby declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner,— (
a) the order is passed without making inquiries or verification which should have been made;
(b) the order is passed allowing any relief without inquiring into the claim;
(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

Time Limit

No order under this section shall be made after the expiry of 2 years from the end of the financial year in which order sought to be revised was passed. However, an order under this section may be passed at any time to give effect to the finding or direction contained in an order of the High Court or Supreme Court.

Procedure

First, the Commissioner may call for and examine the **record** of any proceeding under the Act.
If the Commissioner finds any order passed by the Assessing Officer to be erroneous and prejudicial to the interests of the revenue, he must give an opportunity to the assessee of being heard.
He must also make or cause to be made such enquiry as he deems necessary .Thereafter he may pass such revision order as the circumstances of the case justify (including an order enhancing or modifying the assessment, or canceling the assessment and directing a fresh assessment)

Section 264 Revision in favor of assessee

Which order can be Revised -Orders other than orders to which section 263 applies passed by an authority subordinate to the Commissioner, may be revised. Here order may be revised Either on the Commissioner's own motion or on an application by the assessee for revision.

Time Limit

Commissioner while acting on his motion: One year from the date of original order.	Where revision has been initiated by assessee, the application must be made within one year from the date on which the order in question was communicated to the assessee or the date on which he otherwise came to know of it, whichever is earlier. However, the Commissioner can admit a belated application if the assessee was prevented by sufficient cause from making the application within time	Where the application is made by the assessee, the Commissioner is required to pass an order within one year from the end of the financial year in which the application is made.

Procedure

Once revision proceedings have been initiated, the Commissioner may call for and examine the record of any proceeding under the Act in which the order to be revised has been passed.	He must then make or cause to be made such enquiry as he deems necessary.	Thereafter, he may pass such revision order as the circumstances of the case justify. However, the order passed should not be prejudicial to the assessee.

Orders which cannot be revised-

Where an appeal lies to the First or Second appellate authority but has not been made and the time within which the appeal may be made has not expired, or in the case of an appeal to the Commissioner (Appeals) or the ITAT, the assessee has not waived his right of appeal; or	Where the order is an appeal before the Commissioner (Appeals) or the ITAT.

Similarities and Difference between Section 263 and Section 264

Similarities	Difference	
1. Revision by Commissioner. 2. Revision of order of Assessing Officer	Revision of orders prejudicial to the revenue. An appeal can be filed to ITAT	Revision of orders prejudicial to the assessee. No appeal can be filed against

3. Revision can be suo-moto. 4. Assessment can be cancelled/set aside and a direction be given to Assessing Officer to make fresh assessment. 5. Can be rectified under section 154.	against the order passed under section 263	the order passed under section 264.	
	Revision is possible of the issues which have not been considered and decided in an appeal.	Revision under section 264 is not possible on any issue if an appeal has been filed to CIT(A).	
	Revision under section 264 is not possible if revision has been made under section 263.	Revision on under section 264 is possible after revision under section 263.	
	Revision is moto or when the error is brought to the notice by the i Asses-sing Officer.	Revision is suo-moto or on an application made by the assessee.	
	Order under section 263 can be passed upto 2 years from the end of Financial Year in which order sought to be revised was passed.	Order under section 264 can be made suo-moto upto 1 year from the date of the order sought to be revised.	Where application made by the assessee, the order has to be passed within 1 year from the end of the Financial Year in which application was filed.

Binding nature nature of CBDT circulars

CBDT does not have the power to amend legislative provisions by issuing a Circular. If a circular deviates from Law and is against the assume, the Assessing officer is bound to follow the Circular even though the circular is invalid. However, the assesses can file a WRIT PETITION to High Court against such Circular and High Court will quash such circular. If a circular deviates from Law and is beneficial to the assesses, the Assessing Officer is bound to follow the circular and such circular is valid in law.

35. Avoidance of Repetitive Appeal

Section158A Provision for avoiding repetitive appeals

The case of the assesse in respect of a question of law pertaining to an earlier assessment year is pending in an appeal/reference before the High Court or Supreme Court (to be called "earlier case") and An identical question of law arises in a later assessment year before the Assessing Officer or the appellate authority (to be called "later case") then The assesse may give a declaration in the prescribed form to the Assessing Officer or appellate authority to apply in the relevant case.

The Assessing Officer/ appellate authority by an order in writing - (i) admit the claim of the assessee upon satisfaction that the question of law arising in the relevant case is identical with the question of law in the Other Case; or (ii) reject the claim of the assessee if not so satisfied.

Note: The order of rejection is a final and a non-appealable order.

If the Assessing Officer or the appellate authority agrees to apply in the "later case", the final decision of High Court or Supreme Court on question of law in the "earlier case"; The assesse shall not raise such question of law in the "later case" in appeal before any appellate authority/High Court/Supreme Court. Where the declaration of the assessee is admitted in relation to the relevant case –

. Assessing officer/appellate authority may make an order disposing of the relevant case without awaiting for the final decision on question of law in the other case;	Assessee shall not be entitled to raise such question of law in any appeal before any appellate authority/ High Court/ Supreme Court.

When the decision on the question of law in the other case becomes final, it shall be applied to the relevant case and the Assessing Officer or the appellate authority shall, if necessary, amend the earlier older in the relevant ease in conformity with such decision.

Section158AA Procedure when in an appeal by revenue an identical question of law is pending before SC.

where any question of law arising in the case of an assessee for any assessment year is identical with a question of law arising in the case for another assessment year which is pending before the Supreme Court (in an appeal or in a special leave petition) filed by the revenue, against the order of the High Court in favour of the assessee, the Commissioner or Principal Commissioner may (instead of directing the Assessing Officer to appeal to the Appellate Tribunal), direct the Assessing Officer to make an application to the Appellate Tribunal in the prescribed form within 60 days from the date of receipt of order of the Commissioner (Appeals) stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the earlier case. The Commissioner or Principal Commissioner shall proceed under above provisions only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case.

However, in case no such acceptance is received the Commissioner or Principal Commissioner shall proceed in accordance with the provisions contained in section 253(2)/(2A) and, accordingly, may, if he objects to the order passed by the Commissioner (Appeals), direct the Assessing Officer to appeal to the Appellate Tribunal. Where the order of the Commissioner (Appeals) is not in conformity with the final decision on the question of law in the other case (if the Supreme Court decides the earlier case in favour of the Income Tax Department), the Commissioner or Principal Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal against such order within 60 days from the date on which the order of the Supreme Court is communicated to the Commissioner or Principal Commissioner.

36. Certain Concepts related to Assessment

Section 281 Certain transfers to be void

Where, during the pendency of any proceeding or after the completion of any proceeding but before the service of notice by the Tax Recovery Officer, any assessee creates a charge on or parts with the possession of any of his assets in favour of any other person by way of sale, mortgage, gift etc., such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable under the Income-tax Act as a result of the completion of the said proceeding or otherwise. Charge or transfer not to be considered void where it is made:

For adequate consideration and without any notice of the pendency of such proceeding or without any notice of such tax or other monies remaining payable by the assessee; or	The charge or transfer shall not be rendered void if it is done with the previous permission of the Assessing Officer.	The provisions of the section shall not applies to cases where the amount of tax or other sum payable or likely to be payable doesn't exceeds Rs.5,000 and the assets charged or transferred doesn't exceed Rs.10,000 in value.

Note- For the purpose of this section, "assets" means land, building, machinery, plant, shares, securities and fixed deposits in banks to the extent to which any of these assets does not form part of the stock-in-trade of the business of the assessee.

Section281B Provisional attachment to protect revenue in certain cases.

Where, during the pendency of any proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment, the Assessing Officer is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, he may, with the previous approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

Every such provisional attachment shall remain in force for a period of six months from the date of the such order. However, above period can be extended by such further period or periods as the concerned authority thinks fit but the total period of extension shall not in any case exceed two years or sixty days after the date of order of assessment or reassessment, whichever is later.

Where the assessee furnishes a guarantee from a scheduled bank for an amount not less than the fair market value of the property provisionally attached, the Assessing Officer shall, by an order in writing, revoke such attachment: However, if the Assessing Officer is satisfied that a guarantee from a scheduled bank for an amount lower than the fair market value of the property is sufficient to protect the interests of the revenue, then he may accept such guarantee and revoke the attachment.

The Assessing Officer may, for the purposes of determining the value of the property provisionally attached, make a reference to the Valuation Officer referred to in section 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the Assessing Officer within a period of thirty days from the date of receipt of such reference.

An order revoking the provisional attachment shall be made— (i) within 45 days from the date of receipt of the guarantee, where a reference to the Valuation Officer has been made; or (ii) within 15 days from the date of receipt of guarantee in any other case.

Where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay that sum within the time specified in the notice of demand, the Assessing Officer may invoke the guarantee furnished, wholly or in part, to recover the amount.

The Assessing Officer shall, in the interests of the revenue, invoke the bank guarantee, if the assessee fails to renew the guarantee, or fails to furnish a new guarantee from a scheduled bank for an equal amount, fifteen days before the expiry of such guarantee.

The amount realised by invoking the guarantee shall be adjusted against the existing demand which is payable by the assessee and the balance amount, if any, shall be deposited in the Personal Deposit Account of the Principal Commissioner or Commissioner in the branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries or any bank as may be appointed by the Reserve Bank of India as its agent at the place where the office of the Principal Commissioner or Commissioner is situate.

Where the Assessing Officer is satisfied that the guarantee is not required anymore to protect the interests of the revenue, he shall release that guarantee forthwith.

Section282 Service of notice Generally

The service of a notice or summon or requisition or order or any other communication under this Act (hereafter in this section referred to as communication) may be made by delivering or transmitting a copy thereof, to the person therein named, (a) by post or by such courier services as may be approved by the Board; or (b) in such manner as provided under the Code of Civil Procedure, 1908 for the purposes of service of summons; or (c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; (d) by any other means of transmission of documents as provided by rules made by the Board in this behalf	The Board may make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which the communication referred to in sub-section (1) may be delivered or transmitted to the person therein named.
Explanation: For the purposes of this section, the expressions electronic mail and electronic mail message shall have the meanings as assigned to them in Explanation to section 66A of the Information Technology Act, 2000.	

Section 282A e-authentication of notices and other documents

Where this Act requires a notice or other document to be issued by any income-tax authority, such notice or other document shall be signed and issued in paper form or communicated in electronic form by that authority in accordance with such procedure as may be prescribed	Every notice or other document to be issued, served or given for the purposes of this Act by any income-tax authority, shall be deemed to be authenticated if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon

Section 292BB Notice deemed to be valid in certain circumstances.

Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was

(a) Not served upon him; or

(b) Not served upon him in time; or

(c) Served upon him in an improper manner.

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment.

37. Consequence for Assessee in Default

Section220 Interest if not complied with Notice of Demand

Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under section 156 shall be paid within thirty days of the service of the notice at the place and to the person mentioned in the notice. However, where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty days aforesaid is allowed, he may, with the previous approval of the Joint Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty days aforesaid, as may be specified by him in the notice of demand. Any amount payable in a notice of demand under section 156 shall be paid within 30 days of the service of such notice. On failure to pay whole or part of the demand within the 30 days, assessee shall be deemed to be an Assessee in default for the amount remaining unpaid.

Note-**Section** 156 Notice of demand- When any tax, interest, penalty or any other sum is payable in consequence of any order passed, the Assessing Officer shall serve upon the assessee, a notice of demand in the prescribed form specifying the sum so payable. Where any sum is determined to be payable by the assessee or by the deductor or by the collector under section 143(1) or section 200A (1) or 206CB(1), then intimation issued under those sections shall be deemed to be a notice of demand for the purpose of section 156.

Consequences of being an assessee in default

Interest under section 220	Penalty under section 221
Simple interest @ 1% per month is payable on the amount remaining unpaid, for the period beginning from the day immediately following the 30 days as aforesaid AND ending on the date on which payment is made Note1-Part of the month is considered us full month. Note2-Such Interest may be waived/ reduced Where such Assessee made application and Commissioner or Chief Comm satisfied that (i) payment of such amount has caused or would cause genuine hardship to the assessor; (ii) default in the payment of the amount on which interest has been paid or was payable was due to circumstances beyond the control of the assessee; (iii) The assessee has co-operated in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him. Note3-Order accepting or rejecting the application of the assesses, shall be passed within 12 months from the end	When an assessee is in default or is deemed to be in default in making a payment of tax, he shall, in addition to the amount of the arrears and the amount of interest payable under sub – section (2) of section 220, be liable, by way of penalty, to pay such amount as the Assessing Officer may direct, and in the case of a continuing default, such further amount or amounts as the Assessing Officer may, from time to time, direct, so however, that the total amount of penalty does not exceed the amount of tax in arrears. However, before levying any such penalty, the assessee shall be given a reasonable opportunity of being

of the month in which the application is received. Note4-Where as a result of an order of rectification/appeal/revision, the amount on which interest was payable under section 220 had been reduced, then such interest payable/ paid shall also be reduced accordingly. Note5-If the amount on which interest was payable under section 220 had been reduced in rectification/appeal/revision as stated above, but such amount on which interest was payable is subsequently increased in further appeal/revision, then interest shall be computed on the increased amount from the day immediately following the end of period given in first notice of the demand. Note6-where any notice of demand has been served upon an assessee and any appeal is filed in respect of the amount specified in the said notice of demand, then such demand shall be deemed to be valid till the disposal of the appeal by the last appellate authority.	heard. Further, where the assessee proves to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons, no penalty shall be levied under this section. Note -1 The penalty under section 221 shall not be levied if the assesse process that the default was for good and sufficient reasons. Note -2 Where as a result of any final order the amount of tax, with respect to the default in the payment of which the penalty was levied, has been wholly or partly reduced, the penalty levied shall be cancelled or partly reduced and the amount of penalty paid shall be refunded.

38. Statement of Financial Transaction

Section 285BA Furnishing of statement of financial transactions

Specified entities (Filers) are required to furnish a statement of financial transaction or reportable account (hereinafter referred to as 'statement') in respect of specified financial transactions or any reportable account registered/recorded/maintained by them during the financial year to the income-tax authority or such other prescribed authority.

Persons required to file statement

Following persons shall be required to furnish statement of financial transactions or reportable accounts registered or recorded or maintained by them during a financial year to the prescribed authority-

(a) An assessee;
(b) The prescribed person in the case of an office of Government;
(c) A local authority or other public body or association;

(d) The Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908

(e) The registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988

(f) The Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898

(g) The Collector referred to in clause (g) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

(h) The recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956

(i) An officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934

(j) A depository referred to in clause(e) of sub-section (1) of section 2 of the Depositories Act, 1996

(k) A prescribed reporting financial institutions

The periodicity and due date of furnishing statement

The statement of financial transactions shall be furnished on or before the 31st May, immediately following the financial year in which the transaction is registered or recorded in Form 61A.

However, section 285BA(5) empower the tax authorities to issue a notice to the person who had not filed the statement within prescribed time. In such a case, the tax authorities may serve upon such person a notice requiring him to furnish the statement within a period not exceeding 30 days from the date of service of such notice and in such a case the person shall furnish the statement within the time as specified in the notice.

Section 271FA **Consequences of not furnishing statement of financial transaction or reportable account** –FA 2018

Prescribed income-tax authority may direct that such person shall pay, by way of penalty

If a person who is required to furnish SFTRA under section 285BA	If a person fail to furnish the statement within the period specified in the notice issed under section 285BA
Rs.500 per day of continuing default	Rs.1000 per day of continuing default
1st June immediately following the financial year in which the transaction is registered or recorded till the date of furnishing the AIR or the date of expiry of the time specified in the notice under section 285BA(5), whichever is earlier.	The day immediately following the day on which the time specified in notice under section 285BA(5) for furnishing the AIR expires till the date of furnishing of AIR.

Inaccurate or defective statement of financial transaction or reportable account -

If any person, after filing the statement, comes to know or discovers any inaccuracy in the information provided in the statement, he shall inform such inaccuracy to the prescribed income-tax authority within a period of ten days and furnish the correct information in such manner as may be prescribed. On the other hand, the prescribed income-tax authority may also intimate the defect to the person and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such extended period as may be allowed by prescribed income-tax authority. However, if a person fails to rectify the defect within the said period than such statement shall be treated as an invalid statement and the provisions of this Act shall apply as if such person had failed to furnish the statement.

Section 271FAA **Consequences of filing inaccurate or defective statement of financial transaction or reportable account –**

If a prescribed reporting financial institution referred to in Section 285BA(1)(k) who is required to furnish statement of financial transaction or reportable account, provides inaccurate information in the statement, and where

(a) the inaccuracy is due to a failure to comply with the due diligence requirement or is deliberate on the part of that person	(b) the person knows of the inaccuracy at the time of furnishing the statement but does not inform the prescribed income-tax authority or such other authority or agency;	(c) the person discovers the inaccuracy after the statement is furnished and fails to inform and furnish correct information within a period of 10 days
then, the prescribed income-tax authority may direct that such person shall pay, by way of penalty, a sum of Rs. 50,000.		
The Board may prescribe different values for different transactions in respect of different persons having regard to the nature of such transactions. However, the aggregate value of such transactions during a financial year shall not be less than Rs. 50,000. **Notification No. 95/2015**		

Rule 114E Furnishing of Statement of Financial Transaction- The statement of financial transaction required to be furnished under section 285BA(1) of the Income-tax Act, 1961 shall be furnished by every person mentioned in column (3) of the Table below in respect of all the transactions of the nature and value specified in the corresponding entry in column (2) of the said Table, which are registered and recorded by him on or after 1st April, 2016.		
(1) **Sr. No**	(2) Nature and value of transaction	(3) Class of person (reporting person)
1	(a) Payment made in cash for purchase of bank drafts or pay orders or banker's cheque of an amount aggregating to Rs. 10 lakh or more in a financial year. (b) Payments made in cash aggregating to Rs. 10 lakh or more during the financial year for purchase of pre-paid instruments issued by Reserve Bank of India under the Payment and Settlement Systems Act, 2007. (c) Cash deposits or cash withdrawals (including through bearer's cheque) aggregating to Rs. 50 lakhs or more in a financial year, in or from one or more current account of a person	A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act
2	Cash deposits aggregating to Rs. 10 lakhs or more in a financial year, in one or more accounts (other than a current account and time deposit) of a person.	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); (ii) Post Master General as referred to in the Indian Post Office Act, 1898.
3	One or more time deposits (other than a time deposit made through renewal of another time deposit) of a person aggregating to Rs. 10 lakhs or more in a financial year of a person	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); (ii) Post Master General as referred to in the Indian Post Office Act, 1898; (iii) Nidhi referred to in section 406 of the Companies Act, 2013; (iv) NBFC which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934, to hold or accept deposit from public.
4	Payments made by any person of	A banking company or a co-operative bank

	an amount aggregating to- (i) Rs. 1 lakh or more in cash; or (ii) Rs. 10 lakh or more by any other mode, against bills raised in respect of one or more credit cards issued to that person, in a financial year.	to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act) or any other company or institution issuing credit card.
5	Receipt from any person of an amount aggregating to Rs. 10 lakh or more in a financial year for acquiring bonds or debentures issued by the company or institution (other than the amount received on account of renewal of the bond or debenture issued by that company).	A company or institution issuing bonds or debentures.
6	Receipt from any person of an amount aggregating to Rs. 10 lakh or more in a financial year for acquiring shares (including share application money) issued by the company.	A company issuing shares
7	Buy back of shares from any person (other than the shares bought in the open market) for an amount or value aggregating to Rs. 10 lakh or more in a financial year	A company listed on a recognised stock exchange purchasing its own securities under section 68 of the Companies Act, 2013.
8	Receipt from any person of an amount aggregating to Rs. 10 lakh or more in a financial year for acquiring units of one or more schemes of a Mutual Fund (other than the amount received on account of transfer from one scheme to another scheme of that Mutual Fund)	A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.
9	Receipt from any person for sale of foreign currency including any credit of such currency to foreign exchange card or expense in such currency through a debit or credit card or through issue of travellers cheque or draft or any other instrument of an amount	Authorized person as referred to in section 2(c) of the Foreign Exchange Management Act, 1999

	aggregating to Rs. 10 lakh or more during a financial year	
10	Purchase or sale by any person of immovable property for an amount of Rs. 30 lakhs or more or valued by the stamp valuation authority referred to in section 50C at Rs. 30 lakhs or more	Inspector-General appointed under the Registration Act, 1908 or Registrar or Sub-Registrar appointed under that Act
11	Receipt of cash payment exceeding Rs. 2 lakh for sale, by any person, of goods or services of any nature (other than those specified at Sl. Nos. 1 to 10 of this rule, if any)	Any person who is liable for audit under section 44AB of the Act

Manner of application of threshold limit: The reporting person mentioned in column (3) of the Table under sub-rule (2) [other than the person at Sl.No.10 and Sl. No. 11] shall, while aggregating the amounts for determining the threshold amount for reporting in respect of any person as specified in column (2) of the said Table,-

(a) take into account all the accounts of the same nature as specified in column (2) of the said Table maintained in respect of that person during the financial year;

(b) aggregate all the transactions of the same nature as specified in column (2) of the said Table recorded in respect of that person during the financial year;

(c) attribute the entire value of the transaction or the aggregated value of all the transactions to all the persons, in a case where the account is maintained or transaction is recorded in the name of more than one person;

(d) apply the threshold limit separately to deposits and withdrawals in respect of transaction specified in item (c) under column (2), against Sl. No. 1 of the said Table.

38. Statement of Financial Transaction

Penalty can be levied by the AO/ CIT /CIT but not ITAT by issuing a show cause notice. Any Penalty proceedings must be initiated before levying any penalty i.e by issuing a show cause notice. Initiating penalty before the completion of assessment / passing the order,as the case may be.

For under-reporting or mis-reporting of income	Other than for under-reporting or mis-reporting of income
Assessing Officer shall levy penalty for under-reporting or misreporting of income on the additions made by him in an assessment or reassessment under section 143(3) / 144/147/153A	Here, penalty can be levied at any time by initiating the penalty proceedings by issuing a show cause notice.
CIT(A) shall levy penalty for under-reporting or misreporting of income. On the addition made by him in an order passed under section 250	
CIT shall levy penalty for under reporting misreporting of income on the additions made by him in order passed under section 263	

Section 271J : Penalty for furnishing incorrect information or certificates

Empowers the AO or the CIT (A) to impose penalty on an accountant, a merchant banker or a registered valuer, if it finds that such person has furnished incorrect information in a report or certificate. The quantum of penalty is Rs. 10,000 for each such report or certificate.

Assessing Officer, CIT (Appeals) or the Principal CIT or CIT may, during the course of any proceedings under this Act, levy penalty if a person has under – reported his income. To levy penalty we should follow following steps

Step 1: Check is there Cases of under-reported income

Cases of under-reported income	under-reported income shall not include
(a) the income assessed is greater than the income determined in the return processed under section 143(1)(a); (b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished; (c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment; (d) the amount of deemed total income assessed or reassessed under section 115JB or section 115JC is	a. Where the assessee offers an explanation and the income-tax authority is satisfied that the explanation is bonafide and all the material facts have been disclosed; b. Where such under-reported income is determined on the basis of an estimate, if the accounts are correct and complete but the method employed is such that the income cannot properly be deducted there

greater than the deemed total income determined in the return processed under section 143(1)(a); (e) the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where no return of income has been filed; (f) the amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC is greater than the deemed total income assessed or reassessed immediately before such reassessment; (g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.	from; c. Where the assessee has, on his own, estimated a lower amount of addition or disallowance on the issue and has included such amount in the computation of his income and disclosed all the facts material to the addition or disallowance d. Where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction and disclosed all the material facts relating to the transaction;
Where the undisclosed income is on account of a search operation and penalty is leviable under section 271AAB.	

Step 2: Quantum of under-reported income

I.

Assessment made for first time. Return has been filed	Assessment made for first time. No Return has been filed or Return filed first time u/s 148 FA 2019 [see Note 2]	
Income assessed exceed Income determined under section 144(1)(a)	Income assessed exceed Maximum amount not chargeable to Tax	b. Case of Re-assessment-- Income reassessed exceed Income assessed or reassessed immediately before such reassessment
a. Income assessed (-) Income determined under section 143(1)(a) shall be considered as Under Reported Income and b. Tax shall be [Tax on Aggregate of Under-Reported Income and Sec143(1)(a) Income] (-) Tax on Sec143(1)(a) Income	Under Reported Income and tax thereon , In case of assessee is Individual / HUF / Other Under Reported Income: Amount of income assessed / Amount of Income assessed (-) RS. 2,50,000 Tax thereon: Tax on under-reported income as it if were the total / Tax on (under-reported income + RS. 2,50,000) as it if were	Under reported Income Amount of Income reassessed (–) Amount of income assessed in preceding order Tax on such under-reported Income Tax on [under-reported Income + assessed in preceding order] Minus Tax on

		income	total income of assessee	Income assessed preceding

II. Where section 115JB or 115 JC applies

Assessment made for first time.		case of reassessment
Returns has been filed Deemed total income as per 115JB/115JC exceed Deemed total income determined under section Section 143(1)(a)tal as Under Reported Income= (A-B) + (C – D) , See Note-1	No return has been filed or Return filed first time u/s 148 FA 2019 [see Note 2] Deemed total income as per 115JB/115JC exceed Maximum amount not chargeable to tax. Under Reported Income= (A-B) + (C – D) **, See Note-1**	Deemed total income re-assessed as per 115JB/115JC exceed Deemed total income assessed immediately before such re assessment. Under Reported Income= (A-B) + (C – D) **, See Note-1**

Note-1

~~115JB/115JC~~

A = Total Income assessed/re- assessed as per general provisions

B = Under-reported income i.e Total Income assessed/re- assessed as per general provision reduced by under reported

C = Total Income assessed /re- assessed as per section 115HB/1115JC

D = Under-reported income i.e Total Income assessed/re- assessed as per section 115JB/115JC reduced by under-reported income. #

under-reported income in 'B' and 'D' are the same, then under-reported income shall not considered in 'D'

Step 3 Manner to calculate tax on under-reported income

III. Where an assessment /reassessment has the effect of reducing the loss declared in the return or converting that loss into income

Case of assessment	Case of reassessment
Under Reported Income= Income or Loss Assessed (-) Loss as per section 143(1)(a)	Under-reported Income =Loss reassessed/Income reassessed (-) Loss assessed in preceding assessment order
Tax on Under reported Income= Tax on under reported income as if it were total income of the assesse	Tax on under-reported = Income Tax on under reported income as if it were the total income of the assessee.

Note-2 FA 2019 Penalty provisions u/s. 270A of the Act for not furnishing the return of income,

is extended to return of income furnished for the first-time u/s. 148

Step 4: Computation of penalty under section 270A

The rate of penalty shall be 50 percent of the tax payable on under-reported income. However, in cases of under-reported income falling under misreporting of income, penalty shall be 200 percent of the tax payable on such misreporting of income.

As per Section 270A(9) Following are the cases of misreporting of income-

(a) misrepresentation or suppression of facts;	i. STCG shown as LTCG to claim lower rate of tax. ii. Capital gains claimed exempt although they are not exempt. iii. Deduction under section 43B claimed by declaring the amount has been by due date although amount paid after due date.
(b) failure to record investments in the books of account	Assessing Officer discovers unexplained. immovable property, jewellery etc.or other unexplained Investment Which are not there in books of account
(c) claim of expenditure not substantiated by any evidence;	i.Fake bills of expenditure ii. claim of expenditure without Bills.
(d) recording of any false entry in the books of account	i.Bogus expenditure. ii.Income received shown as advances
(e) failure to record any receipt in books of account having a bearing on total income;	
(f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction, to which the provisions of Chapter X apply.	

Where conditions specified in the notification issued under clause (ii) of the first proviso u/s Section 56(2)(viib) not fulfilled	Any consideration received for issue of share that exceeds the fair market value of such share shall be deemed to be the income of that company chargeable to income-tax for the previous year in which such failure has taken place and, it shall also be deemed that the company has under-reported the income in consequence of the misreporting referred to in sub-section (8) and sub-section (9) of section 270A for the said previous year. (FA 2019).

Section270AA Immunity from imposition of penalty

An assessee may make an application under section 207AA to the Assessing Officer to grant immunity from imposition of penalty under section 270A and initiation of proceedings u/s 276C or 276CC. The assessee can make an application subject to following conditions

(a) The assessee pays tax and interest payable as per the order of assessment/reassessment order under section 143(3)/147 within the period specified in such notice of demand and does not prefer an appeal against such assessment order	The assessee makes such application in a prescribed form within 1 month from the end of the month in which the order of assessment or reassessment is received

The Assessing Officer shall, on fulfilment of the above conditions and after the expiry of the period of filing the appeal as specified in section 249(2), grant immunity from penalty proceedings under section 270A and initiation of proceedings under section 276C. However, immunity shall not be granted for penalty under section 270A(9) of the Act.
The Assessing Officer is required to pass an order accepting (or rejecting) such application, within a period of 1 month from the end of the month in which such application is received. However, the Assessing Officer shall give an opportunity of being heard before rejecting the application.
The order passed under this section shall be final.
No appeal under section 246A or an application for revision under section 264 shall be admissible against the order of the assessment or reassessment in a case where the order granting immunity is passed .

