CONTENT

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Amendments CA Final: for May'20
Content Index:

AMENDMENTS AT A GLANCE

S.No	Amendment	Section	Date of applicability
BASICS			
1)	**Deemed accrual of gift made to a person outside India**: *any income arising from any sum of money paid, or any property situate in India transferred, on or after 5th July, 2019 by a person resident in India to a person outside India shall be deemed to accrue or arise in India."*	**56(2)(x)** **Sec 9(1)**	**01/04/2019**
2)	**Interest earned by a NR from IFSC unit:** any income by way of interest payable ***to*** *a non-resident* **by** a unit located in an IFSC in respect of monies borrowed by it on or after 1st September, 2019 shall be exempted from tax	**10(15)**	**01/09/2019**
3)	**Standard Deduction under Salary increased to 50,000**	**Sec 16(iia)**	**01/04/2019**
HOUSE PROPERTY			
4)	**Self Occupied houses: Any 2** of the following can be claimed with Nil GAV • Self Occupied house [SO] or • Vacant house owing to Business or employments at other place where assessee stays in rented house [DSO] **Interest:** Limit of 30,000/200,000 will be for both such houses combined	**Sec 23(4)**	**01/04/2019**
5)	**Property held as stock in trade:** If Vacant then for year of completion + 2 more years - Annual value not taxable If Let out then from 1st day its taxable	**Sec 23**	**01/04/2019**
CAPTIAL GAINS			

6)	**Earlier:** the exemption u/s 54 was only for purchase / construction of 1 RHP **Amendment :** the exemption u/s 54 is now for purchase / construction **of 2 RHP** ***provided that the amount of capital gains is ≤ 2 crore*** and this option can be availed only once in a lifetime	**Sec 54**	**01/04/2019**
BUSINESS & PROFESSION			
7)	Payer will not be deemed to be assessee in default for non deduction of TDS for payment made **to a resident or NR**, if **such resident or NR** . Provided that such R or NR has • 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. **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** **Disallowance of Deduction : In both Sec 40(a)(i) and (ia):** 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 (Resident or Non resident)** files the return and discloses such income as part of the Return	**201(1)** **201(1A)** **40(a)**	**01/04/2019** **01/04/2019** **01/04/2019**
8)	**Earlier**: interest on loan to scheduled banks was subject to the restriction **Amendment**: Interest on any loan or advances **to** a **deposit-taking NBFCs** and **systemically important non deposit-taking NBFCs** shall covered by Sec 43B	**43B**	**01/04/2019**
9)	Some sections had the mode of payment prescribed as "**by a/c payee cheque or draft or ECS**" It was argues that a lot of new payment modes have come up like UPI, e-wallets etc thus the words "***or any other prescribed mode***" have been added	**35AD ,40A(3), 43(1),43CA, 50C, 56(2)(x), 44AD,269ST, 80JJAA, 13A, 269SS,269T**	

10)	**Mode of acceptance of business payments :** The Section is applicable to business not profession • Where the turnover > 50 crore • Applicable to every person • All payments to be collected through electronic modes *prescribed* • Penalty of 5000 per day • No transaction charges on this by the banks	**269SU** **271DB**	**01/11/2019**
DEDUCTIONS FROM GTI			
11)	**NPS:** • **Contribution by the Central Government** to the **Tier II** a/c of the NPS is eligible for deduction u/s 80C • **Contribution of the Central Government** as employer to the **Tier I** a/c of the NPS is eligible for deduction u/s 80CCD(2) @ 14% of salary (earlier it was 10%) • **Withdrawal on closure** of the NPS is exempt upto 60% of the total payable (earlier it was 40%) for every person (employee or Self Employed)	**80C** **80CCD(2)** **12A**	**2019-20**
12)	**Interest on Housing Loan** • Deduction for Interest **upto 150,000** • loan has been sanctioned by a financial institution **during the period beginning** on the 1st April, 2019 to 31st March 2020. • the **stamp duty value** of house property **≤ 45 lakh** rupees; • assessee does not own any residential house property on the date of sanction of loan. •	**80EEA**	**2019-20**

Sections	24(b)	80C	80EE	80EEA
Deduction for	**Interest on loan**	• **Principal** repayment or • **Cost**	**Interest on loan**	**Interest on loan**

	for the purchase or construction or repair of	for *purchase* or *construction* of	for the purchase or construction of	for the purchase or construction of
Type of House	RHP CHP IHP	RHP	RHP – *Self Occupied*	RHP
Person to whom deduction is available	Every assessee	Individual or HUF	Individual	Individual
Loan from	Any person	Bank, FI, NHB, LIC from certain employers	Banks / FI	Banks / FI
Due or paid basis	Due basis	Paid basis	Paid basis	Paid basis
Deduction from where	Available **from House Property**	Available **from GTI**	Available **from GTI**	Available **from GTI**
Conditions			• Amt. of loan ≤ 35 lacs • Value of HP ≤ 50 lacs • Loan must be **sanctioned in 2016-17** • Must not own any RHP on date of sanction of loan	• No such condition • **SDV** of HP ≤ 45 lacs • Loan must be **sanctioned in 2019-20** • Must not own any RHP on date of sanction of loan
Maximum Limit	There is **no maximum limit** *except* for a self occupied residential house where the limit is Rs 30,000 or 200,000	150,000	50,000	150,000

13)	With a view to improve environment and to reduce vehicular pollution, it is proposed to insert a new section 80EEB in the Act so as to provide for a deduction in respect of i) **interest on loan taken for purchase of an electric vehicle** ii) from any financial institution iii) up to 150,000 rupees iv) the loan has been **sanctioned** by a financial institution including a non-banking financial company during the period beginning on the **1st April, 2019 to 31st March, 2023;** v) the assessee does not own any other electric vehicle on the date of sanction of loan.	**80EEB**	**2019-20**
RETURN OF INCOME			
14)	**Compulsory filing of Returns:** • has *deposited* an amount or *aggregate of the amounts > 1 crore rupees* in *one or more current account* maintained with a banking company or a co-operative bank; • has incurred expenditure of an amount or aggregate of the amounts exceeding *2 Lacs*	**139(1)**	**2019-20**

	rupees *for himself or any other person* for travel to a foreign country; or • has incurred expenditure of an amount or aggregate of the amounts exceeding 1 Lac rupees towards consumption of electricity; or • a person who is claiming Exemption under sections 54, 54B, 54D, 54EC, 54F, 54G, 54GA and 54GB of the Act, shall necessarily be required to furnish a return, if **before claim** of exemption his ***total income is more than the maximum amount not chargeable to tax***.		
15)	**Quoting of PAN-AADHAR** (i) **No PAN Allotted:** a person **who does *not* have a Pan** but has AADHAR, can quote the AADHAR in the prescribed transactions and the PAN will be automatically allotted to him, (ii) **PAN & AADHAR linked:** every person **who *has been* allotted a PAN**, and *who has linked his Aadhaar number* under section 139AA, may furnish or intimate or quote his Aadhaar number in lieu of a PAN. **Person receiving a prescribed document:** for a prescribed transaction must ensure that PAN or AADHAR has been quoted **Penalty:** earlier Rs 10,000 was for each default non quoting of PAN. Now AADHAR is also added	**139A(6A)** **139(6B)** **272B**	**01/09/2019**
16)	**Consequence of not linking PAN with Aadhaar** • **Earlier:** The existing proviso to the sub-section (2) of section 139AA, provides that the PAN allotted to a person shall be *deemed to be invalid*, in case the person fails to intimate the Aadhaar number, on or before the notified date. • **Amendment:** In order to protect validity of transactions previously carried out through such PAN, it is proposed to amend the said proviso so as to provide that if a person fails to intimate the Aadhaar number, the PAN allotted to such person shall be **made inoperative** in the prescribed manner.	**139AA**	**01/09/2019**
Self-Assessment / TDS /Advance Tax			
17)	**Relief u/s 89(1):** The existing provisions of section 140A, section 143, section 234A, section 234B and section 234C contain provisions relating to computation of tax liability *after allowing credit for prepaid taxes and certain admissible reliefs, credits etc.*	**140A / 143 / 234A / 234B / 234C**	

	However, the relief under section 89 is not specifically mentioned in these sections, which is resulting into genuine hardship in the case of taxpayers who are eligible for this relief – thus added		
18)	**Change in limits of TDS u/s 194A**	**194A**	**01/04/2019**

Payer	*Threshold limit if Payee is*	
	Senior Citizen	*Others*
Banking Co.	50,000	**40,000**
Co-operative Society engaged in banking business	50,000	**40,000**
Post Office	50,000	**40,000**
In any other case	5,000	5,000

19)	**TDS on rent:** The limit is increased from 180,000 p.a. to **240,000** p.a	**194I**	**01/04/2019**
20)	**Taxable Life Insurance payments :** **Earlier :** 1% of total payment **Amended:** **5%** of **Taxable amount** **<u>However in following cases no TDS shall be deducted</u>**: • If sum payable by the insurer to the insured does not exceed 1 Lac, or • If the life insurance policy proceeds are exempt u/s 10(10D), or • If sum is received on the occasion of death of the insured person.	**194DA**	**01/09/2019**
21)	term "**consideration for immovable property**" shall include all charges of the nature of club membership fee, car parking fee, electricity and water facility fees, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property.	**194IA**	**01/09/2019**
22)	**TDS on cash withdrawals exceeding 1 crore:**	**194N**	**01/09/2019**

	TDS at the rate of 2% on **cash payments** in > 1 Crore **in aggregate** made during the year, by a banking company or cooperative bank or post office, to any person from an account (one or more with the same bank) maintained by the recipient i.e on cash withdrawals from the bank Payment made in **cash BY** : Any bank (private or public sector) , A co-operative bank , A post office **TO** any person *other than-*Any government body, Any bank including co-operative banks, Any business correspondent of a banking company (including co-operative banks), Any white label ATM operator of any bank (including co-operative banks) White Label ATMs are owned and operated by Non Banking Financial Companies (NBFC). RBI has granted license or permission to non-banking entities to open such ATMs. Any non-banking entity with a minimum net worth of ₹ 100 crore can apply for white label ATM , Any other person notified by the government		
23)	**TDS to be deductible** at the rate of 5%. on the sum, or the aggregate of sums, paid or credited in a year **by** an ***individual or a Hindu undivided family***, not required to deduct tax at source under section • **194C -** where Ind/HUF are either not covered by Sec 44AB or if covered are making payment for personal purposes • **94H -** where Ind/HUF are either not covered by Sec 44AB • **194J -** where Ind/HUF are either not covered by Sec 44AB or if covered are making payment for personal purposes if such sum, or aggregate of such sums, **> 50 lac** rupees in a year. **Eligible for lower rate deduction u/s 197**	**194M**	**01/09/2019**
24)	**Online filing of application seeking determination of tax to be deducted at source on payment to non-residents:** if a person who is responsible for paying any sum to a non-resident which is chargeable to tax under the Act (other than salary) considers that the whole of such sum would not be income chargeable in the case of the recipient, he can make an application to the Assessing Officer to determine the appropriate proportion of such sum chargeable. – ***earlier manual , now online***	**195**	**01/09/2019**

25)	**Electronic filing of statement of transactions on which tax has not been deducted:** the section provides for filing of such statements on a floppy, diskette, magnetic tape, CD-ROM, or any other computer readable media. To enable online filing of such statements, it is proposed to substitute this section so as to provide for filing of statement (where tax has not been deducted on payment of interest to residents) in prescribed form in the prescribed manner	**206A**	**01/09/2019**

CA Final Level			
IINTERNATIONAL TAXATION			
26)	**Earlier:** exemption to demerger was given if the assets were taken over at book values **IND-AS Compliant Companies -** Indian Accounting Standards (Ind-AS) compliant companies *are required to record the property and the liabilities of the undertaking at a value different from the book value* of the demerged company. **Amendment:** Sec 2(19AA) does away with the condition for such Ind-AS complaint companies to record assets at book value in the hands of the resulting company to be eligible for the exemptions if such values are in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015.	**2(19AA)**	
27)	The existing provisions of section 43D of the Act, *inter-alia* provides that **interest income** in relation to certain categories of bad or doubtful debts received by certain institutions or banks or corporations or companies, shall be chargeable to tax • in the previous year in which it is credited to its profit and loss account or • actually received, whichever is earlier. This provision is an **exception to the accrual system of accounting** which is regularly followed by such assessees for computation of total income. The benefit of this provision is presently available to **public financial institutions**, **scheduled banks**, **cooperative banks**, **State financial corporations**, **State industrial investment corporations** and **public companies like housing finance companies.** **Amendment Finance Act 2019:** With a view to provide a level playing field to **certain categories of NBFCs who are adequately regulated**, it is proposed to amend section 43D of the Act so **as to include** • deposit-taking NBFCs and • systemically important non deposit-taking NBFCs within the scope of this section.	**43B** **43D**	**2019-20**
28)	**Relaxation in conditions of special taxation regime for offshore funds:** Section 9A of the Act provides for a **safe harbour in respect of offshore funds**. *It provides that in the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager located in India and acting on behalf of such fund shall by itself not constitute business connection in India of the*	**9A**	**2019-20**

	said fund Certain relaxation in the requirement for Sec 9A i) the corpus of the fund shall not be less than 100 crore ~~at the end of such previous year~~ **at the end of a period of six months from the end of the month of its establishment or incorporation or at the end of such previous year, whichever is later**; and ii) 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~~ **the amount calculated in such manner as may be prescribed**.		
29)	**Clarification with regard to power of the Assessing Officer in respect of modified return of income filed in pursuance to signing of the Advance Pricing Agreement (APA)** **Reason for the Amendment:**The Section uses the words "*assess or reassess or recompute*", while the intention of the legislature is for Assessing Officer to merely modify the total income consequent to modification **of** return of income in pursuance to APA. **Amendment:** the Assessing Officers shall pass an order ***modifying the total income*** (instead of Assess or reassess or recomoute) of the relevant assessment year. **Sec 246A** Section provides that the assessee may appeal to the Commissioner (Appeals) against an order ~~**of assessment or reassessment**~~ under sub-section (*3*) of section 92CD.	**92CD** **246A**	**01/09/2019**
30)	**Primary & Secondary Adjustment:** **Clarification:** • Where the primary adjustment relates to AY 2016-17 and earlier the secondary adjustment will not be required whether the amount of primary adjustment is more than 1 crore or not • Secondary Adjustment: shall apply to the agreements which have been **signed on or after 1st April, 2017**; however, **no refund of the taxes already paid** till date under the pre amended section would be allowed; • **Issue Resolved:** Where the entire money has not been repatriated and some part is then the assessee shall be required to calculate **interest on the excess money** or part thereof; • in a case where the excess money or part thereof has **not been repatriated in time**, the	**92CE**	**2019-20**

	assessee will have the option to pay ✓ additional income-tax at the rate of 18% on such excess money or part thereof ✓ in addition to the existing requirement of calculation of interest till the date of payment of this additional tax. ✓ The additional tax is proposed to be increased by a surcharge of 12% • the tax so paid shall be the **final payment of tax** and **no credit** shall be allowed in respect of the amount of tax so paid; • the **deduction** in respect of the amount on which such tax has been paid , **shall not be allowed** under any other provision of this Act; and • the assessee shall be required to calculate **interest on the excess money** or part thereof; • **if 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.** • the excess money may be **repatriated from any of the associated enterprises** of the assessee which is not resident in India;		
31)	**Rationalisations of provisions relating to maintenance, keeping and furnishing of information and documents by certain persons:** in order to provide that the information and document to be kept and maintained by a constituent entity of an international group, and filing of required form, shall be applicable ***even when there is no international transaction undertaken by such constituent entity.***	**92D**	**2019-20**
32)	**Clarification regarding definition of the "accounting year" in section 286 of the Act**: In order to address such concerns and to bring clarity in law, it is proposed to suitably amend section 286 so as to provide that the accounting year in case of the ARE of an international group, the parent entity of which is not resident in India, the reporting accounting year shall be the one applicable to such parent entity	**286**	**2019-20**
33)	**IFSC:** • **Sec 47:** With a view to provide tax-neutral transfer of certain securities by Category III Alternative Investment Fund (AIF) in IFSC, it is proposed to amend the said section so as to provide **that any transfer of a capital asset, specified in the said clause by such AIF, of**	**IFSC**	**01/09/2019**

	which all the unit holders are non-resident, are not regarded as transfer subject to fulfillment of specified conditions.
	• **Sec 115A:** In order to ensure that units located in IFSC claim full deduction, it is proposed to amend section 115A to provide that a unit in IFSC claiming benefit of Sec 115A can also claim deduction u/s 80LA.
	• **Sec 80LA:** The deduction specified in the said section in respect of a Unit of International Financial Services Centre **[IFSC]**
	    ○ shall be allowed at **100% for 10 years.**
	    ○ In addition the deductions may, at the option of the assessee, be claimed by him for any ten consecutive assessment years out of fifteen years
	• **Sec 115O:** To facilitate distribution of dividend by companies operating in IFSC, dividend paid out of **accumulated income derived from operations in IFSC, after 1st April 2017 shall *also not* be liable for tax on distributed profits.**
	The existing provisions of the section 115-O of the Act, provide that no tax on distributed profits shall be chargeable in respect of the total income of a company, being a unit of an IFSC, deriving income solely in convertible foreign exchange, for any assessment year on any amount declared, distributed or paid by such company, by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2017, **out of its current income**, either in the hands of the company or the person receiving such dividend.
	• **Sec 115R:** No additional tax is payable by a Mutual fund located in a IFSC on any amount distributed on or after 01/09/2019,from transactions made on a RSE located in the IFSC and where all unit holders are NR.		

34)	**Recovery of tax in pursuance of agreements with foreign countries.** *Earlier recovery proceeding could be started in India or foreign country only if the assessee had property in India or the Foreign Country.* **The Act has been amended to provide** • **In case of a foreign country seeking assistance from India –** The Board may direct the TRO who has jurisdiction for recovery proceedings against a Resident in India **or** who has property in India • **In case of a India seeking assistance from a foreign country –** who has jurisdiction for recovery proceedings against a Resident that country **or** who has property in that country.	**228A**	**01/09/2019**
CHARITABLE TRUST			

35)	**Cancellation of registration of the Trust:** PC/CIT can call for documents of information to satisfy himself • Gaminess of the activities • Compliance of the requirement **of any other law** as are material for the achievement of the objects	**12AA**	**01/09/2019**
CAPITAL GAINS			
36)	**Additional tax of 20% for buy back of shares** - Earlier the provisions were applicable only to unlisted companies – extended to listed companies as well	**115QA**	**05/07/2019**
37)	FVC = Market value when Consideration is unascertainable There was no provision for any exemptions – provision added to empower Govt. to exempt certain transactions from the provisions of this Chapter	**50CA**	**2019-20**
DEDUCTIONS			
38)	With a view to align the definition of "affordable housing" under section 80-IBA with the definition under GST Act A housing project **approved on or after the 1st day of September, 2019** shall be eligible for deduction under this section • if the *carpet area* of the residential unit ≤ 60 sq. Mtrs, where the project is located within the Metropolitan cities of Bengaluru, Chennai, Delhi National Capital Region (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurugram, Faridabad), Hyderabad, Kolkata and Mumbai (whole of Mumbai Metropolitan Region), or • 90 square metres, where the project is located in any other place; and if the stamp duty value of a residential unit in the housing project does not exceed 45 Lac rupees.	**80IBA**	**01/09/2019**
Returns / Assessments / Appeals			
39)	In order to simplify the procedure for claim of refund, it is proposed to amend the said section so as to provide that **every claim for refund** under Chapter XIX of the Act **shall be made by furnishing return** in accordance with the provisions of section 139 of the Act.	**239**	**01/09/2019**
40)	**Statement of Financial Transactions:** Earlier these reports were not required for transaction below 50,000 in a year	**285BA**	**01/09/2019**

	It is also proposed to ~~remove the current threshold of rupees fifty thousand on aggregate value of transactions during a financial year~~, **for furnishing of information**, *with a view to ensure pre-filling of information relating to small amount of transactions as well.* order to ensure proper compliance, it is also proposed to amend the provisions of sub-section(4) of aforesaid section so as provide that **if the defect in the statement is not rectified within the time specified therein, the provisions of the Act shall apply as if such person had furnished inaccurate information in the statement.**		
41)	**Prosecution for non filing of ROI:** No prosecution is possible if the ROI is filed by the assessee before the end of the AY or *the tax payable by such person, not being a company, on the total income determined on regular assessment, as reduced by the advance tax or self-assessment tax, if any, paid before the expiry of the assessment year, and any tax deducted or collected at source, does not exceed 10,000*	**276CC**	**2019-20**
42)	**Enhancing time limitation for sale of attached property under rule 68B of the Second Schedule of the Act** provide that no sale of immovable property attached towards the recovery of tax, penalty etc. shall be made after the expiry of ~~three years~~ 7 years from the end of the financial year in which the order in consequence of which any tax, penalty etc. becomes final.	**68B**	**01/09/2019**
START UP INCENTIVES			
43)	• Benefit Extended to 31/03/2021 • Retaining ownership of computers reduced from 5 years to 3 years • Total shareholding in new Company reduced from 50% to 25%	**54GB**	**2019-20**
44)	**Loss for the PY incurred will be allowed to be carry forward only if either of the two conditions are fulfilled** a) Where shareholding is 51% same as on the last date of the year of transfer and the year of setting off of the loss or b) 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, continue to hold those shares on the last day of such previous year and such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated.	**79**	
45)	The existing provisions of section 79 are not applicable to a company where any change in shareholding takes place in a previous year pursuant to		

	a. a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 (IBC) b. **NCLT on a petition moved by the C.Govt. u/s 241 of the Companies Act, has suspended the BOD of the company** c. **Change in shareholding of such company, and its subsidiaries and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by NCLT u/s 242 of the Companies Act, 2013**		
46)	Generally the lower of Business loss or unabsorbed depreciation is to be reduced to compute book profits However the **aggregate amount of unabsorbed depreciation and loss brought forward** shall be allowed to be reduced from the book profit **for companies in points a) , b) & c) above**	**115JB**	
47)	Post getting recognition a Startup may apply for Tax exemption under section 80 IAC of the Income Tax Act. Post getting clearance for Tax exemption, the Startup can avail tax holiday for 3 consecutive financial years out of its first ten years since incorporation. Eligibility Criteria for applying to Income Tax exemption (80IAC):the entity should be a recognized Startup . Only Private limited or a Limited Liability Partnership is eligible for Tax exemption under Section 80IAC. The Startup should have been incorporated after 1st April, 2016	**80IAC**	
48)	**Angel Tax: Consideration (-) FMV = income where consideration > Face value** This shall not be charged to tax, if the consideration for issue of shares is received by a venture capital undertaking from a specified fund. **Eligibility Criteria for Tax Exemption for eligible startup** a. The entity should be a DPIIT [Department for Promotion of Industry and Internal Trade] recognized Startup. b. Aggregate amount of paid up share capital and share premium of the Startup after the proposed issue of share, if any, does not exceed INR 25 Crore.	**56(2)(viib)**	

Summary

Particulars	Section 115BA	Section 115BAA	Section 115BAB	Others
Applicable from	AY 2017-18[3]	AY 2020-21	AY 2020-21	-
Type of company	Domestic company engaged in manufacturing/ production	All domestic companies	Domestic company engaged in manufacturing/ production	Any domestic company
Eligibility (start date)	Set-up and registered on or after 1 March 2016	No specific requirement	Set-up and registered on or after 1 October 2019 *(manufacturing to commence by 31 March 2023)*	-
Allowability of prescribed deduction/ loss	No	No	No	Yes
Basic tax rate	25%	22%	15%	25%/30%
Surcharge	7%/ 12%	10%	10%	7%/ 12%
Cess	4%	4%	4%	4%
Applicability of MAT	Yes [15%]	Not applicable	Not applicable	Yes [15%]
SDT provisions	Not Applicable	Not Applicable	Applicable	Applicable
Restriction for entities formed by restructuring/ use of old plant & machinery/ use of building earlier used as hotel or convention centre	No	No	Yes	-

COMPARATIVE RATES OF TAX for all PERSONS

	Individual	HUF	Firm	Domestic Co.	Foreign Co.	AOP/BOI	Local Authority	AJP
Person	Natural	Artificial	Artificial	Artificial	Artificial	Artificial	Artificial	Artificial
Source of Income of the person	All 5	4 (except Salary)	4 (except Salary)	4 (except Salary)	4 (except Salary)	4 (except Salary)	4 (except Salary)	4 (except Salary)
Rate of Tax on the income of the person	Slab rates(minimum exemption slab 2,50,000 or 3,00,000 or 500,000 as applicable)	Slab rates(minimum exemption slab 250,000)	30%	25% if turnover in PY 2018-19 is ≤ 400 cr Else 30%	40%	As per rules u/s 167B	30%	Slab rates(minimum exemption slab 250,000)
Surcharge	@ 10% will be levied on the tax if Total Income > 50 lacs but ≤ 1 crore @ 15% will be levied on the tax if Total Income > 1 cr but ≤ 2 crore @ 25% will be levied on the tax if Total Income > 2 cr but ≤ 5 crore @ 37% will be levied on the tax if Total Income > 5 crore	Same as individual	@ 12% of the tax where the Total income is > Rs 1 crore	@ 7% of the tax where the Total income is > Rs 1 crore but ≤ 10 Crore and 12% thereafter	@ 2% of the tax where the Total income is > Rs 1 crore but ≤ 10 Crore and 5% thereafter	Same as Individual	@ 12% of the tax where the Total income is > Rs 1 crore	Same as individual
HEC (4%)	Always on the amount of Tax plus surcharge	Always on the amount of Tax plus surcharge	Always on the amount of Tax plus surcharge	Always on the amount of Tax plus surcharge	Always on the amount of Tax plus surcharge	Always on the amount of Tax plus surcharge	Always on the amount of Tax plus surcharge	Always on the amount of Tax plus surcharge