Section 271AAB : Law of penalty for under-reporting or mis-reporting of income in case of search & seizure-Penalty under section 270A cannot be levied in respect of the undisclosed income referred to in this section.

Section 271AAB(1) where search has been initiated under section 132 UPTO the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President,	**Section 271AAB(1A)** where search has been initiated under section 132 on or after the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President,
The assessee shall pay a penalty under section 271AAB in addition to tax on "undisclosed income" pertaining to a "specified previous year" as follows	The assessee shall pay a penalty under section 271AAB in addition to tax on "undisclosed income" pertaining to a "specified previous year" as follows—

<table>
<tr>
<td>Quantum of penalty
1. If undisclosed income is admitted during the course of search, the taxpayer will be liable for penalty at the rate of 10 per cent of undisclosed income provided the following conditions are satisfied—
a. The assessee in the course of the search, in a statement under section 132(4) admits the undisclosed income and specifies the manner in which such income has been derived;
b. he substantiates the manner in which the undisclosed income was derived;
c. he pays the tax, together with interest, if any, in respect of the undisclosed income; and
d. he furnishes the return of income for the specified previous year declaring such undisclosed income therein.
2. Undisclosed income is not admitted during the course of search but he satisfies conditions (c) and (d) (supra), he will be liable for penalty at the rate of 20 per cent of undisclosed income.

3. In a case not covered under (1) and (2) above, the taxpayer will be liable for penalty at the rate of 60 percent of undisclosed income.</td>
<td>1. If undisclosed income is admitted during the course of search, the taxpayer will be liable for penalty at the rate of 30 per cent of undisclosed income provided the following conditions are satisfied—
a. The assessee in the course of the search, in a statement under section 132(4) admits the undisclosed income and specifies the manner in which such income has been derived;
b. he substantiates the manner in which the undisclosed income was derived;
c. he pays the tax, together with interest, if any, in respect of the undisclosed income; and
d. he furnishes the return of income for the specified previous year declaring such undisclosed income therein

2. In a case not covered under (1) above, the taxpayer will be liable for penalty at the rate of 60 percent of undisclosed income.</td>
</tr>
<tr>
<td colspan="2">Specified previous year - "Specified previous year" means the previous year in which search is conducted. It also includes the previous year which has ended before the date of search but the due date of furnishing return of income under section 139(1) has not expired before the date of search and the assessee has not furnished his return of income for the previous year.</td>
</tr>
<tr>
<td colspan="2">Undisclosed income, for the purpose of this section, means
(1) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has-
(a) not been recorded on or before the date of search in the books of account or other documents maintained in
(2) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not</td>
</tr>
</table>

	the normal course relating to such previous year; or (b) otherwise not been disclosed to the Chief Commissioner or Commissioner before the date of search;	have been found to be so had the search not been conducted.

Section 273A (1) power of Commissioner to reduce or waive penalty certain cases.

The Principal Commissioner or Commissioner may in his discretion, either on his own motion or otherwise (i.e., on an application made by the assessee), reduce or waive the amount of penalty imposed or imposable for underreporting and misreporting of income, if he is satisfied that

(a) the person liable to penalty has, prior to the detection by the Assessing Officer, of the concealment of particulars, of income or inaccuracy of particulars furnished in respect of such income voluntarily and in good faith, made full and true disclosure of such particulars .	**(b)** has also co-operated in any enquiry relating to the assessment of his income	**(c)** and has either paid or made satisfactory arrangement for the payment of any tax or interest payable in consequence of an order passed in respect of the relevant assessment year

Prior approval of Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General is required in case of amount of income in respect of which penalty imposed or imposable for the assessment year (aggregate basis if it relates to more than one assessment year) exceeds Rs. 5 lac. Where an order has been made under section 273A(1) in favour of any person, he shall not be entitled to any relief under this section (means entire section 273A) in relation to any other assessment year at any time after the making of such order.

Section273A(4) **Powers of commissioner to waive or reduce penalty in case of genuine hardship**

The Commissioner may, on an application made in this behalf by an assessee, and after recording his reasons for doing so, reduce or waive the amount of any penalty payable by the assessee, or stay or compound any proceeding for the recovery of any such amount, if he is satisfied that-

(a) to do otherwise, would cause genuine hardship to the assessee, having regard to the circumstances of the case, and	**(b)** the assessee has co-operated in any inquiry relating to the assessment and any proceeding for the recovery of any amount due from him.

Note- If the above two conditions are satisfied, the Commissioner has no discretion to refuse to exercise his powers [K.S.N. Murthy –AP HC]

Prior approval of Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General is required in case of amount of penalty imposed or imposable for the assessment year (aggregate basis if it relates to more than one assessment year) exceeds Rs. 1 lac.

The above order under section 273 A(1) or section 273 A(4), as the case may be, either accepting or rejecting the application in full or in part, shall be passed within a period of twelve months from the end of the month in which the application is received by the Principal Commissioner or the Commissioner . However, no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard.

Particulars	273A (1)	273A(4)
Which Penalty CIT can waive / reduce	section 270A Penalty	Any
Who can make Application	CIT suo-moto or assessee's application	Only if application made by the assessee
When Approval of Chief CIT or Director General required	If the concealed Income or underreported or misreported income exceeds Rs. 5 Lakhs	If penalties exceed Rs. 1 Lakh.
Condition to be fulfilled	Cooperation+ Payment+ True & full disclosure	Cooperation+ Genuine hardship both at application time and order passing time by CIT)
Waiver of penalty if already paid	If already paid it shall be refunded if waiver order has been passed.	No waiver is possible if penalty has already been paid
Time limit for passing order	No time limit	Order must be passed within 12 months from the end of the month in which application is received by CIT

Taxability of Unexplained Cash Credit etc **Section 68, section 69, section 69A, section 69B and section 69C**

Taxability- See Table, Burden of Proof: – So far as section 68 is concerned, the onus is wholly upon the Assessee to explain the source of the entry. But in cases falling under section 69, 69A, 69B and 69C, the words used show that before any of these sections are invoked, the condition precedent as to existence of investment, expenditure, etc. must be conclusively established by material on record/ evidence. **Year of Taxability**: – The sum as determined under the provision would be taxable in the Financial Year in which it is credited (Section 68), invested (Section 69, 69A, 69B) or incurred (Section 69C).

Rate of Taxability: -Section 115BBE provides that even if assesse has included unexplained cash credits and declared them in the Return of income or discovered by Assessing Officer ,he shall pay 60% tax on such income (+25% surcharge + cess in all cases.) ,without allowance of any

expenditure and chapter VI-A deductions .Also, losses shall not be allowed to be set off against such deemed income.

Section 271AAC provides penalty of 10% of tax calculated as per section 115BBE. However, no such penalty shall pay 60% tax on such penalty shall be levied if assesse has included such income in Return of Income and paid tax on or before the end of Previous Year.

Opportunity of being heard: – The word "explanation" indicates that the assessee must be given an opportunity of being heard to prove the nature and source of cash credits, investments and expenses. **Comparison between section 68, section 69, section 69A, section 69 B and section 69C:**

Comparison between section 68, section 69, section 69A, section 69B and section 69C: –

NOTE- See PGBP Chapter for detail Comparison .

Section 269SS : Mode of taking or accepting certain loans, deposits and specified sum

No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or other electronic mode as may be prescribed [Finance Act 2019], if,—

(a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or	**(b)** on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or	**(c)** the amount or the aggregate amount referred to in clause (*a*) together with the amount or the aggregate amount referred to in clause (*b*),
is Rs.20000 or more		
Provided that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by,— (a) the Government; (b) any banking company, post office savings bank or co-operative bank; (c) any corporation established by a Central, State or Provincial Act; (d) any Government company as defined in clause (*45*) of section 2 of the Companies Act, 2013 (*e*) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette:		
Provided further that the provisions of this section shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act.		

Note- "specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.
Section271D - If a person takes or accepts any loan or deposit or specified sum in contravention of the provision of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of loan deposit or specified sum taken or accepted. Joint Commissioner may impose this penalty.

Section 269T : Mode of repayment of certain loans or deposits

No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it or any specified advance received by it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit or paid the specified advance, or by use of electronic clearing system through a bank account OR other electronic mode as may be prescribed [Finance Act 2019] if—

(a) the amount of the loan or deposit or specified advance together with the interest, if any, payable thereon, or	(b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits, or	(c) the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances,
is Rs.20000 or more:		
Provided that where the repayment is by a branch of a banking company or co-operative bank, such repayment may also be made by crediting the amount of such loan or deposit to the savings bank account or the current account (if any) with such branch of the person to whom such loan or deposit has to be repaid.		
Provided further that nothing contained in this section shall apply to repayment of any loan or deposit or specified advance taken or accepted from— (i) Government; (ii) any banking company, post office savings bank or co-operative bank; (iii) any corporation established by a Central, State or Provincial Act; (iv) any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956); (v) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.		

"loan or deposit" means any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature;	"Specified advance" means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place.
Section271E - If a person repays any loan or deposit or specified sum referred to in section 269T otherwise than in accordance with the provisions of that section, Joint Commissioner may impose Penalty, a sum equal to the amount of the loan or deposit or specified sum so repaid.	

Section 269ST Mode of Undertaking Transactions

No person shall receive an amount of two lakh rupees or more—

(a) in aggregate from a person in a day; or	(b) in respect of a single transaction; or	(c) in respect of transactions relating to one event or occasion from a person,
otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account OR other electronic mode as may be prescribed [Finance Act 2019]		
Provided that the provisions of this section shall not apply to— **(i)** any receipt by— **(a)** Government; **(b)** any banking company, post office savings bank or co-operative bank; **(ii)** transactions of the nature referred to in section 269SS; **(iii)** Such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify.		
This section is not applicable to the following cases also- a) Receipt by a business correspondent on behalf of a banking company or cooperative bank, in accordance with RBI guideline. b) receipt by a white label ATM label ATM operator from retail outlet sources on behalf of a banking company or co-operative bank , in accordance with the authorization issued by RBI under the payment and settlement Systems Act c) Receipt from an agent by a issuer of pre-paid payment instruments, in accordance with authorization issued by RBI under the payment settlement system Act d) Receipt company by a company or institution issuing credit cards against bills raised in respect of one or more credit cards e) Awards received from central or state Government. Note-The nature of repayment of loan by nonbanking Financial companies or Housing companies, receipt of one installment of loan repayment in respect of a loan shall constitute a single transaction as specified in clause (b) of section 269ST of the Act and all the installment paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions of this section.		
Section271DA -Joint Commissioner may impose penalty sum equal to the amount of such		

receipt in case of Failure to company with the provisions of section 269ST i.e. receipt of any sum in contravention of the provisions of section 269ST.

Sec 269SU: Mandating acceptance of payments through prescribed electronic modes FA 2019

Every person, carrying on business (Not Profession) and having sales/turnover/gross receipts in excess of Rs.50 crores during immediately preceding previous year, shall provide facility for accepting Payment through the prescribed electronic modes in addition to the existing facility for electronic mode of payment

Section 27IDB provided that the failure to provide facility for electronic modes of payment prescribed under section 269SU shall attract penalty of a sum of 5,000, for every day during which such failure continues. However, the penalty shall not be imposed if the person proves that there were good and sufficient reasons for such failure. Any such penalty shall be imposed by the Joint Commissioner.

As per Payment and Settlement Systems Act, 2007 -No bank or system provider shall impose any charge upon anyone, either directly or indirectly, for using the modes of electronic payment prescribed under section 269SU of the Income-tax Act.

Section 129 : Change of incumbent of an office

Whenever in respect of any proceeding under this Act an income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor.

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard.

Explanation 1 to Section 153 and Explanation to Section153B - While computing the time limit for completion of assessment or reassessment as mentioned under section 153 or section 153B, the time taken under section 129 of the Act, shall be excluded.

Section 275 Time limits for passing the penalty order

A. penalty for underreporting or mis-reporting of income

Section 275(1)(a):- In a case where the relevant assessment or other order is the subject-matter of

An appeal to the Commissioner (Appeals) under section 246 or section 246A	**An appeal to the Appellate Tribunal under section 253**
An order imposing penalty shall be passed **(a)** before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or **(b)** within one year from the end of the financial	An order imposing penalty shall be passed **(a)** before the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or **(b)** six months from the end of the month in

year in which the order of the Commissioner (Appeals) is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, whichever is later	which the order of the Appellate Tribunal is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, whichever is later

Section 275(1)(b) In a case where the relevant assessment or other order is the subject-matter of revision under section 263 or section 264,	**Section 275(1)(c) In any other case,**
An order imposing penalty shall be passed before the expiry of six months from the end of the month in which such order of revision is passed.	An order imposing penalty shall be passed **(a)** before the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or **(b)** six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.

Above period shall exclude ,the time in giving an opportunity to the assessee to be reheard under the proviso to section 129 or any period during which a proceeding under this chapter for the levy of penalty is stayed by an order of injunction of any court.If an appeal has been filed to high Court against the assessment order then Assessing Officer shall not wait for the order of High Court.

B. Penalties other than penalty for under reporting or mis-reporting- Penalty order can be passed within 6 months from the end of the month in which penalty proceedings were initiated.

Section	**Authority to levy penalty**	**default 's Nature**	**Penalty leviable**
140A(3)	Assessing Officer	Failure to pay wholly or partly— (*a*) self-assessment tax, or (b) interest and fee, or (c) all the above under section 140A(1)	Such amount as Assessing Officer may impose but not exceeding tax in arrears
221(1)	Assessing Officer	Default in making payment of tax	Such amount as Assessing Officer may impose but not exceeding amount of tax in arrears
270A(1)	Assessing Officer / CIT(A) / Pr. CIT/CIT	Under-reporting and misreporting of income	A sum equal to 50% of the amount of tax payable on under-reported income. However, if under-reported

			income is in consequence of any misreporting thereof, the penalty shall be equal to 200% of the amount of tax payable on under-reported income
271A	Assessing Officer / CIT(A)	Failure to keep, maintain, or retain books of account, documents, etc., as required u/s 44AA	Rs. 25,000
271AA(1)		(1) Failure to keep and maintain information and documents required by section 92D(1) or 92D(2) (2) Failure to report such transaction (3) Maintaining or furnishing incorrect information or document	2% of value of each international transaction/or specified domestic transaction entered into
271AAB(1)			
271AAB(1A)	Assessing Officer	Where search has been initiated on or after 15-12-2016 and undisclosed income found	(a) 30% of undisclosed income of the specified previous year if assessee admits the undisclosed income; substantiates the manner in which it was derived; and on or before the specified date pays the tax, together with interest thereon and furnishes the return of income for the specified previous year declaring such undisclosed income (b) 60% of undisclosed income of the specified previous year in any other case.
271AAC	Assessing Officer	Income determined by Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year. [if such income is not included by assessee in his	10% of tax payable under section 115BBE

		return or tax in accordance with section 115BBE has not been paid	
271B	Assessing Officer	Failure to get accounts audited or furnish a report of audit as required under section 44AB	One-half per cent of total sales, turnover or gross receipts, etc., or Rs. 1,50,000, which-ever is less
271BA	Assessing Officer	Failure to furnish a report from an accountant as required by section 92E	Rs. 1,00,000
271C	Joint Commissioner	failure to deduct tax at source, wholly or partly, under sections 192 to 196D (Chapter XVII-B) or failure to pay wholly or partly tax u/s 115-O(2) or second proviso to section 194B	Amount equal to tax not deducted or paid
271CA	Joint Commissioner	Failure to collect tax at source as required under Chapter XVII-BB	Amount equal to tax not collected
271D	Joint Commissioner	Taking or accepting any loan or deposit or specified sum in contravention of the provisions of Section 269SS.	Amount equal to loan or deposit or specified sum so taken or accepted
271DA	Joint Commissioner	Person receives any sum in contravention of provisions of section 269ST.	Amount equal to the sum so received
271E	Joint Commissioner	Repayment of any loan or deposit or specified advance otherwise than in accordance with provision of section 269T.	Amount equal to loan or deposit or specified advance so repaid
271FA	Prescribed	Failure to furnish an annual information return as required under section 285BA(1) Failure to furnish annual information return within the period specified in notice u/s 285BA(5)	Rs. 500 per day of default Rs. 1000 per day of default
271FAB	No authority prescribed	Section 9A provides that fund management activity carried out by an eligible offshore	Rs. 5,00,000

		investment fund through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India (subject to certain conditions). The provision requires that eligible investment fund shall furnish within 90 days from the end of the financial year a statement, in respect of its activities in a financial year, in the prescribed form containing information relating to fulfillment of specified conditions and such other information or documents as may be prescribed. Penalty to be levied if investment fund failed to comply with the requirement.	
271G	Assessing Officer/CIT(A)	Failure to furnish any information or document as required by section 92D(3)	2% of the value of the international transaction/specified domestic transaction for each failure
271GA	No authority prescribed	Section 285A provides for reporting by an Indian concern if following two conditions are satisfied: (a) Shares or interest in a foreign company or entity derive substantial value, directly or indirectly, from assets located in India; and (b) Such foreign company or entity holds such assets in India through or in such Indian concern. In this case, the Indian entity shall furnish the prescribed information for the purpose of determination of any income accruing or arising in	Penalty shall be: (a) a sum equal to 2% of value of transaction in respect of which such failure has taken place, if such transaction had effect of, directly or indirectly, transferring right of management or control in relation to the Indian concern; (b) a sum of Rs. 5,000 in any other case.

		India under Section 9(1)(i). In case of any failure, the Indian concern shall be liable to pay penalty.	
271GB(1)	No authority prescribed	Failure to furnish report under section 286(2)	Rs. 5,000 per day upto 30 days and Rs. 15,000 per day beyond 30 days
271GB(2)	No authority prescribed	Failure to produce the information and documents within the period allowed u/s 271GB(6)	Rs. 5,000 for every day during which the failure continues
271GB(3)	No authority prescribed	Failure to furnish report or failure to produce information/documents under section 286 even after serving order u/s 271GB(1) or 271GB(2)	Rs. 50,000 for every day for which such failure continues beginning from the date of serving such order.
271GB(4)	No authority prescribed	Failure to inform about inaccuracy in report furnish u/s 286(2) Or furnishing of inaccurate information or document in response to notice issued u/s 286(6).	Rs. 5,00,000
271H	Assessing Officer	Failure to deliver/cause to be delivered a statement within the time prescribed in section 200(3) or the proviso to section 206C(3), or furnishes incorrect information in the statement.	Penalty shall not be less than Rs. 10,000 but may extend to Rs. 1,00,000
271-I	Assessing Officer	As per section 195(6) of the Act, any person responsible for paying to a non-resident or to a foreign company, any sum (whether or not chargeable to tax), shall furnish the information relating to such payment in Form 15CA and 15CB. Penalty shall be levied in case of any failure.	Rs. 1,00,000
271 J	Assessing Officer / CIT(A)	Where the Assessing Officer or the Commissioner	Rs. 10,000 for each such report or certificate

		(Appeals), finds that an accountant or a merchant banker or a registered valuer has furnished incorrect information in any report or certificate furnished under any provision of this Act or the rules made thereunder.	
272A(1)	Where the corresponding default occurs in the course of any proceeding before an IT Authority not lower in rank than a Joint Director or Joint Commissioner, by such IT Authority, otherwise, by Joint Director / Joint Commissioner	Refusal or failure to (a) answer questions (b) sign statement (c) attend to give evidence or produce books of account, etc., in compliance with summons u/s section 131(1)	Rs. 10,000 for each failure/default
	Assessing Officer / CIT (A) / Pr. CIT / CIT	(d) Comply with notice u/s 142(1), 143(2) or failure to comply with direction issued u/s 142(2A).	
272A(2)	Assessing Officer / CIT (A) / Pr. CIT / CIT Where the corresponding default occurs in the course	Failure to- (a) furnish requisite information in respect of securities as required under section 94(6) (b) give notice of discontinuance of business or profession as required under	Rs. 100 for every day during which default continues (In respect of penalty for failure, in relation to a declaration mentioned in section 197A, a certificate as required by section 203 and returns u/ss 206 and 206C and statements under Section

	of any proceeding before an IT Authority not lower in rank than a Joint Director or Joint Commissioner, by such IT Authority, otherwise, by Joint Director/Joint Commissioner	section 176(3) ; (c) furnish in due time returns, statements or certificates, deliver declaration, allow inspection, etc., under sections 133, 134, 139(4A), 139(4C), 192(2C), 197A, 203, 206, 206C, 206C(1A) and 285B (d) deduct and pay tax under section 226(2) (e) file a copy of the prescribed statement within the time specified in section 200(3) or the proviso to section 206C(3) (up to 1-7-2012) (f) file the prescribed statement within the time specified in section 206A(1) (g) Failure to deliver or cause to be delivered a statement under Section 200(2A) or Section 206C(3A) within prescribed time. With effect from June 1, 2015, it is mandatory for an office of the Government, paying TDS or TCS, as the case may be, without production of a challan, to deliver a statement in the prescribed form and manner to the prescribed authority.	200(2A) or section 200(3) or proviso to section 206C(3) or section 206C(3A), penalty shall not exceed amount of tax deductible or collectible)
272AA(1)	Joint Commissioner / Additional Director / Deputy Director / Assessing Officer	Failure to comply with section 133B	Not exceeding Rs. 1,000
272B (1)	Assessing Officer	Failure to comply with provisions of section 139A/139A(5)(c)/(5A)/(5C)	Rs. 10,000
272BB(2)	Assessing	Failure to comply with	Rs. 10,000 for each

	Officer	section 203A	failure/default
272BB(1A)	Assessing Officer	Quoting false tax deduction account number/tax collection account number/tax deduction and collection account number in challans/certificates/statements/documents referred to in section 203A(2)	Rs. 10,000

Note:- No penalty is imposable for any failure under sections 271(1)(b), 271A, 271AA, 271B, 271BA, 271BB, 271C, 271CA, 271D, 271E, 271F, 271FA, 271FAB, 271FB, 271G, 271GA, 271GB, 271H, 271-I, 271J, 272A(1)(c) or (d), 272A(2), 272AA(1), 272B, 272BB(1), 272BB(1A), 272BBB(1), 273(1)(b), 273(2)(b) and 273(2)(c) if the person or assessee proves that there was reasonable cause for such failure (section 273B).

OFFENCES AND PROSECUTIONS

Section	Default Nature	Rigorous imprisonment	
		Minimum period	Maximum period
275A	Contravention of order made under section 132(1) (Second Proviso) or 132(3) in case of search and seizure		Up to 2 years
275B	Failure to afford necessary facility to authorised officer to inspect books of account or other documents as required under section 132(1)(*iib*)	Any period un to 2 years and fine	2 years and fine
276	Removal, concealment, transfer or delivery of property to thwart tax recovery		Up to 2 years
276A	Failure to comply with provisions of section 178(1) and (3) re : company in liquidation	Any period up to 2 years. Imprisonment shall not be less than 6 months unless special and adequate reasons are recorded in the judgment of court	2 years and fine.
276B	Failure to pay to credit of Central Government (*i*) tax deducted at source under Chapter XVII-B (non-cognizable offence under section	3 months and fine	7 years and fine

	279A), or (*ii*) tax payable u/s 115-O(2) or second proviso to section 194B		
276BB	Failure to pay the tax collected under the provisions of section 206C	3 months and fine	7 years and fine
276C(1)	If amount of tax sought to be evaded or tax to be evaded or tax on under reported income is Rs. 25 lakh or less	3 months and fine	2 years and fine
276C(2)	If amount of tax sought to be evaded or tax on under reported income is more than Rs. 25 lakh	6 months and fine	7 years and fine
276CC	Wilful failure to furnish return of income under section 139(1) or in response to notice under section 142(1)(i) or section 148 or section 153A (non-cognizable offence under section 279A)	If tax sought to be evaded exceeds RS. 25,00,000 : 6 months and fine. In any other case, 3 months and fine: Note : No prosecution for failure in due time under section 139(1) If (i) the return is furnished by him before the expiry of AY; or (ii) the tax payable by such person, not being a company, on regular assesement, as reduced by TDS and advance tax, does not exceed Rs. 3,000.	If tax sought to be evaded exceeds Rs. 25,00,000 : 7 years and fine. In any other case, 2 years and fine. Note : No prosecution for failure to furnish in due time under section 139(1) if (i) the return furnished by him before the expiry of AY; or (ii) the tax payable by such person, not being a company, on regular assessment, ad reduced by TDS and advance tax, does not exceed Rs. 3,000
276D	Willful failure to produce accounts and documents under section 142(1) or to comply with a notice under section 142(2A)		Up to 1 year
277	False statement in verification or delivery of false account, etc. (non-	where tax sought to be evaded	In other cases -

	cognizable offence under section 279A)	exceeds Rs. 25 lakh - 6 months to 7 years	3 months to 2 years
277A	Falsification of books of account or document, etc., to enable any other person to evade any tax, penalty or interest chargeable/leviable under the Act	3 months	2 years
278	Abetment of false return, account, statement or declaration relating to any income or fringe benefits chargeable to tax (non-cognizable offence under section 279A)	where tax, penalty or interest sought to be evaded exceeds Rs.25 lakh - 6 months to 7 years	In other cases- 3 months to 2 years
278A	Second and subsequent offences u/s 276B, 276C(1), 276CC, 277 or 278	6 months	7 years
280(1)	Disclosure of particulars by public servants in contravention of section 138(2) [Prosecution to be instituted with previous sanction of Central Government under section 280(2)]		Up to 6 months (simple/rigorous)

Notes:

(1) No person is punishable for any failure under section 276A or 276B if he proves that there was reasonable cause for such failure (*vide* section 278AA).

(2) (*a*) Prosecution for offences under section 275A, section 275B, section 276, section 276A, section 276B, section 276BB, section 276C, section 276CC, section 276D, section 277, section 277A and section 278 to be instituted with previous sanction of Principal Director General/Principal Chief Commissioner/Principal Commissioner/Director General/Chief Commissioner/Commissioner, except where prosecution is at the instance of the Commissioner (Appeals) or the appropriate authority (*vide* section 279).

(3) The offences under Chapter XXII can be compounded (either before or after the institution of proceedings) by Principal Director General/Director General or Principal Chief Commissioner/Chief Commissioner.

(4) Where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, such company shall be punished with fine and every person, referred to in sub-section (1) of section 278B, or the director, manager, secretary or other officer of the company referred to in sub-section (2) of section 278B shall be liable to be proceeded against and punished in accordance with the provisions of this Act.

(5) Section 278AB a person may apply to the Principal Commissioner/Commissioner for granting immunity from prosecution, if he has applied for settlement under section 245C and the proceedings have abated under section 245HA. The application shall not be made after institution of prosecution proceedings after abatement.

(6) The person shall not be proceeded against under section 276CC in a case where the return of income is not filed within the due date under section 139(1), if

(a) The return is furnished by him before the expiry of the assessment year; or

(b) the tax payable by the assessee on the total income determined on regular assessment, as reduced by the advance tax, if any, paid and any tax deducted at source, does not exceed Rs.3,000.

40.Settlement Commission

Introduction

The Central Government constitutes a Commission to be called the Income-tax Settlement Commission for the settlement of cases. For Settlement there shall be a “case , where "case" means any proceeding for assessment under the Act of any person. An application in a prescribed form shall be made to Settlement Commission. Such application shall be accompanied by the prescribed fees i.e Rs. 500. Assessee may make an application to ITSC at any stage of a case relating to him in prescribed form making a true and full disclosure of his income has not been disclosed before Assessing Officer. The application shall be not be allowed to be withdrawn by the applicant .The application once made cannot be revised like “Revised return”. The application cannot be admitted unless “additional amount of income tax payable” exceeds specified amount. Such “additional amount of tax payable” and interest thereon must be paid on or before making the application. The proof of such payment is attached with the application. The applicant must, on the date of making the application to the Settlement Commission, also intimate the Assessing Officer in prescribed manner, about having made an application to the Settlement Commission**.** No application for settlement can be made for an assessment year which is not pending under section 143(3) / 144/ 147/ 153A.