For the Assessment Year 2020-21, the rate of surcharge shall be as under:

Nature of Income	*Range of Total Income*				
	Up to Rs. 50 lakh	*More than Rs. 50 lakh but up to Rs. 1 crore*	*More than Rs. 1 crore but up to Rs. 2 crore*	*More than Rs. 2 crore but up to Rs. 5 crore*	*More than Rs. 5 crore*
Short-term capital gain covered under Section 111A	*Nil*	10%	15%	15%	15%
Long-term capital gain covered under Section 112A	*Nil*	10%	15%	15%	15%
Unexplained income chargeable to tax under Section 115BBE	25%	25%	25%	25%	25%
Any other income	*Nil*	10%	15%	25%	37%

II. JUDICIAL UPDATES

	Name of Case Law	Section & issue involved	Decision	Page number of module
JUDICIAL UPDATES – July 2020				
1.	**CIT v. Laxman Das Khandelwal (2019) 417 ITR 325 (SC)**	**Is non-issuance of notice under section 143(2) by the Assessing Officer a defect not curable under section 292BB inspite of participation by the assessee in assessment proceedings?**	**<u>Supreme Court's Observations</u>:** The law on the point as regards applicability of the requirement of issue of notice under section 143(2) is quite clear. According to section 292BB, if the assessee had participated in the proceedings, by way of legal fiction, notice issued would be deemed to be valid even if there be infractions as detailed in the said section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on the part of the assessee. It is, however, to be noted that the section does not save complete absence of issue of notice. **For section 292BB to apply, the notice must have emanated from the Department.** It is only the infirmities in the manner of service of notice that the section seeks to cure. The section is not intended to cure complete absence of notice itself.	**Module 4B** Topic. 20.2.2c Similar point held in **Travancore Diagnostics (P) Ltd v. Asstt. CIT (2017) 390 ITR 167 (Ker)**
2.	**Pr. CIT v. Maruti Suzuki India Ltd. [2019] 416 ITR 613 (SC)**	**Whether issue of notice by the Assessing Officer in the name of the amalgamating company (S, in this case), after such company has amalgamated with another company (M, in this case) and after he has been so informed of such amalgamation, is a defect curable under section 292B? Would participation of the amalgamated company, M, in the assessment proceedings operate as an**	In the present case, despite the fact that the Assessing Officer was informed of the amalgamating-company (S) having ceased to exist as a result of the approved scheme of amalgamation, **the jurisdictional notice was issued in the name of S, the amalgamating company**. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. The Supreme Court, accordingly, held that the initiation of assessment proceedings on a non-existent entity (S, in this case) was void-ab-initio and participation in the proceedings by the appellant-amalgamated company (M, in this case) in the circumstances cannot operate as an estoppel against law	**Module 4A** Topic 19

		estoppel against law?		
		Return of income, etc., not to be invalid on certain grounds. ***Sec 292B.*** *No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.*		
3.	**CIT v. A. A. Estate Pvt. Ltd. [2019] 413 ITR 438 (SC)**	**While deciding an appeal, is it mandatory for the High Court to frame a substantial question of law or can it decide the case on the basis of the question of law urged by the appellant under section 260A(2)(c)?**	The Apex Court noted that there lies a distinction between the questions proposed by the appellant for admission of the appeal to the High Court and the questions framed by the High Court. **The questions, which are proposed by the appellant, fall under section 260A(2)(c) whereas the questions framed by the High Court fall under section 260A(3).** Section 260A(4) provides that the appeal is to be heard on merits only on the questions formulated by the High Court under section 260A(3). ***In other words, the appeal is heard only on the questions formulated by the High Court and not on the questions proposed by the appellant.*** In case if the High Court is of the view that the appeal did not involve any substantial question of law, it should have recorded a categorical finding to that effect that the questions proposed by the appellant either do not arise in the case or/and are not substantial questions of law so as to attract the rigor of section 260A for its admission and accordingly, should have dismissed the appeal in *limine*. However, this was not done in this case. Instead, the appeal was heard only on the questions urged by the appellant u/s 260A(2)(c). **The High Court, therefore, did not decide the appeal in conformity with the mandatory procedure prescribed in section 260A.**	**Module 4B** Topic 21.3.1

4.	**Pr. CIT v. Aarham Softronics [2019] 412 ITR 623 (SC)**	**Can an assessee who has set up a new industrial undertaking and availed deduction@100% of profits under section 80-IC(3) for the first 5 years, be eligible to claim deduction@100% of profits once again on having undertaken "substantial expansion" thereof, for the period remaining out of 10 years?**	*The crux of the Supreme Court ruling is explained in the following example. If the substantial expansion is carried out immediately, on the completion of first 5 years, the assessee would be entitled to deduction@100% of profits and gains again for the next 5 years. On the other hand, if substantial expansion is undertaken, say, in the 8th year, deduction would be 100% for the first 5 years, deduction at 25% for the next 2 years and at 100% again from the 8th year as this year becomes "initial assessment year" once again. This 100% deduction would be for the remaining 3 years only, i.e., 8th, 9th and 10th assessment years.* *Consequent to the above Supreme Court judgement, students are advised to ignore case law no. 10 [CIT v. Classic Binding Industries [2018] 407 ITR 429 (SC)], reported under "Significant Select Cases" in pages no. 11.106-11.107 in Chapter 11: Deductions from Gross Total Income in the printed copy of Module 2 of the October 2019 edition of the Study Material.*	**Module 3B** Topic 14.2.4b NEW
5.	**CIT (Exemptions) v. Reham Foundation [2019] 418 ITR 205 (All [FB])**	**Can the Appellate Tribunal, while hearing an appeal under section 254(1), in a matter where registration under section 12AA has been denied by the Commissioner, itself pass an order directing the Commissioner to grant registration?** *The issue under consideration is whether the Appellate Tribunal has the power under section*	<u>**High Court's Decision:**</u> The High Court held that the Appellate Tribunal while hearing an appeal under section 254(1) in a matter where registration under section 12AA has been denied by the CIT, can itself pass an order directing the CIT to grant registration, only in case the Tribunal disagrees with the opinion of the CIT as regards the genuineness of the activities and object(s) of the trust, on the basis of material already on record before the CIT. However, the said power is not to be exercised by the Appellate Tribunal as a matter of course and remand to the CIT is to be made where the Appellate Tribunal records a divergent view on the basis of the material which has been filed before the Appellate Tribunal for the first time.	**Module 4B** Topic 21.2

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<td>254(1) to pass an order directing CIT to grant registration under section 12AA or should it remand the case to the CIT for deciding the matter afresh.</td>
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<u>Case where the Appellate Tribunal can direct registration of the trust without remand to the CIT</u>
The High Court opined that the Tribunal can pass an order directing the CIT to grant registration, considering the specific facts of the case, where –
(i) the CIT has refused to accept the application for registration of trust after recording its finding , on the basis of the material on record before him, that the activities and object(s) of the trust are not genuine; and
(ii) the Appellate Tribunal, on the basis of the same material on record, comes to the conclusion that the order of the CIT is perverse since it has been passed ignoring, misconstruing or misinterpreting such evidence.
In such a case, the Appellate Tribunal can direct registration of the trust without remanding the matter to the CIT, since such remand would be an empty formality as the CIT cannot go against the conclusion arrived at and recorded by the Appellate Tribunal.
In view of the unfettered power of the Appellate Tribunal in terms of section 254(1), the Tribunal can very well record its satisfaction on the genuineness of the activities and object(s) of the trust and direct registration of the trust without remand of case to the CIT, in case such satisfaction is recorded on the basis of documents and material already available on record at the stage of examination by the CIT.
<u>Cases where the Appellate Tribunal has to remand the case to the CIT</u>:
In the following cases, however, the Appellate Tribunal has to remand the case to the CIT -
(i) Where the Appellate Tribunal records such satisfaction on the basis of material or documentary evidence which was not available before the CIT while exercising his powers under section 12AA; and
(ii) Where the CIT rejects the application on a technical ground without recording its opinion on facts or genuineness of the activities and object(s) of the trust and such decision is overturned by the Appellate Tribunal, the case has to be remanded to the CIT for recording satisfaction in terms of section 12AA.
The onus on the Appellate Tribunal to remand the matter in cases indicated hereinabove is in view of the strict interpretation of the powers of the CIT under section 12AA; if the Appellate Tribunal is given wide powers to direct registration of trust in all or any circumstance, it would render the provisions of section 12AA ineffective, which again cannot be the intention of the Legislature.
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<td>Smt. Ritha Sabapathy v. DCIT [2019] 416 ITR 191 (Mad)</td>
<td>Can the Appellate Tribunal dismiss an appeal, without deciding the case on its merits, solely on the ground</td>
<td>Accordingly, the High Court opined that even if the assessee could not appear, the Tribunal could have decided the appeal only on merits, ex parte, after hearing the Revenue's contentions. It reiterates that the fact finding Appellate Tribunal should not shirk</td>
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Topic 21.3.1</td>
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		that the assessee had not appeared on the appointed date of hearing?	its responsibility to decide a case on its merits. Cryptic orders, not touching the merits of the case, would not give rise to any substantial question of law for consideration by the High Court under section 260A. The assessee's valuable right of getting the issues decided on merits by the final fact finding body, viz., the Tribunal cannot be given short shrift in this manner. A legal and binding responsibility, therefore, lies upon the Tribunal to decide the appeal on merits, irrespective of the appearance or otherwise of the assessee or his counsel before it.	
7.	**Valsad District Central Co-operative Bank Ltd. v. ACIT [2019] 414 ITR 616 (Guj)**	**Can the assessee's failure to produce Commissioner's order of approval dating back to the year 1976 for employees Gratuity Scheme, tantamount to non-disclosure of material facts to justify re-opening of assessment under section 148, where he has produced the agreement between LIC and the trustees of the Gratuity Scheme, on the basis of which claim for deduction under section 36(1)(v) was being allowed in the earlier years?**	The High Court, accordingly, held that merely because the assessee is unable to produce a copy of the order of approval of the Gratuity Scheme by the Commissioner after long gap of time, it cannot tantamount to failure on the part of the assessee to disclose truly and fully all material facts, since the assessee had produced a copy of the agreement with LIC and the trustees of the gratuity scheme in the course of original assessment, in line with the documents produced in the course of assessment in the earlier years. Therefore, in the absence of failure on the part of the assessee to disclose truly and fully all material facts, reopening of assessment by issue of notice under section 148 is not valid, though, there may not be a change of opinion on the part of the Assessing Officer, as he may not have pointedly examined this aspect of gratuity in the original assessment.	**Module 4B** Topic 20.3
8.	**CIT (TDS) v. Eurotech Maritime Academy Pvt. Ltd. [2019] 415 ITR 463 (Ker)**	**Can penalty under section 271C be levied for the non-remittance of the tax deducted at source under Chapter XVII-B to the credit of the Central Government?**	The second proviso to section 194-I cannot be applicable to the assessee, because a trust cannot be included within the definition of "an individual or a Hindu undivided family" and therefore, the monetary limits specified in clause (a) or (b) of section 44AB is not relevant in this case. There is no exemption as such for other persons not covered under section 44AB. Hence, the trust is liable to	**Module 4B** Topic 20.3

			deduct tax at source, irrespective of whether or not it was covered under section 44AB. Regarding the delay in deposit, the Court took note of the decision of the Kerala High Court in US Technologies International (P.) Ltd. v. CIT [2010] 195 Taxman 323 case, which held that penalty under section 271C would be attracted for failure to deduct or failure to remit recovered tax. Further, it also noted another decision of the same High Court in case of Classic Concepts Home India Pvt. Ltd. v. CIT [2016] 383 ITR 626 (Ker) which held that so far as failure on the part of the assessee to remit the tax recovered at source is concerned, there cannot be any justifying circumstance for delay in remittance because the assessee cannot divert tax recovered for the Government towards working capital or any other purpose. Thus, the defence available under section 273B does not cover failure in payment of recovered tax.	
9.	**Sunil Vasudeva & Others v. Sundar Gupta & Others [2019] 415 ITR 281 (SC)**	**Does the High Court have the inherent power to review its own order to correct a mistake apparent from the record?**	The Supreme Court held that section 293 puts a complete bar on filing suit in any civil court against the Income-tax authority. If the civil suit was not maintainable in view of section 293 of the Act and this was the purported defence of the respondents and of the Department, there was no error committed by the High Court in its judgment rendered in exercise of its review jurisdiction calling for interference.	**Module 4B** Topic 7.2.9
	<u>Supreme Court's Observations</u>: The effect of section 293 of the Income-tax Act, 1961 had been mistakenly omitted by the High Court while passing an order directing pursuance of a civil suit. Accordingly, the said order was recalled for review and error apparent was corrected. On the issue of whether the High Court can review its own order, the Supreme Court referred to its ruling in *Kamlesh Verma v. Mayawati (2013) 8 SCC 320*, wherein the basic principles for entertaining a review application had been eloquently examined. As per the said decision, the High Court can review its own order, where the grounds for review were: (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner			

	or could not be produced by him; (ii) mistake or error apparent on the face of the record; (iii) any other sufficient reason. A review will, however, **not** be maintainable in the following cases: (i) repetition of old and overruled argument; (ii) minor mistakes of inconsequential import.			
10.	**CIT v. Metal and Chromium Plater (P) Ltd. [2019] 415 ITR 123 (Mad)**	**Should capital gains exempt under section 54EC, which forms part of the net profit in the statement of profit and loss of the assessee-company, be taken into account for calculation of tax on book profits as per section 115JB?** The issue under consideration is, whether, while determining the "book profit" for purposes of section 115JB, long-term capital gains included in the statement of profit and loss can be excluded since the same is eligible for exemption under section 54EC under the regular provisions of the Income-tax Act, 1961	The High Court affirmed the decision of the Tribunal holding that capital gains which forms part of the net profit in the statement of profit and loss of the assessee - company, in respect of which exemption under section 54EC is available while computing total income under the regular provisions of the Income-tax Act, 1961, should not be taken into account for calculation of minimum alternate tax on book profits under section 115JB.	**Module 4A** Topic 18.2

JUDICIAL UPDATES – Nov 2019

1.	**CIT v. HCL Technologies Limited [2018] 404 ITR 719 (SC)**	The issue under consideration is whether software development charges incurred in foreign exchange attributable to the delivery of technical services outside India, deductible from export turnover, **be excluded from total turnover also** for computing deduction under section 10AA.	Hence, such expenditure incurred in foreign exchange for providing technical services outside India are deductible from total turnover also.	Module 4B Topic 24.2 – 2 *New Point*

Example: From the P&L account of XYZ & Co, a partnership firm engaged in the business of manufacturing and selling leather jackets, compute the exemption under. The firm started manufacturing in a SEZ on 01/04/15, their P&L for the year ended 31st March 2019 is as follows:

Particulars	Amount (₹)	Particulars	Amount (₹)
Cost of production	**5,00,000**	**Export Sales**	**7,50,000**
Freight, Insurance	**1,00,000**	**Domestic Sales**	**2,50,000**
till Mumbai			
Freight, Insurance		**Interest on**	**25,000**
from Mumbai till		**debentures**	
USA	**2,00,000**		
Profit	**2,25,000**		
	10,25,000		**10,25,000**

Additional Information :

1. **amount in dollars brought into India on 15/09/19 is 3 lacs**
2. **amount brought into India in dollars upto 15/10/19 is 2.20 lacs**
3. **amount credited to his bank in the USA**
   (a) on 30/09/19 - 1.50 lacs (b) on 03/10/19 - 1.75 lacs

Ans : Since the unit is set up on or after 01/04/05 in a SEZ thus the deduction shall be available u/s 10AA

Total turnover = export sales + domestic sales= 7.50 lacs + 2.50 lacs = 10 lacs, from this we need to deduct the freight, telecommunication charges, transit insurnce for delivery out of India, expenses incurred in Foreign Exchange incurred outside India. = I0 lacs – 2 lacs (the entire freight is deducted as the freight of 2 lacs relates to export sales of 7.50 lacs, which fully forms part of the total turnover) = 8 lacs

	Export turnover = money brought into India within time = 4.50 Lacs , from this we need to deduct the freight, telecommunication charges, transit insurance for delivery out of India, expenses incurred in Foreign Exchange incurred outside India = 4.50 lacs – [2 lacs × [4.50 lacs ÷ 7.50 lacs]] (the entire freight is not deducted as the freight of 2 lacs relates to export sales of 7.50 lacs, however the export turnover is only 4.50 lacs. Thus we will reduce the amount of freight etc. proportionate to the export turnover.)= 3.30 lacs **Profits from business** = from the head business and profession from activity for which deduction u/s 10AA is eligible = 2.25 lacs – 0.25 lacs interest on debentures (which is income from Other sources) = 2 lacs **Exemption** = 100% (2 lacs × 3.30 lacs ÷ 8 lacs) = 100% (0.825 lacs) **Calculation of TOTAL INCOME OF XY and CO for PY 2018-19** Income under the head Business and Profession Profits u/s 28 = 2 lacs Income under the head other sources = 0.25 lacs Gross total Income = 2.25 lacs Less deductions u/s 80C to 80U = NIL **TOTAL INCOME = 2.25 lacs** Less : exemption u/s 10AA = 0.825 lacs **Taxable TOTAL INCOME = 1.425 lacs**			
2.	**CIT v. Mahindra and Mahindra Ltd. [2018] 404 ITR 1 (SC)**	Where the **waiver is in respect of loan taken for purchase of plant and machinery** and tooling equipment, would the same be subject to tax in the hands of the recipient by virtue of the provisions contained in either section 28(iv) or section 41(1)?	The Supreme Court, accordingly, held that the amount of loan waived would **not** be taxable either under section 41(1) – since it is not a trading liability or under section 28(iv) – since its not a perk	Module 32 Topic 8.2.12e *Already covered* *Refer judgement of CIT v Steel Industries*
	*As per **section 2(24)(xviii),** assistance in the form of waiver by the Central Government or State Government or any authority or body or agency in cash or kind to the assessee would be included in the definition of "income". In this case, the waiver is by a foreign company, and hence, is not included within the scope of definition of "income" under section 2(24).* *Further, it may be noted that as per **Explanation 10 to section 43(1),** deduction on account of, subsidy or grant or reimbursement, by whatever name called, received from any person has to be made while computing actual cost. Since waiver has not been expressly included in the said Explanation, it is possible to take a view that the same is not deductible while computing the actual cost. However, if a view is taken that "waiver" is included within the scope of the phrase "by whatever name called" in the said Explanation, then, the same has to be deducted while computing actual cost.*			
3.	**CIT v. Sree Rama Multi Tech Ltd. [2018] 403 ITR 426 (SC)**	Is interest income from share application money deposited in bank eligible for set-off against public issue expenses or should such interest be subject to tax under the head	The Supreme Court concurred with the High Court's view that the interest accrued on deposit of share application money with bank is eligible for set off against the public issue expenses; such interest is, hence, **not** taxable as "Income from Other Sources" but as business income	Module 2 Topic 8.1.6ba – refer CIT v Henkel Spic India Ltd

		'Income from Other Sources'?		*Already covered*
4.	**CIT v. Container Corporation of India Limited [2018] 404 ITR 397 (SC)**	Can Inland Container Depots (ICDs) be treated as infrastructure facility, for profits derived therefrom to be eligible for deduction under section 80-IA?	The Supreme Court, accordingly, upheld the decision of the division bench of the High Court and held that CONCOR can claim for deduction under Section 80-IA in respect of profits derived from Inland Container Depots.	Module 3B Topic 14.2.1 *Already covered*
5.	**CIT (TDS) and Anr v. Canara Bank [2018] 406 ITR 161 (SC)**	Can payment of interest by Canara Bank to NOIDA be exempted from the requirement of tax deduction at source under section 194A on the ground that the same is a corporation established by or under the Uttar Pradesh Industrial Area Development Act, 1976?	The Supreme Court observed that the Preamble to the 1976 Act itself provides for constitution of an authority. NOIDA has, thus, been established by the 1976 Act and is clearly covered under the Notification dated October 22, 1970. Hence, it is eligible for exemption from tax deduction at source provided under section 194A(3)(iii)(f).	Module 1 Topic 7.2.6 *New point*
6.	**Director, Prasar Bharati v. CIT [2018] 403 ITR 161 (SC)**	Are the provisions of tax deduction at source under section 194H attracted in **respect of amount retained by accredited advertising agencies out of remittance of sale proceeds** of "airtime" purchased from Doordarshan and sold to customers?	The Supreme Court, thus, held that the amount retained by the accredited advertising agencies is commission and consequently, the provisions of tax deduction at source under **Section 194H are attracted..**	Module 1 Topic 7.2.8c *Ques 2: please note interpretation has changed*
	It may be noted that the CBDT has, vide Circular No.5/2016 dated 29.2.2016, clarified that TDS under section 194H is not attracted on retentions by an advertising agency (for booking or procuring of or canvassing for advertisements) from payments remitted to television channels/newspaper companies. The CBDT has issued this clarification on the basis of the Allahabad High Court ruling in Jagran Prakashan Ltd.'s case and Delhi High Court ruling in Living Media Ltd.'s case that the relationship between the media company and advertising agency is that of a "principal to principal**".** **However, the Supreme Court, in this case, has distinguished from the Allahabad High Court ruling, on the basis of the fact that an agreement has been entered into by Doordarshan with the accredited agencies specifically appointing them as agents; and the agreement also contains a specific clause for deduction of tax at source on trade discount, which is in the nature of commission.** Accordingly, the Supreme Court held that the relationship between Doordarshan and its accredited agencies is that of a principal and agent, consequent to which TDS provisions under section 194H would get attracted in respect of retentions by accredited advertising agencies from payments remitted to Doordarshan. Therefore, the applicability or otherwise of the CBDT Circular will depend on the facts of the specific case.			
7.	**Spinacom India (P.) Ltd. v. CIT [2018] 258 Taxman 128 (SC)**	Whether delay in **filing appeal under section 260A can be condoned**	Since no satisfactory reason has been provided by the Appellant for the extraordinary delay of 439 days in filing the appeal, the Supreme Court dismissed the application for	Module 4B Topic 21.3.1

		where the stated reason for delay is the pursuance of an alternate remedy by way of filing an application before the ITAT under section 254(2) for rectification of mistake apparent on record?	condonation of delay.	*New Point*
	Sec 254(2) is an application for rectifying a 'mistake apparent from the record' which is much narrower in scope than the latter. Under section 260A, an order of the ITAT can be challenged on substantial questions of law. The time period for filing an appeal under section 260A does not get suspended on account of the pendency of an application before the ITAT under section 254(2) of the Act			
8.	**U.P. Distillers Association (UPDA) v. CIT [2017] 399 ITR 143 (Del)**	**Is the cancellation of registration of a trust under section 12AA, on the basis of search conducted in the premises of its Secretary General and the statement recorded by him under section 132(4), valid?**	The Delhi High Court, accordingly, held that cancellation of the trust's registration under section 12AA on the basis of search conducted in the premises of the Secretary General and the statement recorded under section 132(4) from him, is valid.	Module 4A Topic 17.2.2
9.	**Sky Light Hospitality LLP v. Assistant CIT [2018] 405 ITR 296 (Del)**	Is the notice for reassessment issued under section 148 on the basis of tax evasion report received from the Investigation Unit of the Income-tax department valid, if such notice has been issued erroneously in the name of the erstwhile company which has now been converted into an LLP?	The Delhi High Court held that the notice **issued under section 148 on the basis of tax evasion report received from the Investigation unit of the Income-tax department is valid,** since there was reason to believe on the basis of the said report that income had escaped assessment, even though the notice was erroneously issued in the name of the erstwhile company which has now been converted into LLP.	Module 4B Topic 20.3.1b
10.	**Regen Powertech Private Limited v. CBDT and Another [2019] 410 ITR 483 (Mad)**	**Can the CBDT refuse to condone delay in filing the tax return, where such delay was caused by circumstances beyond the control of the assessee?**	The High Court held that application for condonation of delay could not have been rejected by the CBDT as the circumstances causing delay were beyond the control of the assessee. The High Court opined that the CBDT should have exercised its discretion in a proper manner and condoned the delay.	Module 4B Topic 22.1.1
	The assessee company was engaged in the manufacture of wind energy generators. For the A.Y.2014-15, the assessee filed its return of income on January 7, 2015 with a delay of 37 days. The assessee contended that the delay was on account of obtaining the audit report required under section 44AB. The appointed firm of chartered accountants (SRB) had some reservations regarding the valuation of the assessee company's business transfer which was communicated to the assessee only on the last day of filing the audit report. In such circumstances, the assessee had to look for an alternative auditor which could also be done subject to a "No Objection Certificate" from SRB. The "No Objection Certificate" was only issued on December 15, 2014, after which the return of income along with audit			