Section 245A cases” which can be referred to settlement commission

A "case" means any proceeding for assessment under the Act of any person, in respect of any assessment year which may be pending before the Assessing Officer on the date on which an application under section 245C(1) is made. When a proceeding is taken as "pending proceeding"-

In assessment proceedings under section 143(3) / 144.	Case becomes pending under section 143(3)/144 on the date on which notice under section 143(2) / show cause notice under section 144 is issued.
In assessment / reassessment proceeding under section 147	A proceeding for assessment or reassessment under section 147 shall be deemed to have commenced From the date on which a notice under section 148 is issued for any Assessment Year
Any other assessment year or years for which a notice under section 148 has not been issued, but such notice could have been issued on such date, if the return of income for the other assessment year or assessment years has been furnished u/s 139 or in response to a notice u/s 142	A proceeding for assessment or reassessment under section 147 shall be deemed to have commenced) from the date of issuance of the notice referred to in sub-clause (a), for any other Assessment year or Assessment year for which a notice under section 148 has not been issued, but such notice could have been issued on such date, if the return of income for the other Assessment Year or Assessment Year has been furnished under section 139/in response to a notice under section 142
In fresh assessment proceedings where fresh	Such fresh assessment proceedings shall be

assessment is made pursuant to order passed under section 254/263/264 cancelling the assessment and directing a fresh assessment	deemed to have been commenced on the date on which order under section 254/264 cancelling the assessment was passed
In assessment / reassessment proceedings under section 153A for the 6/10 Assessment Year immediately preceding the Assessment Year relevant to the previous in which search is conducted.	These proceedings shall be deemed to have commended on the date on which notice under section 153A is issued.
In assessment proceedings under section 143(3) / 144 of the Assessment Year relevant to the previous year in which search is conducted	These proceedings shall be deemed to have commended from the date on which the return of income for that Assessment Year is furnished under section 139 or in response to a notice served under section 142.

Section245B Settlement commission and its MemberThe Central Government shall constitute a Commission to be called the Income-tax Settlement Commission for the settlement of cases. The Settlement Commission shall consist of a Chairman and as many Vice-Chairmen and other members as the Central Government thinks fit. The Chairman, Vice-Chairman and other members of the Settlement Commission shall be appointed by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and experience in, problems relating to direct taxes and business accounts. Where a member of the Board is appointed as the Chairman, Vice-Chairman or as a member of the Settlement Commission, he shall cease to be a member of the Board.

Section245C Additional amount of income tax payable

Application to the Settlement Commission cannot be made unless the additional income-tax payable exceeds specified amount.

Application can be filed only if the additional amount of income-tax payable exceeds	
Rs. 50 lakh	**Rs. 10 lakh**
a. When an application is in a case where proceedings for assessment or reassessment have been initiated for any assessment years referred to in Section 153A(1)(b) or Section 153B(1)(b).	b. Where the applicant is **related** to the person (at **case a**) who has filed an application (called "Specified Person"); **and** c. proceedings for assessment or reassessment have been initiated for any assessment years referred to in Section 153A(1)(b) or Section 153B(1)(b) or Section 153C in his case also. d. Where an application is filed in any other case

Meaning of "related" for the purpose of case no. b above The applicant, in relation to the specified person, means,— (i) where the specified person is an individual, any relative of the specified person; (ii) where the specified person is a company, firm, association of persons or Hindu undivided family, any director of the company, partner of the firm, or member of the association or family, or any relative of such director, partner or member; (iii) any individual who has a substantial interest in the business or profession of the specified person, or any relative of such individual; (iv) a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the specified person or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member; (v) a company, firm, association of persons or Hindu undivided family of which a director, partner or member, as the case may be, has a substantial interest

in the business or profession of the specified person; or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member; (vi) any person who carries on a business or profession,— (a) where the specified person being an individual, or any relative of such specified person, has a substantial interest in the business or profession of that person; or (b) where the specified person being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or member.

For the above purpose, a person shall be deemed to have a substantial interest in a business or profession, if—

(a) in a case where the business or profession is carried on by a company, such person is, on the date of search, the beneficial owner of shares (not being shares entitled to a fixed rate of dividend, whether with or without a right to participate in profits) carrying not less than twenty per cent of the voting power; and

(b) in any other case, such person is, on the date of search, beneficially entitled to not less than twenty per cent of the profits of such business or profession.

Section:- 245D Procedure on receipt of application

The following procedure is followed by the Settlement Commission-

<table>
<tr><td colspan="2">Notice to the applicant-On receipt of application, the Settlement Commission shall, within 7 days from the date of receipt of application, issue a notice to the applicant requiring him to explain as to why the application made by him is to be allowed to be proceeded with.</td></tr>
<tr><td colspan="2">Settlement Commission can allow or reject the application-On hearing, the Settlement Commission shall, within a period of 14 days from the date of application, by an order in writing, reject or allow the application. Where the Settlement Commission does not pass the order within 14 days from the date of application, it shall be deemed that the application is allowed to be proceeded with.</td></tr>
<tr><td colspan="2">Calling for the report from the Principal Commissioner or Commissioner of Income-tax--Once the application is allowed to be proceeded with, the Settlement Commission shall call for a report from the Principal Commissioner or Commissioner of Income-tax within 30 days from the date on which the application was made. On receipt of the communication from Settlement Commission, the Principal Commissioner or Commissioner shall furnish the report within a period of thirty days of the receipt of such communication</td></tr>
<tr><td colspan="2">Application to be declared as invalid in certain circumstances--</td></tr>
<tr><td>If report called for has been furnished within thirty days -The Settlement Commission on the basis of the report of the Principal Commissioner or Commissioner of Income-tax, within a period of 15 days of the receipt of the report, declare the application as invalid and shall send a copy of such order to the applicant and the Principal Commissioner or Commissioner. However, before declaring the application as invalid, an opportunity of hearing must be given to the applicant.</td><td>If report called for has not been furnished within thirty days- The Settlement Commission shall proceed further in the matter without the report of the Principal Commissioner or Commissioner.</td></tr>
<tr><td colspan="2">A second report from the Principal Commissioner or Commissioner of Income-tax—
After the application is not declared as invalid, the Settlement Commission may call for the records from the Principal Commissioner or Commissioner and after examination of such records, if it is of the opinion</td></tr>
</table>

that a further enquiry or investigation is necessary, it may direct the Principal Commissioner or Commissioner to make such further enquiry or investigation. The Principal Commissioner or Commissioner shall furnish a report on the matters covered by the application and any other matter relating to the case, within a period of 90 days of the receipt of communication from the Settlement Commission. If the Commissioner does not furnish a report within 90 days, the Settlement Commission may proceed to pass an order without such report.
Order of Settlement Commission-After examination of the records and the reports of the Commissioner, and after giving an opportunity to the applicant and to the Principal Commissioner or Commissioner to be heard (either in person or through a representative), and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of the Act, pass such order as it thinks fit on (a) the matters covered by the application, and (b) any other matter relating to the case not covered by the application, but referred to in the report or reports of the Principal Commissioner or Commissioner.
Time limit-The Settlement Commission shall pass an order within 18 months from the end of the month in which application was made.
Further, the materials brought on record before the Settlement Commission shall be considered by the Members of the concerned Bench before passing any order under this chapter.
Every order passed by the Settlement Commission shall provide for (a) the terms of settlement including any demand by way of tax, penalty, or interest. (b) the manner in which any sum due under the settlement shall be paid, (c) all other matters to make the settlement effective, and (d) that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.
ax payable in pursuance of the order shall be paid within 35 days of the receipt of a copy of order by the applicant. The assessee shall be liable for simple interest under section 245D(6A) at the rate of 1.25 per cent per month or part of month on the amount remaining unpaid after the expiry of 35 days. Such interest is payable even if Settlement Commission has extended the time for payment of such tax or allowed payment by way of installments.

Power of Settlement Commission to rectify order

The Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any final order passed by it— (a) at any time within a period of six months from the end of the month in which the final order was passed; or (b) at any time within the period of six months from the end of the month in which an application for rectification has been made by the Principal Commissioner or the Commissioner or the applicant, as the case may be:

Provided that no application for rectification shall be made by the Principal Commissioner or the Commissioner or the applicant after the expiry of six months from the end of the month in which final order is passed by the Settlement Commission:

Provided further that an amendment which has the effect of modifying the liability of the applicant shall not be made under this sub-section unless the Settlement Commission has given notice to the applicant and the Principal Commissioner or Commissioner of its intention to do so and has allowed the applicant and the Principal Commissioner or Commissioner an opportunity of being heard.

Consequences if settlement order is obtained by fraud or misrepresentation

Where a settlement becomes void if it has been obtained by fraud or misrepresentation of facts, the proceedings with regard to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with. Thereafter, income tax authority concerned shall complete such proceedings at any time before the expiry of two years from the end of the financial year in which the settlement became void, notwithstanding anything contained in any other provisions of the Act.

Section245DD Power of settlement commission to order provisional attachment

Where, during the pendency of any proceeding before it, the Settlement Commission is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, it may, by order, attach provisionally any property belonging to the applicant in the manner provided in the Second Schedule. Every provisional attachment shall cease to have effect after the expiry of a period of 6 months from the date of such order. The Settlement Commission may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as it thinks fit.

Section 245E Power to reopen completed proceedings

The Settlement Commission does not have any power to reopen completed proceedings.

Section 245F Powers and procedure of settlement commission

In addition to the specific powers given to the Settlement Commission under this chapter, all the powers which are vested in an income-tax authority under the Act are also exercisable by the Settlement Commission.

Section 245G Inspections, etc., of reports

No person is entitled to inspect or obtain copies of any reports given by any income-tax authority to the Settlement Commission. However, the Settlement Commission has been given full discretion to allow inspection of such reports or to furnish copies thereof to the applicant on an application and on payment of the prescribed fee. In case, some evidence has been brought on record against the applicant in any report, for the purpose of enabling the applicant to rebut such evidence, he will be entitled to obtain a certified copy of any such report or part thereof on making an application to the Commission and on payment of the prescribed fee.

Section245H Powers to grant immunity from prosecution, etc.

Under section 245H of the Act, the Settlement Commission has been vested with the power to grant immunity to the applicant from prosecution and also from imposition of penalty (either wholly or

partly). The immunity from prosecution may relate to any offence under the Income-tax Act or Wealth-tax Act or Indian Penal Code or under any Central Act, for the time being in force. While granting immunity, the Settlement Commission is competent to impose such conditions as it may think fit. Further, such immunity is subject to:

1. Such an immunity can be granted if the Settlement Commission is satisfied that the applicant has extended full co-operation in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived.

2. The Settlement Commission must record reasons in writing while granting such immunity.

3. Further no immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 245C.

4. Settlement Commission cannot grant immunity from prosecution under the Indian Penal Code or under any Central Act other than the Income-tax Act and the Wealth tax Act.

5. An immunity granted to a person as stated above shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed u/s 245D(4) within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted. On withdrawal of the immunity the provisions to the Act shall apply as if such immunity had never been granted.

6. In case the Settlement Commission is satisfied that a person to whom immunity from prosecution or penalty was granted had given false evidence or concealed material particulars, it will be competent for the Settlement Commission to withdraw the immunity. Upon withdrawal of the immunity, the applicant shall become liable to prosecution and also liable to the imposition of penalty in respect of any offence for which he would have been so liable had the immunity not been granted to him.Section245HA Abatement of proceeding before settlement commission

Proceedings for settlement shall abate from the date given below

Where the application is rejected within 14 days from the date of application under section 245D(1)	An application made under section 245C declared as invalid with or without the report of the Commissioner under section 245D(2C)	An application made under section 245C and the order is not passed within the time prescribed in section 245D(4A)	An order is passed under section 245D(4) but not provided for the terms of settlement.
Date on which the application is rejected	The last day of the month in which the application is declared as invalid	Date on which the time period specified in section 245D(4A) expires.	Date on which such order is passed.

Consequence of abatement of proceedings before Settlement Commission

(a) As per provisions of section 245HA (2), where the proceedings before the Settlement Commission abates, the Assessing Officer before whom the proceedings are pending at the time of making the application under section 245C shall reassume jurisdiction and shall dispose of the case in accordance with the provisions of the Act as if no application has been made to the Settlement Commission.

(b) Further, the Assessing officer shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of any enquiry held or evidence recorded by the Settlement Commission as if such material, information, enquiry and evidence was produced before him or held or recorded by him in the course of the proceedings before him.- Section 245HA(3).

(c) As per Section 245HA(4), in respect of time limit prescribed under section 153 or 153B for completing assessment or reassessment, the period commencing from the date of application and ending with the date of abatement shall be extended.

(d) As per the explanation to section 153 or 153B, if after extending the time under section 245HA(4), the period available to the assessing officer for passing an order is less than one year, then such period shall be extended to 1 year.

(e) As per the provisions of section 245HAA, where an application is made under section 245C is rejected under section 245D, the credit for the tax and interest paid on or before making application or during the pendency of the case, shall be allowed by the Assessing Officer.

Section245-I Order of settlement to be conclusive

An order passed by the Settlement Commission under sub-section (4) of section 245D shall be conclusive as to the matters stated therein and no matter covered by such order, shall be reopened in any proceedings under this Act or under any other law for the time being in force except as provided in this Chapter. The order of Settlement Commission to a limited extent can be challenged in a Court by filing writ petition.

Following are the few circumstances which may warrant writ petition-

(i) When proper opportunity of being heard is not given to the parties by Settlement Commission i.e. principles of natural justice violated

(ii) Procedural lapse on the part of Settlement Commission.

(iii)When there is a contradiction between the reasoning given in the order passed by the Settlement Commission and the conclusion drawn.

Section245K Bar on subsequent application for settlement in certain cases

In the following cases a person or related person cannot apply for settlement under section 245C in relation to any other matter:

a. where an order of settlement passed under section 245D(4) provides for the imposition of a penalty on the person who made the application under section 245C for settlement, on the ground of concealment of particulars of his income ; or

b. where after the passing of an order of settlement under section 245D(4) in relation to a case, such person is convicted of any offence under Chapter XXII in relation to that case

Further, where a person has made an application under section 245C and if such application is allowed to be proceeded with under section 245D(1), such person or related person shall not be entitled to make another application under section 245C at any time later. In other words, only once, the benefit of settlement of the case could be availed by the taxpayers.

Related person for the purpose of this section means

(i) where such person is an individual, any company in which such person holds more than fifty per cent of the shares or voting rights at any time, or any firm or association of persons or body of individuals in which such person is entitled to more than fifty per cent of the profits at any time, or any Hindu undivided family in which such person is a karta;	(ii) where such person is a company, any individual who held more than fifty per cent of the shares or voting rights in such company at any time before the date of application before the Settlement Commission by such person	(iii) where such person is a firm or association of persons or body of individuals, any individual who was entitled to more than fifty per cent of the profits in such firm, association of persons or body of individuals, at any time before the date of application before the Settlement Commission by such person;	(iv) where such person is a Hindu undivided family, the karta of that Hindu undivided family.

41.Tax planning, Tax avoidance and Tax evasion

Tax Evasion: Tax Evasion is an illegal way to minimize tax liability through fraudulent techniques like deliberate under-statement of taxable income or inflating expenses. It is an unlawful attempt to reduce one's tax burden. Tax Evasion is done with a motive of showing fewer profits in order to avoid tax burden. It involves illegal practices such as making false statements, hiding relevant documents, not maintaining complete records of the transactions, concealment of income, overstatement of tax credit or presenting personal expenses as business expenses. Tax evasion is a crime for which the assesse could be punished under the law.

Tax Planning: Tax planning is process of analyzing one's financial situation in the most efficient manner. Through tax planning one can reduce one's tax liability. It involves planning one's income in a legal manner to avail various exemptions and deductions. Under Section 80C, one can avail tax deduction if specific investments are made for a specific period up to a limit of Rs 1, 50,000. The most popular ways of saving tax are investing in PPF accounts, National Saving Certificate, Fixed Deposit, Mutual Funds and Provident Funds. Tax planning involves applying various advantageous provisions which are legal and entitles the assesse to avail the benefit of deductions, credits, concessions, rebates and exemptions. Or we can say that Tax planning is an art in which there is a logical planning of one's financial affairs in such a manner that benefits the assesse with all the eligible provisions of the taxation law. Tax planning is an honest approach of applying the provisions which comes within the framework of taxation law.

Tax Avoidance: Tax avoidance is an act of using legal methods to minimize tax liability. In other words, it is an act of using tax regime in a single territory for one's personal benefits to decrease one's tax burden. Although Tax avoidance is a legal method, it is not advisable as it could be used for one's own advantage to reduce the amount of tax that is payable. Tax avoidance is an activity of taking unfair advantage of the shortcomings in the tax rules by finding new ways to avoid the payment of taxes that are within the limits of the law. Tax avoidance can be done by adjusting the accounts in such a manner that there will be no violation of tax rules. Tax avoidance is lawful but in some cases it could come in the category of crime.

Features and differences between Tax evasion, Tax avoidance and Tax Planning:

1. Nature: Tax planning and Tax avoidance is legal whereas Tax evasion is illegal

2. Attributes: Tax planning is moral. Tax avoidance is immoral. Tax evasion is illegal and objectionable.

3. Motive: Tax planning is the method of saving tax .However tax avoidance is dodging of tax. Tax evasion is an act of concealing tax.

4. Consequences: Tax avoidance leads to the deferment of tax liability. Tax evasion leads to penalty or imprisonment.

5. Objective: The objective of Tax avoidance is to reduce tax liability by applying the script of law whereas Tax evasion is done to reduce tax liability by exercising unfair means. Tax planning is done to reduce the liability of tax by applying the provision and moral of law.

6. Permissible: Tax planning and Tax avoidance are permissible whereas Tax evasion is not permissible.

- Tax liability of an individual can be reduced through 3 different methods- Tax Planning, Tax avoidance and Tax evasion. All the methods are different and interchangeable.
- Tax planning and Tax avoidance are the legal ways to reduce tax liabilities but Tax avoidance is not advisable as it manipulates the law for one's own benefit. Whereas tax planning is an ideal method.

42. Liability to tax in special cases

Section159 Legal Representative

(a) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(b) For the purpose of making an assessment including reassessment and for the purpose of levying any sum on the legal representative any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and shall be continued.

(c) Similarly, any proceeding which could have been taken against the deceased can be taken against the legal representative and all the provisions of the Act shall accordingly apply.

(d) The legal representative of the deceased shall be deemed to be an assessee for the purposes of this Act.

(e) Every legal representative is personally liable if he disposes of or creates charge on the property of the deceased in his possession, while his liability for tax etc., remains undischarged.

(f) In any case, the liability of the legal representative shall be limited to the extent to which, the estate of the deceased is capable of meeting the liability.

(g) Every proceedings would continue against the legal representative. Not only that, proceedings which could have been taken against the deceased if he had not died, can also be taken against the legal representative.

Exceptions To this general rule Income earned in a previous year is assessed in the next Financial Year i.e., Assessment year.

Generally Income earned in a previous year is assessed in the next Financial Year i.e., Assessment year, but there are certain Exceptions such as-

Section 172 Shipping business of non-residents- The income of ship owned by a non-resident is assessable for the period when ship last arrived in India to the date of departure of ship.

Section 174 Assessment of Persons Leaving India-

i.When it appears to the Assessing Officer that any Individual may leave India during the current assessment year or shortly after its expiry and that he has no present intention of returning to India, the total income of such individual for the period from the expiry of the previous year for that assessment year upto the probable date of his departure from India shall be chargeable to tax in that assessment year.	ii.The Assessing Officer may estimate the Income of such individual for such period where it cannot readily determined in the manner	For the purposes of making an assessment under this section, the Assessing Officer may serve a notice upon such individual requiring him to furnish within such time, not being less than seven days, a return of income. Such notice shall be treated as if it was a notice under section 142(1) and non-compliance with the notice may lead to best judgement

	provided in the Act.	assessment. The notice shall require the assessee to furnish his return of income for the period referred to in (i).

Section 174A Assessment of AOP / BOI / artificial juridical person formed for a particular event or purpose- Where it appears to the Assessing Officer that any AOP/BOI / an artificial juridicial person, formed for a particular event or purpose is likely to be dissolved in the assessment year in which such AOP/BOI/artificial juridical person was formed, the total income of such AOP/BOI/juridical person for the period from the expiry of the previous year for that assessment year upto the date of its dissolution shall be chargeable to tax in that assessment year, and the provisions of section 174 shall, so far as may be, apply to any proceedings in the case of any such person as they apply in the case of persons leaving India.

Section 175 Assessment of persons likely to transfer property to avoid tax- Where it appears to the Assessing Officer during the current assessment year that any person is likely to charge, sell, transfer or dispose of or otherwise part with any of his assets with a view to avoid the payment of any liability under the Act, then the total income of such person for the period from the expiry of the previous year for that assessment year to the date when the Assessing Officer commences proceedings under this section, shall be chargeable to tax in that assessment year. The provisions of section 174 shall, apply to the proceedings in case of any such person as they apply in case of persons leaving India.

Section 176 Discontinued Business- Where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year for that assessment year upto the date of discontinuance may, at the discretion of the Assessing Officer be charged to tax in that assessment year.

43.RESIDENTIAL STATUS

Section 6 Residence in India

Section 6(1) Individual

(i)If Individual satisfies any of the basic conditions i.e (a) He is in India at least for 182 days during the previous year. Or (b) He is in India for at least 60 days during the previous year and 365 days during 4 years immediately preceding the concerned previous year,then he is Resident. Otherwise Non Resident.

Note-If timings of arrival in India as well as departure from India are available, then presence in India shall be computed on hourly basis and thereafter total of 24 hours of stay in India shall be taken as one day.

Note- If such timings are not available, then day on which he enters India as well as day on which he leaves India, both days shall be taken into account.

Note- Exceptions to the Basic Conditions i.e only one condition to be checked, He is in India at least for 182 days during the previous year

In case of an individual, being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship or for the purposes of employment outside India	In case of an individual, being a citizen of India, or a person of Indian origin, who, being outside India, comes on a visit to India in any previous year
	A person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, was born in undivided India.

Note- In the case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the manner and subject to such conditions as may be prescribed i.e Notification No. 70/2015 For the purposes of clause (1) of section 6, in case of an individual, being a citizen of India and a member of the crew of a ship, the period or periods of stay in India shall, in respect of an eligible voyage, not include the period beginning on the date entered into the Continuous Discharge Certificate in respect of joining the ship by the said individual for the eligible Voyage and ending on the date entered into the Continuous Discharge Certificate in respect of signing off by that individual from the ship in respect of such voyage.

(ii)I f Individual Resident after satisfying any of the basic conditions satisfies both the ADDITIONAL CONDITIONS i.e (a) He has been resident at least for 2 years out of 10 years immediately preceding the concerned previous year AND (b) He has been in India for at least 730 days during 7 years immediately preceding the concerned previous year then he shall be considered as Resident and ordinarily resident. If both the ADDITIONAL CONDITIONS not satisfied then Resident but not ordinarily resident.

Note- As per the provisions of section 6(5) of the Act, if a person is resident in India in a previous year in respect of any source of income, he shall be deemed to be resident in India in the previous year in respect of each of his other sources of income

Section 6(2) When Hindu undivided family or Firm or Association of Persons (AOP) resident or non-resident- Control and management of the affairs

Wholly in India	Partly in India and partly outside India	Wholly outside India
Resident		Non-resident

Note- Control and management is situated at a place where the head, the seat and the directing power are situated.

Section (3) Company

A company is said to be a resident in India in any previous year, if—

(i) it is an Indian company; or (ii) its place of effective management, in that year, is in India.

Explanation.—For the purposes of this clause "place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of business of an entity as a whole are, in substance made.

Place of effective management is in India or not An Indian Company is always Resident,but A company other than an Indian company is Resident only if Place of effective management is in India.

Section 6(4) When otherPerson is resident or non-resident- Control and management of the affairs

Wholly in India	Partly in India and partly outside India	Wholly outside India
Resident		Non-resident

Note- Control and management is situated at a place where the head, the seat and the directing power are situated.

Section 5 Scope of total Income

A. Always Taxable in India, whether Assessee is Resident (OR/NOR) or Non- Resident

i. Income received in India whether accrued in India or outside India

ii. Income deemed to be received in India whether accrued in India or outside India

iii. Income accruing or arising in India whether received in India or outside India

iv. Income deemed to accrue or arise in India whether received in India or outside India i.e Section 9

B. Other Cases

	Whether tax incidence arises in the case of		
Particulars	Resident and ordinarily resident	Resident but not ordinarily resident	Nonresident
Income received and accrued outside India from a business controlled in or a profession set-up in	Yes	Yes	No

India			
Income received and accrued outside India from a business controlled from outside India or a profession set-up outside India	Yes	No	No
Income (other than business or profession income) received and accrued outside India	Yes	No	No

CBDT Circular- Guiding principles for determination of POEM of a company

Any determination of the POEM will depend upon the facts and circumstances of a given case. The POEM concept is one of substance over form. An entity may have more than one place of management, but it can have only one place of effective management at any point of time. Since "residential status" is to be determined for each year, POEM will also be required to be determined on year to year basis.

Theses Circular shall apply to a Company having turnover or gross receipts exceeding Rs. 50 crores in the financial year

A. Primary Guiding Factor

ACTIVE BUSINESS OUTSIDE INDIA

1. A company is said to be engaged in "ACTIVE BUSINESS OUTSIDE INDIA" If it satisfies all the following conditions and hence its POEM is outside India-

i. Passive income is 50% or less of its Total Income

Note- Passive income shall be aggregate of Income from transaction where both the purchase and sale of goods is from/ to its associated enterprises and Income by way of royalty, dividend, capital gains, interest and rental income whether derived from associated or non-associated enterprises.

Note-Total Income to be computed as per tax laws of the country where such company is incorporated. Otherwise as per books of account if tax laws of that country does not require computation.

ii. Less than 50% of total assets situated in India

Note : The value of assets shall be

Depreciable assets	Other assets
Average of its value for tax purpose at the beginning and end of PY.	Value as per Books

iii Less than 50% of total employees situated in India or are resident in India -

Note : Number of Employees shall be average of number of employees at the beginning and end of the previous year. Employees shall include persons who are not directly employed but perfor5ms functions similar to employees e.g. contractual persons.

iv. Payroll expenses of employees situated in India or resident in India is less than 50% of total payroll expenditure

Note : "Payroll" includes cost of salaries, wages, bonus plus employee's compensation including pension and social costs borne by employer.

v. Majority meetings of Board of Directors are held outside India

Note : If it is established that Board of Directors are standing aside and not exercising their powers of management and such powers of management are exercising by holding company or any other person resident in India, then POEM SHALL BE CONSIDERED IN INDIA. Merely because the Board of Directors (BOD) follows general and objective principles of global policy of the group laid down by the parent entity which may be in the field of pay roll functions, Accounting, Human resource (HR) functions, It infrastructure and network platforms, Supply chain functions, Routine banking operational procedures, and not being specific to any entity or group of entities per se; would not constitute a case of BOD of company standing aside. Therefore , the location of shareholders will determine the POEM.

IF NO ACTIVE BUSINESS OUTSIDE INDIA

First we will identify the person who actually make key management and commercial decision for conduct of company's business as a whole and determine place where decision are being made.

Note- Place where decision taken are more Important than place where decision Implemented.

<u>B.Secondary guiding factors</u>

If the above factors do not lead to clear identification of POEM, then the following secondary factors can be considered-

(i) Place where main and substantial activity of the company is carried out; or
(ii) Place where the accounting records of the company are kept

<u>NN. 29 /2018 When POEM of Foreign Company is in India</u>

How to Record the depreciable asset If the foreign company is assessed to tax

assessed to tax In the foreign jurisdiction		Not assessed to tax in the foreign jurisdiction
Where it is required to take into account depreciation for the purpose of computation of its taxable income, the written down value (hereinafter referred to as WDV) of the depreciable asset as per the tax record in the foreign country on the 1st day of the previous year shall be adopted	In case where it is not required to take into account depreciation for purpose of computation of its taxable income, the WDV shall be calculated in the manner, as though the asset was installed, utilized and the depreciation was actually allowed as per the provisions of the laws of that foreign jurisdiction and the WDV so arrived at as on the 1st day of the previous year, shall	If the foreign company is not assessed to tax in the foreign jurisdiction, then WDV of the depreciable asset as appearing in the books of account as on the 1 day of the previous year maintained in accordance with the laws of that foreign jurisdiction shall be adopted as the opening WDV for the said previous year.

as opening WDV for the said previous year,	be adopted to be the opening WDV for the said previous year	

How to Record brought forward loss and unabsorbed depreciation

If the foreign company is assessed to tax in the foreign jurisdiction	If the foreign company is not assessed to tax in the foreign jurisdiction
brought forward loss and unabsorbed depreciation as per the tax record shall be determined year wise on the 1st day of the said previous year.	brought forward loss and unabsorbed depreciation as per the books of account prepared in accordance with the laws of that country shall be determined year wise on the 1st day of the said previous year.
The brought forward loss and unabsorbed depreciation of the foreign company as arrived at above, as the case may be, shall be deemed as loss and unabsorbed depreciation brought forward as on the 1st day of the said previous year and shall be allowed to be set off and carried forward in accordance with the provisions of the Act for the remaining period calculated from the year in which they occurred for the first time taking that year as the first year. Provided that the losses and unabsorbed deprecation of the foreign company shall be allowed to be set off only against such income of the foreign company which have become chargeable to tax in India on account of it becoming Indian resident	
n case where the brought forward loss and unabsorbed depreciation referred to in above, as the case may be, originally adopted in India are revised or modified in the foreign jurisdiction due to any action of the tax or legal authority, the amount of the loss and unabsorbed depreciation shall be revised or modified for the purposes of set off and carry forward.	