	report was filed on January 7, 2015.			
11.	**CIT v. Indian Oil Corporation [2019] 410 ITR 106 (Uttarakhand)**	**Is the assessee-company engaged in refining, distribution and sale of petroleum products, liable to deduct tax under section 194C or under section 194-I, in respect of payment made to the carrier engaged for road transport of bulk petroleum products?**	**High Court's Observations:** the carrier would be paid transport charges, and that too, for the shortest route travelled by it in the course of transporting the goods of the assessee. The contract did not require payment of idle charges and it was clear that there was no entitlement to any payment other than the actual transportation of the goods. Hence, the carrier was not being hired for full time thus 194C is applicable	**Module 1** Topic 7.2.11
	Facts: The assessee-company was engaged in refining crude oil and storing, distributing and selling the petroleum products. The assessee-company required tank trucks for road transportation of bulk petroleum products from its various storage points to customers or other storage points. It entered into an agreement with another company for the said purpose.			
12.	**CIT v. Ceebros Hotels Private Limited [2018] 409 ITR 423 (Mad)**	**Can an assessee setting up a hotel claim deduction under section 35AD for the relevant previous year, on the basis that it had commenced its operations and made an application for three-star category classification in beginning of the said previous year, even though the same was granted by the authority only in the next year due to the requirement of completion of inspection?**	**High Court's Decision:** The High Court upheld the Tribunal's view that the assessee is entitled to claim the deduction under section 35AD for the relevant previous year, opining that the provision which was introduced to encourage the establishment of hotels of a particular category is a beneficial provision, and hence, should be read and interpreted liberally	**Module 2** Topic 8.2.13b
13.	**Principal CIT v. Reebok India Company [2018] 409 ITR 587 (Del)**	**Can part of the interest paid by the assessee on unsecured loans taken be disallowed due to the reason that, out of the said loans, the assessee had advanced certain sum of money to third parties without charging any interest?**	The High Court, accordingly, held that deduction for interest paid on unsecured loans has to be allowed under section 36(1)(iii), where the commercial expediency test is satisfied, even though part of the unsecured loan was advanced to third parties without charging interest.	**Module 2** Topic 8.2.8ec
	The assessee-company had taken unsecured loans of Rs.502.69 crores. Out of the said sum, it had advanced Rs.172.59 crores to third parties on which no interest was charged and received. Pursuant to this, for the relevant assessment year, the Assessing Officer proportionately disallowed, under section 36(1)(iii), an amount of Rs.23.60 crores from the interest of Rs.68.75 crores paid by the assessee. The Dispute Resolution Panel affirmed the addition opining that the Assessing Officer was empowered to examine if the expenditure incurred by the assessee met the rigors of "business connection" and "expediency".			
14	**Principal CIT v. Gujarat State Fertilizers and Chemicals Limited [2018] 409 ITR 378 (Guj)**	**Would sale of fertilizer bonds (issued in lieu of government subsidy) at loss be treated as a business loss or a loss under the head "Capital gains"?**	In this case also, the assessee received fertilizer bonds (in lieu of subsidy) which were sold at a loss in the open market. The High Court, accordingly, held that since the subsidy would have been treated as business income, loss on sale of fertilizer	**Module 2** Topic 8.1.6h

			bonds issued is to be allowed as business loss.	
15.	**CIT v. Ranjit Projects Private Limited [2018] 408 ITR 274 (Guj)**	**Would an assessee who enters into an agreement with the Gujarat State Road Development Corporation for an infrastructure development project be entitled to deduction under section 80-IA(4), even though as per the requirement contained therein, the agreement has to be entered into with the Central Government or State Government or a local authority or any other statutory body?**	The High Court held that since the assessee has entered into an agreement with GSRDC, a government agency constituted by the State Government for the purposes of executing road development projects, it is entitled to deduction under Section 80-IA	**Module 2** Topic 14.2.1
16.	**C Aryama Sundaram v. CIT [2018] 407 ITR 1 (Mad)**	**Would the cost of purchase of land and cost of construction of residential house thereon incurred by the assessee prior to transfer of previously owned residential house property, qualify for exemption under section 54?**	**High Court's Decision:** The High Court, accordingly, held that, in this case, the cost of land and cost of construction incurred thereon prior to transfer of residential house property also have to be considered for the purpose of capital gains exemption under section 54. As capital gains arising on transfer of previously owned house property of the assessee is less than the cost of the new residential house in this case, the entire capital gains would be exempt under section 54.	**Module 3A** Topic 9.7.1c
17.	**CIT v. Maruti Suzuki India Limited [2018] 407 ITR 165 (Del)**	**Can payments made by an assessee to a non-resident agent who does not have any income assessable in India be disallowed under section 40(a)(i) for non-deduction of tax at source on the ground that no application was made by the assessee under section 195(2) for making deduction of tax at source at nil rate?**	**High Court's Decision:** The High Court, accordingly, held that where the assessee has made payment to a non-resident agent where such income is not chargeable to tax in India, section 40(a)(i) could not be invoked to disallow deduction of such payment for non-deduction of tax at source, while computing the business income of the assessee.	**Module 2** Topic 8.2.6
18.	**Sun Outsourcing Solutions Private Limited v. CIT (Appeals) [2018] 407 ITR 480 (T&AP)**	**Is interest under section 201(1A) attracted even in a case where non-deduction of tax at source was under a *bona fide* belief that tax was not deductible and the default was not willful?**	The High Court, accordingly, held that since the company had failed to deduct tax on the payments made to its employees, being Indian residents deputed to work in the U.K., section 201(1A) is automatically attracted; even if such non-deduction was due to the *bona fide* belief that tax is not deductible in such case, the company is, nevertheless, liable to pay interest under section 201(1A).	**Module 1** Topic 7.3.6

III. CIRCULARS & NOTIFICATIONS

Notification of transactions in equity shares in respect of which the condition of chargeability to STT at the time of acquisition for claiming concessional tax treatment under section 112A shall not apply [Notification No. 60/2018, dated 01-10-2018] The provisions of concessional rate of 10% shall apply only if the purchase of the shares was also on the RSE

<table>
<tr><td colspan="2">The circular clarifies that the condition will not apply in the following situations
where the acquisition of equity shares entered into
- before 1st October, 2004 or
- on or after 1st October, 2004 which are not chargeable to ST T , other than the following transactions.</td><td rowspan="3">Module 3A
Topic 9.4.4b

new point</td></tr>
<tr><td>a) Where shares are existing shares listed on a RSE but are acquired through a preferential issue.</td><td>• Has been approved by the HC/SC/NCLT/SEBI or RBI
• Buyer is a NR and purchase is in accordance with FDI guidelines of the Govt.
• By an investment fund mentioned u/s 115UB or a VCC as under Sec 10(23FB) or a qualified institutional investor.
• Is through preferential issue</td></tr>
<tr><td>b) Where shares are existing shares listed on a RSE but acquired other than on RSE</td><td>• Acquired from a company other than by preferential issue as above
• By Scheduled Banks, reconstruction or securitisation companies or Public Financial Institutions during the course of their business
• Acquired by HC/SC/NCLT/SEBI or RBI
• Acquired under ESOP or ESOS
• Buyer is a NR and purchase is in accordance with FDI guidelines of the Govt.
• Acquired in accordance with SEBI(substantial acquisition of shares and takeover rules 2011)
• By an investment fund mentioned u/s 115UB or a VCC as under Sec 10(23FB) or a qualified institutional investor.
• acquisition by mode of transfer referred to in section 47 (e.g., transfer of capital asset</td></tr>
</table>

	under a gift, an irrevocable trust, transfer of capital asset between holding company and its subsidiary,etc	
c) Where shares are acquired during the period the shares are delisted from the RSE		
Exception notified for the purposes of clause (ii) of the proviso to section 56(2)(viib) [Notification No. 24/2018, dated 24-05-2018]		
Where a company, other than a company in which public are substantially interested, issues shares at a premium to a person being a resident, section 56(2)(viib) brings to tax in the hands of such company, the difference between the aggregate consideration received for such shares as exceeds the fair market value of the shares under the head "Income from Other Sources". However, such provision would not be attracted where the consideration for issue of such shares is received by a company from a class or classes of persons **as may be notified by the Central Government in this behalf.** **Earlier** the Central Government had, vide Notification No. 45/2016, dated 14.6.2016, notified classes of persons, i.e., a person defined under section 2(31) of the Income-tax Act, 1961, being a resident, who makes payment of an amount exceeding the face value of shares of the "startup" company, as consideration for issue of such shares. In **supersession** of the above mentioned Notification, the Central Government has, vide this notification, notified that the provisions of section ***56(2)(viib) shall not apply*** to consideration **received by** a company, **being an eligible start-up for the purposes of deduction under section 80-IAC**, for issue of shares that exceeds the face value of such shares, if the consideration has been received for issue of shares from an investor in accordance with the approval granted by the Inter-Ministerial Board of Certification Accordingly, vide this notification, the eligibility criteria for non-applicability of section 56(2)(viib) have been specified in relation to the recipient company rather than the class or classes of persons making payment for issue of shares to the company. T his notification shall be deemed to have come into effect from 11.04.2018.		**Module 3B** **Topic 11.3.4** *Change Point b) of analysis*
No tax is required to be deducted at source on interest payable on "Power Finance Corporation Limited 54EC Capital Gains Bond" and "Indian Railway Finance Corporation Limited 54EC Capital Gains Bond" - Notification No. 27 & 28/2018, dated 18-06-2018		
The benefit of this exemption would, however, be admissible in the case of transfer of such bonds by endorsement or delivery, only if the transferee informs PFCL/IRFCL by registered post within a period of sixty days of such transfer.		**Module 2** **Topic 7.2.4** *New point*

<table>
<tr><th colspan="2">Exemption to interest income on specified off-shore Rupee Denominated Bonds [Press Release, dated 17-09-2018]</th></tr>
<tr><td>Interest payable by an Indian company or a business trust to a non -resident, including a foreign company, in respect of rupee denominated bond issued outside India before 1.7.2020 is liable for concessional rate of tax of 5%. Consequently, section 194LC provides for the deduction of tax at a lower rate of 5% on the said interest payment.

Consequent to review of the state of economy on 14.9.2018 by the Prime Minister, the Finance Minister has announced a multi-pronged strategy to contain the Current Account Deficit (CAD) and augment the foreign exchange inflow. In this background, low cost foreign borrowings through off-shore rupee denominated bond have been further incentivised to increase the foreign exchange inflow.

Accordingly, it has been decided that interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India during the period from 17.9.2018 to 31.3.2019 shall be exempt from tax, and consequently, no tax shall be deducted on the payment of interest in respect of the said bond under section 194LC</td><td>Module 5
Topic 26.2.1a

New point</td></tr>
<tr><th colspan="2">TDS</th></tr>
<tr><td>Clarification as to the applicability of section 194N and manner of computing the threshold limit of Rs.1 crore thereunder, where cash withdrawals have taken place prior to 1.9.2019 [Press Release dated 30.8.2019]

The Finance (No. 2) Act, 2019 has inserted section 194N, with effect from 1.9.2019 to require every person, being a banking company, a co-operative society engaged in carrying on the business of banking or a post office who is responsible for paying, in cash, any sum or aggregate of sums exceeding ` 1 crore during the previous year to any person from one or more accounts maintained by such recipient-person with it, to deduct tax at source @2% of sum exceeding<br><br>` 1 crore. The deduction is to be made at the time of payment of such sum.

The CBDT has, vide Press Release dated 30.8.2019, clarified that section 194N is to come into effect from 1st September, 2019. Hence, any cash withdrawal prior to 1st September, 2019 will not be subjected to the TDS under section 194N. However, since the threshold of Rs. 1 crore is with respect to the previous year 2019-20, calculation of amount of cash withdrawal for triggering deduction under section 194N shall be counted from 1st April, 2019. Hence, if a person has already withdrawn Rs. 1 crore or more in cash upto 31st August, 2019 from one or more accounts maintained with a banking company or a cooperative bank or a post office, TDS@2% shall apply on all subsequent cash withdrawals.</td><td></td></tr>
</table>

No tax is required to be deducted at source under section 194N on cash withdrawals by persons or class of persons as notified by the Central Government [Notification No. 80/2019, dated 15.10.2019]

The proviso to section 194N provides that no tax is, however, required to be deducted at source on payments made to *inter alia* such other person or class of persons as notified by the Central Government.

Accordingly, the Central Government has, vide this notification, after consultation with the Reserve Bank of India (RBI), specified -

the authorised dealer and its franchise agent and sub-agent; and

Full-Fledged Money Changer (FFMC) licensed by the RBI and its franchise agent;

Such persons should maintain a separate bank account from which withdrawal is made only for the purposes of -

(i) purchase of foreign currency from foreign tourists or non-residents visiting India or from resident Indians on their return to India, in cash as per the directions or guidelines issued by RBI; or

(ii) disbursement of inward remittances to the recipient beneficiaries in India in cash under Money Transfer Service Scheme (MTSS) of the RBI;

Time limit for repatriation of excess money or part thereof and manner of computation of interest on excess money not repatriated prescribed [Notification No. 76/2019, dated 30.9.2019]

Section 92CE(2) requires repatriation, within the prescribed time, of the excess money or part thereof, as the case may be, which is available with the associated enterprise, in a case 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. If the excess money or part thereof is not repatriated to India within the prescribed time, it shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed in the prescribed manner.

The CBDT has, *vide this notification*, amended Rule 10CB(1) which prescribes the time limit for repatriation of excess money or part thereof i.e., on or before 90 days from the specified date. The 90 days period is to be reckoned from the date specified in column (2) in the cases mentioned in column (1) of the table below. Further, the date from which interest is chargeable on the excess money or part thereof which is not repatriated in the cases mentioned in column (1) is given in column (3) in the table below:

Case	Time limit for repatriation of excess money or part thereof: Within 90 days from	Date from which interest is chargeable on the non- repatriated excess money or part thereof within the specified time limit
(1)	(2)	(3)

(i) Where primary adjustments to transfer price have been made *suo-motu* by the assessee in his return of income	the due date of filing of return u/s 139(1)	*the due date of filing of return u/s 139(1)*	
(ii) If primary adjustments to transfer price as determined in the order of the Assessing Officer or the appellate authority has been accepted by the assessee	the date of the said order	*the date of the said order*	
(iii) Where primary adjustment to transfer price is determined by an advance pricing agreement (APA) entered into by the assessee u/s 92CC in respect of a previous year -			
• *If the APA has been entered into on or before the due date of filing of return for the relevant P.Y.*	*the date of filing of return u/s 139(1)*	*the* ***due date*** *of filing of return u/s 139(1)*	
• *If the APA has been entered into on or after the due date of filing of return for the relevant P.Y.*	*the end of the month in which the APA has been entered into*	*the end of the month in which the APA has been entered into*	
(iv) Where option has been exercised by the assessee as per the safe harbour rules u/s 92CB	the due date of filing of return u/s 139(1)	*the due date of filing of return u/s 139(1)*	
(v) Where the primary adjustment to the transfer price is determined by a resolution arrived at under Mutual Agreement Procedure under a DTAA has been entered into u/s 90 or 90A	*the date of giving effect by the A.O. under Rule 44H to such resolution*	*the date of giving effect by the A.O. under Rule 44H to such resolution*	

Rule 10CB(2) prescribes the rate at which the per annum interest income shall be computed in case of failure to repatriate the excess money or part thereof within the above time limit. The interest would be computed *inter alia* at six month London Interbank Offered Rate (LIBOR) as on 30th September of the relevant previous year + 3.00%, where the international transaction is denominated in foreign currency.

Rate of exchange for the calculation of the value in rupees of the international transaction denominated in foreign currency shall be the telegraphic transfer buying rate of such currency on the last day of the previous year in which such international transaction was undertaken.	
Surcharge rates on Incomes covered u/s 112A & 111A **1. For those whose incomes are taxable at slab rates**	
The August, 2019 edition of the Study Material contains the CBDT Press Release dated 24.8.2019, at Pg. 4.362 of Module 2. According to this Press Release, the enhanced surcharge of 25% and 37% on Income-tax, as the case may be, applicable where the total income of Individuals/HUFs/ AOPs/Bols/Artificial Juridical persons exceeds ₹ 2 crore and ₹ 5 crore, respectively, has been withdrawn on income-tax payable at special rates on short-term capital gain under section 111A and long-term capital gains under section 112A arising from the transfer of equity share in a Higher surcharge of 25% & 37% will NOT be applicable to tax on LTCG u/s 112A or STCG u/s 111A Thus where i) Total Income (Excl 112A/111A) > 2cr Tax u/s 112A/111A – 15% surcharge Tax on other Income – 25% " ii) Total Income (Excl 112A/111A) > 5cr Tax u/s 112A/111A – 15% surcharge Tax on other Income – 37% " iii) Total Income (Excl 112A/111A) > 1cr Tax u/s 112A/111A – 15% surcharge Tax on other Income – 15% " iv) Total Income (Excl 112A/111A) > 50lacs Tax u/s 112A/111A – 10% surcharge Tax on other Income – 10% "	
EXAMPLES	
• STCG u/s 111A ` 30 lakhs; • LTCG u/s 112A ` 25 lakhs; and • Other income ` 40 lakhs  • STCG u/s 111A ` 60 lakhs; • LTCG u/s 112A ` 65 lakhs; and • Other income ` 50 lakhs	

• STCG u/s 111A ` 54 lakh; • LTCG u/s 112A ` 55 lakh; and • Other income ` 3 crores	• STCG u/s 111A ` 50 lakhs; • LTCG u/s 112A ` 65 lakhs; and • Other income ` 6 crore.	
• STCG u/s 111A ` 60 lakhs; • LTCG u/s 112A ` 55 lakhs; and • Other income ` 1.10 crore		

2. For others

	Particulars	Rate of surcharge on income- tax	Example	
			Components of total income	**Applicable rate of surcharge**
(i)	Where the total income > ` 50 lakhs but ≤ ` 1 crore	10%	Capital gains on securities referred to in section 115AD(1)(b) ` 60 lakhs; **and** Other income ` 35 lakhs;	Surcharge would be levied@10% on income-tax computed on total income of ` 95 lakhs.
(ii)	Where total income ` 1 crore but ≤ ` 2 crore	15%	Capital gains on securities referred to in section 115AD(1)(b) ` 1.20 crore; **and** Other income ` 60 lakhs;	Surcharge would be levied@15% on income-tax computed on total income of ` 1.80 crore.
(iii)	Where total income [excluding STCG/ LTCG on securities referred to in section115AD(1)(b)] > ` 2 crore but ≤ ` 5 crore	25%	• Capital gains on securities referred to in section 115AD(1)(b) ` 1.20 crore; **and**	Surcharge would be levied: @15% on income- tax leviable on capital gains of ` 1.20 crore

	Rate of surcharge on the income-tax payable on the portion of income chargeable to tax u/s 115AD(1)(b)	Not exceeding 15%	• Other income ` 3 crores;	referred to in section 115AD; **and** @25% on income- tax computed on other income of ` 3 crores included in total income
(iv)	Where total income [excluding STCG/ LTCG on securities referred to in section 115AD(1)(b)] > ` 5 crore	37%	• Capital gains on securities referred to in section 115AD(1)(b) ` 1.70 crore; and • Other income ` 6 crore	Surcharge would be levied - @15% on income- tax leviable on capital gains of ` 1.70 crore referred to in Section 115AD; **And** @37% on income- tax computed on other income of ` 6 crore included in total income
	Rate of surcharge on the income-tax payable on the portion of income chargeable to tax u/s 115AD(1)(b)	Not exceeding 15%		
(v)	Where total income [including STCG/ LTCG on securities referred to in 115AD(1)(b)] > ` 2 crore in cases not covered under (iii) and (iv) above	15%	• Capital gains on securities referred to in section 115AD(1)(b)` 1.10 crore; **and** Other income ` 1.60 crore;	Surcharge would be levied@15% on tax on total income of ` 2.70 crore.

Concessional rates of tax in respect of certain Domestic Companies – New Point

S.No	Particulars	**Section 115BAB**	**Section 115BAA**
1.	Applicability	Domestic **Manufacturing** Company w.e.f 01.04.2019	Any Domestic Company w.e.f. 01.04.2019.
2.	Rate of Tax	i) **For income from Manufacturing Activity:** 15% (Subject to fulfilment of	i) **Income for which no specific rate os given under this Chapter:** 22% (Subject to fulfilment of

		certain **conditions**) *plus 10% Surcharge plus 4% cess i.e* **17.16%** ii) **For other income :** 22% plus 10% surcharge plus 4% cess **i.e. 25.168%** • Neither derived nor incidental to manufacturing • STCG on NDCA(no restriction for claiming any deduction) • **other than in pt.iii) :** iii) **Chapter XII income [Sec 112** (any LTCG) **& 112A** (LTCG on securities subject to STT) **]** • Rate of tax: As per Sec 112 & 112A • Surcharge @10% [Sec 115BAB]. • HEC@ 4%	certain **conditions**) *plus 10% Surcharge plus 4% Cess.* **Effective tax rate= 25.168%** and t<u>here is no restriction regarding claiming of deduction or allowance.</u> ii) **For other income :** 22% plus 10% surcharge plus 4% cess **i.e. 25.168%** • STCG on NDCA(no restriction for claiming any deduction) • **other than in pt.iii) :** iii) **Chapter XII income [Sec 112** (any LTCG) **& 112A** (LTCG on securities subject to STT) **]** • Rate of tax: As per Sec 112 & 112A • Surcharge @10% [Sec 115BAB]. • HEC@ 4%
	Illustration: M/s ABC Limited incorporated on 11.11.2019. The company is in the business of providing professional services. Total income of the company before allowing deduction of expenditure for FY 2019-20 is Rs 78 Lacs. Company incurred Rs 31 Lacs expenditure during the year. What will be the amount of tax for FY 2019-20 of M/s ABC Limited if the company opts section 115BAA during AY 2020-21? Where the total income of the person, includes any income, which has neither been derived from nor is incidental to manufacturing or production of an article or thing and **in respect of which no specific rate of tax has been provided separately under this Chapter**, such income shall be taxed at the rate of 25.168% and there is no restriction regarding claim of any deduction or allowance permissible under the relevant provisions of the Act. Therefore, Amount of tax will be : Rs 11.83 Lacs (78 Lacs-31 Lacs= 47 Lacs , 25.168% of Rs 47 Lacs=11.83 Lacs)		
3.	MAT	MAT: Not Applicable Since it is ***new company***, there will be no brought forward MAT Credit.	MAT: Not Applicable Brought forward MAT Credit cannot be set-off against income u/s 115BAA

<table>
<tr><td></td><td></td><td></td><td></td></tr>
<tr><td>4.</td><td><u>Conditions</u>
to be fulfilled for availing concessional rate of tax and exemption from MAT</td><td>a) Should be set-up or registered <u>on or after 01.10.2019</u>
b) <u>Commenced manufacturing</u> or production of an article or thing <u>on or before the 31.03.2023</u></td><td>Existing company as well as new company can avail benefit.
No requirement to fulfil such conditions.</td></tr>
<tr><td></td><td colspan="3"><u>CONDITIONS only for Sec 115BAB:</u>
1) Should not be formed by splitting up, or the reconstruction, of a business already in existence
(This condition shall not apply in respect of a company, business of 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)
2) It does not use any machinery or plant previously used for any purpose (i.e Second hand machinery cannot exceed 20% of the total machinery)
However foreign Second hand machinery will not be considered second hand provided
It was not used in India Earlier and no deduction in respect of such machinery has been allowed or is allowable under the Income Tax Act.
3) Business of manufacture or production of any article or thing shall <u>NOT</u> include business of,—
a) development of computer software in any form or in any media;
b) mining;
c) conversion of marble blocks or similar items into slabs;
d) bottling of gas into cylinder;
e) printing of books or production of cinematograph film; or
f) any other business as may be notified by the Central Government in this behalf</td></tr>
</table>

<table>
<tr><td></td><td colspan="2">If any difficulty arises regarding fulfilment of the conditions contained in points d) to f) above, the Board may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty and to promote manufacturing or production of article or thing using new plant and machinery.

Every guideline issued by the Board shall be laid before each House of Parliament, and shall be binding on the person, and the income-tax authorities subordinate to it.</td></tr>
<tr><td></td><td colspan="2">Illustration 1: M/s ABC Ltd incorporated on 15.11.2019 is into the business of providing consultancy services. The company is not formed by splitting up or reconstruction of business already in existence. All the plant and machinery of the company is new. Can ABC limited opt for section 115BAB for FY 2019-20?

As the first criteria to opt for section 115BAB is that the company should be Domestic Manufacturing Company. M/s ABC Limited is not manufacturing Company, hence it cannot opt for section 115BAB.