Where the accounting year does not end on 31st march

Foreign company shall be required to prepare profit and loss account and balance sheet for the period starting from the date on which the accounting year immediately following said accounting year begins, upto 31st march of the year immediately preceding the period beginning with 1st April and ending on 31st march during which the foreign company has become resident.	The foreign company shall also be required to prepare profit and loss account and balance sheet for succeeding periods of twelve months, beginning from 1st April and ending on 31st March, till the year the foreign company remains resident in India on account of its POEM.

44.Taxability of Royalty, Fee for Technical Services and Interest

Section 9 Income deemed to accrue or arise in India

<table>
<tr><td>Sec 9(1)(i)Business connection includes Professional Connection</td><td colspan="3">Income accruing or arising through or from any business connection in India is taxable irrespective of residential status of a person. Examples of business connection are:- a. Opening subsidiary company in India. b. Opening branch in India c. Appointing agent in India</td></tr>
<tr><td>Sec 9(1)(i)House property or other source</td><td colspan="3">Income through or from any property, any asset or source of income in India shall be deemed to accrue or arise in India.</td></tr>
<tr><td>Sec 9(1)(i)Capital Gain</td><td colspan="3">Income through the transfer of a capital asset situated in India shall be deemed to accrue or arise in India.</td></tr>
<tr><td>Sec 9(1)(ii)Salary</td><td colspan="3">Income which falls under the head ‘Salaries’ shall be deemed to accrue or arise in India if services are rendered in India. Further, salary for the rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment shall also be deemed to accrue or arise in India.</td></tr>
<tr><td>Sec 9(1)(iii)Salary paid by the Government to a citizen of India</td><td colspan="3">Salary paid by the Government to a citizen of India for service outside India shall be deemed to accrue or arise in India. It may be noted that allowances and perquisites paid outside India by the Government is exempt by virtue of section 10(7).</td></tr>
<tr><td>Sec 9(1)(iv)Dividend</td><td colspan="3">Dividend paid by an Indian company is always deemed to accrue or arise in India</td></tr>
<tr><td>Sec 9(1)(v)nterest on monies borrowed</td><td rowspan="2">Payable by Government shall always Deemed to accrue or arise in India</td><td rowspan="2">Payable by Resident Deemed to accrue or arise in India if borrowed funds are used for :- (a) business or profession carried on in India or (b) for any source of income in India</td><td rowspan="2">Payable by Non Resident Deemed to accrue or arise in India only when borrowed funds are used for the purposes of business or profession carried on in India. Resident</td></tr>
<tr><td>Sec 9(1)(vi) or (vii) Royalty / Fees for technical services</td></tr>
<tr><td colspan="4">FA 2019 Inserted -Sec 9(1)((viii) income, arising from any sum of money paid, or any property situated in India transferred as any compensation or other payment as referred to in section 56 (2) (xi) by a person resident in India to a person outside India will be deemed to accrue or arise in India. Hence, Any sum of money or value of property referred to in clause (x) of sub-section (2) of section 56 arising principally to non-residents/ persons outside India from a person resident in India will be subject matter of taxation within the purview of section 9 of the Act.</td></tr>
</table>

Explanation to section 9(1)(v) Income by way of interest

When interest is payable by an Indian branch of a foreign bank to its overseas head office, it is deductible while computing income of Indian Branch. Moreover, in the hands of recipient head office, the same is not taxable in India as payer and recipient are the same. As per various judicial rulings, tax is not deductible by the payer Indian branch. Therefore, in order to provide clarity and certainty on the

issue of taxability of interest payable by the Permanent Establishment (PE) of a non-resident engaged in banking business to the head office, an Explanation has been inserted in section 9(1)(v).

As per this Explanation, in the case of a nonresident, being a person engaged in the business of banking, any interest payable by the PE in India of such non-resident to the head office or any PE or any other part of such non-resident outside India, shall be deemed to accrue or arise in India. Such interest shall be chargeable to tax in addition to any income attributable to the PE in India. Further, the PE in India shall be deemed to be a person separate and independent of the non-resident person of which it is a PE and the provisions of the Act relating to computation of total income, determination of tax and collection and recovery would apply accordingly. Further, the PE in India has to deduct tax at source on any interest payable to either the head office or any other branch or PE, etc. of the non-resident outside India. Permanent establishment includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

Explanation to Section 9- Royalty and fees for technical services

Royalty and fees for technical services paid to a non-resident / foreign company for acquiring know-how shall be taxable in India in hands of Non-resident / Foreign Company if the know-how has to be utilized in India. It is irrespective whether
i. Know-how is delivered outside India or technical services are rendered outside India; or ii.
Ii. Payment is made to Non-resident / Foreign Company outside India; or
iii.Non-resident / foreign company has a place of business in India/ residence in India/ business connection in India or not
iv. Know-how or technical services are made available in India or outside India.

Note-know-how or technical services should be utilized in India and in that case the royalty / fees for technical service paid to Non-resident / foreign company is taxable in India in hands of Non-resident / Foreign Company.

Section 115A: Taxability n hands of non-residents and foreign companies

Interest Income of NR/FC		Royalty and fee for Technical service other than referred in section 44DA
20% of Interest	5% of Interest	10% or the rate as per DTAA whichever is lower.
From Government or Indian concern on money	a. Under section 194LB from an Infrastructure debt fund referred to in section 10 (47) on moneys borrowed by infrastructure debt fund in foreign currency. b. Under section 194LC from Indian company or business trust in respect	Royalty and fee for Technical service other than referred in section

borrowed by Government / Indian concern in Foreign Currency	of monies borrowed by it at any time on or after the 1st July, 2012 but before the 1st (a) Under a loan agreement; or July, 2020 in foreign currency, from a source outside India, except Section 10(4C)(b) By way of issue of long-term bonds, As approved by the Central Government in this behalf; c. Under section 194LD received by Foreign Institutional Investor or Qualified Foreign Investor or Indian Government where such interest in payable on or after 1-6-2013 but before 1-7-2020 on investment made by Foreign Institutional Investor or Qualified Foreign Investor in foreign currency in: (a) Rupee denomination bond of in Indian Company; or (b) Government security. d. On Rupee Denominated Bonds issued outside India and purchased in foreign currency Note- Money borrowed means Loans, Debentures, Bonds, Deposits in Indian Company, Government securities	44DA: a) Received from Government b) Received from Indian concern. See Note5

Note1- Deduction under section 28 to 44C and section 57 shall not be available in respect of any above income.

Note2- Unabsorbed Depreciation Cannot be Set off in respect of any above income.

Note3-Provision of Chapter-VI i.e., Set off and carry forward of losses and

Note4-Deduction under chapter VI-A Applicable i.r.t Royalty and fee for Technical service but not for Interest income [Only Sec 80 LA is applicable in case of Interest Income FA2019].

Note5- Return of Income is required in case of Royalty and fee for Technical service but for Interest income required only if (a) Total income includes only interest income (b) TDS is deducted.

Note5-

i. Place of Delivery of know how is irrelevant (Knowhow must be used in India)
ii. Royalty includes rent/ hire charges / lease charges of machinery and equipment.
iii. Hire charges of oil rigs covered by section 44BB are not covered in the definition of royalty.
iv. Section 115A does not apply if nonresident or Foreign Company has Permanent Establishment in India and it is covered by 44DA
v. Tax treatment in hands of payer of royalty- Section 40(a)(i) and section 40(a)(ia) provides that deduction for any expenditure by way of royalty paid to non-resident and resident respectively, shall be allowed if TDS is deducted / paid as per the conditions specified therein. Section 40 (a)(ia) provide that royalty shall have the same meaning as given in section 9. The definition or royalty includes payments for computer software. Therefore, amount paid for purchase of computer software is royalty and shall be allowed as deduction under section 37(1), subject to section 40(a)(i) and 40(a)(ia).

Explanation 4 to section 9- Explanation 4 has been inserted to clarify that the transfer of all or any rights in respect of any right, property or information includes transfer of all or any rightful for use or right to use computer software (including granting of a license) irrespective of the medium through which such right is transferred.

Explanation 5 to section 9- Explanation 5 has been inserted to clarify that the 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.

Explanation 6 to section 9- Explanation 6 has been inserted to clarify that the expression "process" includes transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fiber or by any other similar technology, whether or not such process is secret.

Section 9 to section 9-clarifies the payment made to foreigner shall be treated as royalty even if: (i) Possession of server is not within India. (ii) Server is not used directly by Indian bank. (iii) The location of server is outside India. Therefore, on such payments, TDS shall be deducted under section 195.

Section 44DA

Where an Indian concern or Indian government pays royalty or FTS to a foreign company/NR pursuant to an agreement (whether a specified agreement or non specified agreement) which was entered into on or after 01.04.2003 and the royalty or FTS is paid in respect of right or property or contract or service which is effectively connected to PE in India, then Section 44DA shall apply i.e Normal tax rates are applicable. However, the following expenditures are disallowed-

Any expenditure or allowance which is not wholly and exclusively incurred for the business of PE in India	Any payment made by PE to its HO or to any of its other offices (which does not represent reimbursement of actual expenditure incurred for the purpose of business of PE in India).

Deduction U/s 28 to Section 44C is available and also Unabsorbed depreciation adjustment U/s 32 (2) and Adjustment of losses against royalty or FTS is possible. Also, such FC/NCNR shall maintain the books of accounts as required U/s 44AA and shall get them audited U/s 44AB.

Section 44DA	**Section 115A**
Income shall be computed under the head P/ G/ B/ P after allowing all expenses	No expenses shall be allowed in computing such income
No deduction shall be allowed (i) in respect of any expenditure or allowance which is not wholly and exclusively incurred for the business of such permanent establishment or fixed place of profession in India (ii) in respect of any amount if any paid by the permanent establishment to its head office or to any of its other offices Note:However deduction shall be allowed in respect of reimbursement of actual expenses incurred by head office or other offices provided that such expenses are	

incurred for the permanent establishment in India.	
Deduction under chapter VI-A if any shall be allowed	Deduction under chapter VI-A if any shall be allowed
Such income can result in a loss which shall be set off and carried forward as per Chapter-VI	Since expenses are not allowed, such income cannot result in a loss
Losses of other businesses in India and losses from other activities shall be set-off against the incomes referred in section 44DA subject to Chapter VI	Losses of other businesses in India and losses from other activities shall be set off against the incomes referred in section 115A subject to Chapter VI
Compulsory maintenance of books of accounts and other documents	No such requirement
Compulsory audit requirement and report of audit	No such requirement
Tax @ 40% in case of foreign companies (plus 2% or 5 % surcharge) plus 4% education cess and Tax at normal rates in case of nonresident	Tax @ 10% (plus 2% or 5% surcharge) plus 4% education cess.

	Section 115AB	Section 115AC	Section 115AD
Eligible Assessee	Overseas Financial Organization (Offshore Fund)	Non-Resident including Foreign Company	Foreign Institutional Investors (FIIs)
Tax rate	10% in following case- i. Income from units purchased in foreign currency ii.Long term capital gains arising from the transfer of such units	10% in following case- i. Interest income from notified bonds of an Indian Company or bonds of any public sector company bought in foreign currency ii. Dividend Income from notified GDRs, purchased in foreign currency. (This does not include dividend covered u/s.115-0); and iii.Long term capital gains arising from the transfer of such bonds or GDRs.	10% -Long term capital gains on transfer of securities (other than units covered by section 115AB) 20% -Income in respect of securities (except covered by 115A) 30% -Any short term capital gain on transfer of securities (except covered by section 111A) 111A-15% 112A-10 % in Excess of Rs. 1,00,000

		Note: If the bonds are covered by section 194LB, 194LC, 194LD, then tax rate on interest shall be 5%	Note-In case of C.G, Maximum Surcharge 15% [not 25% or 37%] in case of FII in the form of AOP/BOI. Note: If the bonds are covered by section 194LB, 194LC, 194LD, then tax rate on interest shall be 5% And section 115AC shall be taxable @ 10%
Filing of ROI	NA	Filing of return of income u/s. 139(1) shall not be necessary in case the following **conditions are satisfied:** **(a) The total income comprises only of the income referred in this section; and** **(b) Tax deductible in respect of such income has been deducted.**	NA
TDS Provisions	As per section 196B, person responsible for making payment in the nature of LTCG arising from the transfer of units referred to in section 115AB shall, deduct TDS @ 10% at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier.	As per section 196C, person responsible for making payment in the nature of interest in respect of bonds or GDRs referred to in section 115AC or LTCG from transfer of such bonds or GDRs shall, deduct TDS @ 10% as the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier.	As per section 196D person responsible for making payment in the nature of interest in respect of securities referred to in section 115AD(not being interest income referred income referred under section 1944LB/194LC/ 194LD) shall, deduct TDS @ 20% at the time credit of such income to the account of the payee or at the time of payment, whichever is earlier.
		Where the assessee acquired GDRs or bonds in an amalgamated or resulting company by virtue of his holding shares or bonds in the amalgamating or demerged company, the	

		provisions of section 115AC shall apply to such GDRs or bonds.	
Common Provision	a. Chapter VI-A, First Proviso to section 48 and Second Proviso to section is Not Applicable. b. Set off, C/F& Set off of losses [C/Y and B/ F against the incomes referred to in section is Possible subject to Provisions of Chapter VI. c. For Income other than Specified, Chapter VI-A available Normal provisions and normal tax rates shall apply. d. Section 28 to 44C and Section 57 is applicable in case of Section 115AC and Section 115AD		

Following Income of NR etc shall be Exempted u/s 10 [FA 2019]

Clause 4C-Interest Income which is payable by Indian company or business trust in respect of money borrowed from a source outside India by way of issue of rupee denominated Bond as referred under section 194LC, during the period beginning from the 17th Sep 2018 and ending on the 31 March 2019.
Clause 4D-Any income of Specified Fund accrued or arise to or received as a result of transfer of capital assets referred to in section 47(viiab), recognized stock exchange located in any IFSC and where the consideration for such transaction is paid or payable in convertible foreign exchange to the extent that Income accrued or arise to or is received in respect of units held by non-resident. Note- specified fund means a fund established or incorporated in India in the form of Trust or a company or a limited liability partnership or a body corporate OR which has been granted a certificate of registration as a category III Alternative investment fund Regulation and is regulated SEBI.OR which is located in any International Financial Service Center of which all units are held by non -resident other than units held by a sponsor or manager
Clause(15)(ix)Any income of NR by way of interest payable by a unit located in IFSC in respect of money is borrowed by it on or after 1st September 2019

Chapter XIIA - Special Provisions Applicable To Non-Residents Indians

Section 115C Definitions

"Foreign exchange asset"	"Non-resident Indian"
Following assets acquired or purchased with or subscribed to in, convertible foreign exchange: (i) Shares in an Indian company ; (ii) Debentures issued by an Indian public company; (iii) Deposits with an Indian public company;	An individual, being a citizen of India or a person of Indian origin who is not a resident. A person shall be deemed to be of Indian origin if he, or either of his

(iv) Securities of the Central Government; and (v) Such other assets as may be notified by the Central Government.	parents or any of his grandparents, was born in undivided India.

Taxability

Investment Income arising from "Foreign Exchange Asset"	Long term capital gains arising on transfer of foreign exchange asset
Tax Rate- @ 20 %	Tax Rate- @ 10%
Section 115D While computing investment income, a.No deduction in respect of any expenditure or allowance under any provisions of the Income-tax Act shall be allowed. b.No deduction under chapter VIA shall be allowed	Section 115D While computing capital gain, a. First proviso to section 48 (Conversion Rule) is applicable and therefore benefit of Indexation is not available. b. No deduction under chapter VIA shall be allowed.
	Section 115F Exemption for long term capital gains- See Note below

Note- Section 115F The long term capital gains arising from the transfer of any foreign exchange asset will be exempt as per following formula provided net proceeds realised on such transfer are re-invested or redeposited within 6 months from the date of such transfer in the "Foreign exchange assets" or savings certificates notified u/s.10 (4B).

Amount invested × Long Term Capital Gain / Net consideration

However, where the new asset is transferred or converted (otherwise than by transfer) into money within a period of three years from its acquisition, the capital gains arising from the transfer of the original asset which has been exempted from tax shall be deemed to be the long term capital gains of the previous year in which the new asset is transferred or converted into money.

Section 115G Return of income- A non-resident Indian having only investment income or income by way of long-term capital gains arising from the transfer of any foreign exchange asset or both, need not file his return of income u/s. 139, if the tax deductible from such income has been correctly deducted at source.

Section 115H Benefit after the assessee becomes resident- A non-resident Indian who becomes a resident in any subsequent year has the option to claim that the special provisions shall continue to apply to him in relation to investment income derived from foreign exchange asset for that assessment year and for every subsequent assessment year until the transfer or conversion of such assets into

money. Such option can be exercised by furnishing a declaration in writing to the Assessing Officer to that effect along with his return of income for that assessment year.

Section 115 I Option to Assessee- A non-resident Indian has the option to claim that in respect of any particular assessment year the special provisions relating to chapter XII A should not apply to him by furnishing his return of income with such declaration for that assessment year u/s. 139. In such a case, the whole of the total income of that assessment year will be charged to tax under the general provisions of the Income-tax Act.

Section 115BB of Income Tax Act "Tax on winnings from lotteries, crossword puzzles, races including horse races, card games and other games -

Where the total income of an assessee includes any income by way of winnings from any lottery or crossword puzzle or race including horse race (not being income from the activity of owning and maintaining race horses) or card game and other game of any sort or from gambling or betting of any form or nature whatsoever, the income-tax payable shall be the aggregate of-

(i) the amount of income-tax calculated on income by way of winnings from such lottery or crossword puzzle or race including horse race or card game and other game of any sort or from gambling or betting of any form or nature whatsoever, at the rate of 30% and	(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).

Section 194B: person responsible for paying to any person any income by way of winning from any lottery or crossword puzzle or card game and other game of any sort in an amount exceeding Rs 10,000 shall, at the time of payment thereof, deduct income-tax thereon at the rate of 30%.

Sec. 115 BB and Sec. 194B both are talks about Taxation on Income from any games which is sort of gambling or betting like lotteries, crossword puzzles, races including horse races, card game. Sec. 115 BB is charging section which explain about applicable rate of tax on above , while sec. 194 B explain TDS norms that when a payer of above income is required to deduct TDS.

Losses cannot be set off against the income referred under section**115BB.** No deduction of any expenditure or allowance shall be allowed under section 58. If any percentage of such income is payable to Govt. or the agency conducting the lotteries, such percentage is deduction while computing the Lottery income and while calculating TDS from such income.

Section 115BBA: Tax on non-resident sportsmen or sport Associations

Where the total income of an assessee

(a) being a sportsman who is not a citizen of India and is a non-resident, includes any income received/ receivable by way of- (i) participation in India in any game (other than the games referred to in section 115BB) or sport; or (ii) advertisement, or (iii) contribution of articles relating to any game or sport in India in newspapers, magazines or journals; or	(b) being a non-resident sports association or institution, includes any amount guaranteed to be paid or payable to such association or institutions in relation to any game (other than the games referred to in section 115BB) or sport played in India;	(c) being an entertainer, who is not a citizen of India and is a nonresident, includes any income received or receivable from his performance in India

NOTES:

1. Special rate of tax is applicable on the above mentioned incomes only. Balance income of the assessee will be chargeable to tax at normal rates applicable to assessee.
2. No deduction or Allowance shall be allowed in computing income referred to in (a), (b) and (c).
3. It shall not be necessary for the assessee to furnish return under section 139 if -
(i) The total income of the assessee consist of only the incomes referred to in (a), (b) and (c) above and
(ii) Tax at source has been deducted from such income.
4. Non-resident match referees and umpires in the games played in India do not fall within the meaning of sportsmen to attract taxability under the provision of section 115BBA, and consequently does not attract the TDS provision under section 194E in the hands of the payer. However, same shall be covered by section 195.
5. Section 194-E: person responsible for paying to any non-resident sportsman (including an athlete) or an entertainer non-resident sports association or institution any income referred to in section 115BBA shall, at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier, deduct income-tax thereon at the rate of 20%.

Section 10(6D) Royalty/fees for technical services by National Technical Research Organization (NTRO) to non-resident

Any income arising to a non-resident/foreign company by way of royalty from (or fees for technical services rendered in or outside India to) the National Technical Research Organization shall be Exempted.

Section10(48)	Section 10(48A)	Section 10(48B)
Applicable to Foreign Company	Applicable to Foreign	Applicable to Foreign

	Company	Company
Income received on account of sale of crude oil, any other goods or rendering of services as may be notified by Central Government in this behalf	Any income accruing or arising on account of storage of crude oil in a facility in India and sale of crude oil there from to any person resident in India	Any income accruing or arising on account of sale of leftover stock of crude oil from the facility in India after the expiry of agreement u/s 10(48A)
(i) Recipient of income is a foreign company. (ii) Income is received in India in Indian currency. (iii) Receipt of such income in India by the foreign company is pursuant to an agreement/arrangement entered into by the Central Government or approved by the Central Government. (iv) The foreign company and the agreement/arrangement are notified by the Central Government in this behalf. Note-Notified company is:- National Iranian Oil Company.	(i). Storage and sale by the foreign company in pursuant to an agreement or arrangement entered into by the Central Government or approved by the Central Government. (ii). Further, such agreement and foreign company is notified by the Central Government.	This exemption is subject to such conditions as Central Government may notify in this behalf.

Explanation 1 To Section 9(1) Mining of diamonds

If foreign company engaged in the business of mining of diamonds, no Income shall be deemed to accrue or arise in India to it through or from the activities which are confined to the display of uncut and unsorted diamond in any special zone notified by the Central Government in the Official Gazette in this behalf.

45.Double Taxation Avoidance Agreements (DTAA)

Meaning of double taxation

Double taxation generally means taxation of same income of a person in more than one country. The main reason behind double taxation is that countries across the world different rules for taxing income. Basically, there are two main rules of income taxation:

Source rule	Residence rule
Under this rule, the income may be subject to tax in the country where the source of such income exists (i.e., where the business establishment is situated or where the asset/ properly is located) whether the income earner is a resident in that country or not.)	Under this rule, person may be taxed on the basis of his residential status in a country. Generally, if a person is resident of a country, he may have to pay tax on any income earned outside that country as well.
Further, countries like India follows mixture of above rules. Therefore, problem of double taxation arise if a person is taxed in respect of any income on the basis of source rule in one country and on the basis of residence rule in another country or the basis of mixture of above two rules. In order to overcome the hardship faced by tax payers due to double taxation, countries adopt two ways: (a) Bilateral relief (b) Unilateral relief.	

Bilateral Relief Section 90 and 90A	Unilateral Relief -section 91
Where Countries are entering into DTAA with each other. Bilateral relief can be given in either of the following methods- Exemption Method: A particular income is taxed in only one of the two counties. Tax Credit Method: Income is taxable in both countries in accordance with their respective tax laws read with double taxation avoidance agreement. However, the country of residence of the tax payer, allows him credit for the tax charged thereon in the country of source.	When there is no agreement between two countries, country of the residence itself provide relief.

Section90 Bilateral relief-Where there is agreement with foreign countries

Section 90(1) The Central Government may enter into an agreement with the Government of any country outside India to provide

(a) for grant of double taxation relief, for avoidance of double taxation (See Note)
(b) for exchange of information for the prevention of evasion or avoidance of Income Tax
(c) For recovery of income-tax.

Note-methods:

Exemption method	Tax relief method
Under this method, the relief is provided to the assessee by taxing a particular income in only one of the two countries, which would otherwise have been taxed in both the countries.	Under this method, the income of the assessee is taxable in both countries in accordance with their respective tax laws/DTAAs. However, the country of which the tax payer is a resident, allows him credit for the tax charged on the doubly taxed income in the other country.

Explanation 1.—For the removal of doubts, it is hereby declared that the charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favorable charge or levy of tax in respect of such foreign company.

Explanation 4-For the removal of doubts, it is hereby declared that where any term used in an agreement entered into under sub-section (1) is defined under the said agreement, the said term shall have the same meaning as assigned to it in the agreement; and where the term is not defined in the said agreement, but defined in the Act, it shall have the same meaning as assigned to it in the Act and explanation, if any, given to it by the Central Government.

Section 90(2) Where the Central Government has entered into DTAA with the Government of any country outside India or specified territory outside India, , then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

Section 90(4) An assessee, not being a resident, to whom DTAA applies, shall not be entitled to claim any relief under such agreement unless a certificate of his being a resident in any country outside India or specified territory outside India, as the case may be, is obtained by him from the Government of that country or specified territory.

Section 90(5) The assessee referred to in sub-section (4) shall also provide such other documents and information, as may be prescribed.

Notification No. 39/2012Rule 21AB Tax Residence Certificate

Certificate for claiming relief by a non-resident under an agreement referred to in sections 90 and 90A should contain the following particulars in form no. 10F : (i) Name of the assessee; (ii) Status (individual, company, firm etc.) of the assessee; (iii) Nationality (in case of individual); (iv) Country or specified territory of incorporation or registration (in case of others); (v) Assessee's tax identification number in the country or specified territory of residence or in case there is no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory; (vi) Residential status for the purposes of tax; (vii) Period for which the certificate is applicable; and (viii) Address of the applicant for the period for which the certificate is applicable;

Such certificate should be duly verified by the Government of the country or the specified territory of which the person claims to be a resident for the purposes of tax. In addition, the CBDT has also prescribed the form for an assessee, who is a resident in India, to make an application to the Assessing Officer for obtaining a certificate of residence for the purposes of an agreement referred to in section 90

and 90A. It has also prescribed the form in which the Assessing Officer, on receipt of such an application by the assessee and on being satisfied in this regard, shall issue a certificate of residence to such an assessee.

Note:- The submission of TRC containing prescribed particulars shall be a necessary but not sufficient condition for availing benefits of the agreements referred to in these sections. In effect, further conditions can be stipulated for claiming treaty benefits, in addition to the requirement of submission of TRC.

Section 91 Unilateral Relief i.e Countries with which no agreement exists

Section 91 (1)If there is a country with which India does not have a DTAA, And the Indian resident assessee in respect of income arising outside India Pays income tax both in foreign country and also in India, Then he shall be entitled to deduct the lower of the following amount

A. Tax on such doubly taxed income at the rates applicable in India	B. Tax on such doubly taxed income at the rates applicable in foreign country
[Tax on Total Income in India x Such doubly taxed income] / Total Income in India	[Tax paid in foreign country x Such doubly taxed income] / Total income assessed in foreign country
Double Taxed incomes means the income computed after allowing all expenses and deductions under Chapter VI-A, if applicable.	

Section 91(2) Where a person who is resident in India in any previous year has any agricultural income in Pakistan in respect of which he has paid the tax in Pakistan as per laws of taxation of agricultural income in Pakistan, he shall be entitled to a deduction from the Indian Income tax payable by him

(i) Of the amount of tax paid in Pakistan on such income which is liable to tax under this Act, also; or	(ii) Of a sum calculated on the income at the Indian rate of tax
Whichever is less.	

Section 91 (3) If any non-resident person is assessed on his share in the income of a registered firm assessed as resident in India in any previous year and such share includes any income accruing or arising outside India during that previous year (and which is not deemed to accrue or arise in India) in a country with which there is no agreement under section 90 for the relief or avoidance of double taxation and he proves that he has paid income-tax by deduction or otherwise under the law in force in that country in respect of the income so included he shall be entitled to a deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income so included at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal.

Section90A Adoption by CG of agreement between specified associations for double taxation relief.

Section 90A provides for the following:-

1. There is a specified association in India

2. It enters into an agreement with any specified association in a specified territory outside India

3. The Central Government may, by notification in the Official Gazette, make the necessary provisions for adopting and implementing such agreement- (a) for grant of double taxation relief, for avoidance of double taxation; (b) for exchange of information for the prevention of evasion or avoidance of Income Tax; (c) for recovery of income-tax.

4. In relation to any assessee to whom the said agreements applies, the provisions of the Income Tax Act shall apply to the extent they are more beneficial to the assessee.

46.Advance Rulings

Section245-O Constitution of authority of Advance Ruling

. The Central Government shall constitute an Authority for giving advance rulings, to be known as "Authority for Advance Rulings". The Authority shall consist of a Chairman and such number of Vice-chairmen, Revenue Members and Law Members as the Central Government may by notifications appoint. A person shall be qualified for appointment as –

Chairman	Vice-Chairman	Revenue Member	Law Member
Who has been a Judge of the Supreme Court or the Chief Justice of a High Court or at least seven years a Judge of a High Court	Who has been Judge of a High Court	(i) From the Indian Revenue Service, who is, or is qualified to be, a Member of the Board, (ii) From the Indian Customs and Central Excise Service, who is, or is qualified to be, a Member of Central Board of Excise and Customs, on the date of occurrence of a vacancy.	From the Indian Legal Service, who is, or is qualified to be, an Additional Secretary to the Government of India on the date of occurrence of a vacancy.

The terms and conditions of service and the salaries and allowances payable to the Members shall be such as may be prescribed. The Central Government shall provide to the Authority with such officers and employees, as may be necessary, for the efficient discharge of the functions of the Authority under the Act. The powers and functions of the Authority may be discharged by its Benches as may be constituted by the Chairman from amongst the Members thereof.