Illustration 2: M/s XYZ Ltd incorporated on 15.11.2019 is into the business of manufacturing of pharma products. The company is not formed by splitting up or reconstruction of business already in existence. The total value of Plant and Machinery used by the Company is Rs 100 Lacs. A machinery part of Rs 80,000/- previously used by M/s Oswal Enterprises, a spare part dealer is put to use by the Company on 18.12.2019. Can M/s XYZ Limited opt for section 115BAB for FY 2019-20?

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, the condition specified in section is deemed to have complied with. As the value of part of machinery used by the Company is Rs 80,000/- which is 0.8% of the total value of machinery, M/s XYZ Ltd can opt for section 115BAB, provided all other conditions specified in subsection (2) are complied with.

Illustration 3: M/s A Ltd incorporated on 18.12.2019 is into the business of bottling of gas into cylinder. The company is not formed by splitting up or reconstruction of business already in existence. All the conditions laid down in subsection (2) are complied with. Can M/s A Limited opt for section 115BAB for FY 2019-20?

Answer: As the business of bottling of gas into cylinders is specifically excluded from the manufacturing or production of any article or thing u/s 115BAB, therefore M/s A Ltd cannot opt for section 115BAB.</td></tr>
<tr><td>5.</td><td>Computation of total income</td><td>Total income of the company should be computed:

<u>Applicable to Sec 115BAB & Sec 115BAA</u>

1) <u>Without providing deductions</u> under</td></tr>
</table>

		a) Section 10AA – units in SEZ b) Section 32(1)(iia) – Additional Depreciation (Depreciation is however allowed) c) Section 32AD – Investment allowance d) Section 33AB - Tea/Coffee/Rubber e) Section 33ABA – Site restoration Fund f) Section 35(1)(ii)/(iia)/(iii) , Section 35(2AA), Section 35(2AB) – Scientific Research g) Section 35AD – Specified Business h) Section 35CCC – Agricultural Extension Programme i) Section 35CCD - Training centre for manufacturing workforce j) Section 80IA to 80RRB (Any provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes" other than the provisions of section 80JJAA) 2) Without set-off of any loss or allowance for unabsorbed depreciation deemed so under section 72A where such loss or depreciation is attributable to any of the deductions referred to in 1) above (Such loss and depreciation would be deemed to have already given effect to and no further deduction for such loss shall be allowed for any subsequent year) **Additional Point in 115BAA:** Without set off of any loss carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in point 1) above (Such loss and depreciation would be deemed to have already given effect to and no further deduction for such loss shall be allowed for any subsequent year)
	Illustration 1: M/s ABC Ltd incorporated on 18.12.2019 is into the business of manufacturing of toys. It has brought forward loss on account of additional depreciation amounting to Rs 2.80 Lacs. Income of the company in FY 2019-20 without giving effect to the brought forward loss is Rs 55 Lacs. Compute the income of ABC Limited u/s 115BAA of the Act assuming all the conditions laid sown in subsection (2) have been complied with. Answer: In computing the income u/s 115BAA no deduction of brought forward loss on account of additional depreciation u/s 32(1)(iia) is allowed. Therefore total income of the company will be : Rs 55 Lacs	

6.	Failure to satisfy conditions	When the conditions mentioned in point 4 & 5 are not fulfilled • **option shall become invalid** for that previous year and subsequent AYs • and other provisions of the Act shall apply to the person **Note** – Where option exercised under section 115BAB is rendered invalid due to violation of conditions stipulated in point no.4 and 5 above, such person may exercise option under section 115BAA.	When the conditions mentioned in point 5 are not fulfilled • **option shall become invalid** for that previous year and subsequent AYs • and other provisions of the Act shall apply to the person
	Option to be exercised within prescribed time	The option must be exercised on or before the due date u/s 139(1) for furnishing the **first of the returns of income for any previous year relevant to the AY 2020-21** and such option once exercised shall apply to subsequent AYs. • Once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year. • *In case of an amalgamation, the option u/s 115BAB shall remain valid in case of the amalgamated company only and if the conditions contained in aforesaid points 4 and 5 are continued to be satisfied by such company*	The option must be exercised on or before the due date u/s 139(1) for furnishing the **first of the returns of income for any previous year relevant to the AY 2020-21** and such option once exercised shall apply to subsequent AYs. • Once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year • Where the person exercises option under section 115BAA, the option under section 115BA may be withdrawn
	Illustration: M/s ABC Limited incorporated on 11.11.2019. The company is in the business of mining. Determine under which of these options provisions of section 115BAB/BAA will apply :		

	a) ABC Limited exercised the option u/s 115BAB before the due date for filing return of Income for AY 2020-21 u/s 139(1) of the Act. **b) ABC Limited exercised the option u/s 115BAA after the due date for filing return of Income for AY 2020-21 u/s 139(1) of the Act.** **Ans.** a) Although ABC Limited exercised the option u/s 115BAB before the due date prescribed u/s 139(1) of the Act, but as the business of the company is mining which is specifically exempted u/s 115BAB so it cannot opt for the concessional rate of tax u/s 115BAB. b) As ABC Limited exercised the option u/s 115BAB after the due date prescribed u/s 139(1) of the Act, it cannot opt for the concessional rate of tax u/s 115BAA.	
9.	Transactions with persons having close connection <u>Sec 115BAB</u>	Where it appears to the Assessing Officer that, owing to the <u>close connection between the person to which this section applies and any other person,</u> or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the person <u>more than the ordinary profits</u> which might be expected to arise in such business, the Assessing Officer shall, in computing the profits and gains of such business for the purposes of this section, take the amount of profits as may be reasonably deemed to have been derived therefrom. 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. Profits in excess of the amount of the profits determined by the Assessing Officer, shall be deemed to be the income of the person. Income tax on the income so deemed shall be computed @ 30% plus 10% surcharge plus 4% Cess. **Effective rate of Tax:- 34.32%** No Requirement to make any adjustment
10.	Additional Points Sec 115BAA	1) In the case of a person having a Unit in the IFSC, referred to in section 80LA(1A), which has exercised option for section 115BAA, deduction u/s 80LA would be allowed subject to fulfilment of the conditions specified in that section. 2) As there is <u>no time limit within which section 115BAA can be exercised</u>, a domestic company that has brought forward losses and unabsorbed depreciation on account of deductions listed in SNO

		5. Above, may if it so desires, postpone exercise of option u/s 115BAA to a later AY, after set-off of losses and depreciation so accumulated. 3) Where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to A.Y.2020-21, corresponding adjustment shall be made to the WDV of such block of assets as on 1.4.2019 in the prescribed manner, if option for section 115BAA is exercised for P.Y.2019-20 relevant to A.Y.2020-21. *For example, in case of an asset acquired and put to use for less than 180 days in P.Y. 2018-19, the effect of balance additional depreciation to be allowed in P.Y. 2019-20 will be made in the WDV of the block as on 1.4.2019, if option for section 115BAA is exercised for P.Y.2019-20 relevant to A.Y.2020-21.*

IV. Special Emphasis Topics [SET's]

The syllabus of DT is very vast and the trick to scoring well is the last day revision of all the course.

The trick is in being able to target the paper smartly as well. So from the previous 2 attempts and the Mock Test the following has been observed

	Module	Chapter	Topics	May-18	Nov-18	May 2019	Mock Test 2019		Average	
							MCQ	Subjective	total	%age
	1	**Basics**	**Defining Royalty**					**4**	4	1%
		House Property							0	0%
		Salary							0	0%
		TDS & TCS		9	14	8	4	11	46	10%
24%	**2**	B&P		7	20	3	6		36	8%
	3A	Capital Gains		13	15				28	6%
		Business Reorganisation							0	0%
	3B	Other Sources					2		2	0%
		Clubbing							0	0%
		Set off or losses		4				5	9	2%
		Deductions	80IAC	11				3	14	3%
		HUF							0	0%
	4A	Firms & AOP							0	0%
20%		Charitable Trust		4	8		8	8	28	6%
		MAT & AMT		14	14	22		14	64	14%
		Returns of Income		3					3	1%
	4B	Assessments		3	6	4	3		16	4%
13%		Appeals & Revisions		4	5		2	4	15	3%
		Powers of ITA	132 & 153A	4	8	8	1	4	25	6%
		Settlement Commission		3					3	1%
		Misc Topics	33AB	8					8	2%
			Provisional attachment	5					5	1%
			269SS/T						0	0%
								4	4	1%
	5	DTAA & Relief	Sec 91	6	9		1	10	26	6%
		RS & PE		6	9				15	3%
24%		Special Incomes of NR	115A, 115BB	6	6	6	2	2	22	5%
		AAR & DRP		3		3	1	3	10	2%
		Transfer Pricing	94B & Methods of ALP	6	6	12	3	4	31	7%
		NJA						3	3	1%
		E – Commerce transactions							0	0%
		Conversion of Branch into Subsidiary							0	0%
		Model Tax Conventions		3		6			9	2%
		Application & Interpretation of tax treaties		3	6			6	15	3%
		BEPS							0	0%
		GAAR				4	2		6	1%

A. MODULE WISE SET's from various chapters

Module	Chapter	Topics that must be laid stress upon
1	Basics	3.1, 4.4
	House Property	5.1.3b, 5.1.4, 5.4.1c, 5.5,
	Salary	Standard Deduction, transport allowance & Medical Perk
	TDS & TCS	7.2, 7.3.6,7.4
2	B&P	8.1.2, 8.1.4b, 8.1.4c, 8.1.4e, 8.1.6b, 8.1.6h, 8.1.6i, 8.1.7c, 8.2.2e, 8.2.3, 8.2.4c, 8.2.5, 8.2.6, 8.2.7, 8.2.8, 8.2.11d, 8.2.12, 8.2.13b, 8.2.15c, 8.2.15e
3A	Capital Gains	9.2.1, 9.2.3d, 9.2.3e, 9.3, 9.4.1, 9.4, 9.5.2a, 9.5.3, 9.5.4, 9.6.1, 9.6.3, 9.6.4, 9.7.1, 9.7.3,
	Business Reorganisation	10.1, 10.3, 10.5, 10.6,
3B	Other Sources	11.3.4, 11.3.5, 11.4, 11.5
	Clubbing	
	Set off or losses	13.3, 13.4
	Deductions	14.1.1d, 14.1.2, 14,1,4a & b, 14.1.4c, 14.1.4d, 14.2b, 14.2.3, 14.2.4a & c, 14.2.5b
	HUF	
4A	Firms & AOP	16.2, 16.3
	Charitable Trust	17 full chapter
	MAT & AMT	18 full chapter
	Returns of Income	19.1.1, 19.1.4, 19.1.5, 19.3.1
4B	Assessments	20.2.1b, 20.2.1c, 20.2.2c, 20.2.3a, 20.2.5, 20.3, 20.4.2, 20.5.4, 20.5.2,
	Appeals & Revisions	Entire chapter
	Powers of ITA	22.1.2, 22.1.4, 22.1.5, 22.1.8, 22.2
	Settlement Commission	Entire chapter
	Misc Topics	24.2, 24.3, 24.3, 24.6
5	DTAA & Relief	Sec 91
	RS & PE	25.1.2, 25.2, 25.3
	Special Incomes of NR	26.1, 26.2.1, 26.2.2, 26.2.3, 26.2.7, 8.2.6b,
	AAR & DRP	27.1, 27.2, 27.3
	Transfer Pricing	Entire chapter specially : 28.2, 28.3, 28.5
	NJA	29.1
	E – Commerce transactions	
	Conversion of Branch into Subsidiary	29.3
	Model Tax Conventions	29.4
	Application & Interpretation of tax treaties	29.5
	BEPS	29.6
	GAAR	29.7

V. RTP July 2020 - Discussion

S No	Section	Question Concept	To keep in Mind
1	**10AA**	The question covers a deduction u/s 10AA for the 12th year of operation, where amount has been transferred to **Special Economic Zone Re-Investment Reserve Account'**	**Deduction after 10th year is** • 50% of [Profits (before transfer tor reserve) x export turnover / Total Turnover] or • Amount transferred to the '**Special Economic Zone Re-Investment Reserve Account'** w.e. is less
2	**234A/B/C/E**	There is a relief u/s 91 : uniltateral relief to be computed but the question is on Advance tax and interest.	• Tax on total income for a domestic company where turnover of P.Y. 2017-18 does not exceed 400 crore, would be 25% • Also where a relief is to be given u/s 90 or 91 it will be reduced from the amount of tax on which the aforesaid interests are to be computed
3	**Sec 112A**	Computing LTCG u/s 112A where shares were acquired before 01/02/2018	• We have to take the highest quoted price on the immediately preceding day
4	**Sec 50B** **Sec 47(iv)**	Regular Question on Slump Sale	Advice on Re structuring the sale to minimize tax will also include the provisions of Holding & Subsidiary
5	**115JB**	MAT – Regular question	
6	**80IB**	Whether transport subsidy, interest subsidy and power subsidy received from the Government are eligible for deduction u/s 80IB	We have done the case study – Answer is yes
7	**Appeals**	Power of CIT(A) to admit an appeal beyond 30 days Power of ITAT to grant stay of recovery	-
8.	**Charitable Trust** **Sec 115TD**	Must do the Question	-
9	**TOTAL Income**	Must do the Question	-
10	**Unilateral Relief – Sec 91**	Regular Question	-
11	**92A – Associated Enterprises**	Regular Question	-
12	**POEM**	Must do the Question	-

Selected Questions from RTP

Sec 115TD

Helpage is a charitable trust set up on 1.4.2010 with the object of providing relief of the poor. Later on, in April, 2012, it changed its object to medical relief. It applied for registration on the basis of its new object, i.e., medical relief, on 1.9.2012 and was granted registration on 1.2.2013.