In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the senior-most Vice-chairman shall act as the Chairman until the date on which a new Chairman, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

In case the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Vice-Chairman shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties. A Bench shall consist of the Chairman or the Vice-chairman and one revenue Member and one law Member.

The Authority shall be located in the National Capital Territory of Delhi and its Benches shall be located at such places as the Central Government may, by notification specify.

Section:- 245N read with 245R(2) Meaning of advance ruling, applicant and restrictions on application

Advance 'ruling' means –	Applicant means	Circumstances in which Authority (AAR) will not allow the application
A determination by the Authority in relation to a transaction which has	A non-resident who has undertaken or	where the question raised in the application: (a) is already pending

been undertaken or is proposed to be undertaken by a non-resident applicant; and such determination shall include the determination of any question of law or of fact specified in the application; or	proposes to undertake a transaction;	before any income-tax authority, the ITAT or any court (b) involves determination of fair market value of any property (c) relates to a transaction which is designed prima facie for the avoidance of income-tax
A determination by the Authority in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a resident applicant with a non-resident, and such determination shall include the determination of any question of law or of fact specified in the application; or	A resident who has undertaken or proposes to undertake a transaction with a nonresident	where the question raised in the application: (a) is already pending before any income-tax authority, the ITAT or any court (b) involves determination of fair market value of any property (c) relates to a transaction which is designed prima facie for the avoidance of income-tax
A determination by the Authority in relation to the tax liability of a resident arising out of a transaction which has been undertaken or is proposed to be undertaken by a such applicant, and such determination shall include the determination of any question of law or of fact specified in the application;	A resident falling within notified class or category Notified Resident means a resident, who has undertaken or proposed to be undertaken one or more transactions valuing rupees one hundred crore or more in total.	where the question raised in the application: (a) is already pending before any income-tax authority, the ITAT or any court (b) involves determination of fair market value of any property (c) relates to a transaction which is designed prima facie for the avoidance of income-tax
A determination or decision by the Authority in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal and such determination or decision shall include the determination or decision of any question of law or of fact relating to such computation of total income specified in the application.	A resident falling within notified class or category of persons. (PSU)	where the question raised in the application: (a) is already pending before any court (b) involves determination of fair market value of any property

Advance ruling can be obtained by		in relation to his tax liability arising out of transactions of	Public sector companies
Non- resident	Resident dealing with a non-resident	Rs. 100 crores & more	Resident making application

The case should not be pending before any Income-tax authority / ITAT/High Court / Supreme Court on the date of application. Though, it may become pending later on.	The case should not be pending before any Income-tax authority /ITAT/High Court / Supreme Court on the date of application. Though, it may become pending later on.	The case should not be pending before any Income-tax authority /ITAT/High Court / Supreme Court on the date of application. Though, it may become pending later on.	The case should not be pending before any Income-tax authority /ITATon thedate of application. Public SectorCompany cannot seek advance ruling if on the date of application, the case is pending before any court.
In the above cases, Income-tax authority / ITAT cannot pass their orders without waiting for the decision of the "Authority for Advance Ruling". However, ITAT is not bound by the decision given by Authority for Advance Ruling and can give a contrary decision.			

Section245Q Application for Advance Ruling

An applicant desirous of obtaining an advance ruling under Income Tax Act, or under Central Excise Act or for Service Tax, may make an application in 4 copies of application in such form and manner as may be prescribed stating question on which the advance ruling is sought. Application shall be accompanied by a fee of Rs. 10,000 or such fee as may be prescribed, whichever is higher. Application may be withdrawn by the applicant within 30 days from the date of the application. The Order of AAR giving its opinion is a final order and no Appeal is possible against such an order"

Notification No. 74/ 2014 prescribed Filing fees before AAR

Public Sector Undertaking (PSU) applicant	Other Applicants		
Rs. 10,000	Amount of one or more transaction, entered into or proposed to be undertaken, in respect of which ruling is sought		
	Does not exceed Rs. 100 crore	Exceeds Rs. 100 crore but does not exceed Rs. 300 crore.	Exceeds Rs. 300 crore.
	Rs. 2,00,000	Rs. 5,00,000	Rs. 10,00,000

Section245R Procedure on receipt of application

1.On receipt of an application, the Authority shall forward a copy thereof to the Principal Commissioner or Commissioner and, if necessary, call upon him to furnish the relevant records.

2.The Authority may, after examining the application and the records called for, by order, either allow or reject the application. However, in following few cases, AAR shall reject the application-

i. With regard to NR & Resident applicant (except PSUs), when the question raised in the application is pending before any ITA, ITAT or Court on the date of application. It can be pending later on. ii. With regard to PSUs, when the issue is pending before any Court	Question raised in the application involves determination of FMV of any property	Question in the application relates to a transaction which is designed prima facie for the avoidance of tax. This restriction shall not be applicable for the PSUs

However, no application shall be rejected unless an opportunity has been given to the applicant of being heard. Further, where the application is rejected, reasons for such rejection shall be given in the order. A copy of every order rejecting application shall be sent to the applicant and to the Principal Commissioner or Commissioner. Reason for rejection shall be given in the order. No appeal is possible against order of rejection.

3. Where an application is allowed, the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce its advance ruling on the question specified in the application.

4. On a request received from the applicant, the Authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.

5. The Authority shall pronounce its advance ruling in writing within6 months of the receipt of application.

6. A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Principal Commissioner or Commissioner.

Section245RR Appellate authority not to proceed in certain cases.No income-tax authority or the Appellate Tribunal shall proceed to decide any issue in respect of which an application has been made by a resident applicant under section 245Q (1).

Section 245S Applicability of advance ruling. The advance ruling pronounced by the Authority shall be binding only— (a) on the applicant who had sought it; (b) in respect of the transaction in relation to which the ruling had been sought; and (c) on the Principal Commissioner or Commissioner, and the income-tax authorities subordinate to him, in respect of the applicant and the said transaction.

The advance ruling shall continue to be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

Section 245T Advance ruling to be void in certain circumstances

Where the Authority finds, on a representation made to it by the Principal Commissioner or Commissioner or otherwise, that an advance ruling pronounced by it has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of this Act shall apply to the applicant as if such advance ruling had never been made.

Section 245U Powers and procedures of Authority

The Authority shall have all the powers of a civil court under the Code of Civil Procedure, 1908. The Authority shall be deemed to be a civil court for the purposes of section 195 of the Code of Criminal Procedure, 1973 and every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code. The Authority shall have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.

47.TRANSFER PRICING AND ITS ADJUSTMENTS

Section 92 Computation of income from international transaction having regard to arm's length price

Section 92(1) Any income arising from international transaction shall be computed based on arms length price. In common parlance arm's length price means genuine and correct market price. In respect of Income Tax it is determined as per sec 92C.

The Explanation to Section 92(1) clarify that it is not only the sale price which shall be determine as per ALP but even the allowance for any interest or Expenses arising from international taxation shall be determined as per ALP.

Section 92(2) provides that if an international Transaction provides that 2 or more enterprises entered into an agreement for allocation of cost or Expenses in connection with services provided then such allocation of cost or Expenses shall be on the basis of arm's length prices of service provided.

Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the specified domestic transaction shall be computed having regard to the arm's length price.

Section 92(3)) Provisions of transfer pricing shall not apply where: (i) Computation of income; or (ii) Determination of allowance for any expense or interest ; or (iii) Determination of any cost or expense allocated or apportioned Has the effect of reducing the income chargeable to tax or increasing the loss of the assessee to whom transfer pricing is applied.

Section 92A: Meaning of associated enterprise

I. Shares carrying not less than 26% of the voting power

Two Enterprise shall be deemed to be Associated Enterprise if at any time during the previous year one enterprise hold share carrying Not less than 26% of the voting power in another Enterprises.	Any person holds directly or indirectly, shares carrying not less than 26% of voting power of each of such enterprise.

II. Loan advanced not less than 51% of the Book value of Total asset

If a loan is advance by one Enterprise to Another constituting Not less than 51% of the Book value of Total asset of an Enterprise then Both are associated Enterprise

III. Guarantees not less than 10%of the total borrowings

One enterprise guarantees not less than 10%of the total borrowings of the other enterprise.

IV. More than 1/2 of the Board of directors or members

More than 1/2 of the Board of directors or members of Governing Board or 1 or more Executive Director or Executive Member of Governing Board of one enterprise appointed by other enterprise	More than 1/2 of the Board of directors or members of Governing Board or 1 or more Executive Director or Executive Member of Governing Board of each of the two enterprise appointed by same person of persons

V. Use of know-how, patent, technical know-how, etc.

The business of one enterprise is wholly dependent on the use of know-how, patent, technical know-how, etc. of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights.

VI. 90% or more of the raw material and consumable

90% or more of the raw material and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, is SUPPLIED by the other enterprise.

VII. Prices and other conditions are influenced-

The goods or articles manufactured or processed by one enterprise are sold to the other enterprise and the prices and other conditions are influenced by such other enterprise.

VIII. Common Control- Where one enterprise is controlled by an individual, the other enterprise is controlled by a member of such HUF or relative of such member or jointly by such member & his relative.

IX. Holds not less than 10% interest-- Where one enterprise is a Firm, AOP or BOL, and the other enterprise holds not less than 10% interest in such, Firm, AOP or BOI.

Section 92B International Transaction

(1)International Transaction means a transaction between two or more associated enterprises one of the two enterprises should be Non-resident. Both can also be nonresident but in this case the income should be accrued in India. Therefore at least one party has to be Non-resident to call transaction as International Transaction.

International transaction includes Transaction between associated enterprises in the nature of

Purchase, sale, transfer , lease or use of tangible property; or intangible property; or Provision of services;	Capital financing including lending or borrowings or guarantee Any other transaction having a bearing on the profits, income, losses or assets of such enterprises'; or	A transaction of business restructuring or reorganization, entered into by an enterprises with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date.	It Also include a mutual agreement of arrangement between two or more associated enterprises for the allocation of any cost or expense incurred in connection with a benefit, service facility provided to any one or more such enterprises.

Conditions to satisfy for a transaction to be an international transaction,

Transaction must be between two associated enterprises	At least one of the two enterprises must be a non-resident.
If both the associated enterprises are non-residents, then Transfer Pricing shall apply only if income of one of the non-residents is assessable under the Indian Income-tax Act.	

Section 92B(2) Deemed International Transaction

A transaction entered into by an enterprise with a person other than an associated enterprise shall, for the purposes of sub-section (1), be deemed to be an international transaction entered into between two associated enterprises, if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise where the enterprise or the associated enterprise or both of them are non-residents irrespective of whether such other person is a non-resident or not.

Section 92BA Meaning of specified domestic transaction

Where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of twenty crore rupees for "Specified domestic transaction i.e

Where any goods or services held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or where any goods or services held for the purposes of any other business, carried on by the assessee are transferred to the eligible business, and, in either case, the consideration for such transfer recorded in the accounts of eligible business does not correspond to the market value of such goods or services on the date of transfer, then, for the purpose of deduction under this section, the profits and gains of such eligible business shall be computed as if the transfer had been made at the market value of such goods or services as on that date.	Where it appears to the Assessing Officer that owing to close connection between the assess carrying on the eligible business andany otherperson, or for any other reason, the course of business transacted between them produces to the assessee more than the ordinary profits which might be expected to arise in such business, the Assessing Officer shall in computing the profits and gains of such business for the purpose of computing deduction under section, take the amount of profits as may be reasonably deemed to have been derived therefrom.
"Eligible Business" meansBusiness referred to in sections 80-IA, 80-IAB,80-IB, 80- IC, 801-ID, 80-IE & 10AA and any business transacted between the persons referred to in section 115BAB(4) (FA 2019)	

Section 92C- Computation Of ARM'S Length Price

As per Section 92C the Arm's length price (ALP) in relation to international transaction or specified domestic transaction shall be determined by the most appropriate prescribed method considering the nature of transaction or class of transaction or class of associated person or function perform by such persons or such other relevant factors. Following are the prescribed method. (i) Comparable uncontrolled price method (CUP method) (ii) Resale price Method (iii) Cost plus method (iv) Profit split method. (v) Transactional Net Margin Method (vi) Any such other Method may be prescribed.

The most appropriate method referred to in 92C(1) shall be applied, for determination of arm's length price. However, if the variation between the arm's length price so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed 1% of the latter in respect of wholesale trading and 3% of latter in other cases, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price. Provided that where more than one price is determined by the most appropriate method, the arm's length price in relation to an international transaction or specified domestic transaction shallbe computed as per Rule 10CA.

(i) Comparable uncontrolled price method (CUP method)

Step – 1 Determine the price charged or paid with respect to comparable uncontrolled transaction.

Step – 2 Price at step – 1 is adjusted with respect to functional differences between international transaction and uncontrolled transaction.

Step - 3 such adjusted prices is Arm's length price.

(ii) Resale price Method

Step – 1 Find out the price at which goods and services are obtained from associated Enterprises and are resold to unrelated Enterprises.

Step – 2 Such resale price is reduced by normal gross profit in respect of unrelated transaction

Step – 3 Then reduce the purchase related expenses

Step – 4 Add or less functional difference between international transaction and uncontrolled transaction

Step – 5 The adjusted price arrive at step 4 is an arm's length price

(iii) Cost plus method

Step – 1 Find out direct or indirect cost of production with respect to A.E (Associated Enterprise)

Step – 2 Determine the normal gross profit Mark-up which will arise in respect of unrelated transaction

Step – 3 The normal GP arise at Step – 2 should be adjusted on account of functional Difference between international transaction and uncontrolled transaction

Step – 4 The cost (COP) arrive at Step – 1 Should be increase by GP arrive in Step – 3and the resulting number will be Arm's length price

(iv) Profit split method.

Step – 1 Determine the combine Net profit of the Associated Enterprises (AE)

Step – 2 Determine the relative contribution Made by each AE in earning such combined Net profit (This ratio is evaluated on the basis of functions performed, asset employed, risk assume and reliable external data by unrelated enterprises. This ratio will be provided in the question.)

Step – 3The combine Net profit as given in Step – 1 is then split among AE in the relative contribution ratio as given in step – 2

Step - 4 The profit thus apportioned shall be taken into Account to determine the Arm's length price.

(v) Transactional Net Margin Method

Step – 1 Determine the NP margin w.r.t. to AE.

Step – 2 Determine the NP margin w.r.t. to unrelated transaction.

Step – 3 Add / less functional differences between IT (international Transaction) and uncontrolled Transaction

Step – 4 Such NP margin as arrive at Step-3 Shall be taken into Account to arrive at Arm's length price.

(vi) Any such other Method may be prescribed.

Notification No. 18/2012 Rule 10AB inserted to provide for "Other method of determination of arm's length price" Accordingly, Rule 10AB has been inserted in the Income-tax Rules, 1962 to provide that for the purposes of section 92C(1)(f), the other method for determination of the arms' length price in relation to an international transaction shall be any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts.

When the AO, on the basis of material or information or document in his possession, of the opinion that: Price has not been determined with section 92C, or Documents are not maintained by assessee in accordance with section 92D, Data used for computing arm's length price is not reliable or not correct, or Assessee has failed to furnish information with in specified time required u/s 92D. - Then AO can determine the arm's length price on the basis of information in his possession. Where such arm's length price is determined by AO, the Assessing Officer may compute the total income of the assessee having regard to the arm's length price so determined.

Provided that no deduction under section 10AA or under chapter VI-A shall be allowed on the increased income.

Provided further that income of other enterprise shall not be recomputed for the purpose of Chapter of TDS i.e., other party cannot claim the refund of TDS.

Rule 10CA Notification:- 83/2015 RANGE CONCEPT Where more than one price is determined by most appropriate method

Where in respect of an international transaction or a specified domestic transaction, the application of the most appropriate method results in determination of more than one price, then the arm's length price shall be computed as under-

i)A dataset shall be constructed by placing the prices in an ascending order	ii)Where the dataset constructed consists of 6or more entries, an arm's length range beginning from the thirty-fifth percentile of the dataset and ending on the sixty-fifth percentile of the dataset shall be constructed.	iii)Where the price at which the international transaction or the specified domestic transactions has actually been undertaken is within the range referred to (ii), then, the price at which such international transaction or the specified domestic transactions has actually been undertaken shall be deemed to be the arm's length price	iv)If the price at which the international transaction or the specified domestic has actually been undertaken is outside the arm's length range referred to (ii), the arm's length price shall be taken to be the median of the dataset.	v)In a case where dataset consists of less than 6 entries, the arm's length price shall be the arithmetical mean of all the values included in the dataset:
	"the thirty-fifth percentile" of a dataset, having	"the sixty-fifth percentile" of a data set, having	"the median" of thedata set, having values	

	values arranged in an ascending order, shall be: Total entries in data set x 35/100	values arranged in an ascending order, shall be: Total entries in data set x 65/100	arranged in an ascending order, shall be: Total entries in data set x 50/100	
	If this number is a fractional number, the next higher number which is a whole number shall be taken and the value in the data set placed at this whole number shall be the median. If this number is a whole number, then the arithmetical average of value in data set at this number and value in data set at next higher number shall be the median.			

Section : 92CA : Reference to T.P.O

If AO considers necessary then he may refer computation of ALP to the transfer prizing officer. (T.P.O) in respect of international transaction (I.T.) or specified Domestic Transaction before doing so AO shall take the previous approval of CIT. After the reference is made the T.P.O shall serve a notice to assessee to produce Evidences. The TPO itself shall gathers material for computation of ALP.

Where any other International Transaction comes to the notice of TPO which was not referred him earlier, can also be considered while computing the ALP. Where in respect of International Transaction assessee has not furnish report u/s 92E and such transaction comes notice of TPO then he shall considered that transaction also. On the Basis of material gathered by TPO and Evidence be produced by assessee the TPO shall compute the ALP. This is done by passing the ORDER in WRITING. The copy of the order shall be sent to AO and assessee.

The order of TPO is binding on A.O. The TPO shall pass the order 60 days prior to last date on which period of completion of assessment is given under 153 or 153B 153 speaks about time limit of completion of Regular assessment u/s 143(3), 144, and 147, 153B speaks about time limit of completion of search and seizure assessment. In case of Transfer pricing all the time limit are extended by 12 month if the matter is referred to TPO.

The TPO can rectify the mistake apparent from record in respect of the order subject to the provision of section 154. After the rectification under 154 the TPO shall send the copy of order to AO to rectify the order of assessment accordingly. The transfer pricing officer can Exercise the power to issue summon or may call for information u/s 133(6) from assessee or may conduct survey.

Section 92D: Maintenance, and keeping of information and document by persons entering into international transaction

A person entering into International transaction (IT) or specified domestic transaction (SDT) shall keep and maintain such information and document as may be prescribed. Prescribed information and document are not required to be maintained in a case where the aggregate value as recorded in the

books of account does not exceed Rs. 1 crore • Following are the documents which are prescribed by the CBDT.

(i) Profile of multinational group which assessee belongs to. (ii) Ownership structure i.e. shareholding pattern. (iii) Brief description of the Business of the assessee and it A.E. (iv) Nature and terms of international transaction. (v) Financial Estimates made by assessee. Eg. budget, forecast etc. (vi) Nature and terms of uncontrolled transaction. (vii) Analysis of comparison between international transaction and uncontrolled transaction (viii) Computation of ALP (Arm's length price) i.e. Actual working, method adopted, reason for adopting most appropriate method and adjustment made. (ix) Official publication of government to know about standard GP margin etc. (x) Published accounts i.e. BOA etc (xi) Price publication if listed (xii) Agreement and contract of international transaction and uncontrolled transaction.

(ii) Prescribed information and document are required to kept and maintain for a period of 8 year from the end of relevant assessment year.

(iii) The AO or the CIT(A) may require any person who has entered IT or SDT to furnish any information or document within period of 30 days from the date of issue of notice. The assessee can make an application for extension and it may be further extended by another 30 days.

(iv)A person being a constituent Entity of an international group shall also keep or maintain such information or document in respect of international group as may be prescribed. A constituent entity means an entity which forms part of consolidated financial statement for the purpose of financial reporting.

(v) Where AO or CIT (A) calls for any information or documents then a constituent entity shall furnish prescribed information and document on or before the date to be prescribed.

Section 92E: Report from CA

Any assessee entered into IT or SDT (specified Domestic Transaction) during the previous year shall obtain a report from chartered accountant in form 3CEB on or before the due date of filling of return. This is the report of all the international transaction with associated enterprise during the year Failure to submit this report shall attract penalty under section 27/BA of Rs. 1,00,000/- Even if this report is submitted the assessee will be liable to penalty u/s 271AA if some transaction are not reported i.e. Not reported in FORM – 3CEB i.e. 2% of value of unreported transaction If the above report is not submitted. Both the following penalty will be imposed. (i) penalty u/s 271BA of Rs. 100000 (ii) penalty u/s 271AA @ 2% of value of all international transaction i.e. unreported transaction because if reported is not submitted then obviously all transaction remain unreported.

Section 92CB: Power of board to make Salf harbour Rules

The Central Board of Direct Taxes has been empowered to formulate safe harbor rules i.e. to provide the circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee. The safe harbour rules were notified in September 2013. In the rules, safe harbour rates were

prescribed for specific nature of international transactions. The CBDT, vide notification No. 46, dated 7 June 2017, revised the existing safe harbour rules.

Rule10TF Safe harbor rule not to apply in certain cases

Nothing contained in rules 10TA, 10TB, 10TC, 10TD or rule 10TE shall apply in respect of eligible international transactions entered into with an associated enterprise located in any country or territory notified under section 94A (Popularly known as NJA) or in a no tax or low tax country or territory. "No tax or low tax country or territory" means any country/territory where maximum rate of Income Tax is less than 15%.

Section 92CC: Advance Pricing Agreement

Terms of APA include – (i) the international transactions covered by the agreement; (ii) the agreed transfer pricing methodology, if any; (iii) determination of arm's length price, if any; (iv) definition of any relevant term to be used in item (ii) or (iii); (v) critical assumptions i.e. the factors and assumptions that are so critical and significant that neither party entering into an agreement will continue to be bound by the agreement, if any of the factors or assumptions is changed ;

Advance Pricing Agreement is an agreement between a taxpayer and a taxing authority on an appropriate transfer pricing methodology for a set of transactions over a fixed period of time in future. The APA offers better assurance on transfer pricing methods and are conducive in providing certainty and unanimity of approach.

Types of APA-

(a) Unilateral APAs - Unilateral APA is an arrangement between the tax payer and the Indian tax administration (CBDT)

(b) Bi-lateral/ multilateral APAs- Bilateral / multilateral APA involves not only the taxpayer and the Indian tax administration but also the taxpayer's affiliates (with whom he transacts) and their tax administration.

The Board, may enter into an advance pricing agreement ('APA') with any person, determining the arm's length price or specifying the manner in which arm's length price is to be determined, in relation to an international transaction to be entered into by that person. The manner of determination of arm's length price, may include the methods referred to in section 92C or any other method, with adjustments or variations. The arm's length price of any international transaction, in respect of which the APA has been entered into, shall be determined in accordance with the APA so entered. APA shall be valid for such period not exceeding 5 consecutive previous years as may be specified in the APA.

The APA entered into shall be binding on the person in whose case, and in respect of the transaction in relation to which, the APA has been entered into; and also on the CIT, and Assessing Officers under him, in respect of the said person and the said transaction.

The APA shall not be binding if there is a change in law or facts having bearing on the agreement so entered. The Board may, by an order, declare an APA to be void ab initio, if it finds that the APA has been obtained by the person by fraud or misrepresentation of facts.

Notification No23/2015 – Rules for Rollback of APA

Form 3CEDA for the relevant roll back years have been filed before due date. Roll back application should cover all the roll back years (i.e., the years falling with the block of four years) in which the international transaction has taken place. Roll back provisions shall not be provided, in respect of an international transaction, if the Incometax Appellate Tribunal has passed an order disposing off an appeal relating to determination of ALP of the international transaction, at any time before signing of the APA agreement; or application of roll back has the effect of reducing total income or increasing the total loss. The manner of determining ALP in the roll back years with respect to any particular international transaction will be same as the manner agreed in the regular APA.

Section 92CD: Effect to advance pricing agreement

(1)Where any person has entered into an APA and prior to the date of entering into the APA, any return of income has been furnished under the provisions of section 139 for any assessment year relevant to a previous year to which such AM applies, such person shall furnish, within 3 months from the end of the month in which the said AM was entered into, a modified return in accordance with and limited to the APA.

(2) Where the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the APA applies have been completed before the expiry of period allowed for furnishing of modified return under sub-section (I), the Assessing Officer shall, in a case where modified return is filed in accordance with the provisions of sub-section (1),proceed to assess or reassess or recompute the total income of the relevant assessment year having regard to and in accordance with the CPA.

(3) Where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the APA applies are pending on the date of filing of modified return in accordance with the provisions of sub-section (1), the Assessing Officer shall proceed to complete the assessment or reassessment proceedings in accordance with the APA taking into consideration the modified return so furnished.

(4) Notwithstanding anything contained in section 153 or section 1538

(a) Order of assessment, reassessment or re-computation of total income under subsection (2) shall be passed within 1 year from the end of the financial year in which the modified return is furnished; (b) Period of limitation as provided in section 153 or section 1538 for completion of pending assessment or reassessment proceedings referred to in sub-section (3) shall be extended by 12 months.

Penalty under Transfer Pricing

Section 271AA	Section 271 G	Section 271 BA
2% of the value of - each international transaction or specific domestic transaction entered		Rs. 100000
Penalty for: (i) Failure to keep maintain information and documents. (ii) Failure to report such transaction which he is required to do so in Transfer-Pricing Report; or (iii) Maintaining or furnishing any incorrect information or documents.	Penalty for failure to furnish information or document under section 92D(3)	Penalty for failure to furnish report from the chartered accountant.

Section92CE Primary and secondary adjustments in Transfer pricing

"Primary adjustment" to a transfer price, means the determination of transfer price in accordance with the arm's length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee; Hence, Primary Adjustment" means determination of Transfer Price as per Arm's Length Principle resulting in "increased total income orreduced loss".

"Secondary adjustment" means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

~~Section 92CE(1) Applicability of secondary adjustment i.e~~ When is Secondary Adjustment required to be made?

Where a primary adjustment to transfer price,— (i) has been made suo motu by the assessee in his return of income; (ii) made by the Assessing Officer has been accepted by the assessee; (iii) is determined by an advance pricing agreement entered into by the assessee under section 92CC on or after 1st April 2017; (iv) is made as per the safe harbour rules framed under section 92CB; or (v) is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or section 90A for avoidance of double taxation, the assessee shall make a secondary adjustment. However, Secondary adjustment is not made if ,amount of primary Adjustment made in case of an assessee in any PY does not exceed Rs.1 Cr.OR Primary Adjustment is made i.r.o. "AY 2016-17 OR any earlier AY".

FA 2019-The provision of the section shall apply to the APA which have been signed on or after 1st April 2017, However, no refund of the tax already paid till date under the Pre amended section would be allowed. It means if any secondary adjustment made on the basis of advance

pricing agreement signed before 1st April 2017 and Taxes already paid that cannot be refunded to assessee.

Non repatriation of excess money by the associated enterprise deemed to be an advanced -- where as a result of primary adjustment to the transfer price increase in total income or reduction in the loss as the case may be of the assessee the excess money or part there of which is available with its associated enterprise if not repatriated into India within the time as may be prescribed shall be Deemed to an advance made by the assessee to such associated enterprise and the interest on such advance computed as the income of the assessee in prescribed manner.

FA 2019 Explanation- for the removal of doubt it is hereby clarified that the excess money or part their of may be repatriated from any of the associated enterprises of the assessee which is not a resident in India. It means, Such "excess money or part thereof" may be repatriated from any of the "Associated Enterprises of assessee which is not resident in India".

Section 92CE(1) When Secondary adjustment not required

Secondary adjustment not required if,— (i) the amount of primary adjustment made in any previous year does not exceed one crore rupees; and (ii) the primary adjustment is made in respect of an assessment year commencing on or before the 1st day of April, 2016

Section 92CE(2) Quantification of Secondary Adjustment

Where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed i.e 90 days, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest @20.9664%, i.e. 18% + 12% + 4% on such advance, shall be computed in such manner as may be prescribed.

<table>
<tr><td rowspan="2">Type of primary adjustment</td><td rowspan="2">Time limit for repatriation</td><td colspan="2">Applicable interest rate for delayed receipts</td></tr>
<tr><td>Transaction in INR</td><td>Transaction in Foreign currency</td></tr>
<tr><td>Adjustment made by the Indian Tax Authority and accepted by the taxpayer</td><td>On or before 90 days from the date of relevant order</td><td rowspan="3">One year marginal cost of fund lending rate of State Bank of India as of 1 April of the relevant FY plus 325 basis points</td><td rowspan="3">Six month London Interbank Offered rate as of 30 September of the relevant FY plus 300 basis points</td></tr>
<tr><td>Adjustment made by the Indian Tax Authority and accepted by the taxpayer</td><td rowspan="2">On or before 90 days from the due date of filing return of income (or modified return as may be applicable in case of an APA)</td></tr>
<tr><td>Suo-moto adjustment by the taxpayer</td></tr>
</table>

Adjustment pursuant to APA, Safe Harbour			
For the purpose of this section, "excess money" means the difference between the arm's length price determined in primary adjustment and the price at which the international transaction has actually been undertaken.			

Section 92CE(2A)/(2B)/(2C)/(2D) newly inserted FA 2019

If excess money or part there of not repatriated in specified time limit then interest shall be chargeable from

a. If primary adjustment made by assessing officer or appellate authority	b. if primary adjustment due to advance pricing agreement	
then interest shall be chargeable from the date of order of assessing officer or appellate authority.	if advance price agreement entered into on or before due date of Return under Section 139(1) of that previous year	If advance pricing agreement was entered into after due date of return of relevant previous year
	from due date under Section 139 (1)	from the end of the month in which APA was entered.

c. If primary adjustment due to mutual agreement procedure	d. If primary adjustment due to any other reason
from the date of giving effect by assessing officer of such mutual agreement procedure	then from the due date of return of income under Section 139 subsection 1

Section 92CE(2A) Inserted by Finance Act 2019 Additional Income Tax instead of secondary adjustment

In case of where the excess money or a part there of has not been repatriated in time, then the assessee will have the option to pay additional tax @ 18%+12%+4% on such excess money or part thereof in addition to existing requirement of calculation of interest till the date of payment of this additional tax .The tax so paid shall be final payment of tax and no credit shall be allowed in respect of amount of tax paid. The deduction in respect of amount on which such tax has been paid shall not be allowed under any other provision of this actIf the assessee pays the additional Income Tax he will not be required to make secondary adjustment or compute interest from the date of payment of such tax.

48. Section94B Limitation on interest deductible

Section94B Limitation on interest deductible

Why Prefer debt over equity as a measure to finance businesses

Debt and equity are the instruments through which a company is generally financed or capitalized. The manner in which a company is capitalized has a major impact on the amount of taxable profit as the tax laws of countries generally provide for a deduction in respect of interest paid or payable while arriving at the taxable profit. However, the dividend paid on equity contribution is not deductible. Therefore, the higher the level of debt in a company, and thus, the amount of interest it pays, the lower will be its taxable income. Due to this reason, debt is considered a more tax efficient method of finance than equity. Multinational groups are often able to structure their financing arrangements to maximize tax benefits.

Tax Rules to prevent shifting of profits through excessive interest payments

In order to address this issue, tax rules are in place in each country to fix a ceiling limit on the amount of interest deductible in computing a company's profit for tax purposes. Such rules are designed to counter cross-border shifting of profit through excessive interest payments, with the objective of protecting a country's tax base.

Relevant Action Plan of BEPS

Under the initiative of the G-20 countries, the Organization for Economic Co-operation and Development (OECD) in its Base Erosion and Profit Shifting (BEPS) project had taken up the issue of base erosion and profit shifting by way of excess interest deductions by the MNEs in Action Plan 4 and recommended certain measures in its final report. Accordingly, Section 94B has been inserted in the Income-tax Act, 1961 in line with BEPS Action Plan.

Section 94B(1) Excess Interest shall not be deductible

Notwithstanding anything contained in this Act, where an Indian company, or a permanent establishment of a foreign company in India, being the borrower, incurs any expenditure by way of interest or of similar nature exceeding one crore rupees which is deductible in computing income chargeable under the head "Profits and gains of business or profession" in respect of any debt issued by a non-resident, being an associated enterprise of such borrower, the interest shall not be deductible in computation of income under the said head to the extent that it arises from excess interest, as specified in sub-section (2) :

Section 94B(2) Determination of Excess Interest

For the purposes of sub-section (1), the excess interest shall mean (a) an amount of total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortization of the borrower in the previous year or (b) interest paid or payable to associated enterprises for that previous year, whichever is less.

Section 94B(3) Non- applicability of section 94B(1)

Nothing contained in sub-section (1) shall apply to an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance.

Section 94B(4) Carry forward of the excess interest

Where for any assessment year, the interest expenditure is not wholly deducted against income under the head "PGBP", so much of the interest expenditure as has not been so deducted, shall be carried forward to the following assessment year or assessment years, and it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of maximum allowable interest expenditure in accordance with sub-section (2):

Provided that no interest expenditure shall be carried forward under this sub-section for more than eight assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed

Section 94B(5) - Meaning of certain terms

"Debt" means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in the computation of income chargeable under the head "Profits and gains of business or profession";

Where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.

"Permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

49. NOTIFIED JURISDICTIONAL AREA.

Section94A Special Measure for NJA Transactions

Section 94A (1) The Central Government may, having regard to the lack of effective exchange of information with any country or territory outside India, specify by notification in the Official Gazette such country or territory as a notified jurisdictional area in relation to transactions entered into by any assessee

Section 94A (2) Notwithstanding anything to the contrary contained in this Act, if an assessee enters into a transaction where one of the parties to the transaction is a person located in a notified jurisdictional area, then—

(i) all the parties to the transaction shall be deemed to be associated enterprises within the meaning of section 92A	(ii) any transaction in the nature of purchase, sale or lease of tangible or intangible property or provision of service or lending or borrowing money or any other transaction having a bearing on the profits, income, losses or assets of the assessee including a mutual agreement or arrangement for allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided by or to the assessee shall be deemed to be an international transaction within the meaning of section 92B, and the provisions of sections 92, 92A, 92B, 92C [except the second proviso to sub-section (2)], 92CA, 92CB, 92D, 92E and 92F shall apply accordingly

Section 94A (3) : Notwithstanding anything to the contrary contained in this Act, no deduction,—

(a) in respect of any payment made to any financial institution located in a notified jurisdictional area shall be allowed under this Act, unless the assessee furnishes an authorisation in the prescribed form authorising the Board or any other income-tax authority acting on its behalf to seek relevant information from the said financial institution on behalf of such assessee; and	(b) in respect of any other expenditure or allowance (including depreciation) arising from the transaction with a person located in a notified jurisdictional area shall be allowed under any other provision of this Act, unless the assessee maintains such other documents and furnishes such information as may be prescribed, in this behalf.

Section 94A (4) Notwithstanding anything to the contrary contained in this Act, where, in any previous year, the assessee has received or credited any sum from any person located in a notified jurisdictional area and the assessee does not offer any explanation about the source of the said sum in the hands of such person or in the hands of the beneficial owner (if such person is not the beneficial owner of the said sum) or the explanation offered by the assessee, in the opinion of the Assessing Officer, is not satisfactory, then, such sum shall be deemed to be the income of the assessee for that previous year.

Section 94A (5) Notwithstanding anything contained in any other provisions of this Act, where any person located in a notified jurisdictional area is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVII-B, the tax shall be deducted at the highest of the following rates, namely:— (a) at the rate or rates in force; (b) at the rate specified in the relevant provisions of this Act; (c) at the rate of thirty per cent.

section 94A (6): In this section,— (i) “person located in a notified jurisdictional area” shall include,— (a) a person who is resident of the notified jurisdictional area; (b) a person, not being an individual, which is established in the notified jurisdictional area; or (c) a permanent establishment of a person not falling in sub-clause (a)or sub-clause (b), in the notified jurisdictional area; (ii) “permanent establishment” shall have the same meaning as defined in clause (iiia)of section 92F; (iii) “transaction” shall have the same meaning as defined in clause (v)of section 92F.

50. Conversion into Indian Subsidy

Section 115JG CONVERSION OF AN INDIAN BRANCH OF FOREIGN COMPANY INTO AN INDIAN SUBSIDIARY COMPANY

Where a foreign company is engaged in the business of banking in India through its branch situate in India and such branch is converted into a subsidiary company thereof, being an Indian company i.e Indian subsidiary company. If the conversion takes place in accordance with the scheme framed by RBI and subject to the conditions notified by the Central Government, the capital gain arising on such conversion shall not be chargeable to tax.

In the above case, the provisions of the Act relating to treatment of unabsorbed depreciation, set off or carry forward of losses, tax credit in respect of tax paid on deemed income relating to certain companies and the computation income in the case of the foreign company and the Indian subsidiary company, shall apply with such exceptions, modifications and adaptations as may be specified in that notification.

If there is a failure to comply with any condition specified in the RBI schemes or notification of the Government, normal provisions of the Act will apply without giving effect to the aforesaid exemption.

Where such default is committed after claiming capital gain exemption, the benefit of exemption will be taken back by re computing the income of the assessee under section 154 of the previous year in which conversion took place. The time-limit of 4 year under section 154(7) shall be determined from the end of the year in which the default is committed.

51. Fund Managers of offshore fund

Section 9A Certain activities not to constitute business connection in India

Section 9A(1) In the case of an "eligible investment fund", the fund management activity carried out through an "eligible fund manager" acting on behalf of such fund shall not constitute business connection in India of the said fund.

Section 9A(2) An "eligible fund manager" shall not be said to be resident in India merely because the "eligible fund manager" undertaking fund management activities on its behalf is located in India.

Section 9A(3) The eligible investment fund means a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit and fulfils the following conditions, namely:—

(a) The fund is not a person resident in India;

(b) the fund is a resident of a country or a specified territory with which an agreement referred to in subsection (1) of section 90 or sub-section (1) of section 90A has been entered into [or is established or incorporated or registered in a country or a specified territory notified by the Central Government in this behalf];– bracket inserted by Finance Act, 2016

(c) The aggregate participation or investment in the fund, directly or indirectly, by persons resident in India does not exceed five per cent of the corpus of the fund;

(d) The fund and its activities are subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident;

(e) The fund has a minimum of twenty-five members who are, directly or indirectly, not connected persons;

(f) Any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding ten per cent;

(g) The aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than fifty per cent;

(h) The fund shall not invest more than twenty per cent of its corpus in any entity;

(i) The fund shall not make any investment in its associate entity;

(j) The monthly average of the corpus of the fund shall not be less than one hundred crore rupees, at the end of period of 6 months from the last day of the month of its establishment or incorporation or at the end of such previous year whichever is later. FA 2019

Provided that if the fund has been established or incorporated in the previous year, the corpus of fund shall not be less than one hundred crore rupees at the end of such previous year; Provided further that nothing contained in this clause shall apply to a fund which has been wound up in the previous year

(k) The fund shall not carry on or control and manage, directly or indirectly, any business in India or from India; Words omitted by Finance Act, 2016

(l) the fund is neither engaged in any activity which constitutes a business connection in India nor has any person acting on its behalf whose activities constitute a business connection in India other than the activities undertaken by the eligible fund manager on its behalf;

(m)the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the arm's length price of the said activity.

Provided that the conditions specified in clauses (e), (f) and (g) shall not apply in case of an investment fund set up by the Government or the Central Bank of a foreign State or a sovereign fund, or such other fund as the Central Government may subject to conditions if any, by notification in the Official Gazette, specify in this behalf.

Section 9A(4) The eligible fund manager, in respect of an eligible investment fund, means any person who is engaged in the activity of fund management and fulfils the following conditions, namely:— (a) the person is not an employee of the eligible investment fund or a connected person of the fund; (b) the person is registered as a fund manager or an investment advisor in accordance with the specified regulations; (c) the person is acting in the ordinary course of his business as a fund manager; (d) the person along with his connected persons shall not be entitled, directly or indirectly, to more than twenty per cent of the profits accruing or arising to the eligible investment fund from the transactions carried out by the fund through the fund manager

Section 9A(5) read with Section 271FAB, 273B Every eligible investment fund shall, in respect of its activities in a financial year, furnish within 90 days from the end of the financial year, a statement in the prescribed form to be prescribed income-tax authority containing information relating to the fulfilment of the relevant conditions or any information or document which may be prescribed.

Section 271FAB In case of non-furnishing of the prescribed information or document or statement, a penalty of Rs.5 lakh shall be leviable on the fund.

Section 273BNo penalty shall be imposable for such failure if it is proved that there was reasonable cause for such failure

Section 9A(6), (7) and (8) Nothing contained in this section shall apply to exclude any income from the total income of the eligible investment fund, which would have been so included irrespective of whether the activity of the eligible fund manager constituted the business connection in India of such fund or not. Nothing contained in this section shall have any effect on the scope of total income or determination of total income in the case of the eligible fund manager. The provisions of this section

shall be applied in accordance with such guidelines and in such manner as the Board may prescribe in this behalf.

Section 9A(9) For the purposes of this section,—

(a) "associate" means an entity in which a director or a trustee or a partner or a member or a fund manager of the investment fund or a director or a trustee or a partner or a member of the fund manager of such fund, holds, either individually or collectively, share or interest, being more than fifteen per cent of its share capital or interest, as the case may be;

(b) "Connected person" shall have the meaning assigned to it in clause (4) of section 102 which reads as under:- "connected person" means any person who is connected directly or indirectly to another person and includes,— (a) any relative of the person, if such person is an individual; (b) any director of the company or any relative of such director, if the person is a company; (c) any partner or member of a firm or association of persons or body of individuals or any relative of such partner or member, if the person is a firm or association of persons or body of individuals; (d) any member of the Hindu undivided family or any relative of such member, if the person is a Hindu undivided family; (e) any individual who has a substantial interest in the business of the person or any relative of such individual; (f) a company, firm or an association of persons or a body of individuals, whether incorporated or not, or a Hindu undivided family having a substantial interest in the business of the person or any director, partner, or member of the company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member; (g) a company, firm or association of persons or body of individuals, whether incorporated or not, or a Hindu undivided family, whose director, partner, or member has a substantial interest in the business of the person, or family or any relative of such director, partner or member; (h) any other person who carries on a business, if— (i) the person being an individual, or any relative of such person, has a substantial interest in the business of that other person; or (ii) the person being a company, firm, association of persons, body of individuals, whether incorporated or not, or a Hindu undivided family, or any director, partner or member of such company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member, has a substantial interest in the business of that other person.

(c) "Corpus" means the total amount of funds raised for the purpose of investment by the eligible investment fund as on a particular date;

(d) "Entity" means any entity in which an eligible investment fund makes an investment;

(e) "Specified regulations" means the Securities and Exchange Board of India (Portfolio Managers) Regulations, 1993 or the Securities and Exchange Board of India (Investment Advisers) Regulations,

2013, or such other regulations made under the Securities and Exchange Board of India Act, 1992 which may be notified by the Central Government under this clause

52.Foreign Tax Credit

RULE 128 FOREIGN TAX CREDIT

(1)An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in this rule.

(2) Foreign Tax Credit ('FTC') shall be allowed if as per DTAA. foreign income is taxable in India as well as foreign country. If there is no DTAA, then FTC shall be allowed as per section 91. The foreign tax credit shall mean

(a) In respect of a country or specified territory outside India with which India has entered into an agreement for the relief or avoidance of double taxation of income in terms of section 90 or section 90A, the tax covered under the said agreement.	(b) In respect of any other country or specified territory outside India, the tax payable under the law in force in that country or specified territory in the nature of income-tax referred to in section 91.

(3) Such credit shall be available against the amount of tax, surcharge and cess payable under the Act but not in respect of any sum payable by way of interest, fee or penalty. Therefore, FTC shall not be allowed against any interest, fee or penalty.

(4) No FTC shall be available in respect of any amount of foreign tax which is disputed by the assessee.

(5) The credit of foreign tax shall be given effect to in the following manner:

(i) the credit shall be the lower of the tax payable under the Act on such income and the foreign tax paid on such income. If foreign income is Rs. 10,00,000 on which tax is deducted in foreign country is Rs.4,00,000 and tax on such income in India is Rs.3,00,000, then FTC shall be allowed for Rs.3,00,000 and not Rs.4,00,000.	(ii) the credit shall be determined by conversion of the currency of payment of foreign tax at the telegraphic transfer buying rate on the last day of the month immediately preceding the month in which such tax has been paid or deducted. (Therefore, if the tax was deducted in foreign country say on 10th Feb., 2020, then such tax shall be converted into Indian currency by applying TTBR of foreign currency on 31.1.2020)

(6) In a case where any tax is payable under the provisions of section 115JB or section 115JC, the credit of foreign tax shall be allowed against such tax in the same manner as is allowable against any tax payable under the provisions of the Act other than the provisions of the said sections (hereafter referred to as the "normal provisions").

(7) Where the amount of foreign tax credit available against the tax payable under the provisions of section 115JB or section 115JC exceeds the amount of tax credit available against the normal provisions,

then while computing the amount of credit under section 115JAA or section 115JD in respect of the taxes paid under section 115JB or section 115JC, as the case may be, such excess shall be ignored.

Example

Particular	MAT/AMT Provision	Basic Tax Provisions		
Tax liability	500	200	MAT/AMT Credit available	300
FTC admissible/allowable	260	200	Excess FTC	60
Balance tax payment	240		Actual MAT/AMT credit allowed	240

Section 155 (14A) Rectifications on Settlement of Dispute of Foreign Tax Credit

Where in the assessment for any previous year or in any intimation or deemed intimation under section 143(1) for any previous year, credit for income-tax paid in any country outside India or a specified territory outside India referred to in section 90, section 90A or section 91 has not been given on the ground that the payment of such tax was under dispute, and if subsequently such dispute is settled; and the assessee, within six months from the end of the month in which the dispute is settled, furnishes to the Assessing Officer evidence of settlement of dispute and evidence of payment of such tax along with an undertaking that no credit in respect of such amount has directly or indirectly been claimed or shall be claimed for any other assessment year, the Assessing Officer shall amend the order of assessment or any intimation or deemed intimation under section 143(1), as the case may be, and the provisions of section 154 shall, so far as may be, apply thereto.

Provided that the credit of tax which was under dispute shall be allowed for the year in which such income is offered to tax or assessed to tax in India.

53.GAAR i.e GENERAL ANTI-AVOIDANCE RULE

TAX AVOIDANCE vs. TAX EVASION/ TAX PLANNING

Tax Avoidance vs. Tax Evasion	Tax Avoidance vs. Tax Planning
'Tax evasion' is generally the result of illegality, suppression, misrepresentation and fraud. 'Tax avoidance1 is the result of actions taken by the assessee, none of which or no combination of which is illegal or forbidden by the law itself. The GAAR provisions do not deal with cases of tax evasion. Tax evasion is clearly distinct from tax avoidance and is already prohibited under the current provisions of the Income-tax Act.	'Tax Planning' is a situation where the taxpayer takes advantage of a fiscal incentive afforded to him by the tax legislation by actually complying to the conditions attached to that fiscal incentive. An example of tax planning is the setting up of a business undertaking by a taxpayer in a specified area such as a Special Economic Zone ('SEZ'). In such a case the taxpayer is taking advantage of a fiscal incentive offered to him by complying with conditions of the SEZ provisions in the Income-tax Act e.g., setting up the business only in the SEZ areas and export from the SEZ area. Tax planning, as distinct from tax avoidance, is allowed under the tax statute. The GAAR provisions also do not deal with case of tax planning.

Some aspect must be kept in mind w.r.t GAAR

GAAR provisions do not	Applicability	Exemption from GAAR provisions
i.deal with cases of Tax Evasion) since it is already prohibited under the current provisions of the Act.)/Tax Planning ii. apply with cases where there are specific provisions under the Act for anti-avoidance iii. cover Investments made/ acquired prior to 1st April 2017	i.GAAR provisions are applicable for Assessment Year 2018-19 and onwards ii.Provisions of Specific Anti-Avoidance Rules and GAAR can co-exist. iii.GAAR provisions apply where the aggregate tax benefit in the relevant Assessment Year arising to all the parties to the arrangement exceed Rs.3 crores.	i.Foreign Institutional Investor ('FII') who: Ø is an assessee under the Act; Ø has not taken benefit of a DTAA; and Ø has invested in listed or unlisted securities with prior permission. ii. Non-resident, in relation to investment made by way of offshore derivative instruments

Section 95: Applicability of GAAR

(1) Notwithstanding anything contained in the Act, an arrangement entered into by an assessee may be declared to be an impermissible avoidance arrangement and the consequence in relation to tax arising there from may be determined subject to the provisions of this Chapter. GAAR provisions are applicable to "impermissible avoidance arrangement". Consequences in relation to tax arising there from are to be determined in accordance with Chapter X-A. GAAR has an overriding effect on other provisions of the Income-tax Act. Provisions of GAAR would be applicable, irrespective of other provisions of the Act. The provisions of GAAR shall also override the DTAA provisions. However, in cases where the Income-tax Act specifically provides tax incentives to the taxpayers upon fulfilment of prescribed conditions, provisions of GAAR shall not be applicable. Further, where there are specific provisions which deals with ways of stopping tax avoidance, GAAR shall not apply, but specific provisions will apply

(2) This Chapter shall apply in respect of any assessment year beginning on or after the 1st day of April, 2018. GAAR provisions are applicable from Assessment Year 2018-19 and onwards.

Explanation.—For the removal of doubts, it is hereby declared that the provisions of this Chapter may be applied to any step in, or a part of, the arrangement as they are applicable to the arrangement. In order to plug any loophole, GAAR provisions will apply to any step in or a part of an arrangement as they are applicable to the whole arrangement.

Illustration 1: Facts: M/s India Chem Ltd. is a company incorporated in India. It sets up a unit in a SEZ for manufacturing of chemicals. It claims 100% deduction of profits earned from that unit for 5 years as per section 10AA of the Act. Is GAAR applicable in such a case?
Interpretation: There is an arrangement of setting up of a unit in SEZ which results in a tax benefit. However, as already discussed above, this is a case of tax planning where the tax payer is taking advantage of a fiscal incentive offered to him by complying with the conditions imposed in the legislation e.g., setting up the business unit in SEZ area. Hence, the Revenue would not invoke GAAR as regards this arrangement.

Illustration 2: Facts: In the above Illustration 1, let us presume M/s India Chem Ltd. has another unit for manufacturing chemicals in a non-SEZ area. It then diverts its production from such manufacturing unit to SEZ unit and shows the same as manufactured in the tax exempt SEZ unit, whereas only the process of packaging is done in the SEZ. Is GAAR applicable in such a case?
Interpretation: This is a case of misrepresentation of facts by showing production of non-SEZ unit as production of SEZ unit. Hence, this is an arrangement of tax evasion and not tax avoidance. Tax evasion, being unlawful, can be dealt with directly by establishing correct facts. GAAR provisions will not be invoked in such a case and A.O. will not allow any deduction under section 10AA.

Illustration 3: Facts: In the above Illustration 2, let us presume that M/s India Chem Ltd. does not show production of non-SEZ unit as a production of SEZ unit but transfers the product of non-SEZ unit to SEZ unit at a price lower than the fair market value and does only some insignificant activity in SEZ unit. Thus, it is able to show higher profits in SEZ unit than in non-SEZ unit, and consequently claims higher deduction in computation of income. Can GAAR be invoked to deny the tax benefit?
Interpretation: As there is no misrepresentation of facts or false submissions, it is not a case of tax evasion. The company has tried to take advantage of tax provisions by diverting profits from non-SEZ unit to SEZ unit. This is not the intention of the SEZ legislation. However, such tax avoidance is specifically dealt with through transfer pricing regulations that deny tax benefits. Hence, the Revenue would not invoke GAAR in such a case. The Revenue will invoke Transfer Pricing regulations.

Illustration 4: Facts: In the above Illustration 3, let us presume, that both units in SEZ area (say A) and non-SEZ area (say B) work independently. M/s India Chem Ltd. started taking new export orders from existing as well as new clients for unit A and gradually, the export from unit B declined. There has not been any shifting of equipment from unit B to unit A. The company offered lower profits from unit B in computation of income. Can GAAR be invoked on the ground that there has been shifting or reconstruction of business from unit B to unit A for the main purpose of obtaining tax benefit?
Interpretation: The issue of tax avoidance through shifting/reconstruction of existing business from one unit to another has been specifically dealt with in section 10AA of the Act. Hence, the Revenue would not invoke GAAR in such a case.

Illustration 5: Facts: The amalgamation of a loss making company with a profit making company results in losses of amalgamating company being set off and hence, a lower net profit and lower tax liability for the amalgamated company. Would the losses be disallowed under GAAR?
Interpretation: As regards setting off of losses, the provisions relating to amalgamation already contain specific anti-avoidance safeguards. Therefore, GAAR would not be invoked when SAAR is applicable.

Illustration 6: Facts: In the above Illustration 5, let us presume, the profit making company merges into a loss making company. This results in losses setting off profits and hence, a lower net profit and lower tax liability for both companies taken together. Can this be examined under GAAR?
Interpretation: In case of merger of profit making company with loss making company, there is no specific anti-avoidance safeguards. However, since such merger would be under the order of High Court, GAAR cannot be invoked.

Illustration 7: Facts: A choice is made by a company by acquiring an asset on lease over outright purchase. The company claims deduction for lease rentals in case of acquisition through lease rather than depreciation as in the case of purchase of the asset. Would the lease rent payment, being higher than the depreciation, be disallowed as expense under GAAR?
Interpretation: GAAR provisions would not apply in this case as the taxpayer merely makes a selection out of the options available to him.

Section 96 and Section 97 Impermissible Avoidance Arrangement & Arrangement to Lack Commercial Substance

An arrangement is an "impermissible avoidance arrangement" (IAA) if it satisfies the following primary condition and any one of tainted element presence test.

PRIMARY CONDITION- Main purpose is to obtain tax benefit

Note- An arrangement is presumed to have been entered into for main purpose of obtaining tax benefit even if Main purpose of whole arrangement is not to obtain a tax benefit; but Main purpose of step in, or a part of, the arrangement is to obtain tax benefit.

TAINTED ELEMENT PRESENCE TEST

Test 1: Arrangement creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length	The first tainted, element refers to non-arm's length dealings where an arrangement creates rights and obligations, which are not normally created between parties dealing at arm's length. As there are SAAR applicable to international transactions and certain specified domestic transactions, this tainted element is to be examined only in those transactions which are not covered by Transfer Pricing regulations and where the main purpose of the arrangement is to obtain tax benefit.
Test 2: Arrangement results, directly or indirectly, in the misuse or abuse, of the provisions of this Act	The second tainted element refers to an arrangement which results in misuse or abuse of the provisions of the tax law. It implies cases where the law is followed in letter or form but not in spirit or substance, or where the arrangement results in consequences which are not intended by the legislation, revealing an intent to misuse or abuse the law.
Test 3: This test covers the following situations:	
a) Arrangements that lack commercial substance; and---- As regards the first limb, the term "commercial substance" has not been defined and has to be understood in common parlance	As regards the second limb, there are other factors provided under section 97, which have the effect of deeming the arrangement to be lacking in commercial substance. The presence of any one of these following factors will be sufficient for the test to be satisfied:
c) When the arrangement involves the	d) When the arrangement does not have a significant

	location of an asset or of a transaction or of the place of residence of any party which is without any substantial commercial purpose other than obtaining a tax benefit for a party	effect upon the business risks or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained.	
Test 4: The arrangement is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purposes		This test deals with the manner in which the arrangement is entered into or carried out. For example, if an arrangement could be carried out in a simpler/ direct way and the parties adopt a different route, the same may fall under the ambit of this test.	

Analysis of Test 3

Test 3(a) Where the substance/ effect of the arrangement as a whole, is inconsistent with, or differs significantly from, the form of its individual steps or a part Clause (a) is the codification of substance v. form doctrine. It implies that where substance of an arrangement is different from what is intended to be shown by the form of the arrangement, then tax consequence of a particular arrangement should be assessed based on the "substance" of what took place. In other words, it reflects the inherent ability of the law to remove the corporate veil and look beyond form.

Test 3(b) When the arrangement involves/ includes any of these:
(i) Round Trip Financing

(ii) An accommodating party

(iii) Elements that have effect of offs

(iv)) A transaction which is conducted through one or more persons and disguises the value, location, source, ownership or control of funds which is the subject matter of such transaction.

Note- This factor is intended to cover situations where transactions are undertaken by persons through others, so as to disguise their identities, location, source, value etc.