On 1.4.2019, Helpage got merged with M/s. Medicare (P) Ltd, a pharmaceutical company not entitled for registration under section 12AA. All the assets and liabilities of the erstwhile trust became the assets and liabilities of M/s. Medicare (P) Ltd. The trust appointed a registered valuer for the valuation of its assets and liabilities. From the following particulars (including the valuation report), calculate the tax liability in the hands of the trust arising as a result of such merger:

(i) Land

Location	Date of purchase	Stamp duty value on 1.4.2019	Value which the land would fetch, if sold in the open market on 1.4.2019	Book Value on 1.4.2019
		₹	₹	₹
Noida	1.9.2010	55 lakhs	58 lakhs	50 lakhs
Gurgaon	1.9.2013	100 lakhs	120 lakhs	110 lakhs

(ii) Shares

Type of shares	Date of purchase	Face value of each share	Purchase price of each share	Price at which each share is quoted on BSE as on 1.4.2019		Open market value as on 1.4.2019 #
				Highest price	Lowest price	
		₹	₹	₹	₹	₹
5000 Quoted equity shares of A Ltd.	1.5.2014	100	110	320	300	
2000Preference shares of B Ltd.	1.9.2015	100	100	--	--	180

\# on the basis of report of Merchant Banker

(iii) Liabilities

Book value of liabilities on 1.4.2019 = ₹ 120 lakhs. This includes –

(a) Corpus fund ₹ 12 Lakhs.

(b) Provision for taxation ₹ 8 lakhs; and

(c) Reserves and Surplus ₹ 18 lakhs

Answer

As per section 115TD, the accreted income of "Helpage", a charitable trust, registered under section 12AA which is merged with M/s Medicare (P) Ltd., an entity not entitled for registration under section 12AA, would be chargeable to tax at the rate of 34.944% [30% plus surcharge @12% plus cess@4%].

Computation of accreted income and tax liability in the hands of the Helpage trust arising as a result of merger with M/s. Medicare (P) Ltd.

Particulars	Amount (₹)
Aggregate FMV of total assets as on 1.4.2019, being the specified date (date of merger) **[See Working Note 1]**	1,39,10,000
Less: Total liability computed in accordance with the prescribed method of valuation **[See Working Note 2]**	82,00,000
Accreted Income	**57,10,000**

Tax Liability @ 34.944% of ₹ 57,10,000 (rounded off)	**19,95,300**
Working Notes:	
(1) Aggregate fair market value of total assets on the date of merger	
- **Land at Noida, being immovable property, purchased on 1.9.2010**	-
Since the trust was registered only on 1.2.2013 and benefit of section 11 and 12 was available to the trust only from A.Y.2013-14, relevant to P.Y.2012-13, being the previous year in which the application for registration is made, the value of land purchased in P.Y.2010-11, in respect of which benefit under sections 11 and 12 was not availed, has to be ignored for computing accreted income.	
- **Land at Gurgaon, being an immovable property, purchased on 1.9.2013**	1,20,00,000
[The fair market value of land would be higher of ₹ 120 lakhs i.e., price that the land would ordinarily fetch if sold in the open market and ₹ 100 lakhs, being stamp duty value as on the specified date, i.e., 1.4.2019]	
- **Quoted equity shares of A Ltd. [5,000 x ₹ 310 per share]**	15,50,000
[₹ 310 per share, being the average of the lowest (₹ 300) and highest price (₹ 320) of such shares on the specified date]	
- **Preference shares of B Ltd. [2,000 x ₹ 180 per share]**	
[The fair market value which it would fetch if sold in the open market on the specified date i.e. FMV on 1.4.2019]	3,60,000
	1,39,10,000
(2) Total liability	
- Reserves and Surplus ₹ 18 lakhs [not includible]	-
- Corpus Fund of ₹ 12 lakhs [not includible]	-
- Provision for taxation ₹ 8 lakhs [not includible]	-
- Other Liabilities	
[₹ 120 lakhs - ₹ 18 lakhs - ₹ 12 lakhs - ₹ 8 lakhs]	82,00,000
	82,00,000

Total Income

Lambda Ltd. is engaged in the manufacture of fabrics since 01 -04-2012. Its Statement of Profit and Loss for the previous year ended 31st March, 2020 shows a profit of ₹ 750 lakhs after debiting or crediting the following items:

(a) Depreciation charged on the basis of useful life of assets as per Companies Act is ₹ 52 Lakhs.

(b) Industrial power tariff concession of ₹ 4.80 lakhs, received from Maharashtra State Government was credited to Statement of profit and loss.

(c) The company had provided ₹ 18 lakhs being sum fairly estimated as payable with reasonable certainty, to workers on agreement to be entered with the workers union towards periodical wage revision once in every three years.

(d) Dividend received from a US company ₹ 12 Lakhs.

(e) Loss ₹ 17 lakhs, due to destruction of a machine worth ₹ 24 lakhs by fire due to short circuit and ₹ 3 lakh received as scrap value. The insurance company did not admit the claim of the company on charge of gross negligence.

(f) Provision for gratuity based on actuarial valuation was ₹ 320 lakhs. Actual gratuity paid debited to gratuity provision account was ₹ 180 lakhs.

(g) The company has purchased 1000 bales of raw cotton at a price of ₹ 20,000 per bale from M/s. Omicron, a firm in which majority of the directors of Lambda Ltd. are partners. The firm's normal selling price of the same material in market is ₹ 18,000 per bale.

(h) Advertisement charges ₹ 2.30 lakhs, paid by cheque for advertisement published in the souvenir of a political party registered with the Election Commission of India.

(i) Long term capital gain ₹ 3 lakhs on sale of equity shares on which Securities Transaction Tax (STT) was paid at the time of acquisition and sale.

Additional Information:

(i) Normal depreciation computed as per Income-tax Rules is ₹ 71 lakhs.

(ii) GST ₹ 8 lakhs collected from its customers was paid by the company on the due dates. On an appeal, the High Court directed the GST department to refund ₹ 3 lakhs to the company. The company in turn refunded ₹ 2 lakhs to the customers from whom it was collected and the balance ₹ 1 lakh is still lying under the head "Current Liabilities".

Compute the total income of Lambda Ltd. for the A.Y. 2020 -21 by analyzing and applying the relevant provisions of income-tax law. Briefly explain the reasons for treatment of each item. Ignore the provisions relating to Minimum Alternate Tax. Assume that the company has not opted for section 115BAA.

POEM

Singtel Ltd. is a company incorporated in Singapore and 55% of its shares are held by Godavari (P) Ltd., an Indian company. Singtel Ltd. has its presence in India also. The details relating to Singtel Ltd. for the P.Y.2019-20, are as under:

Particulars	India	Singapore
Fixed assets at depreciated values for tax purposes (₹ in crores)	120	80
Intangible assets (₹ in crores)	50	200
Other assets (value as per books of account) (₹ in crores)	40	120
Income from trading operations (₹ in crores)	25	50
The above figure includes:		
(i) Income from transactions where purchases are from associated enterprises	2	4
(ii) Income from transactions where sales are to associated enterprises	3	5
(iii) Income from transactions where both purchases and sales are from/to associated enterprises	5	10
Interest and dividend from investments (₹ in crores)	20	15
Number of employees	70	90
(Residents in respective countries)		
Payroll expenses on employees (₹ in crores)	8	12

Determine the residential status of Singtel Ltd. for A.Y.2020 -21, if during the F.Y.2019-20, seven board meetings were held – 3 in India and 4 in Singapore.

Answer

The residential status of a foreign company is determined on the basis of place of effective management (POEM) of the company.

For determining the POEM of a foreign company, the important criteria is whether the company is engaged in active business outside India or not.

A company shall be said to be engaged in "Active **Business Outside India"** (ABOI) for POEM, if

- the passive income is not more than 50% of its total income; **and** - less than 50% of its total assets are situated in India; **and**
- less than 50% of total number of employees are situated in India or are resident in India; **and**
- the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

Singtel Ltd. shall be regarded as a company engaged in active business outside India for P.Y.2019-20 for POEM purpose only if it satisfies all the four conditions cumulatively.

Condition 1: The passive income of Singtel Ltd. should not be more than 50% of its total income

Total income of Singtel Ltd. during the P.Y. 2019-20 is ₹ 110 crores [(₹ 25 crores + ₹ 50 crores) + (₹ 20 crores + ₹ 15 crores)]

Passive income is the aggregate of, -

(i) income from the transactions where both the purchase and sale of goods is from/to its associated enterprises; and

(ii) income by way of royalty, dividend, capital gains, interest or rental income;

Passive Income of Singtel Ltd. is ₹ 50 crores, being sum total of :

(i) ₹ 15 crores, income from transactions where both purchases and sales are from/to associated enterprises (₹ 5 crores in India and ₹ 10 crores in Singapore)

(ii) ₹ 35 crores, being interest and dividend from investment (₹ 20 crores in India and ₹ 15 crores in Singapore)

Percentage of passive income to total income = ₹ 50 crore/ ₹ 110 crore x 100 = 45.45%

Since passive income of Singtel Ltd. **is 45.45%, which is not more than 50%** of its total income, the first condition is satisfied.

Condition 2: Singtel Ltd. should have less than 50% of its total assets situated in India

Value of total assets of Singtel Ltd. during the P.Y. 2019 -20 is ₹ 610 crores [₹ 210 crores, in India + ₹ 400 crores, in Singapore]

Value of total assets of Singtel Ltd. in India during the P.Y. 2019-20 is ₹ 210 crores

Percentage of assets situated in India to total assets = ₹ 210 crores/₹ 610 crores x 100 = 34.43%

Since the value of assets of Singtel Ltd. **situated in India is less than 50%** of its total assets, the second condition for ABOI test is satisfied.

Condition 3: Less than 50% of the total number of employees of Singtel Ltd. should be situated in India or should be resident in India

Number of employees situated in India or are resident in India is 70

Total number of employees of Singtel Ltd. is 160 [70 + 90]

Percentage of employees situated in India or are resident in India to total number of employees is 70/160 x 100 **= 43.75%**

Since employees situated in India or are residents in India of Singtel Ltd. **are less than 50%** of its total employees, the third condition for ABOI test is satisfied.

Condition 4: The payroll expenses incurred on employees situated in India or resident in India should be less than 50% of its total payroll expenditure

Payroll expenses on employees employed in and resident of India = ₹ 8 crores.

Total payroll expenses = ₹ 20 crores (₹ 8 crores + ₹ 12 crores)

Percentage of payroll expenses of employees situated in India or are resident in India to the total payroll expenses = 8 x 100/20 = 40%

Tax Treaties

What are the differences between the OECD Model Convention and UN Model Convention in relation to the article on Permanent Establishment? Examine.

Answer

In relation to Article 5 on Permanent Establishment, the UN Model Convention varies from the OECD Model Convention in the following aspects:

(i) As per Article 5(3)(a) of the OECD Model Convention, a building site or construction or installation project constitutes a PE if it lasts more than twelve months. The UN Model Convention is wider as it covers "assembly and installation project" and "supervisory" activities in connection thereto and requires the activity in question to continue only for six months for constituting a PE.

(ii) Article 5(3)(b) of the UN Model Convention makes a specific reference to Service PE which is absent in the OECD Model Convention. Under the UN Model Convention, furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose would constitute a PE, but only if activities of that nature continue within a Contracting State for a period or periods aggregating more than 183 days in any 12 month period commencing or ending in the fiscal year concerned.

In the absence of a Service PE reference in OECD Model Convention, the presence has to be ascertained through general principles under Article 5(1).

(iii) The UN Model Convention has an additional Article 5(6) relating to insurance which is absent in OECD Model Convention. As per this Article in the UN Model Convention, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person.

In the absence of similar Article in the OECD Model Convention, a PE of an insurance Enterprise has to be determined in accordance with provisions of Article 5(1) or 5(2) of the OECD Model Convention.