Section 98 Consequences of Impermissible Avoidance Arrangement

If an arrangement is declared to be an impermissible avoidance arrangement, then, the consequences, in relation to tax, of the arrangement, including denial of tax benefit or a benefit under a tax treaty, shall be determined, in such manner as is deemed appropriate, in the circumstances of the case, including by way of but not limited to the following, namely:—

(a) disregarding, combining or re characterizing any step in, or a part or whole of, the impermissible avoidance arrangement;

(b) treating the impermissible avoidance arrangement as if it had not been entered into or carried out;

(c) Disregarding any accommodating party or treating any accommodating party and any other party as one and the same person;

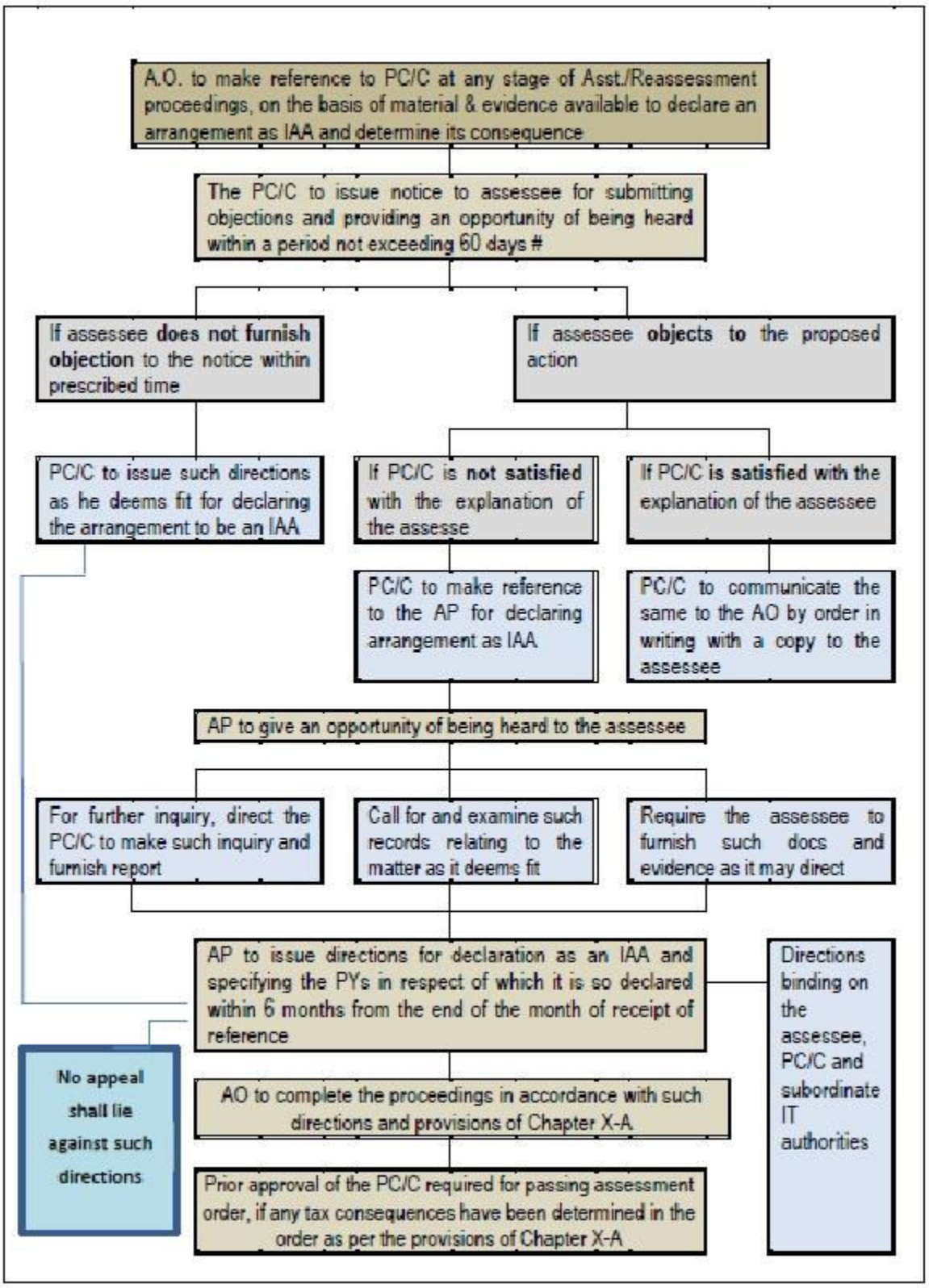
(d) Deeming persons who are connected persons in relation to each other to be one and the same person for the purposes of determining tax treatment of any amount;

(e) Reallocating amongst the parties to the arrangement— (i) any accrual, or receipt, of a capital nature or revenue nature; or (ii) any expenditure, deduction, relief or rebate;

(f) treating— (i) the place of residence of any party to the arrangement; or (ii) the situs of an asset or of a transaction, at a place other than the place of residence, location of the asset or location of the transaction as provided under the arrangement; or

(g) Considering or looking through any arrangement by disregarding any corporate structure.

Section 144BA Assessment Procedure for GAAR Invocation (NOTE- AP= Approving Panel)


A.O. to make reference to PC/C at any stage of Asst./Reassessment proceedings, on the basis of material & evidence available to declare an arrangement as IAA and determine its consequence
The PC/C to issue notice to assessee for submitting objections and providing an opportunity of being heard within a period not exceeding 60 days #
If assessee does not furnish objection to the notice within prescribed time
If assessee objects to the proposed action
PC/C to issue such directions as he deems fit for declaring the arrangement to be an IAA
If PC/C is not satisfied with the explanation of the assesse
If PC/C is satisfied with the explanation of the assessee
PC/C to make reference to the AP for declaring arrangement as IAA
PC/C to communicate the same to the AO by order in writing with a copy to the assessee
AP to give an opportunity of being heard to the assessee
For further inquiry, direct the PC/C to make such inquiry and furnish report
Call for and examine such records relating to the matter as it deems fit
Require the assessee to furnish such docs and evidence as it may direct
AP to issue directions for declaration as an IAA and specifying the PYs in respect of which it is so declared within 6 months from the end of the month of receipt of reference
Directions binding on the assessee, PC/C and subordinate IT authorities
No appeal shall lie against such directions
AO to complete the proceedings in accordance with such directions and provisions of Chapter X-A
Prior approval of the PC/C required for passing assessment order, if any tax consequences have been determined in the order as per the provisions of Chapter X-A

CLARIFICATIONS ON CERTAIN QUERIES ABOUT IMPLEMENTATION OF GAAR

Question	Response/Answer
Will GAAR be invoked if Specific Anti Avoidance Rule (SAAR) applies	It is internationally accepted that specific anti avoidance provisions may not address all situations of abuse, and there is need for general anti-abuse provisions in the domestic legislation. The provisions of GAAR and SAAR can co-exist and are applicable, as may be necessary, in the facts and circumstances of the case
Will GAAR be applied to deny treaty eligibility in a case where there is compliance with Limitation of Benefit (LOB) test of the treaty	Adoption of anti-abuse rules in the tax treaties may not be sufficient to address all tax avoidance strategies and the same are required to be tackled through domestic anti-avoidance rules. If a case of avoidance is sufficiently addressed by LOB in the tax treaty, there shall not be an occasion to invoke GAAR.
Will GAAR interplay with the right of the taxpayer to select or choose method of implementing a transaction	GAAR will not interplay with the right of the taxpayer to select or choose method of implementing a transaction.
Applicability of the provisions of GAAR where the jurisdiction of the FPI is finalized based on non-tax commercial considerations and such FPI has issued P-notes referencing Indian securities Will GAAR be invoked with a view to denying treaty eligibility to a Special Purpose Vehicle (SPV), either on the ground that it is located in a tax friendly jurisdiction or on the ground that it does not have its own premises or skilled professional on its own roll as employees	GAAR shall not be invoked merely on the ground that the entity is located in a tax efficient jurisdiction. If the jurisdiction of FPI is finalized based on non-tax commercial considerations and the main purpose of the arrangement is not to obtain tax benefit, GAAR will not apply. For GAAR application, the issue, as may be arising regarding the choice of entity, location etc., has to be resolved on the basis of the main purpose and other conditions provided under Section 96 of the Act.
Applicability of GAAR provisions to: i. any securities issued by way of bonus issuances so long as the original securities are acquired prior to 1 April, 2017; shares issued post 31 March, 2017, on conversion of Compulsorily Convertible Debentures, Compulsorily Convertible Preference Shares (CCPS), Foreign Currency Convertible Bonds (FCCBs), Global Depository Receipts (GDRs), acquired prior to 01 April, 2017; ii. shares which are issued consequent to split up or consolidation of such grandfathered shareholding	Grandfathering under Rule 1OU(1)(d) of the Rules will be available to investments made before 1 April 2017 in respect of instruments compulsorily convertible from one form to another, at terms finalized at the time of issue of such instruments. Shares brought into existence by way of split or consolidation of holdings, or by bonus issuances in respect of shares acquired prior to 1 April 2017 in the hands of the same investor would also be eligible for grandfathering under Rule 1OU(1)(d) of the Rules

Whether grandfathering would extend to all forms of investments including lease contracts (say, air craft leases) and loan arrangements, etc.	Grandfathering is available in respect of income from transfer of investments made before 1April 2017. As per Accounting Standards, 'investments ' are assets held by an enterprise for earning income by way of dividends, interest, rentals and for capital appreciation. Lease contracts and loan arrangements are, by themselves, not 'investments' and hence grandfathering is not available.
Will GAAR apply if arrangement held as permissible by Authority for Advance Ruling (AAR)	If arrangement is held permissible by AAR, GAAR will not apply. The AAR ruling is binding on the Principal Commissioner of Income-tax (PCIT)/ Commissioner of Income-tax (CIT) and the Income-tax authorities subordinate to them in respect of the applicant.
Will GAAR be invoked if arrangement is sanctioned by an authority such as the Court, National Company Law Tribunal or is in accordance with judicial precedents etc.	Where the Court has explicitly and adequately considered the tax implication while sanctioning an arrangement, GAAR will not apply to such arrangement.
Will a Fund claiming tax treaty benefits in one year and opting to be governed by the provisions of the Act in another year attract GAAR provisions?	In so far as the admissibility of claim under treaty or domestic law in different years is concerned, it is not a matter to be decided through GAAR provisions.
How will it be ensured that GAAR will be invoked in rare cases to deal with highly aggressive and artificially pre-ordained schemes and based on cogent evidence and not on the basis of interpretation difference	The proposal to declare an arrangement as an impermissible avoidance arrangement under GAAR will be vetted first by the Principal Commissioner/ Commissioner and at the second stage by an Approving Panel, headed by judge of a High Court. Adequate safeguards are in place to ensure that GAAR is invoked only in deserving cases
Can GAAR lead to assessment of notional income or disallowance of real expenditure	If the arrangement is covered under Section 96 of the Act, then the arrangement will be disregarded by application of GAAR and necessary consequences will follow
Whether a definite timeline may be provided such as 5 to 10 years of existence of the arrangement where GAAR provisions will not apply in terms of the provisions regard to section 97(4)3 of the Act.	Period of time for which an arrangement exists is only a relevant factor and not a sufficient factor under Section 97(4) of the Act to determine whether an arrangement lacks commercial substance.
. It may be ensured that in practice, the consequences of a transaction being treated as an 'impermissible avoidance arrangement' are determined in a uniform, fair and rational basis. It should be clarified that if a particular consequence is applied in the hands of one of the participants, there would be corresponding adjustment in the hands of another participant.	In the event of a particular consequence being applied in the hands of one of the participants as a result of GAAR, corresponding adjustment in the hands of another participant will not be made. GAAR is an anti-avoidance provision with deterrent consequences and corresponding tax adjustments across different taxpayers could militate against deterrence.

Tax benefit of INR 3 crores defined in Section 102(10) of the Act may be calculated in respect of each arrangement and each taxpayer and for each relevant assessment year separately. The tax impact of INR3 crores should be considered after taking into account impact to all the parties to the arrangement i.e. on a net basis and not on a gross basis (i.e. impact in the hands of one or few parties selectively)	The application of the tax laws is jurisdiction specific and hence what can be seen and examined is the 'Tax Benefit' enjoyed in Indian jurisdiction due to the 'arrangement or part of the arrangement'. Further, such benefit is assessment year specific. GAAR is with respect to an arrangement or part of the arrangement and therefore limit of INR3 crores cannot be read in respect of a single taxpayer only.
Will a contrary view be taken in subsequent years if arrangement held to be permissible in an earlier year.	If the PCIT/Approving Panel has held the arrangement to be permissible in one year and facts and circumstances remain the same, as per the principle of consistency, GAAR will not be invoked for that arrangement in a subsequent year.
No penalty proceedings should be initiated pursuant to additions made under GAAR at least for the initial 5 years.	Levy of penalty depends on facts and circumstances of the case and is not automatic. No blanket exemption for a period of five years from penalty provisions is available under Act. The taxpayer, may at his option, apply for benefit under Section 273A of the Act if he satisfies conditions prescribed therein.

Ch54 Taxation under Capital Gain

45(1) Charging Section

Any profits or gains arising from the transfer of a capital asset effected in the previous year, shall be chargeable to income-tax under the head 'Capital Gains' and shall be deemed to be the income of the previous year in which the transfer took place unless such capital gain is exempt under section 54, 54B, 54D, 54EC, 54EE, 54F, 54G, 54GA or 54GB.

The following are the essential conditions for taxing capital gains:

A. there must be a capital asset;
B. the capital asset must have been transferred;
C. there must be profits or gains on such transfer, which will be known as capital gain;
D. such capital gain should not be exempt under section 54, 54B, 54D, 54EC, 54EE,54F, 54G, 54GA or 54GB.

If the above conditions are satisfied, the capital gain shall arise and taxed in the previous year in which the asset is transferred, subject to certain exceptions..

Exception to charging section

Generally Capital Gain are taxable in the Previous year in which capital asset is transferred but Exceptions to this rule are as under

1. 45(1A) Capital gains arising from Insurance claim on damage/ destruction of capital assets
2 45(2) . Capital gains arising from Conversion of capital asset into stock-in-trade
3. 45(5) Capital gains arising from Compulsory acquisition of an asset
4. 45(5A) Capital gains arising from Joint Development Agreement

2(14) Definition of capital asset

Capital Asset" means –

(a) property of any kind held by an assessee, whether or not connected with his business or profession;
(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the SEBI Act, 1992.

but does not include—
(i) Stock in trade.
(ii) Personal Movable Effect*
(iii) Rural Agriculture land in India (See point 5 below)
(iv) Certain Gold deposit Bonds.
(v) Deposit Certificate under Gold Monetisation Scheme, 2015.
Note Interest on above (iv)/(v) is exempt u/s 10(15)

However, following are capital Assets i.e exclusion from Personal Effect
(a) jewellery;
(b) archaeological collections;
(c) drawings;
(d) paintings;
(e) sculptures; or
(f) any work of art.

Notes :-
1. Immovable Property in which assessee resides is a CAPITAL ASSET.

2. Jewellery used for personal purposes is excluded from personal effects and shall be regarded as capital asset.Silver utensils constitute personal affects and no capital gainswill arise will arise on the sale of silver utensils. Sale of gold bars, sovereigns, etc. used forpuja attracts capital gains since these are not personal effects AND Gold utensils are not personal effects and are capital assets.

3. Movable assets used for personal purposes e.g. television, fridge etc. are not capitalassets.

4. Business assets are capital assets but stock-in-trade, is not capital assets.

5. Rural agriculture land in India is not a capital asset,Rural agriculture land means Land which is not urban agriculture land
a. Rural Land means population > 10,000 People.
b. If Population is > 10,000 but upto 1,00,000 then land upto 2km attached to the urban land is also urban.
c. If Population is > 1,00,000 but upto 10,00,000 then land upto 6km attached to the urban land is also urban.
d. If Population is > 10,00,000 then land upto 2km attached to the urban land is also urban.

Note-Agricultural land situated outside India is always a capital asset

6. The assessing Officer (A.O) does not have the power to treat the securities held by aforeign Institutional Investor (FII) as stock in trade. Accordingly, section 111A, section 112 and section 112A shall apply to FII on sale of such securities.

Meaning of Short Term Capital Assets

Holding period is 12 months or less	Holding period is 24 months or less	Holding period is 36months or less
1.Share / Debentures of a company Listed on a recognized stock exchange in India / zero coupon bond 2.Units of equity oriented mutual funds/ units of UTI	1.Shares of Companies not listed on any stock exchange in India includes shares of a foreign company listed on stock exchange outside India 2.Immovable property, being land or building or both located in India or in foreign country 3.Units of debt oriented mutual funds	1.Units of Business Trust 2.Units of debt oriented mutual funds 3. All other Capital Assets

2(47) definition of transfer

"Transfer includes, -
(i) the sale, exchange or relinquishment of the asset; or
(ii) the extinguishment of any rights ; or
(iii) the compulsory acquisition under any law; or
(iv) in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him, such conversion or treatment; or
(v) any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act,1882;or
(vi) any transaction which has the effect of transferring or enabling enjoyment of any 'IP'.

48 method of computation of capital gains

Section 48: Computation Of Capital Gains (Other than Block Scheme)
CAPITAL GAINS=

Full Value of Consideration (Accrued or received)

(-) Expenses wholly and exclusivelyon transfer
(-) Cost of Acquisition
(-) Cost of Improvement

First proviso 48:capital gains in case of non residents

capital gains earned by non-resident assesse (including foreign Company) arising from transfer of shares/ debentures/ bonds in Indian company, acquired in foreign currency by way of purchase or reinvestment, then (i) Cost of Acquisition of the asset; (ii) Expenditure incurred wholly and exclusively in connection with such transfer; and (iii) Sales Consideration received or accruing as a result of transfer of capital asset Into the same foreign currency as was initially utilized in the purchase of such shares or debentures. The capital gains so computed in the foreign currency shall be reconverted into Indian currency .

ANALYSIS"-
1. Non-resident includes a foreign company.
2. For the applicability of the first proviso, the shares or debentures should be purchased in the foreign currency or it should be a case of re-investment.
3. Debenture includes bonds.
4. The shares, debentures and bonds of a Government company are also covered bythe first proviso. However, the bonds of Central Government, State Government and RBI are not covered.
5. The first proviso shall not apply to units of UTI and mutual funds. It also does not apply to units of a business trust.
6. Assessee should be a non-resident in the previous year in which shares or debentures are sold.
7. The First Proviso to section 48 is mandatory. A non-resident cannot opt forthe second proviso to section 48 if his case falls in the First Proviso to section 48.
8. Second Proviso to section 48 will not apply, i.e., no indexation where First Proviso applies.
10. This proviso is applicable for computing short term capital gains as well as long term capital gains.
11. For LTCG covered u/s 112A this proviso is not applicable. (Finance Act 2018)
12.Rul 115A:method of conversion-telegraphic transfer buying/selling rate

- (a) The cost of acquisition shall be converted at the average of the telegraphic transfer buying rate (TTBR) and the telegraphic transfer selling rate (TTSR) as on the date of acquisition of shares/debentures.
(b) The expenditure in connection with the transfer shall be converted at the

average of TTBR and TTSR as on the date of transfer of shares/debentures.
(c) The sales consideration shall be converted at the average of TTBR and TTSR as on the date of transfer of shares/debentures.
(d) The capital gains computed in the foreign currency shall be converted into Indian currency by applying TTBR as on the date of transfer of shares/debentures

Second proviso to 48 Indexation

While computing long term capital gains " Indexed Cost of Acquisition" shall be taken instead of "Cost of Acquisition" and " Indexed Cost of Any Improvement" shall be taken instead of" cost of any improvement" No indexation where First proviso applies.

Where, "Indexed Cost of acquisition" means:
Cost of Acquisition X CII for the year in which asset is transferred / CII for the 1st year in which asset was held by the assesse or for the year beginning on 1-4-2001, whichever is later,

And: "Indexed Cost of any Improvement" means:
Cost of Improvement X CII for the year in which asset is transferred / CII for the first year in which the Improvement to the asset took place.

Third proviso to 48: second proviso to48: not apply

Provided also that nothing contained in the first and second provisos shall apply to the capital gains arising from the transfer of a long-term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust referred to in section 112A

Fourth proviso to 48:exemption of foreign exchange fluctuation

Indexation benefit is not available :
1. For bonds/ debentures of any company except Sovereign Gold Bonds issued by RBI under Sovereign Gold Bond Scheme, 2015
2. For bonds issued by Government except Capital Indexed bonds
Note- Capital gains will arise where an Individual Redeems such Sovereign Gold Bonds before maturity, In all other case Capital gain arise and Indexation benefit shall be available.

Fifth proviso to 48: STT not to be allowed as deduction i.e Taxability of rupee denominated bonds (RDB)

Any gains arising to a non-resident on account of appreciation of rupee against a foreign currency at the time of redemption (Exemption is not available if RDB is transferred before maturity) of RDB of Indian company subscribed HELD (purchased the RDB from market or has originally subscribed) by him, shall be ignored for the purposes of computation of full value of consideration.

In the hands of Non-Residents and foreign company, the interest on RDBs shall be taxed @ 5% as per section 115A without deduction of any expenses or allowances.

Section 47 - There will be no capital gains on any transfer, made outside India, of a rupee denominated bond of an Indian company issued outside India, by a Non-Resident to another non-resident. Sec. 47(viiad), provide that any transfer outside India of a Rupee denominated bond of an Indian Co. issued o/s India by a NR to another NR, then it is exempt.
If the same bond is transferred by a NR on redemption to the Indian Co, then it is taxable. However, the gain arising due to currency exchange will not be subject to tax.

Section 47 - There will be no capital gains if Rupee Denominated Bonds (RDBs) are transferred by a Non-Resident on a recognized stock exchange located in any International Financial Services Centre (IFSC) and where consideration for such transaction is payable in foreign currency.

Transfer of following assets by a NR on a recognized stock exchange located in IFSC is exempt u/s 47, if consideration is paid or payable in foreign currency:
(1) Bonds or GDR'S referred to in Sec. 115AC
(2) Rupee denominated bonds
(3) Derivative
Earlier, IFSC came in MAT, AMT, no DDT u/s 115-O, no STT, earlier 10(38) was available, now 112A and 111A also available even if STT not paid.

Seventh proviso to 48
STT paid on sale of shares / units shall not be reduced from the sale price and the STT paid on purchase of shares / units shall not be added to the cost of acquisition of shares/ units held as capital assets.

Section 55 cost of Acquisition

COA-All Case Except Specified

Where the capital asset is acquired by the assesse or the previous owner before 1.4.2001	Where the capital asset is acquired by the assesse are the previous owner on or after 1.4.2001
Cost of acquisition to the assesse or the previous owner, or FMV as on 1.4.2001 at the	cost of acquisition to the assesse or the previous owner.

option of the assesse	

COA- Certain Self Generated Assets

If Acquired then purchase price shall be COA ,otherwise Nil.	B.C. Srinivasa Shetty (SC) (Landmark)
(a) Goodwill of business (not profession) (b) Trade mark or brand name associated with a business. (c) Tenancy Rights. (d) Stage carriage permits. (e) Loom hours. (f) Right to manufacture etc. (g) Right to carry on any business / Profession. (h) Patents. Note- option to take cost of acquisition as FMV as on 01-04-2001 is not available even if above asset was acquired before 01-04-2001.	Dept contention Capital Gains=Sale consideration (-) Cost of Acquisition i.e NIL Assessee's contention Capital Gains=Sale consideration (-) Cost of Acquisition (N.A) It was held by Supreme Court in this landmark judgement that whenever computation mechanism fails, then charging section cannot be effectuated. Therefore, no Capital Gain arise on self generated asset.

Share and Securities

Original Shares/securities	Right Shares/ securities	Renouncement of right to subscribe shares / securities	Bonus shares/ securities
COA Shall be Purchase price	COA Shall be Price actually paid under the right issue	COA Shall be Nil (who transfers his Right) Price paid to the person who renounced the right and amount paid to the company to acquire the right shares (Who taken right)	COA Shall be NIL
Period of Holding shall be From the date of allotment	Period of Holding shall be From the date of allotment	Period of Holding shall be From the date of offer i.e always ST (who transfers his Right) Period of Holding shall be From the date of allotment (	Period of Holding shall be From the date of allotment

		Who taken right)	

55: cost of improvement

All case except specified	Specified case
Where other capital asset is acquired by the assesse or the previous owner,then All capital expenditure incurred on improvement by the assesse and the previous owner on or after 1.4.2001. Cost of improvement incureed before 1.4.2001 is to be ignored in all cases. Expenditure deductible under other heads of income not to be included in Cost of improvement.	Cost of Improvement Shall be Nil- 1.Goodwill of Business 2.Right to manufacture, produce or process any article or thing 3.Right to carry on any business or profession

Income Declaration scheme,2016

As per Income declaration Scheme, 2016 (IDS) the assets which were acquired out of black money, i.e. not disclosed, can be declared under the Scheme. The FMV of the assets as on 1-4-2016 shall be deemed to be the undisclosed income and assesse shall pay 45% of FMV of such asset as tax, cess and penalty. Cost of acquisition of assets declared under the Income Declaration Scheme, 2016, shall be the FMV of such which has been taken into account for purposes of said scheme. However, Period of holding to be reckoned from The date on which such property is acquired if the date of acquisition is evidenced by a deed registered with any authority of a State Government in case of Immovable Property and 1 june, 2016 in other case.

111A: tax on short-term capital gains in certain cases and 112A Tax on LTCG in Certain Cases

111A: tax on short-term capital gains in certain cases	112A Tax on LTCG in Certain Cases FA 2018
all assesses including FIIs and non-residents	all assesses including FIIs and non-residents
STCG on CABeing an equity share in a company or a unit of an " Equity Oriented Fund" or units of business trust; and The transaction of sale is chargeable to STT	STCG on CABeing An equity shares in a company; or A unit of an equity-oriented fund; or A unit of a business trust And STT is chargeable in case of an equity share in a company, STT has been paid on both

	acquisition as well as transfer of the share (Note 1) and In case of a unit of an equity-oriented fund or a unit of a business trust, STT has been paid on transfer of such unit. Section 112A applies to all listed equity shares whether regularly traded or not
Tax payable on such STCG shall be @ 15%. STCG other than referred in section 111A shall be taxable at the normal rates applicable to the assesse.	Tax payable on such STCG shall be @ 10% in excess of Rs 1,00,000. Note- 2 for COA LTCG other than referred in section 112A shall be taxable at the normal rates applicable to the assesse.
For claiming benefits of section 111A, assesse (except FIIs) have to establish that they were holding the equity shares / unit of Equity Oriented Fund/ unit of a business trust as capital asset and not as stock-in-trade.	For claiming benefits of section 111A, assesse (except FIIs) have to establish that they were holding the equity shares / unit of Equity Oriented Fund/ unit of a business trust as capital asset and not as stock-in-trade.
Securities such as preference shares, debentures, deep discount bonds, units of debt Mutual Fund etc. are not covered under the purview of section 111A.	Section 112A is not available for preference shares, debentures, deep discount bonds, units of debt Mutual Fund, etc . Section 112A shall not be available to capital gains arising pursuant to buyback, sale of rights entitlement, delisted shares, negotiated deals, etc.
Benefit of slab rate is available on such short term capital gains in case of resident Individual or HUF. i.e., Not available to non-resident.	

No Chapter VI-A deduction is allowed on STCG under section 111A.	Section 112A over-rides section 112. If section 112A is not application (because of non-compliance with the conditions of section 112A), then section 112 shall apply. The benefit of first proviso and second proviso 48 shall not apply while computing LTCG under section 112A.

Note 1-Some exceptions provided for STT acquisition of equity shares

(i) Were acquired before 01.10.2004 in any manner. Condition of payment of STT onacquisition is therefore not relevant for shares acquired before 1-10-2004.
(ii) Were acquired on or after. 01-10-2004 and STT was paid on the acquisition of these shares. However Central Government has notified certain acquisition made on or after 01-10-2004 which will be eligible for benefit under section 112A even if STT is not paid on theacquisition.

Note- 2 Explanation to section 55(2)(ac)
The cost of acquisition shall be higher of (a)and (b) below:
(a) Cost of acquisition of the assets; and
(b) The lower of (i) The fair market value (FMV)of the asset: and (ii) Sales consideration.

In case asset has been acquired from a previous owner, then cost of acquisition in (a) above shall mean the cost to previous owner, If previous owner acquired the asset before 1-4-2001, then cost to previous owner or FMV as on 1-4-2001, whichever is higher.

STT applies to the following:
(i) Sale of Equity on a recognized stock exchange.
(ii) Sale of unit of an equity oriented fund or unit of a business trust on a recognized stock exchange.
(iii) Sale of unlisted equity shares by any holder of such shares under an offer sharesare subsequently listed on a recognized stock exchange.
(iv) Sale of unlisted units of a business trust by the any holder of such units which were acquitted in consideration of a transfer referred to in section 47 (xvii) under an offer for sale to he public included in an initial offer and where such units are subsequently listed on a recognized stock exchange.
(v) Sale of unit of an equity oriented fund to the Mutual Fund
Note- No STT has to be paid in respect of a transaction undertaken on recognized stock exchange located in International Financial Services Centre (IFSC) where the consideration for

such transaction is payable in foreign currency. On such sale, benefit of section 111A /112Ashall be available.

Note-where the STT could not have been paid like acquisition of share in IPO, FPO, bonus or right issue by a listed company, acquisition by non-resident in accordance with FDI policy, etc.

112: tax on long term capital gains AND Proviso to 112: tax on LTCG from listed securities or ZCB

a) Long-term capital gains are subject to tax at 20%;

b) Long-term capital gains arising from transfer of listed securities, units or a zero coupon [other than as referred to in point d) below] bonds shall be taxable at lower of following:

i. 20% after taking benefit of indexation; or

ii. 10% without taking benefit of indexation.

c) Long-term capital gains arising to a non-residents or foreign company from transfer of unlisted securities shall be taxed at without giving benefit for indexation;

d) Long-term capital gains arising from transfer of listed equity share, or a unit of an equity oriented fund or a unit of a business trust as referred to in Section 112Ashall be chargeable to tax at the rate of 10% in excess of Rs. 1 Lakh

Capital gains exempt under 10

Section 10(38) : Long-term capital gain arising on transfer of equity shares or units of equity oriented mutual fund (*) or a unit of a business trust other than a unit allotted by the trust in exchange of shares of a special purpose vehicle as referred to in section 47(xvii), will be exempt from tax, if the following conditions are satisfied:

a. Transfer should take place on or after October 1, 2004.
b.The asset transferred should be equity shares of a company or units of an equity oriented mutual fund or a unit of a business trust other than a unit allotted by the trust in exchange of shares of a special purpose vehicle as referred to in section 47.
c.The transaction should be liable to securities transaction tax (STT) at the time of transfer.

Section 10(33) : Long-term or short-term capital gain arising on transfer of units of Unit Scheme, 1964 .

Section 10(37) : An individual or Hindu Undivided Family (HUF) can claim exemption in respect of capital gain arising on transfer of agricultural land situated in an urban area by way of

compulsory acquisition. This exemption is available if the land was used by the taxpayer (or by his parents in the case of an individual) for agricultural purpose for a period of 2 years immediately preceding the date of its transfer.

Section 10(37A) : An individual or Hindu Undivided Family (HUF) can claim exemption in respect of capital gain arising on transfer of land or building or both under Land Pooling Scheme under the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015. This exemption is available if individual or HUF was owner of such land as on 02-06-2014.

Clarifications by CBDT on issue whether shares are capital assets or stock-in Trade

Circular 6/2016

A.Listed shares and securities

(a) Where the assesse itself, irrespective of the period of holding the, opts to treat them as stock- in- trade, income arising from transfer of such shares / securities would be treated as its business income;
(b) If held for more than 12 months, if the assesse desires to treat the income arising from the transfer as Capital Gains the same shall not be put to dispute by the A.O. However, this stand, once taken by the assesse in a particular AY, shall remain applicable in subsequent AYs alsoand the taxpayers shall not be allowed to adopt a different stand in subsequent years;
(c) If held for 12 months or less and income is shown as short term capital gains, the natureof transaction (i.e. whether the same is in the nature of capital gain or business income)shall continue to be decided keeping in view the Circular 4/2007 issued by the CBDT-
(i) The treatment which assesse has given in books of account, i.e., whether shown as investment or as stock in trade.
(ii) The existence of power to purchase and sell shares in Memorandum of Association isnot decisive factor that it is stock in trade.
(iii) Quantum of purchase and sales,
(iv) Ratio between purchase and sale.
(v) Holding period.
(vi) If objective is to earn dividend, then it is a capital asset.
(vii) Method of valuation.
(viii) It is possible to have one portfolio as investment and other portfolio as stock in trade.
(ix) Whether such shares have been purchased out of own funds or from loans taken.

B. Unlisted shares and securities- CBDT Clarification

Income arising from transfer of unlisted shares would be considered under the head Capital Gain, irrespective of period of holding, with a view to avoid disputes/ litigation and to maintain uniform approach

50C: special provision for full value of consideration in certain cases 155(15): rectification

Where on transfer of land or building or both, Sales consideration received or accruing is less than Value assessed or assessable by the stamp valuation authority for payment of stamp duty, then the value so assessed or assessable shall deemed to be the sales consideration.

Provided, where the value adopted or assessed or assessable by the stamp valuation authority does not exceed 105 per cent of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration. FA 2018

Provided, Where assesse claims that value so assessed or assessable exceeds FMV of property; and The value so assessed or assessable has not been disputed in any appeal or revision before any authority / Court, A.O. may refer valuation of the capital asset to Valuation Officer . Where value ascertained by Valuation Officer is lower than stamp duty value then such Value ascertained by Valuation officer shall be taken as sales price , Where it Exceeds the stamp duty value then Stamp duty value shall only be taken as sales price.

Where Capital gains are computed as per the provision of section 50C By taking the value assessed or assessable by stamp valuation authority And subsequently such value is reduced in any appeal or revision, The A.O. shall amend the order of assessment and re-compute the capital gain by taking reduced value as per Section 154 and Period of 4 years for Section 154 shall be reckoned from the end of the previous year in which the order reducing the value was passed in that appeal or revision.

Where the date of agreement fixing the amount of consideration for the transfer of immovable property held as capital asset and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for computing the full value of consideration. Subject to condition that upto date of agreement ,Full or part amount of consideration has been paid by way of an account payee cheque or account payee bank draft or use of an electronic clearing system through a bank account or through such other electronic mode as may be prescribed (FA 2019)

50CA Full value of consideration in case of Unquoted share

In case of all assesses including non-resident assesses. Where consideration for transfer of quoted share (equity or preference shares if held as CA)of a company Is less than The FMV determined in accordance with the prescribed manner (i.e. as per Rule 11UAA), then such FMV shall be deemed to be the sales consideration.

Provided that the provisions of this section shall not apply to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed.(FA 2019)

Note-this section does not cover convertible debentures.
Note –For "Quoted shares" following conditions should be cumulatively fulfilled:
a. Share is quoted on any recognized stock exchange;
b.Share is quoted with regularity form time to time (quoted shares not traded with regularity will be treated as unquoted shares.)
c.Quotation of the share is based on current transaction;
d.The current transaction is made in the ordinary course of business.

Note : provisions of section 50CA are not applicable for cases covered under section 47. Therefore section 50CA is not applicable where unquoted share ate gifted or transferred by holding company to wholly owned subsidiary company.

Note : In case of sale consideration being less than FMV, the transferor will be taxed under section 50CA on the ground that he has not declared true consideration. On the other hand, the transferee will be taxed under section 56 (2)(x), on ground that he has understated the purchase consideration. Hence there is a double taxation.

<u>50D FMV= SC in certain cases</u>

Where the consideration received or accruing as a result of the transfer of a capital asset by an assessed is not ascertainable or cannot be determined, then, for the purpose of computing income chargeable to tax as capital gains, the FMV of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing as a result of such transfer.

<u>55A: reference to valuation officer</u>

With a view to ascertain the FMV of a capital asset for the purposes of the chapter of capital gains i.e., sections 45(1A), 45(2), 45(4), 46(2), 50D, 55 and on exchange of assets,the A.O. may refer the
valuation of capital asset to a Valuation Officer in following case-

where the value of the asset as claimed by the assesse is in accordance with the estimate made by a registered valuer, if the A.O. is of opinion that the value so claimed is at variance with its FMV	If the A.O. is of opinion, That the FMV of the asset exceeds the value of the asset as claimed by the assessed by more than 15% of the value of the asset as so claimed or by more than Rs. 25,000	If the A.O. is of opinion , That having regard to the nature of the asset and other relevant circumstances, it is necessary so to do so.

	whichever is less	

45(1A): capital gains on insurance claims for damage or destruction of capital assets

Where insurance claim is received in respect of capital asset damaged or destroyed, as a result of Flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature, or Riot or civil disturbance, or Accidental fire or explosion; or Action by an enemy or action taken in combating an enemy (whether with or without a declaration of war) ,then Any money or FMV or other assets received from insurance company shall be deemed to be sales consideration for computing capital gains. It is to be Capital Gain shall be taxable in the year of receipt of insurance claim.

If no claim is received on destruction of capital asset, no capital gain shall arise and such cost of the asset destroyed shall be a capital loss i.e. dead loss which has no tax treatment.

45(2): capital gains on conversion of capital assets into stock –in-trade Conversion of stock in-trade into capital assets

Capital Gains shall be arise where an assessed converts or treats the capital asset into stock-in-trade of his business. Capital Gain shall be taxable in the year in which such stock-in-trade is sold or otherwise transferred. If Full stock-in-trade is not sold part is sold, then only such proportion capital gains shall be taxable in the year in which such part of SIT is sold. The amount recorded in the books of account of the business as the value of stock-in-trade is not relevant. FMV on date of conversion is relevant

Note- Conversion of stock-in-trade into capital asset FA 2018

Section 28 (via)- The FMV of inventory as on the date on which it is converted into, or treated as, a capital asset determined in the prescribed manner shall be chargeable to tax under the head "PGBP".	Explanation 1A to section 43(1)- Where a capital asset referred to in section 28(via) is used for the purpose of business or profession, the actual cost of such asset to the assesse shall be the FMV which has been taken into account for the	Section 49(9): COA- Where the capital gain arises from the transfer of a capital asset referred to in section 28(via), the cost of acquisition of such asset shall be deemed to be the fair market value which has been taken into account for the	Section 2(42A)(ba): Period of Holding- In the case of a capital asset referred to in section 28(via), the period shall be reckoned from the date of its conversion or treatment

	purposes of the said clause.	purposes of the said clause.	

Note- RULE 11UAB: Determination of fair market value for inventory for the purposes of section 28(via)

Immovable property, being land or building or both, shall be the stamp duty value in respect of such immovable property on the date on which the inventory is converted into, or treated, as a capital asset	Jewellery, archaeological collections, drawings, paintings, sculptures, any work of art, shares or securities, shall be the value determined in the manner provided in rule 11UA on the date on which the inventory is converted into, or treated as a capital asset;	Other Property- the price that such property would ordinarily fetch on sale in the open market on the date on which the inventory is converted into, or treated, as a capital asset

45(2A): transfer of securities by depositories read with Board's circular

Capital gains arising from transfer made by the depository (being registered owner of securities)
Shall deemed to be the income of the beneficial owner Of the previous year in which transfer took place; and The cost of acquisition and the period of holding of any securities Shall be determined on the basis of the first-in-first-out method (FIFO) . As per relevant Board's Circular FIFO method will be applied only in respect of the dematerialized holdings because in case of sale of dematerialized securities, the securities held in physical form cannot be construed to have been sold as they continue to remain in possession of the investor and are identified separately. In the Depository system, the investor can open and hold multiple accounts. In such as case, where an investor has more than one security account, FIFO method will be applied account wise. If in an existing account of dematerialized stock, old physical stock is dematerialized and entered at a later date, under the FIFO method, the basis for determining the movement out of the account is the date of entry into account.

45(3): capital gains on transfer of a capital asset by a partner/ member to firm/AOP/BOI

Where Partner /Member, Transfers Capital asset to Firm/ AOP/BOI as the case may be, then it shall be treated as Transfers Capital asset and Amount recorded in book is sales consideration. If partner transfers the assets referred in section 56(2)(x) at less than FMV then section 56(2)(x) will apply in the hands of firm /AOP/BOI and difference between the FMV and the transaction

value in case of receipt of capital asset (including share, immovable property, etc) to be income in the hands of the recipient.

If immovable property is transferred by partner/ member to firm / AOP /BOI, then section 50C shall apply and if stamp duty value is more than the amount recorded in books of account, the stamp duty value shall be taken to be sales price. Similarly, If unlisted shares are transferred by partner/ member to firm / AOP/BOI, then section 50CA shall apply and if the FMV is more than the amount recorded in books of account, the FMV shall be taken to be sales price.

45(4): capital gains on transfer of a capital asset by way of distribution on dissolution of a firm

APO/BOI or otherwise If Firm /AOP /BOI Distributes capital asset on Dissolution of firm or otherwise i.e Retirements etc then it shall be treated as Transfer and FMV of capital asset on date of distribution is treated as sales consideration. Capital gains shall be taxable as the income of the firm in the previous year in which such distribution takes place.
Note- As per ICDS inventory on the date of dissolution shall be valued at the net realizable value.
Note- Subject to section 56(2)(x) ,Excess amount received by the assesse on retirement form the firm is not assessable to capital gains.

45(5): capital gains on transfer by way of compulsory acquisition of an asset (155: rectification)

Transfer includes Compulsory acquisition under any law or transfer where consideration is determined or approved by the CG or RBI. Capital gains arising from such transfer of the capital asset shall be taxable in following manner –

Original Compensation	Enhanced Compensation
Full or part compensation shall be Taxable in the year in which it is first received by the assesse. Period of holding shall be taken upto the date when asset was compulsorily acquired.	Enhanced Compensation shall be Taxable in the year in which it is received by the assesse.Nature of capital gain shall be same as the nature of capital gain with reference to the original compensation. Cost of acquisition shall be taken to the NIL. Note- legal expenses incurred to obtain the enhanced compensation are deductible from enhanced compensation Note- If any enhanced compensation is received pursuant to an interim order of Court, Tribunal or other authority, then such year of receipt but shall be taxable in the previous year in which the final order is

	passed by the Court, Tribunal or other authority . Note- If Compensation Reduced by any Court or Authority, then A.O will pass rectification order accordingly.

47: certain transactions not regarded as transfer

47(i)	Distribution of capital asset on total or partial partition of HUF
47(iii)	Transfer of capital asset under a gift or will or an irrevocable trust
47(iv)	Transfer of capital asset by a company to its wholly owned subsidiary company
47(v)	Transfer of a capital asset by a wholly owned subsidiary company to its holding company Note for above clauses 1. Section 47A :- Withdrawal of Exemption in certain cases Where at any time before expiry of 8 years from date of transfer referred in clause(iv) or (v) of section 47 [i.e. H to S (or) S to H] (1) Such Capital Asset is converted by transfer into stock in-trade OR (2) Holding Co. ceases to hold the whole of share capital of sub Co. 2. SECTION 49(1) :- COST TO PREVIOUS OWNER Where Capital Asset became property of Assessee by above means, the COA shall be deemed to be the cost for which the previous owner acquired it, as increased by COI incurred by prev. owner and Assessee. Option to take FMV as on 01.04.2001 is available 3. Explanation to Sec 2(42A)- For determining the nature of capital Asset, the period for which the Asset was held by previous owner should also be clubbed. 4. Where the previous owner also acquired the property by way of gift etc, then COA of the Asset shall be the cost to last previous owner who acquired it by a mode other than gift etc. 5.Manjula J. Shah that by way of “deemed holding period fiction” created by the statue the assessee is deemed to have the capital Asset from the year the

	Asset was held by previous owner and accordingly the asset is the long term capital asset in the hands of the Assessee. Therefore for determining the indexed COA u/s 48 the assessee must be treated to have held the asset from the year as said was first held by previous owner and accordingly cost inflation index for the year the asset was first held by the previous owner would be considered for determining indexed cost of Acquisition.
47(vi)	Transfer of capital assets in a scheme of amalgamation
47(via)	Transfer of shares in an Indian company held by a foreign company to another foreign company under a scheme of amalgamation of the two foreign companies
47(viab)	Transfer of share of a foreign company (which derives, directly or indirectly, its value substantially from the share or shares of an Indian company) held by a foreign company to another foreign company under a scheme of amalgamation (subject to conditions)
47(viaa)	Transfer of capital assets in a scheme of amalgamation of a banking company with a banking institution
47(vib)	Transfer of capital assets by the demerged company to the resulting company in a demerger
47(vic)	Transfer of shares held in an Indian company by a demerged foreign company to the resulting foreign company
47(vica)	Any transfer of a capital asset by the predecessor co-operative bank to the successor co-operative bank in a business reorganization.
47(vicb)	Any transfer of capital asset (being shares) held by a shareholder in the predecessor co-operative bank if the transfer is made in consideration of the allotment to him of any shares in the successor co-operative bank in a scheme of business reorganization
47(vicc)	Transfer of share of a foreign company (which derives, directly or indirectly, its value substantially from the share or shares of an Indian company) held by a demerged foreign company to resulting foreign company in case of demerger (subject to conditions)
47(vid)	Transfer or issue of shares by the resulting company to the shareholders of the demerged company in a scheme of demerger
47(vii)	Allotment of shares in amalgamated company in lieu of shares held in amalgamating company

47(viia)	Transfer of capital assets (being foreign currency convertible bonds or GDR) by a non-resident to another non-resident
47(viiaa)	Any transfer made outside India, of a capital asset (being rupee denominated bond of an Indian company issued outside India) by a non-resident to another non-resident
47(viiab)	FA 2018-Any transfer of following capital assets by a non-resident on a recognized stock exchange located in any International Financial Services Centre: a) Bond or GDR b) Rupee Denominated Bond of an Indian Co. c) Derivative d) Such other Securities as may be prescribed.(FA 2019)
47(viib)	Transfer of capital assets (being a Government security carrying periodic payment of interest) outside India through an intermediary dealing in settlement of securities by a non-resident to another non- resident
47(viic)	Redemption of capital asset being sovereign gold bond issued by RBI under the Sovereign Gold Bond Scheme, 2015
47(ix)	Transfer of a capital asset (being work of art, manuscript, painting, etc.) to Government, University, National museum, etc.
47(x)	Transfer by way of conversion of bonds or debentures into shares
47(xa)	Transfer by way of conversion of bonds [as referred to in section 115AC(1)(a)] into shares or debentures of any company
47(xb)	Any transfer by way of conversion of preference shares into equity shares
47(xi)	Transfer by way of exchange of a capital asset being membership of a recognized stock exchange for shares of a company
47(xii)	Transfer of land by a sick industrial company which is managed by its workers' co-operative
47(xiii)	Transfer of a capital asset by a firm to a company in the case of conversion of firm into company
47(xiiia)	Transfer of a capital asset being a membership right held by a member of a recognized stock exchange in India
47(xiiib)	Transfer of a capital asset by a private company or unlisted public company to an LLP, or any transfer of shares held in the company by a shareholder, in the case of conversion of company into LLP

47(xiv)	Transfer of a capital asset to a company in the case of conversion of proprietary concern into a company
47(xv)	Transfer involved in a scheme of lending of securities
47(xvi)	Transfer of a capital asset in a transaction of reverse mortgage made under a scheme notified by the Government
47(xvii)	Transfer of a capital asset (being share of a special purpose vehicle) to a business trust in exchange of units allotted by that trust to the transferor
47(xviii)	Transfer of units of a mutual fund pursuant to consolidation of two or more schemes of equity oriented mutual fund or of two or more schemes of a mutual fund other than equity oriented mutual fund
47(xix)	Transfer of units of a mutual fund from one plan to another pursuant to consolidation of plans within scheme of mutual funds.

Conversion of company into limited liability partnership (LLP)

51: Advance money forfeited Default by seller on or after 1 April

2014 SLUMP SALE Definition

50B: special provision for computation of capital gains incase slump sale 43(6):wdv of block of assets

Conversion of global depository receipts into shares of Indian company

54 Individual/HUF- LTCG on sale of residential house and land appurtenant thereto invested in

purchase/construction of another residential house

Assessee	Individual / HUF
Type of asset transferred	Residential House Property
Type of transfer	LTCG

New asset purchased	One Residential House or two residential houses in India i.e If the capital gains do NOT exceed 2 crores, the assessee MAY, as an OPTION, claim exemption u/s 54 i.r.o. expense incurred on purchase/construction of 2 Residential Houses IN India. Also, where assessee exercises this OPTION, he cannot exercise it again in the "same or any other AY"(i.e. Once in a lifetime benefit)- See Note
Time Limit for investment in new asset	Purchase – Within 1 year before or 2 years after transferConstruction – Within 3 years from transfer
Exemption Amount	Long-Term Capital GainORCost of new asset whichever lesser
CGAS* available	Yes – deposit by return filing due date
Additional Conditions	1. If new asset is sold within 3 years, amount earlier exempted under this section will be reduced from its COA to calculate capital gains thereon 2. If the amount in CGAS is not utilized within the prescribed time limit, such unutilized amount will be taxable as capital gains

Provided that where the amount of the capital gain does not exceed two crore rupees, the assessee may, at his option, purchase or construct two residential houses in India, and where such option has been exercised,—

(a) the provisions of this sub-section shall have effect as if for the words "one residential house in India", the words "two residential houses in India" had been substituted;

(b) any reference in this sub-section and sub-section (2) to "new asset" shall be construed as a reference to the two residential houses in India:

Provided further that where during any assessment year, the assessee has exercised the option referred to in the first proviso, he shall not be subsequently entitled to exercise the option for the same or any other assessment year.

54B Individual/HUF-LTCG on transfer of land used for agricultural purposes, by an individual or his parents or a HUF, invested in other land for agricultural purposes

Assessee	Individual / HUF
Type of asset transferred	Land used for agricultural purposes by the individual / his parent / HUF as the case may be for 2 years prior to transfer
Type of transfer	LTCG
New asset purchased	Agricultural land
Time Limit for investment in new asset	Within 2 years from the date of transfer
Exemption Amount	Long-Term Capital GainORCost of new asset (land)whichever lesser
CGAS* available	Yes – deposit by return filing due date
Additional Conditions	1. If new asset is sold within 3 years, amount earlier exempted under this section will be reduced from its COA to calculate capital gains thereon 2. If the amount in CGAS is not utilized within the prescribed time limit, such unutilized amount will be taxable as capital gains

54D compulsory acquisition of land or building forming part of an industrial undertaking invested in purchase/construction of other land/building for shifting/re-establishing said undertaking or setting up new industrial undertaking

Assessee	Any assessee
Type of asset transferred	Land or building forming part of an industrial undertaking used for the same in the past 2 years prior to transfer
Type of transfer	LTCG

New asset purchased	Land or building for shifting or re-establishing the industrial undertaking
Time Limit for investment in new asset	Within 3 years from the date of transfer
Exemption Amount	Long Term Capital GainORCost of new asset (land/building)whichever lesser
CGAS* available	Yes – deposit by return filing due date
Additional Conditions	1. If new asset is sold within 3 years, amount earlier exempted under this section will be reduced from its COA to calculate capital gains thereon 2. If the amount in CGAS is not utilized within the prescribed time limit, such unutilized amount will be taxable as capital gains

54EA-Net consideration on transfer of LTCA invested in specified bonds, debentures, shares of a public comp-any or units of notified mutual funds

Assessee	Any assessee
Type of asset transferred	Long-term capital asset
Type of transfer	LTCG
New asset purchased	Specified securities – includes government securities, savings certificates, units of UTI, specified debentures, etc.
Time Limit for investment in new asset	Within 6 months from the date of transfer

Exemption Amount	Cost of new asset x Capital Gain / Net consideration (maximum up to the capital gain)
CGAS* available	No
Additional Conditions	1. If new asset is sold within 3 years, amount earlier exempted under this section will be reduced from its COA to calculate capital gains thereon 2. If a loan is taken on the security of the new specified asset within 3 years, the same will be treated as capital gains

54EB-LTCG on transfer of any long-term capital asset invested in specified long-term assets

Assessee	Any assessee
Type of asset transferred	Long-term capital asset
Type of transfer	LTCG
New asset purchased	Specified securities – includes government securities, savings certificates, units of UTI, specified debentures, etc.
Time Limit for investment in new asset	Within 6 months from the date of transfer
Exemption Amount	Cost of new asset x Capital Gain / Net consideration (maximum up to the capital gain)

CGAS* available	No
Additional Conditions	1. If new asset is sold within 3 years, amount earlier exempted under this section will be reduced from its COA to calculate capital gains thereon 2. If a loan is taken on the security of the new specified asset within 3 years, the same will be treated as capital gains

54EC-LTCG arising from land or building or both invested in long-term NHAI/RECL Bond

Assessee	Any assessee
Type of asset transferred	Land or building or both (Earlier Any)
Type of transfer	LTCG
New asset purchased	NHAI bonds or REC bonds, redeemable after 3 years
Time Limit for investment in new asset	Within 6 months from the date of transfer
Exemption Amount	Cost of new asset x Capital Gain / Net consideration (maximum up to capital gain)
CGAS* available	No
Additional Conditions	1. If new asset is sold within 5 years (5 years w.e.f. F.Y. 2018-19), amount earlier exempted under this section will be reduced from its COA to calculate capital gains thereon 2. If a loan is taken on the security of the new specified asset within 5 years(Earlier 3 years), the same will be treated as capital gains 3. Investment in specified bonds should not exceed Rs. 50 lakhs during the current

	and succeeding fiscal year

54ED-LTCG on transfer of certain listed securities or units invested in equity shares forming part of an eligible issue of capital

54EE-LTCG invested in long-term specified assets being units of such fund as may be notified by Central Government to finance start-ups

Assessee	Any assessee
Type of asset transferred	Long-term capital asset
Type of transfer	LTCG
New asset purchased	Units notified by Central Government
Time Limit for investment in new asset	Within 6 months from transfer
Exemption Amount	Cost of new asset x Capital Gain / Net consideration (maximum up to capital gain)
CGAS* available	No
Additional Conditions	1. If new asset is sold within 3 years, amount earlier exempted under this section will be reduced from its COA to calculate capital gains thereon 2. If a loan is taken on the security of the new specified asset within 3 years, the same will be treated as capital gains 3. Investment in specified units should not exceed Rs. 50 lakhs during the current and succeeding fiscal year

54F Individual/HUF-Net consideration on transfer LTCA other than residential house invested in residential house

Assessee	Individual / HUF
Type of asset transferred	Any long-term capital asset other than residential house
Type of transfer	LTCG
New asset purchased	Residential house property
Time Limit for investment in new asset	Purchase – Within 1 year before or 2 years after transferConstruction – Within 3 years from transfer
Exemption Amount	Cost of new asset x Capital Gain / Net consideration (maximum up to capital gain)
CGAS* available	Yes – deposit by return filing due date
Additional Conditions	1. If new asset is sold within 3 years, amount earlier exempted under this section will be reduced from its COA to calculate capital gains thereon 2. If the amount in CGAS is not utilized within the prescribed time limit, such unutilized amount will be taxable as capital gains 3. The Individual/HUF cannot own more than 2 house properties (i.e., existing House property and new house property). If another house property is purchased, amount of exemption allowed earlier will be chargeable as capital gains

54G-CG on transfer of machinery, plant, land or building used for the purposes of the business of an industrial undertaking situate in an urban area (transfer being effected for shifting the undertaking to a non-urban area) invested in new machinery, plant, building or land, in the said non-urban area, expenses on shifting, etc.

Assessee	Any assessee
Type of asset transferred	Capital asset being plant, machinery, land, building or rights in land or building that is used in an industrial undertaking situated in an urban area
Type of transfer	STCG / LTCG
New asset purchased	Shifting of industrial undertaking involving: 1. Purchase of new plant/machinery 2. Acquisition of land or construction of a building 3. Shifted old asset and transferred undertaking to a new area 4. Incurred specified expenses
Time Limit for investment in new asset	1 year before and 3 years after the date of transfer
Exemption Amount	Long-Term Capital GainORCost of new asset whichever lesser
CGAS* available	Yes – deposit by return filing due date
Additional Conditions	1. If new asset is sold within 3 years, amount earlier exempted under this section will be reduced from its COA to calculate capital gains thereon 2. If the amount in CGAS is not utilized within the prescribed time limit, such unutilized amount will be taxable as capital gains

54GA-Exemption of capital gains on transfer of assets in cases of shifting of industrial undertaking from urban area to any Special Economic Zone

Assessee	Any assessee
Type of asset transferred	Capital asset being plant, machinery, land, building or rights in land or building that is used in an industrial undertaking situated in an urban area
Type of transfer	STCG / LTCG

New asset purchased	Shifting of industrial undertaking involving: 1. Purchase of new plant/machinery 2. Acquisition of land or construction of a building 3. Shifted old asset and transferred undertaking to a new area 4. Incurred specified expenses
Time Limit for investment in new asset	1 year before and 3 years after the date of transfer
Exemption Amount	Long-Term Capital GainORCost of new asset whichever lesser
CGAS* available	Yes – deposit by return filing due date
Additional Conditions	1. If new asset is sold within 3 years, amount earlier exempted under this section will be reduced from its COA to calculate capital gains thereon 2. If the amount in CGAS is not utilized within the prescribed time limit, such unutilized amount will be taxable as capital gains

54GB-Exemption in respect of capital gain arising from the transfer of a LTCA, being a residential property (a house or a plot of land), owned by the eligible assessee, and such assessee before the due date of furnishing of return of income under sub-section (1) of section 139 utilises the net consideration for subscription in the equity shares of an eligible company and such company has, within one year from the date of subscription in equity shares by the assessee, utilised this amount for purchase of specified new asset .

Assessee	Individual / HUF
Type of asset transferred	Residential property (house or a plot of land)
Type of transfer	LTCG
New asset purchased	Equity shares in an eligible company: 1. Newly incorporated 2. Engaged in the business of manufacture or eligible business

	3. Assessee has >25% share / voting rights (Earlier 50%) FA 2019 4. Small or Medium enterprise under MSMEA, 2006 or is an eligible startup
Time Limit for investment in new asset	By return filing due date
Exemption Amount	Long-Term Capital GainORCost of new asset whichever lesser
CGAS* available	Available to the eligible company – by return filing due date
Additional Conditions	1. If new asset is sold within 5 years, amount earlier exempted under this section will be reduced from its COA to calculate capital gains thereon. 2. Eligible company to utilize subscription money for the purchase of new plant and machinery subject to certain conditions within 1 year. If not, such unutilized amount shall be chargeable to tax as capital gains. 3. If the amount in CGAS is not utilized by the eligible within the prescribed time limit, such unutilized amount will be taxable as capital gains